This is an amendment to 8.370.9 NMAC, Sections 1, 2 and 7, effective 9/1/2026.

8.370.9.1 ISSUING AGENCY: New Mexico health care authority (HCA).
[8.370.9.1 NMAC - N, 07/01/2024; A, 9/1/2026]

8.370.9.2 SCOPE: This rule is applicable to persons, organizations or legal entities to include each: adult day care center, adult day care home, adult assisted living facility, ambulatory surgical center, diagnostic and treatment center, end stage renal disease facility, general, acute, special and limited service hospitals, home health agency, hospice facility, hospital infirmary, intermediate care facility for [~~the mentally retarded or the intellectually and developmentally disabled~~] individuals with intellectual disabilities, limited diagnostic and treatment center, nursing facility, skilled nursing facility, and rural health clinic.
[8.370.9.2 NMAC - N, 07/01/2024; A, 9/1/2026]

8.370.9.7 DEFINITIONS:
[~~**A. "Abuse"** means:~~
~~**(1)** knowingly, intentionally, and without justifiable cause inflicting physical pain, injury or mental anguish;~~
~~**(2)** the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person;~~
~~**(3)** sexual abuse, including criminal sexual contact, incest, and criminal sexual penetration; or~~
~~**(4)** verbal abuse, including profane, threatening, derogatory, or demeaning language, spoken or conveyed with the intent to cause mental anguish.~~
~~**B. "Bureau"** means the health care authority, division of health improvement, health facility licensing and certification bureau.~~
~~**C. "Case manager"** means the staff person designated to coordinate and monitor the individual service plan for persons receiving services.~~
~~**D. "Complaint"** means any report, assertion, or allegation of abuse, neglect, or exploitation of, or injuries of unknown origin to, a consumer made by a reporter to the incident management system, and includes any reportable incident that a licensed health care facility is required to report under applicable law.~~
~~**E. "CMS"** means the centers for medicare and medicaid services.~~
~~**F. "Consumer"** means any person who engages the professional services of a medical or other health professional on an inpatient or outpatient basis, or person requesting services from a hospital.~~
~~**G. "Division"** means the health care authority, division of health improvement.~~
~~**H. "Employee"** means:~~
~~**(1)** any person whose employment or contractual service with a licensed health care facility which includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that licensed health care facility; or~~
~~**(2)** any compensated persons such as employees, contractors and employees of contractors; or guardianship service providers or case management entities that provide services to people with developmental disabilities; or administrators or operators of facilities who are routinely on site.~~
~~**I. "Exploitation"** means an unjust or improper use of a person's money or property for another person's profit or advantage, financial or otherwise.~~
~~**J. "Immediate access"** means physical or in person direct and unobstructed access, to electronic or other access needed by employees, consumers, family members or legal guardian to the licensed health care facility's incident management reporting procedures or access to the division's incident report form.~~
~~**K. "Immediate reporting"** means reporting that is done as soon as practicable and no later than 24 hours from knowledge of the incident.~~
~~**L. "Immediate jeopardy"** means a provider's noncompliance with one or more requirements of medicaid or medicare participation, which causes or is likely to cause, serious injury, harm, impairment, or death to a consumer.~~
~~**M. "Incident"** means any known, alleged or suspected event of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.~~

~~**N. "Incident management system"** means the written policies and procedures adopted or developed by the licensed health facility for reporting abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.~~

~~**O. "Incident report form"** means the reporting format issued by the division for the reporting of incidents or complaints.~~

~~**P. "ISP"** means a consumer's individual service plan.~~

~~**Q. "Licensed health care facilities"** means any organization licensed by the authority for the following services: adult day care center, assisted living facility, ambulatory surgical center, diagnostic and treatment center, end stage renal disease facility, general, acute, special and limited service hospitals, home health agency, hospice facility, hospital infirmary, intermediate care facility for the mentally retarded or intellectually and developmentally disabled, limited diagnostic and treatment center, nursing facility, skilled nursing facility, rural health clinic.~~

~~**R. "Mental anguish"** means a relatively high degree of mental pain and distress that is more than mere disappointment, anger, resentment or embarrassment, although it may include all of these, and is objectively manifested by the recipient of care or services by significant behavioral or emotional changes or physical symptoms.~~

~~**S. "Neglect"** means the failure of the caretaker to provide basic needs of a person, such as clothing, food, shelter, supervision and care for the physical and mental health of that person. Neglect causes, or is likely to cause, harm to a person.~~

~~**T. "Quality assurance"** means a systematic approach to the continuous study and improvement of the efficiency and efficacy of organizational, administrative and clinical practices in meeting the needs of persons served as well as achieving the licensed health care facility's mission, values and goals.~~

~~**U. "Quality improvement system"** means the adopted or developed licensed health care facility's policies and procedures for reviewing and documenting all alleged incidents of abuse, neglect, exploitation, injuries of unknown origin, or other reportable incidents for the continuous study and improvement of the efficiency and efficacy of organizational, administrative and preventative practices in employee training and reporting.~~

~~**V. "Reportable incident"** means possible abuse, neglect, exploitation, injuries of unknown origin and other events including but not limited to falls which cause injury, unexpected death, elopement, medication error which causes or is likely to cause harm, failure to follow a doctor's order or an ISP, or any other incident which may evidence abuse, neglect, or exploitation.~~

~~**W. "Reporter"** means any person who or any entity that reports possible abuse, neglect or exploitation to the division.~~

~~**X. "Restraints"** means use of a mechanical device, or chemical restraints imposed, for the purposes of discipline or convenience, to physically restrict a consumer's freedom of movement, performance of physical activity, or normal access to his body.~~

~~**Y. "Revocation"** means a type of sanction making a license null and void through its cancellation.~~

~~**Z. "Sanction"** means a measure imposed by the authority on a licensed program, pursuant to these requirements, in response to a finding of deficiency, with the intent of obtaining increased compliance with these requirements.~~

~~**AA. "Substantiated"** means the verification of a complaint based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.~~

~~**BB. "Suspension"** means a temporary cancellation of a license pending an appeal, hearing or correction of the deficiency. During a suspension the provider's medicare or medicaid agreement is not in effect.~~

~~***CC*. "Training curriculum"** means the instruction manual or pamphlet adopted or developed by the licensed health facility containing policies and procedures for reporting abuse, neglect, misappropriation of consumers' property or other reportable incidents.~~

~~**DD. "Unsubstantiated"** means that the complaint or incident could not be verified based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.~~

~~**EE. "Volunteer"** means any person who works without compensation for a licensed health care facility whose services includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that licensed health care facility.~~]

A. Definitions beginning with "A": "Abuse" means:

(1) knowingly, intentionally, and without justifiable cause inflicting physical pain, injury or mental anguish;

(2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person;

(3) sexual abuse, including criminal sexual contact, incest, and criminal sexual penetration; or

(4) verbal abuse, including profane, threatening, derogatory, or demeaning language, spoken or conveyed with the intent to cause mental anguish.

B. Definitions beginning with "B": "Bureau" means the health care authority, division of health improvement, health facility licensing and certification bureau.

C. Definitions beginning with "C":

(1) "Case manager" means the staff person designated to coordinate and monitor the individual service plan for persons receiving services.

(2) "CMS" means the centers for medicare and medicaid services.

(3) "Complaint" means any report, assertion, or allegation of abuse, neglect, or exploitation of, or injuries of unknown origin to, a consumer made by a reporter to the incident management system, and includes any reportable incident that a licensed health care facility is required to report under applicable law.

(4) "Consumer" means any person who engages the professional services of a medical or other health professional on an inpatient or outpatient basis, or person requesting services from a hospital.

D. Definitions beginning with "D": "Division" means the health care authority, division of health improvement.

E. Definitions beginning with "E":

(1) "Employee" means:

(a) any person whose employment or contractual service with a licensed health care facility which includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that licensed health care facility; or

(b) any compensated persons such as employees, contractors and employees of contractors; or guardianship service providers or case management entities that provide services to people with developmental disabilities; or administrators or operators of facilities who are routinely on site.

(2) "Exploitation" means an unjust or improper use of a person's money or property for another person's profit or advantage, financial or otherwise.

F. Definitions beginning with "F": [RESERVED]

G. Definitions beginning with "G": [RESERVED]

H. Definitions beginning with "H": [RESERVED]

I. Definitions beginning with "I":

(1) "Immediate access" means physical or in person direct and unobstructed access, to electronic or other access needed by employees, consumers, family members or legal guardian to the licensed health care facility's incident management reporting procedures or access to the division's incident report form.

(2) "Immediate jeopardy" means a provider's noncompliance with one or more requirements of medicaid or medicare participation, which causes or is likely to cause, serious injury, harm, impairment, or death to a consumer.

(3) "Immediate reporting" means reporting that is done as soon as practicable and no later than 24 hours from knowledge of the incident.

(4) "Incident" means any known, alleged or suspected event of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

(5) "Incident management system" means the written policies and procedures adopted or developed by the licensed health facility for reporting abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

(6) "Incident report form" means the reporting format issued by the division for the reporting of incidents or complaints.

(7) "ISP" means a consumer's individual service plan.

J. Definitions beginning with "J": [RESERVED]

K. Definitions beginning with "K": [RESERVED]

L. Definitions beginning with "L": "Licensed health care facilities" means any organization licensed by the authority for the following services: adult day care center, assisted living facility, ambulatory surgical center, diagnostic and treatment center, end stage renal disease facility, general, acute, special and limited service hospitals, home health agency, hospice facility, hospital infirmary, intermediate care facility for individuals with intellectual disabilities, limited diagnostic and treatment center, nursing facility, skilled nursing facility, rural health clinic.

M. Definitions beginning with "M": "Mental anguish" means a relatively high degree of mental pain and distress that is more than mere disappointment, anger, resentment or embarrassment, although it may include all of these, and is objectively manifested by the recipient of care or services by significant behavioral or emotional changes or physical symptoms.

N. Definitions beginning with "N": "Neglect" means the failure of the caretaker to provide basic needs of a person, such as clothing, food, shelter, supervision and care for the physical and mental health of that person. Neglect causes, or is likely to cause, harm to a person.

O. Definitions beginning with "O": [RESERVED]

P. Definitions beginning with "P": [RESERVED]

Q. Definitions beginning with "Q":

(1) "Quality assurance" means a systematic approach to the continuous study and improvement of the efficiency and efficacy of organizational, administrative and clinical practices in meeting the needs of persons served as well as achieving the licensed health care facility's mission, values and goals.

(2) "Quality improvement system" means the adopted or developed licensed health care facility's policies and procedures for reviewing and documenting all alleged incidents of abuse, neglect, exploitation, injuries of unknown origin, or other reportable incidents for the continuous study and improvement of the efficiency and efficacy of organizational, administrative and preventative practices in employee training and reporting.

R. Definitions beginning with "R":

(1) "Reportable incident" means possible abuse, neglect, exploitation, injuries of unknown origin and other events including but not limited to falls which cause injury, unexpected death, elopement, medication error which causes or is likely to cause harm, failure to follow a doctor's order or an ISP, or any other incident which may evidence abuse, neglect, or exploitation.

(2) "Reporter" means any person who or any entity that reports possible abuse, neglect or exploitation to the division.

(3) "Restraints" means use of a mechanical device, or chemical restraints imposed, for the purposes of discipline or convenience, to physically restrict a consumer's freedom of movement, performance of physical activity, or normal access to his body.

(4) "Revocation" means a type of sanction making a license null and void through its cancellation.

S. Definitions beginning with "S":

(1) "Sanction" means a measure imposed by the authority on a licensed program, pursuant to these requirements, in response to a finding of deficiency, with the intent of obtaining increased compliance with these requirements.

(2) "Substantiated" means the verification of a complaint based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.

(3) "Suspension" means a temporary cancellation of a license pending an appeal, hearing or correction of the deficiency. During a suspension the provider's medicare or medicaid agreement is not in effect.

T. Definitions beginning with "T": "Training curriculum" means the instruction manual or pamphlet adopted or developed by the licensed health facility containing policies and procedures for reporting abuse, neglect, misappropriation of consumers' property or other reportable incidents.

U. Definitions beginning with "U": "Unsubstantiated" means that the complaint or incident could not be verified based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.

V. Definitions beginning with "V": "Volunteer" means any person who works without compensation for a licensed health care facility whose services includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that licensed health care facility.

W. Definitions beginning with "W": [RESERVED]

X. Definitions beginning with "X": [RESERVED]

Y. Definitions beginning with "Y": [RESERVED]

Z. Definitions beginning with "Z": [RESERVED]

[8.370.9.7 NMAC - N, 07/01/2024; A, 9/1/2026]