

Comments and Responses on ARC 7653B  
Medicaid HCBS Incident Reporting Standards  
Received April 15, 2009

The following persons and organizations provided written comments, which are included in the summary below:

Jim Aberg, services director, Opportunity Village, Clear Lake  
Cindy Baddeloo, deputy director, Iowa Health Care Association; director, Iowa Center for Assisted Living  
Marcy Davis, chief executive officer, Candeco Iowa, Ankeny  
Mickey Edwards, regional director, Christian Opportunity Center, Pella  
Kristine Karminski, Abbe Center, Cedar Rapids  
Kim Keleher, Iowa Association on Aging, Siouxland Aging Services, Inc., Sioux City  
Kelly McMahon, quality assurance coordinator, DAC, Inc.,  
Brita Nelson, director of community-based services, Opportunity Homes, Inc, Decorah  
Bill Nutty, director of government relations, Iowa Association of Homes and Services for the aging  
Lisa Schwanke, director of quality improvement, Hope Haven, Rock Valley  
Annie Uetz, director of case management, Polk County Community Health Services  
Kelly Verwers Meyers, directory of regulatory affairs, Iowa Health Care Association  
Amy Wallman Madden, COO, co-founder, H.O.P.E. Honoring Opportunities for Personal Empowerment

### Reporting Form

**COMMENT:** I have been searching for form 470-4698 online. Is that available yet for review? Is it being proposed that this is the form that all providers utilize to report an incident report rather than each agency having their own form to meet guidelines? (Wallman Madden)

**RESPONSE:** The DHS is in the process of developing the form. It will be available both on paper and through an electronic on-line report effective September 1, 2009. All providers will utilize one of these options.

**COMMENT:** Will the form be sent to providers well in advance of the projected date of 9-1-09 so providers can train staff on the use of the required form? If not will there be a grace period for providers to continue to use their own forms until the DHS form is sent and adequate training time can occur? (Edwards)

**RESPONSE:** The intent is to train on the form and electronic on-line report before implementation of September 1, 2009.

**COMMENT:** I thought the Form 47--4698 was only required for major incidents if not reported on ISIS. I thought we agreed each agency could use their own form for the reporting of minor incidents. I can sure agree and it makes sense to use a uniform incident report format for reporting of major incidents. Now with minor incidents, using this form will take away flexibility for providers. My request is to require the DHS Form for major incidents if ISIS is not used for reporting, and please let providers complete their own minor incidents in a format that is most useful to them. (Aberg)

**RESPONSE:** The incident reporting form will be for major incidents only. The rules will be changed to reflect this. Each provider will be required to track the minor incidents.

**COMMENT:** Would IME consider changing the rule that the completed incident report form shall be distributed to a central file with a notation in the consumers file. We are able to meet the centralized file requirement, but have found it is difficult for our leadership to always remember to make a notation in the members medical file for each major or minor incident. Rather, what we do, is one report is placed in a centralized location and a copy of the same report placed in the consumer medical record. Also, with abuse allegations, our legal counsel has advised against placing notations or copies of these type of reports in the medical records of members. Rather, we have a centralized location for all incident reports of abuse with all investigation materials maintained in a separate centralized location in the administrative assistants office only, with very limited access due to confidentiality and privacy for employees for whom an allegation or finding has taken place. For medication error's, we also do not put a copy of the report nor a notation in the central file because this is a staff performance issue that we feel is confidential. We have also been advised by our legal counsel to only keep them in a central location like abuse incident reports. (Aberg)

**RESPONSE:** If an incident occurs, the issue should be documented in the provider's documentation notes. The requirement to make a notation in the member's file is to provide information to the people responsible for direct services to know that there was an incident reported and the full report is available in a central file. The term "member's file" can have a flexible meaning and should be based on the procedures of the provider.

## **Submission of Report**

**COMMENT:** Is there any way to fax or email completed major incident reports to the Bureau? With the time line of 24 hrs to submit an incident report - that is not possible if an incident happens on a Saturday at 5 pm and mailing is the only option. Even though we are in Des Moines, it might take 2 days to get the completed report to the Bureau if sent on Monday morning - well past the 24 hr rule. (Wallman Madden)

**COMMENT:** It would dramatically cut down on the cost of submitting incident reports if they were allowed to be submitted electronically. (McMahon)

**RESPONSE:** An electronic system is in process of being developed with consultation from the Iowa Association of Community Providers. Therefore, reporting will be available electronically as of 9/1/09.

**COMMENT:** It is unclear why we would need to notify the member of the incident when it is deemed major. This classification has no bearing on the member. (McMahon)

**RESPONSE:** It is agreed that it doesn't make sense to notify the member of an incident when they were involved. The intent was to notify the member that this was being reported. The rules are being amended to reflect this.

**COMMENT:** I propose that rather than requiring that the incident report be distributed within 24 hours of the incident, that the report form include a section where providers can document a verbal report of the incident to the case manager and the consumer's legal guardian within the 24 hours and then the report itself be distributed within 72 hours. This allows for weekends when most providers do not have clerical staff available to send reports as well as for Sundays and holidays when postal services is not available. (Schwanke)

**COMMENT:** Under Item 7, subrule 77.33(22). Section c(1). Strike words 9-12 "within 24 hours of" and replace with "on the next business day after". We ask that the new line c(1) read "To the supervisor of the provider staff involved on the next business day after the incident". (Nuttly)

**COMMENT:** The time requirements related to 24 hour reporting are concerning given the nature community-based services throughout multiple counties. I understand the importance of timely reporting, but feel the current standards already suffice. An allowance for providers to report within 24 hours *or at the end of the next business day* would alleviate many of the significant barriers to complying with this piece of the regulation. (Nelson)

**COMMENT:** The 24 hour time frame for distribution of the incident reports to the supervisor, case manager, BLTC and guardian is unrealistic. We provide services throughout a vast rural area. A supervisor is on-call to assist with incidents at any given time but is not expected to be at the administrative office throughout their on-call week to receive and distribute incident reports. It would be more realistic to receive and distribute incident reports the next business day. The 24 hour time frame for distribution of the incident reports to the supervisor is unrealistic. We provide services throughout a vast rural area. A supervisor is on-call to assist with incidents at any given time but is not expected to be at the administrative office throughout their on-call week to receive and distribute incident reports. It would be more realistic to receive and distribute incident reports the next business day. (McMahon)

**COMMENT:** Why was there the need to change the reporting time to the bureau of long term care from 72hrs to 24hrs? Unless the form is electronic or faxed in it does not allow the time to send the report within 24hrs, it also does not allow time for the supervisor to review incidents before being sent onto the bureau. (Karminski)

**COMMENT:** The change from 72 hours to 24 hours for provider staff to notify the member or member's legal guardian and distribute the completed incident report form to the supervisor, the members case manager, the bureau of long term care, and to the members guardian is generally unrealistic for most providers to accomplish. Providers have sites in the community that do not have access to any technology to send a form within 24 hours. Also many case managers do not have an on call system in place to receive such notification or to receive the form. If the form is sent, staff are not available to review and act upon the information on the form until the next working day. Please consider all notification to be completed within 24 hours, or the next business day for a more realistic requirement. The same language is currently allowed in 481-50.7(10A,135C) (Edwards)

**COMMENT:** In these rules the provider staff is given 24- hours after an incident is witnessed or suspected to report the incident to the provider and then the provider is given 24-hours to report the incident AND "THE ACTION THE PROVIDER TOOK TO MANAGE THE INCIDENT AND THE RESOLUTION OF OR THE FOLLOW UP TO THE INCIDENT".

This is absolutely impossible if the staff member submits the report late in the allowable 24-hour reporting period requirement. Services are community based and this allows very little or NO time to drive, interview and act on an incident. My organization missed the 72-hour deadline from the old rules by 10 minutes and was required to address it therefore I am well aware that the department will count the minutes in the 24-hour requirement. Also, this rule does not take into account that community based services are provided 24-hours per day 365 days per week but that community based provider offices are not open 24-hours a day 365 days a week therefore additional time is required to notify the Manager on Duty and to drive to the offices where electronic equipment can be accessed to submit the report (Form 470-4698).

The code does not clearly identify what "notify" means – is this a phone call or a written report or an email or a fax and does this notification need to be the actual report on the required form? The code also

does not constitute what will be considered delivery of the report. What if the guardian is out of town, is leaving a message or sending an email considered delivery of the report? What about guardians who do not have the ability to receive an electronic version of the report and live out of town? Are we expected to overnight the report? What if the case manager's offices are closed, again what constitutes delivery of the report? What about the bureau of long-term care?

The simultaneous reporting requirement absolutely must be changed as there is no way a provider can abide by that requirement if the staff member submits the report at the later stages of the first 24 hours after an incident. At the very minimum, a second 24-hour period is necessary for the provider to follow up and take action regarding an incident and to access electronic equipment to submit Form 470-4698. (Davis)

**COMMENT:** There is no way in our agency the completed incident report form for a major incident can always be to the supervisor within 24 hours. We have an on call system and in many cases the report will have to be made by phone to the on call administration in order to make the report on ISIS within 24 hours. After that we will get more information. Only certain administrative employees will be allowed access to make such reports on ISIS. Opportunity Village serves 120 children and adults in their own homes throughout North Central Iowa. Our direct services staff are dispersed and reside throughout north central Iowa. In these instances almost all our staff are part time employees who have other jobs. Many of our staff reside in locations which are many miles away from one of our offices or their supervisor. Because of these circumstances, our organization is unable to consistently meet the requirement of the major incident report getting to the supervisor in 24 hours. Since we are going to report the major incidents on ISIS, which is electronic, hopefully we do not have to also complete the DHS form? Can we just complete the report on ISIS only and not have to also complete the DHS Form. This is very redundant. (Aberg)

**COMMENT:** There is no way a provider could get a copy of the incident report to the guardian within 24 hours. Besides that most providers will report major incidents on the ISIS system once developed. Suggest rather to change the rule to require phone contact with member's guardian within 24 hours of the major incident to inform them. If the guardian requests a copy of the incident report one would then be sent to the guardian. (Aberg)

**COMMENT:** ...in our meetings I thought it was agreed to change the rule to state within 72 hours of the [minor] incident (Aberg)

**RESPONSE:** The intent of making an incident report within a day is to inform the listed parties that there has been a report of a major incident. It is important that the guardian and case manager be notified of the major incident as soon as possible to assist in resolving any issues. It may take the provider more than 24 hours to investigate and resolve the incident. Therefore, the provider will be making an initial report and updating the information until the incident has been resolved.

## **Applicability**

**COMMENT:** We utilize the HCBS MR waiver for many of our consumers. Several have chosen to convert their support community living hours into consumer choices option. They then purchase a like service through this program. The majority of the consumers, utilizing this service are paying their parents to support them 24 hours a day. I believe that they need to abide by the same rules as the traditional providers. The only oversight these consumer choices option providers receive is through the case manager. Critical incidents can happen in their care and I believe they need to be held responsible for reporting them to the case manager and to the Bureau of Long Term Care. (Uetz)

**COMMENT:** Exceptions should not be made regarding safety. Individuals receiving services with Medicaid dollars should be offered the same protection and oversight regardless of the type of service being rendered. (McMahon)

**COMMENT:** Clarify provider and provider staff. Case management is not exempted from the list of providers who need to follow incident reporting. Reference is made to provider staff notifying the case manager. Clarify if case management is a provider under this rule. Clarify the case manager's role if it is the case manager who observed or was first notified by someone other than providers of services. Clarify who, the provider or the case manager, is to report to the Bureau of Long Term Care. (Keleher)

**COMMENT:** My question is this, now for a member receiving CCO, the member could get lost or the CCO contract personnel not provide protective oversight, and IME would not want to know about this? Why? I really feel the incident report rules on major incidents need to apply to CCO, or what happened at Atalissa, or something bad could happen someday and tarnish CCO. DHS/IME could experience tremendous second guessing and criticism for this. Why would CMS not want to know of deaths in CCO? Why would IME not want to know about any physical injuries that necessitate physician treatment or emergency room care that occur during service provision? Why would IME not want to know about emergency mental health services needed during services provision? How can the Case Manager monitor the member's health and safety without CCO providers needing to at least complete incident reports for major incidents? Would IME want to know if the CCO contract personnel are reporting dependent adult abuse or child abuse regarding the primary caregiver in the home? Further, as part of MFP, CCO is an option for a member. Since members will be moving from ICF/MR's, Woodward, and Glenwood, why would you not want to know this information. My understanding was the 24 hour reporting requirement came as part of the Justice Department Review of Glenwood. By not requiring this for CCO, is Iowa out of compliance with the DOJ agreement?? (Aberg)

**RESPONSE:** The current rule proposal states "Exception: The conditions in this subrule do not apply to providers of goods and services purchased under the consumer choices option or providers of home and vehicle modification, home-delivered meals or personal emergency response." Providers of goods and services are not providing direct care. The CCO providers of community supports or employment supports, which include direct supports, are required by rule to report incidences.

Case managers are not direct service provider. However, if a case manager is confronted with an incident during the case manager's visit with a consumer, the case manager will also be required to report the incident.

### **Unknown Location Incident**

**COMMENT:** On the definition of a major incident - "Involves a member's location being unknown by provider staff who are assigned responsibility for oversight." I think further clarification on this would decrease potential issues of compliance with this rule. For example, would this indicate that if a person arrives home 15 minutes late from work (indicating they possibly did not take the usual route home) that a major incident report would be required? Or, if someone made an unexpected stop (to get groceries, get a coffee...) while walking home, would a report be necessitated as the staff with assigned responsibility for oversight did not know of their location at that time? (Nelson)

**COMMENT:** Is this referencing a 24hr program as we have hourly community living providers that may call case managers because a member misses an appointment is their location technically unknown although members have the right and freedom to come and go as they wish. Is there a time frame for how long the unknown location needs to be for instance if the member's whereabouts are unknown for 24 or 48 hours? What does assigned responsibility for oversight

mean, that the provider staff is providing oversight of the housing, or the member's 24 hour care? (Karminski)

**COMMENT:** ...suggested wording in order to avoid any misunderstandings of what this means: During the course of service provision a member's location is unknown by provider staff who are assigned responsibility for protective oversight. (Aberg)

**RESPONSE:** The rule has been clarified to state the following “Involves a consumer’s location being unknown by provider staff who are assigned responsibility for protective oversight responsibility. ~~for oversight~~”

## **Relationship to Licensing and Certification Standards**

**COMMENT:** Chapter 24 also has incident reporting rules. Many of the providers must also follow Chapter 24, including all case managers. The rules for incident reporting, do not match these new rules. For instance, they contain different occurrences for when a report is necessary. If these new rules are approved, Chapter 24 needs to be amended so that providers can follow one process no matter the funding stream. (Uetz)

**COMMENT:** The purpose of this proposed rule change is to implement identical incident reporting standards across HCBS habilitation and waiver services. I would like to suggest that these rules be revised to be identical to Chapter 441-24 rules as well. Chapter 24 rules include the same reporting standards as those for major incidents 1-6 in this proposal. Major incident # 7 could remain—but it would eliminate the requirement for providers to write incident reports on what currently are considered minor incidents and make incident reporting standards identical across more services. (Schwanke)

**RESPONSE:** The Iowa Medicaid Enterprise is working with the Division of Mental Health and Disability Services to change Chapter 24 rules to match the HCBS incident reporting rules.

**COMMENT:** However, the proposed regulation is duplicative of the obligations and responsibilities set forth in current state licensure and certification requirements for nursing facilities, residential care facilities, assisted living programs, elder group homes and adult day services enrolled in the Medicaid HCBS program.

The proposed regulation requires any elderly waiver provider to comply with Iowa Code Chapter 235B.3, however, the law changed last year and these licensed entities are under the jurisdiction of the Department of Inspections and Appeals (DIA) pursuant to Iowa Code Chapter 235E for dependent adult abuse reporting and investigation.

Facilities and programs licensed under 135C, 231B, 231C and 231D are mandated by the State of Iowa to report incidents to the DIA. In fact, within the last year, DIA implemented electronic reporting for these providers. Additionally, DIA has been working on draft rules (we have seen an informal copy) which will have additional incident reporting for 231B, 231C and 231D providers. We anticipate those rules being noticed soon.

It is IHCA/ICAL’s position that the current laws sufficiently meet the reporting goals set forth by DHS in ARC7653B. To avoid duplicative reporting and oversight, IHCA/ICAL recommends the below language to 441 IAC 77.33(22):

77.33(22) Incident management and reporting: As a condition of participation in the medical assistance program, HCBS elderly waiver service providers must comply with the requirements of Iowa Code

Sections 232.69, 235B.3 regarding the reporting of child and dependent adult abuse and with the incident management and reporting requirements in this subrule. **EXCEPTIONS:**

1. The conditions in this subrule do not apply to providers of assistive devices, chore service, goods and services purchased under the consumer choices option, home and vehicle modification, home-delivered meals, personal emergency response, or transportation.
2. Health care facilities and certified programs pursuant to Iowa Code Chapters 135C, 231B, 231C and 231D must comply with their applicable licensure requirements for reporting of incidents and must comply with the mandatory reporting requirements set forth in Iowa Code Chapter 235E.2 (Baddeloo, Verwers Meyers)

**RESPONSE:** There are several groups, including the Iowa Medicaid Enterprise and the Department of Inspections and Appeals, that are working together to coordinate the reporting of incidents in order to look comprehensively at the Iowa service system due to the discussions that occurred with the Dependant Adult Abuse Task Force convened at Governor Culver's direction. Until the systems are coordinated, it is essential that both parties receive the information that is outlined in their incident reporting system. Currently the information is similar but does not contain all of the same detail.