

<b>Title of Proposed Rule:</b>	Institutional Medical Neglect	
<b>CDHS Tracking #:</b>	23-04-25-01	
<b>Office, Division, &amp; Program</b>	Rule Author: James Connell	Phone: 720-636-5456
OCYF, DCW		E-Mail: James.Connell@state.co.us

**RULEMAKING PACKET**

**Type of Rule:** *(complete a and b, below)*

- a.             Board       Executive Director  
b.             Regular     Emergency

**This package is submitted to State Board Administration as:** *(check all that apply)*

<input checked="" type="checkbox"/>	AG Initial Review	<input type="checkbox"/>	Initial Board Reading	<input type="checkbox"/>	AG 2 <sup>nd</sup> Review	<input type="checkbox"/>	Second Board Reading / Adoption
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This package contains the following types of rules: *(check all that apply)*

Number	
1	Amended Rules
	New Rules
	Repealed Rules
	Reviewed Rules

What month is being requested for this rule to first go before the State Board?	December 2023
What date is being requested for this rule to be effective?	February 2024
Is this date legislatively required?	no

I hereby certify that I am aware of this rule-making and that any necessary consultation with the Executive Director's Office, Budget and Policy Unit, and Office of Information Technology has occurred.

**Office Director Approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**REVIEW TO BE COMPLETED BY STATE BOARD ADMINISTRATION**

Comments:
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Estimated      1st Board   12/23                  2nd Board   1/24                  Effective Date   2/24  
Dates:    \_\_\_\_\_                                  \_\_\_\_\_                                  \_\_\_\_\_

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**STATEMENT OF BASIS AND PURPOSE**

**Summary of the basis and purpose for new rule or rule change.**

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Char max***

The Colorado Department of Human Services' Division of Child Welfare is updating Volume 7 administrative rule to create clarity when allegations regarding licensed medical personnel in institutional facilities may or may not constitute known or suspected institutional medical neglect and require an assessment. The purpose of the additions to rule are to create consistency when determining which referrals require a response by a caseworker and conducting institutional assessments.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- to comply with state/federal law and/or
- to preserve public health, safety and welfare

Justification for emergency:

**State Board Authority for Rule:**

Code	Description
26-1-107(5)(b), C.R.S. (2023)	State Board to promulgate rules for programs administered and services provided by the State Department under Titles 26 and 27. Child welfare services are administered by the Department under section 26-1-201(1)(f), C.R.S. (2023).

**Program Authority for Rule:** *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
19-3-308(4.5), C.R.S. (2023)	State Department shall adopt rules setting forth procedures for the investigation of reports of institutional abuse.

Does the rule incorporate material by reference?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Does this rule repeat language found in statute?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
If yes, please explain.				

**REGULATORY ANALYSIS**

**1. List of groups impacted by this rule.**

*Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule?*

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County human services departments will benefit from the added clarity of when allegations of medical neglect by medical personnel in a facility requires an assessment.

Healthcare and mental health providers will benefit from creation of the institutional medical neglect definition as this adds clarity as to when they may be listed as a person(s) responsible for institutional abuse/neglect.

**2. Describe the qualitative and quantitative impact.**

*How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?*

Between January 2022 and August 2023, 5438 institutional referrals were received, of which 961 were assessed for institutional abuse and/or neglect. Of the 961 assessed, 30 contained allegations of medical neglect.

In the long term, county departments of human services may receive fewer institutional referrals regarding medical and mental health care providers treatment decisions that are enacted under the authority of their licensure.

**3. Fiscal Impact**

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just “no impact” answer should include “no impact because....”***

State Fiscal Impact (Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change)

No state fiscal impact is expected as there are no costs associated with the changes. Current state staff will work with the training team to incorporate the changes into existing training and offer it as part of the Child Welfare Training System.

County Fiscal Impact

No county fiscal impact is expected as counties are already required to conduct institutional assessments and these proposed changes only clarify when and how to complete these assessments.

Federal Fiscal Impact

No federal fiscal impact as there are no federal costs associated with the rule changes.

Other Fiscal Impact (such as providers, local governments, etc.)

No other fiscal costs anticipated. County human services departments are already required to have the resources in place.

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**4. Data Description**

*List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?*

As part of the rule drafting process, participants in the workgroup discussed data from a review of institutional referrals and reviewed recommendations from the Division of Youth Services.

**5. Alternatives to this Rule-making**

*Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just “no alternative” answer should include “no alternative because...”*

Alternatives to rule-making were discussed within the institutional assessment workgroup. Changes put forth in this packet were unable to be addressed through training, technical assistance or other means.

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**OVERVIEW OF PROPOSED RULE**

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.104.2	Identified need to further clarify the population included in institutional abuse and neglect	<p><b>7.104.2 INSTITUTIONAL ABUSE AND/OR NEGLECT - GROUNDS FOR ASSESSMENT [Eff. 1/1/15]</b></p> <p>This section addresses assessments of referrals alleging institutional abuse and/or neglect as defined in Section 7.000.2 except that a referral of a minor injury resulting from physical restraint shall not, by itself, require an assessment unless there are surrounding circumstances that would indicate abusive and/or neglectful behavior by the care provider.</p> <p>Such circumstances include referrals alleging:</p> <p>A. Abusive or neglectful behavior,</p> <p>B. A pattern of frequent injuries by the same caregiver/staff, and/or</p> <p>C. Similar incidents in the same facility.</p>	<p><b>7.104.2 INSTITUTIONAL ABUSE AND/OR NEGLECT - GROUNDS FOR ASSESSMENT [<del>Eff. 1/1/15</del>]</b></p> <p>This section addresses assessments of referrals alleging institutional abuse and/or neglect as defined in Section 7.000.2. except that:</p> <p>A. A referral of a minor injury resulting from physical restraint shall not, by itself, require an assessment unless there are surrounding circumstances that would indicate abusive and/or neglectful behavior by the care provider. Such circumstances include referrals alleging:</p> <p>A.—1. Abusive or neglectful behavior,</p> <p>B.—2. A pattern of frequent injuries by the same caregiver/staff, and/or</p> <p>C.—3. Similar incidents in the same facility.</p>		

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			<p>B. A REFERRAL OF MEDICAL CONCERN(S) ALLEGING THE LICENSED MEDICAL/MENTAL HEALTHCARE PROVIDER AS THE PERSON RESPONSIBLE FOR ABUSE AND/OR NEGLECT REGARDING MEDICAL DECISION(S) OR ACTION(S) WITHIN THE SCOPE OF THEIR LICENSE(S) SHALL NOT BY ITSELF REQUIRE ASSESSMENT UNLESS THERE ARE OUTSIDE CIRCUMSTANCES THAT WOULD INDICATE ABUSIVE AND/OR NEGLECTFUL BEHAVIOR BY THE MEDICAL/MENTAL HEALTHCARE PROVIDER.</p>		
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## STAKEHOLDER COMMENT SUMMARY

### Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and Sub-PAC):

The Institutional Assessment Rule Workgroup, which included members from geographically diverse county departments; medical doctors; 24-hour care facilities; Children's Hospital Colorado; foster home child placement agencies; Child Welfare Sub-PAC; and the Institutional Assessment Review Team, were included in the development of these proposed rules.

### This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the State Board of Human Services:

The Institutional Assessment Rule Workgroup, which included members from geographically diverse county departments; medical doctors; 24-hour care facilities; Children's Hospital Colorado; foster home child placement agencies; Child Welfare Sub-PAC; and the Institutional Assessment Review Team, were included in the development of these proposed rules. Additionally, the Division of Youth Services Medical and Behavioral Health Director was informed.

### Other State Agencies

Are other State Agencies (such as HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes  No

If yes, who was contacted and what was their input?

### Sub-PAC

Have these rules been reviewed by the appropriate Sub-PAC Committee?

Yes  No

Name of Sub-PAC	Child Welfare Sub-PAC		
Date presented	October 5, 2023		
What issues were raised?	none		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	Unanimous		
If not presented, explain why.			

### PAC

Have these rules been approved by PAC?

Yes  No

Date presented	November 2, 2023		
What issues were raised?	none		
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
	Unanimous		
If not presented, explain why.			

### Other Comments

Comments were received from stakeholders on the proposed rules:

Yes  No

If "yes" to any of the above questions, summarize and/or attach the feedback received, including requests made by the State Board of Human Services, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

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## 12 CCR 2509-2

### 7.104.2 INSTITUTIONAL ABUSE AND/OR NEGLECT - GROUNDS FOR ASSESSMENT ~~[Eff. 1/1/15]~~

This section addresses assessments of referrals alleging institutional abuse and/or neglect as defined in Section 7.000.2. except that:

- A. A referral of a minor injury resulting from physical restraint shall not, by itself, require an assessment unless there are surrounding circumstances that would indicate abusive and/or neglectful behavior by the care provider. Such circumstances include referrals alleging:
  - ~~D.~~—1. Abusive or neglectful behavior,
  - ~~E.~~—2. A pattern of frequent injuries by the same caregiver/staff, and/or
  - ~~F.~~—3. Similar incidents in the same facility.
- B. A REFERRAL OF MEDICAL CONCERN(S) ALLEGING THE LICENSED MEDICAL/MENTAL HEALTHCARE PROVIDER AS THE PERSON RESPONSIBLE FOR ABUSE AND/OR NEGLECT REGARDING MEDICAL DECISION(S) OR ACTION(S) WITHIN THE SCOPE OF THEIR LICENSE(S) SHALL NOT BY ITSELF REQUIRE ASSESSMENT UNLESS THERE ARE OUTSIDE CIRCUMSTANCES THAT WOULD INDICATE ABUSIVE AND/OR NEGLECTFUL BEHAVIOR BY THE MEDICAL/MENTAL HEALTHCARE PROVIDER.