State of South Dakota

Department of Human Services

Division of Developmental Disabilities

Critical Incident Reporting Guide to Compliance

Introduction

It is in partnership with our providers and the South Dakotans they serve, that we ensure the services and supports provided to participants are both top quality and compliant with the laws, rules, and regulations which govern South Dakota's waiver programs. Part of this process includes the reporting and documentation of critical incidents which threaten the health or wellbeing of participants, or which jeopardize the continuity of services delivered to participants. This guide to compliance will provide information and instruction concerning what constitute reportable events and how to address and document them so that the delivery of services can continue and so that participants can work towards realizing their visions of a good life.

Section I: General Authority

Who sets these expectations?

The Code of Federal Regulations, South Dakota Codified Law, and the Administrative Rules of South Dakota (ARSD), section 46:11:03:02 establish the expectation that all "critical incidents" are reported to the Division of Developmental Disabilities (DDD). ARSD specifically requires that "the provider shall give verbal notice of any critical incident involving a participant to the division no later than the end of the division's next business day or the provider's next administrative business day, whichever occurs first, from the time the provider becomes aware of the incident. The provider shall submit a written critical incident report utilizing the division's on-line reporting system within seven calendar days after the initial notice is made. A report must be submitted for the following: deaths, life threatening illnesses or injuries, alleged instances of abuse, neglect, or exploitation against or by any participant, changes in health or behavior that may jeopardize services, serious medication errors, illnesses or injuries that resulted from unsafe or unsanitary conditions, [and] any illegal activities that involves a participant in which there is law enforcement involvement.

Section II: Understanding Critical Incidents

What are Critical Incidents?

A critical incident is an occurrence involving at least one or more participants receiving services where the health, welfare, or safety of the participant(s) was or may have been at risk. Generally, a critical incident involving two or more participants requires a separate incident report for each participant involved.
It is important to remember the above events only give some examples of reportable situations. There may be situations not identified on this document that may constitute a report. If you have questions as to whether an event requires you to complete a critical incident report, a community support specialist at the division should be contacted. An incident report may be requested for increase in behaviors that result in an Extraordinary Needs Request, request for individual services and supports, consultations from the SDDC or other professionals, or significant change request. If this occurs, one incident report should be submitted, describing a culmination of events leading up to the request for additional services.

Section III: Reportable Categories

Deaths

Providers are required to report each death as a separate critical incident report. This is true even if a critical incident report regarding the circumstances that led up to the death was previously reported.

Life-threatening illnesses or injuries

Examples include, but are not limited to:

- Suicide attempts
- Head injury with the loss of consciousness
- Choking incidents that require medical follow-up
- Victim of altercation resulting in severe injury
- Any life-threatening medical diagnosis
- ALL unplanned hospitalizations

Abuse, Neglect, or Exploitation

Providers will report all abuse, neglect, and exploitation allegations to the division. Abuse includes:

- Verbal abuse
- Physical abuse
- Sexual abuse
- Psychological abuse

Jeopardizing Services

Changes in health or behavior that may jeopardize continued services including, but not limited to:

- Missing persons (AWOL)
- Behavior that led to severe altercations towards others
- Sexual contact with someone who is unable to or did not provide consent
- Severe self-inflicted injury
- Inpatient psychiatric stays
- Increase in behavioral issues

  Note:
  AWOL/Missing persons incidents are reportable CIRs unless there is a plan in place to respond to the missing person and the plan was followed. In extreme circumstances the missing person should still be reported.

  Behavioral events that are not resulting in jeopardizing services need to be reported as low or medium GERs as appropriate.

Serious Medication Errors

A serious medication error is the inappropriate administration of a medication to the participant by a provider that results in:

- Emergency medical treatment
- Hospitalization
- Death

Illnesses or injuries that resulted from unsafe or unsanitary conditions

Examples include, but are not limited to:

- Fractures or dislocations
- Unexplained injuries
- Communicable diseases contracted as a result of unsanitary conditions
- Severe allergic reactions

Law Enforcement Involvement

Any illegal activity that involves a participant in which there is law enforcement involvement including:

- Arrests
- Incarceration
- Criminal court appearances/charges
- Illegal drug use
- Probation/parole violation
- Shoplifting, petty theft, etc.

Physical, Mechanical, or Chemical Interventions

Any use of physical, mechanical, or chemical interventions not a part of an approved plan, including but not limited to:

- Physical restraints
- Mechanical restraints
- Chemical restraints
- Use of time-out (time-out may only be used as part of an approved behavior support plan)
- Other techniques with similar degrees of restriction or intrusion, e.g. preventing egress from vehicles and/or rooms, as described in ARSD

  Note: All highly restrictive procedures must receive due process through the agency's Human Rights Committee and Behavior Intervention Committee.

Bruising or Injury Resulting from Physical, Mechanical, or Chemical Intervention

Any bruise or injury resulting from the use of a physical, mechanical, or chemical intervention, irrespective of whether or not the restrictive procedure is part of an approved behavior intervention plan.

Diagnosed Reportable Communicable Diseases

Any diagnosed reportable *communicable disease* involving a participant. A reportable communicable disease is any disease, syndrome, or condition declared by the Department of Health to be dangerous to public health and reportable in accordance with Department of Health Administrative Rule 44:20.

Alleged Instances of Corporal Punishment, Seclusion, Denial of Food, or Other Prohibited Practices

Any alleged instances of corporal punishment, seclusion, denial of food, or other practices prohibited in SDCL 27B-8-42.

Other Critical Incidents as Required by DDD

Any additional critical incidents as defined by the Division of Developmental Disabilities pursuant to ARSD 46:11:03:02
Examples include, but are not limited to:

- Drug/alcohol abuse
- Sensitive Situation
- Intentional Property Damage
- Victim of Theft
- Unapproved Rights Restriction

Section IV: Reporting Requirements

When do I report a Critical Incident?

- The Provider shall give verbal notice to DDD no later than the end of the Division's next business day.
- The Provider shall submit a written report within seven calendar days after the initial notice is made. The date the report is "Approved" in the Division's web platform (Therap) serves as the date the "written" report was submitted to DDD.

How do I report a Critical Incident?

All critical incidents must be reported to your assigned community support specialist (or first available community support specialist if your assigned community support specialist is unavailable) by telephone. Verbal reports for Critical Incident Reports should **not** be communicated via text, email, or voicemail.

If the CSS assigned to the provider isn't available, the provider must request to speak to another CSS.

- For this reason, providers must call the DDD main line at 605-773-3438, so they can be transferred to another DDD staff if they do not reach someone on their first attempt. Providers should not call a CSS's

direct line, this is no longer acceptable for critical incident reporting, and you are directed to contact DDD main line.

When reporting a CIR to your assigned community support specialist (or first available community support specialist) please be prepared with the following information:

- Name of the participant
- Date of the incident
- Event Type (may be multiple depending on the circumstances surrounding the event)
- Summary of events
- Confirmation that the case manager and guardian have been notified (if applicable and if the guardian is not alleged to have committed abuse, neglect, or exploitation)

In the rare circumstance that there are no DDD staff available to receive the critical incident report, a voicemail should be left for your assigned community support specialist to include:

- Name of the participant
- Date of the incident
- Event Type (may be multiple depending on the circumstances surrounding the event)
- Summary of events
- Confirmation that the case manager and guardian have been notified (if applicable and if the guardian is not alleged to have committed abuse, neglect, or exploitation)
- Name, number, title, and organization for the person reporting the incident

The assigned community support specialist will be responsible for following up on the verbal report by returning the provider's call.

Section V: Documentation Requirements

What are the documentation requirements for Critical Incidents?

A report must be written for all critical incidents and submitted to the Division using the Division's web platform no later than 7 days from the date the critical incident was reported. The documentation must contain:

- An account of the incident and specify what happened
- When it happened
- Where it happened
- The participant's status
- Actions taken by the provider

As appropriate, the provider should review the incident to identify possible causes and provide suggestions, plans, or actions for the prevention of similar incidents in the future. The division may request further information relating to the incident or the provider may have additional information related to the incident. This information is submitted by using the follow-up option within the on-line critical incident report.

For any critical incidents that involve allegations of abuse, neglect, or exploitation (ANE), an additional report is required with a summary of findings resulting from an investigation into the circumstances

surrounding the alleged ANE to include details about:

- How the investigation was conducted
- Who was interviewed
- What, if any, evidence was uncovered
- The agencies determination as to whether the ANE allegation is or is not substantiated

The report must be submitted to the Division using the Division's web platform (Therap GER Resolution) no later than 30 calendar days from the date of the incident. The report and all relevant evidence and testimony will be reviewed by the assigned community support specialist and/or the Investigation Unit to make a final determination regarding the status of the allegation as being either substantiated or unsubstantiated.

Section VI: Investigations

How do I conduct an investigation for alleged ANE?

In order to comply with the requirements of ARSD 46:11:03:01, providers must initiate an investigation, as well as submit preliminary and final investigation findings to DDD for **ALL** allegations of ANE. This requirement is met by completing a GER Resolution in the Therap reporting system. The timeframes listed below start upon the observation or discovery of the alleged incident.
Per ARSD 46:11:03:01 the Provider shall:

1. **Initiate an investigation within 48 hours**- At this time, the Provider should open a GER Resolution in Therap to demonstrate that an investigation has been initiated.

2. **Submit preliminary finding to DDD within 7 calendar days of initiation of the investigation**- Use the GER Resolution "**Findings**" tab to submit your preliminary findings. This determination can be changed at any point throughout the investigation. During the investigation process, additional sections of the GER resolution to be completed:
    - The **'Investigators'** section: Select the person assigned as the Investigator. Select who they are assigned by, as well as the assigned date.
    - The **'Investigators Narratives'** section: Select the appropriate "Action Type" from the drop-down list and enter the details of the investigation in the "Comments" box. This section is used to document what actions will be completed to conduct the investigation.
    - The **'Involved Persons'** section: List the persons that were involved in the process, along with their involvement types (Alleged Perpetrator, Alleged Victim, Coordinator, or Witness). Multiple persons who are involved in the process can be added or removed.
    - The **'Resolution Summary'** section: Add the details and notes of the investigation to this section.
    - The **'Recommendations'** section: Record any recommendations, measures or actions that have been or will be taken by the Provider in this section. Multiple recommendations or actions can be added. The recommendation(s) must ensure that the participant's safety and the safety of others were considered; and preventative measures must be taken by the Provider to reduce the likelihood of similar incidents from occurring in the future.

Examples of recommendations/measures/actions taken, but not limited to:

- Staff training by Provider or DDD
- Participant training
- Staff disciplinary measures
- Team review of participant's supports and make changes as warranted
- Team meetings
- Scheduling changes
- Any other preventative measures the agency will be taking

3. **Issue final investigation finding within 30 days**-
    - The investigation must result in a "Finding" of Abuse, Neglect, Exploitation or Unsubstantiated.
    - The "Finding" section must not be left blank.
    - **The Provider must select "Close" (do not select "save") the GER Resolution in Therap**. The date the GER Resolution is closed is considered the date of final investigation report submission to DDD.
    - Provider must notify the participant's case manager (and assigned community support specialist) when the investigation is completed via S-Comm to include the following:
        - Finding
        - Measures to prevent recurrence of similar incidents
    - The provider also notifies the participant and their guardian(s), when applicable, of the outcome of the investigation

Section VII: Definitions

Altercation: Any incident where the physical attack directed at another person results in *severe* physical injury to the other person.

Chemical restraint: The use of any psychoactive medication as a restraint to control behavior or restrict the individual's freedom of movement that is not a standard treatment for the individual's medical or psychiatric condition.

Communicable disease: an illness due to a specific infection agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, fomite, or reservoir to a susceptible host, either directly or indirectly through an intermediate plant or animal host, vector, or the inanimate environment (DOH ARSD 44:20).

Corporal punishment: physical or verbal abuse, such as shaking, screaming, swearing, name calling, or any other activity that would be damaging to a person's physical well-being or self-respect.
Denial of food: preventing a person from having access to a nutritionally adequate diet as a means of modifying behavior. Persons enrolled in residential programs or living units are expected to partake in meals at a predetermined scheduled time.

Critical Incident: Any of the following: deaths, life-threatening illnesses or injuries, alleged instances of

abuse, neglect, or exploitation against or by any participant, changes in health or behavior that may jeopardize continued services, serious medication errors, Illnesses or injuries that resulted from unsafe or unsanitary conditions, any illegal activity involving a participant, any use of physical, mechanical, or chemical intervention, not part of an approved plan, any bruise or injury resulting from the use of a physical, mechanical, or chemical intervention, any diagnosed case of a reportable communicable disease involving a participant, alleged instances of corporal punishment, seclusion, denial of food, or other practices prohibited in SDCL 27B-8-42, any other critical incident as required by the division.

Emergency Medical Treatment: Treatment resulting from an injury or illness which was unplanned and requires the attention of medical personnel in an urgent care or emergency care facility.

Exploitation: The wrongful taking of someone's property or exercising of control over a person's property without the appropriate due process, unfair or no compensation for labor, selling items to a person that are not of the same worth as price received.

Life threatening: diseases or conditions where the likelihood of death is high. Pre-existing conditions should be considered when determining the severity.

Mechanical restraint: The use of any physical device to control behavior and restrict movement for the purpose of preventing harm to self or others.

Missing person: A person who is on an unauthorized absence and at risk of harm to self or others. If the person has a protocol or plan that addresses unauthorized absences, a report is not necessary unless the plan is not implemented as written.

Neglect: Harm to a person's health or welfare, without reasonable medical justification, caused by the conduct of another who is responsible for the person's health or welfare, within the means available for the adult, including the failure to provide adequate food, clothing, shelter or medical care.
Physical restraint: The application of physical force by one or more individuals that reduces or restricts the ability of an individual to move his or her arms, legs, or head freely, for the purpose of preventing harm to self or others.

Physical Abuse: Physical harm, bodily injury, or attempts to cause physical harm or injury.

Physical Restraint: The methods that are intended to restrict the movement of a participant

Psychological abuse: Emotional or psychological abuse is defined as the infliction of anguish, pain, fear of bodily harm or distress through verbal or nonverbal acts. Emotional/psychological abuse includes but is not limited to verbal assaults, insults, threats, intimidation, humiliation, and harassment. In addition, isolating a person from his/her family, friends, or regular activities; giving a person the "silent treatment;" and enforced social isolation are examples of emotional/psychological abuse.

Severe: Injury requiring clinic, hospital, or emergency room care.

Sexual abuse: Sexual abuse is defined as non-consensual sexual contact of any kind with a person. Sexual contact with any person incapable of giving consent is also considered sexual abuse. It includes but is not limited to unwanted touching, sexually explicit photographing, and all types of sexual assault or battery,

such as rape, sodomy, and coerced nudity.

Seclusion: placement of a person alone in a room or other area from which egress is prevented except if utilized by the South Dakota Developmental Center or a community support provider in accordance with South Dakota Codified Law sections 27B-8-52, 27B-8-54, and 27B-8-56.

Suicide attempt: A potentially self-injurious behavior for which there is evidence that the person intended to kill himself or herself; a suicidal act may result in death, injuries, or no injuries.

Time-out room: An enclosed area in which an individual is placed contingent upon the exhibition of a maladaptive behavior, in which reinforcement is not available and from which egress is denied until appropriate behavior is exhibited.

Unexplained injuries: Injuries that cannot otherwise be attributed to environmental factors, medical or dental appointments, or activities. The provider will determine that the injury cannot be related to any environmental factors, medical or dental appointments or activities. Injuries that are suspicious in nature or part of an identified trend should be reported to DDD.
Examples include, but are not limited to: Welts, bruises, discoloration that may indicate abuse (i.e. bilaterally on upper arms indicating grabbing, shaking, bruises of different colors indicating repeated injuries, etc.) Burns (i.e. cigarette burns, scalding, and iron burn) DO NOT report minor sunburns. Fractures of any bone. Cuts, lacerations, puncture wounds, or other injuries. Injuries may or may not require emergency medical treatment. Unexplained injuries may or may not be an element of an allegation of abuse.

Verbal abuse: Verbal abuse is the use of words to cause harm to the person being spoken to. Verbal abuse may consist of shouting, insulting, intimidating, threatening, shaming, demeaning, or derogatory language, among other forms of communication.

Section VIII: Additional Resources

- **CIR Reporting Flow Chart**: https://bit.ly/3odSFz2
- **Mandatory Reporting Authority and Procedures Policy Memorandum**: https://bit.ly/3jeO9gV
- **2021 Critical Incident Reporting Training: Link to Portal:** https://bit.ly/31fkRZs
- **Therap GER CIR Mapping:** https://dhs.sd.gov/docs/SD-incident-mapping.pdf

Section IX: Sources

Commonwealth of Massachusetts, Department of Mental Retardation. 2003 Mortality Report. University of Massachusetts Medical School. Boston, Massachusetts.

Bullard, L., Fulmore, D., Gupta, N., & Johnson, K. (2004). State Regulations for Behavior Support and Intervention. CWLA Press, Washington, DC.

Developmental Disabilities, Administrative Rules South Dakota, Article 46:11, Chapters 1-8 and 11. Medication Administration, Administrative Rules of South Dakota, Article 46:11, Chapter 7.

Abuse, Neglect or Exploitation of Elders or Adults with Disabilities, South Dakota Codified Law, Chapter 22-46.

Developmentally Disabled Persons, South Dakota Codified Law, Title 27B, Chapters 1-8.

The Council on Quality and Leadership. (2005). Quality Measures 2005 – Basic Assurances. Towson, MD.

The Council on Quality and Leadership. (2004). All About Rights, Towson, MD.