Chapter 9–Health and Safety

9.01 Federal Health and Safety Requirements for Home and Community-Based Services

A primary objective of the CLTS Waiver Program is supporting children or youth enrolled in the program and their families in the community and promoting their health and safety. The promotion of health and safety includes minimizing preventable risk to the health and safety of children and youth enrolled in the program. Additionally, strong, collaborative support networks must be in place to identify and remediate any risk to a child’s or youth’s well-being when it arises. Federal requirements are the foundation for protocols and procedures relating to these objectives.

Section 1915(c) of the Social Security Act requires home and community-based services waiver programs to provide assurances to the Centers for Medicare & Medicaid Services (CMS) that the safeguards necessary to protect the health and safety of children and youth receiving these services are in place. The assurances address the unique challenges of providing services to children and youth living in their community:

- Program providers are not with children and youth at all times to monitor program supports and services.
- Children and youth rely on many people for their care and safety.
- Children and youth may be vulnerable and unable to seek help.

The CMS health and safety assurance for the CLTS Waiver Program requires the Wisconsin Department of Health Services (DHS) to demonstrate that it has designed and implemented an effective protocol for assuring the health and safety of children and youth enrolled in the program. The health and safety sub-assurances that DHS must verify and report to CMS annually include the following:

- On an ongoing basis, how it identifies, addresses, and seeks to prevent instances of abuse, neglect, exploitation, and unexplained death.
- An incident management protocol is in place and effectively resolves reported incidents and prevents further similar incidents to the extent possible.
- Policies and procedures for the use of and prohibition of restrictive measures, including restraint and seclusion, are followed.

This chapter outlines requirements and procedures for promoting the health and safety of children and youth enrolled in the CLTS Waiver Program, including:

- Preventing risk to children’s and youth’s well-being. (Risk to well-being is also referred to as an “incident” or “critical incident.”)
• Coordinating strong, collaborative networks that include all of the people in a child’s or youth’s life to promote the child’s or youth’s well-being and identify and mitigate risk when it arises.
• Reporting and responding to incidents and critical incidents.

9.02 Preventing Risk to the Health and Safety of Program Participants

While not all risk to the well-being of children and youth enrolled in the CLTS Waiver Program can be eliminated, there are several important required actions for minimizing preventable risk. County waiver agencies (CWAs) must, in collaboration with DHS, have adequate protocol, policies, and procedures in place that:
• Seek to keep children and youth healthy and prevent illness, injury, or medical and dental problems.
• Assure children and youth are protected from risk of physical, verbal, and sexual abuse; neglect; exploitation; and other maltreatment, including the misuse and/or misappropriation of their money and property.
• Help children or youth and their families prepare for unexpected events, including environmental crises.

Earlier chapters in this manual outline required preventive measures related to minimizing risk to a child’s or youth’s health and safety:
• Chapter 4, Provider Requirements and Allowable Services, includes requirements and procedures for ensuring that service providers are adequately certified and meet the standards of quality for providing CLTS Waiver Program services.
• Chapter 7, Individual Service Plan (ISP), details the requirements for developing a child’s or youth’s ISP to address all of their assessed needs, including health and safety risk factors, either by the provision of CLTS Waiver Program services or through other means. With the child or youth and their family, the support and service coordinator (SSC) confirms backup strategies that are able to quickly and effectively respond to all situations where providers and/or support persons become unavailable to perform their typical role for any reason. The SSC documents these plans on the ISP. Examples of circumstances that require backup plans are a provider staff not showing up for their scheduled shift with a child or youth, a family member who provides support to the child or youth becoming ill and unable to provide supervision and care, and natural disasters.

The following information outlines additional requirements for proactively addressing the health and safety of program participants, including cross-system and agency collaboration, training and education for children and youth and their families, identifying vulnerable children or youth, and mandated reporting.
Collaboration

Children and youth enrolled in the CLTS Waiver Program and their families are best served when all of the people, agencies, and systems that support them collaborate and coordinate services and supports. Each caregiver, agency, and system brings professional expertise, unique knowledge of the child’s or youth’s and family’s needs, and access to different resources. Combined, all of these parts of a child’s or youth’s support network can strengthen the ability to assure their health and safety, improve their connection with and integration in their community, open access to additional supports and services, and help them to achieve their goals.

The SSC is as an essential link for the child or youth and their family to create and implement a comprehensive support network that collaborates fluently to minimize preventable risk to the child’s or youth’s well-being, and to identify and resolve risk when it arises. Coordination across all of the parts of the child’s or youth’s support network ensures that every person or entity understands their role and responsibility and how they should interact to comprehensively and efficiently promote the child’s or youth’s well-being. (Refer to the Wisconsin Department of Children and Families Children with Disabilities: Preventing Abuse and Neglect.) This may mean, depending on each child’s or youth’s individual circumstances, that the SSC and family collaborate with other agencies or systems that are a part of the child’s or youth’s life, such as the Wisconsin Department of Instruction or the local child protective services agency. It may also mean collaborating with all of the service providers in the child’s life who are authorized through the CLTS Waiver Program to ensure a common understanding and implementation of backup or emergency plans in the child’s or youth’s ISP.

When a child or youth is involved in both the CLTS Waiver Program and the local child protective services (CPS) system, continuous communication between these systems benefits assessment, planning, and the child’s or youth’s health and safety. Statutory and policy guidelines exist that directly authorize sharing of information between these entities. CPS agencies have the ability to share reports and records regarding a child or an expectant mother with appropriate staff of an agency social services department, as well as with professional employees of a county department who are working with the child or expectant mother, including county clinical and/or mental health services, developmental disabilities, and alcoholism and other drug abuse services, if those professionals are under contract with, or the supervision of, the county department (Wis. Stat. § 48.981(7)(a) 2 and 5). However, it is best practice to be transparent and to obtain the family’s consent prior to sharing information between the two systems when possible. Refer to DMS, DCF Information Memo 2019-03 for more information about collaboration and sharing information with CPS.

Training and Education

It is important to convey to families how the CLTS Waiver Program and CWA can help keep their child safe and healthy. CWAs are responsible for informing children and youth, as appropriate, and their families and/or legal guardians; caregivers; and providers about the CLTS Waiver Program policies and procedures in place to address children’s and youth’s health and safety.
Topics to discuss and ensure that the family understands include the program requirements outlined in this section to minimize preventable risk, the procedures and requirements in place to identify and remediate any risk to the child’s or youth’s well-being when it arises, and how the family, providers, and CWA must collaborate to achieve each of these objectives.

DHS has developed informational material (P-00069A) for CWAs to distribute to children and youth, when applicable, and their families during their initial application to the CLTS Waiver Program and at least annually thereafter.

**Identifying Vulnerable Children or Youth**

Understanding vulnerability helps professionals serving children anticipate and mitigate risk to health and safety and the potential for serious injury. Research has identified specific characteristics of children with disabilities and their life circumstances that heighten their risk for negative events (i.e., heighten their risk for incidents and critical incidents). Some children and youth who are enrolled in the CLTS Waiver Program have conditions present in their lives that render them more vulnerable.

**Vulnerable Child Definition**

CLTS programs define a vulnerable child as a child who either meets more than one of the three target groups served by the CLTS programs (intellectual/developmental disability, physical disability, or severe emotional disturbance) or is a child who has a high level of life-sustaining needs (nutrition, fluids, or medical treatment) with a limited informal support network.

In addition to at least one of the criteria above, at least one of the following must also apply:

- The child is isolated with limited or no adult contact outside the home and is not available to be observed.
- The child is nonverbal and has limited ability to communicate.
- The child is medically complex, requires significant care from a caregiver or parent, and is highly dependent on others to meet basic needs.
- The child is the subject of current or historical child abuse and neglect reports.
- The child has a primary caregiver who is actively abusing substances.
- The child is dependent on caregivers or parents with limited cognitive, emotional, and/or behavioral capacity to provide for these needs.

**CWA Responsibility for Recognizing Vulnerable Children**

As a part of each CWA’s protocol for assuring the health and safety of children and youth enrolled in the CLTS Waiver Program, it is important that a process is implemented to recognize vulnerable children and youth and provide a heightened level of coordination and communication with all people who support those children. Additionally, confirming whether a child or youth meets the vulnerable child definition is required for reporting incidents and critical incidents to DHS. Refer to 9.03, Incident Management, Resolution, and Reporting, for more information about requirements for reporting.
Mandated Reporting

In order to assist with identifying risk to a child’s or youth’s well-being and coordinate the necessary services and supports (including services and supports available through the CLTS Waiver Program and those available through other programs or agencies) to remediate any identified risk, SSCs are required to complete the Mandated Reporter Online Training created by the Wisconsin Child Welfare Professional Development System. Additionally, SSCs are required to follow the procedures for mandated reporting of abuse and neglect (Wis. Stat. § 48.981(3)). These procedures must be followed when there is reasonable cause to suspect that a child has been abused or neglected, threatened with abuse or neglect, or that abuse or neglect of the child will occur.

9.03 Incident Management, Resolution, and Reporting

Sometimes, despite the measures in place to minimize preventable risk to a child’s or youth’s well-being, a risk arises. Any actual or suspected risk to a child’s or youth’s health and safety is called an incident or a critical incident. This section outlines the protocol and procedures that CWAs must, in collaboration with DHS, have in place to respond to a variety of unanticipated occurrences that indicate high levels of risk for children and youth enrolled in the CLTS Waiver Program and meet the definition of an incident or a critical incident.

**Incident Definition**

An incident is any actual or alleged event or situation that creates a significant risk or serious harm to the physical or mental health, safety, or well-being of a child or youth.

Incidents that must be reported to DHS include:

- Any known or suspected abuse, neglect, or exploitation of the child or youth.
- Errors in medical or medication management that result in an adverse reaction requiring medical attention.
- Initiation of an investigation by law enforcement of an event or allegation regarding a child or youth as either a perpetrator or victim.
- Significant and substantial damage to the residence of the child or youth or service provider.
- Use of isolation, seclusion, or restraint by a provider that is not part of an approved behavior support plan.
- An event or behavior that causes serious injury or risk to the child or youth; which may include running away, setting a fire, violence, unplanned hospitalization, and/or a suspected or confirmed suicide attempt.

**Critical Incident Definition**

If an incident is serious and/or the set of circumstances constituting an incident are unresolved and significant risk to a child’s or youth’s well-being continues, the incident is deemed critical.

Critical incidents that must be reported to DHS include:
Any event or set of conditions that qualifies as a reportable incident and that also poses active, ongoing, and continued significant risk to the health, safety, and welfare of the child or youth.

Any incident that results in the death of the child or youth.

CWAs must have protocols and procedures, in accordance with the requirements below, for managing incidents. Incidents and critical incidents may require immediate, urgent, or emergency response to address a range of scenarios including but not limited to health emergencies; dangerous and challenging behavior; criminal activity by or to a child or youth enrolled in the CLTS Waiver Program; environmental dangers including fires and weather events; and other events or situations that involve high levels of risk to health and safety.

Incident Management

A robust incident management protocol allows agencies and staff to proactively respond to incidents, remove children and youth from danger or risk, and reduce the likelihood of future incidents. CWAs must determine the best design of their incident management protocol, in accordance with the requirements in this section.

A comprehensive incident management protocol must include written requirements and procedures for each of the following:

- Identifying incidents
- Reporting incidents
- Referring incidents
- Gathering information about incidents
- Resolving incidents
- Tracking and trending incidents

Identifying Incidents

The CWA is responsible for ensuring that a child’s or youth’s family, caregivers, and CLTS Waiver Program service providers have a shared understanding of what constitutes an incident and a critical incident, as defined above at the beginning of Section 9.03. It is important to note that incidents include both known and suspected events or situations that create a significant risk or serious harm to the physical or mental health, safety, or well-being of a child or youth or to other people.

Reporting Incidents

The CWA’s incident management protocol must define who is responsible for reporting incidents and the procedure for reporting. A child’s or youth’s family and/or legal guardian(s), caregivers, and providers are all responsible for reporting threats to the child’s or youth’s safety or well-being to the CWA. In turn, the CWA must notify DHS of any incident or critical incident by completing the Incident Report form (F-22541) and emailing it to DHS within the timeframes listed below.
There are two timelines for CWAs to report an incident or critical incident to DHS, incident notification and incident closure. An incident notification includes, at minimum, preliminary information about an incident. Required information for a notification includes fields 1-32 on the incident report form (F-22541). The notification allows DHS to assist with identifying any actions or resources beyond those identified by the CWA in the notification that are necessary to remove the child or youth from danger or risk. Incident closure occurs when an incident report is complete, and all fields of form F-22541 are filled. Refer to the Resolve Incidents section below for additional information about the CWA steps that are required for incident closure.

Timeframes for Reporting

Critical incident
- Notification – 1 business day. CWAs should notify DHS immediately about any critical incident, and must complete the notification within 1 business day of the date that the CWA was notified of the critical incident.
- Closure – 30 calendar days. CWAs must close a report for a critical incident within 30 calendar days of the date that the CWA was notified of the critical incident.

Noncritical incident
- Notification - 3 business days. CWAs must notify DHS within 3 business days of the date that the CWA was notified of the incident.
- Closure – 30 calendar days. CWAs must close an incident report within 30 calendar days of the date that the CWA was notified of the incident.

In addition to notifying DHS of an incident or critical incident, the CWA must also notify a child’s or youth’s parent(s) and/or legal guardian(s) if they are not already aware of the incident.

Referring Incidents

After identifying an incident or critical incident, the CWA refers the information to other agencies, as appropriate, to coordinate a comprehensive network of support to remove risk to the child’s or youth’s safety and well-being and prevent recurrence of that risk. In some cases, the circumstances of an incident legally require that the CWA notify particular agencies, such as child protective services or law enforcement. When a CWA refers an incident to another agency, the CWA is responsible for continuing to work in conjunction with that agency to remediate risk to the child or youth.

Agencies that the CWA may need to notify to refer the incident or critical incident include but are not limited to:
- Adult protective services
- Advocacy organization
- Child protective services
- Law enforcement agency
- Legal services
• Licensing agency (including the DHS Division of Quality Assurance)
• Medical provider(s)
• Tribal agency

Gathering Information about Incidents

For any situation where there is evidence or suspicion of any type of abuse, neglect, exploitation, or violation of a child’s or youth’s rights, the CWA must immediately gather information to determine what occurred and how it affected the child or youth. The gathered information is the basis for establishing, in collaboration with any agency to which the incident was referred, the necessary remediation actions and preventive strategy to minimize recurrence of the incident.

The following information is necessary for completing an incident report:
• The person or people who reported the incident to the CWA.
• The people who were involved in or witnessed the incident.
• The setting where the incident occurred.
• The events or circumstances that presented risk to the child’s or youth’s health and well-being.
• The maltreater, if any, and the maltreater’s relationship to the child or youth.
• The type of involvement, if any, of a service provider.
• The people and/or agencies to which the CWA referred the incident.
• The people and/or agencies that the CWA contacted in relation to the incident.
• Any court order in place for the program participant involved in the incident.

Resolving Incidents

When an incident or critical incident has been identified for a child or youth enrolled in the CLTS Waiver Program, CWAs are responsible for coordinating the actions that are necessary to remove risk to the child’s or youth’s safety and well-being and minimize recurrence of that risk. The actions taken to remove risk to the child’s or youth’s well-being are referred to as remediation actions, and the actions taken to minimize recurrence of an incident are referred to as preventive strategies.

When an incident occurs, the CWA must complete the following remediation and prevention activities and document the activities in the incident report:
• The CWA works closely with the child or youth and their family and providers to identify and implement remedial and preventive actions.
• The CWA partners with other agencies in the child’s or youth’s care network to define the roles and responsibilities of each agency for incident remediation and prevention.
• The CWA reevaluates the child’s or youth’s ISP and identifies and implements needed changes to the supports, services, and/or providers to prevent further incidents and ensure the child’s health, safety, and well-being.
• Action is taken to make the needed changes that were identified in the service plan reevaluation.
• The CWA assures, to the best of its ability, that actions taken will prevent further similar incidents.

The outcome of the incident must also be documented in the incident report. The outcome is a description of how the events that took place during the incident have been verified by an agency or entity other than the CWA. Examples of outcomes include but are not limited to:
• Abuse, neglect, or exploitation that has been substantiated by a government agency. When a government agency investigates allegations of abuse, neglect, or exploitation, the status of substantiation must also be reported as one of three categories:
  o Substantiated by a government agency.
  o Unable to substantiate.
  o Unsubstantiated by a government agency.
• The cause of death of a child or youth enrolled in the CLTS Waiver Program.
• The circumstances of admission of a child or youth enrolled in the CLTS Waiver Program to a hospital.
• The findings of an investigation by a law enforcement agency.

When a CWA has referred an incident to the local CPS agency, they are required to seek a final determination of the allegation of child abuse or child neglect from CPS assessments. In some cases, CLTS waiver staff may fall into one of the categories of mandated reporters enumerated in Wis. Stat. § 48.981(2). In those cases, pursuant to Wis. Stat. § 48.981(3)(c) 6., an agency social services department must inform the reporter what action, if any, was taken to protect the health and welfare of the child or youth who is the subject of the report within 60 days after receiving the report. In other cases when CLTS Waiver Program staff report allegations of child abuse and/or child neglect, child welfare workers may share the outcome of the child welfare assessment with CLTS Waiver Program staff under the authority provided by law if they fall within the provisions set forth in Wis. Stat. § 48.981(7)(a) 2 or 5, as specified above.

**Tracking and Trending Incidents**

Tracking and trending incidents is a proactive measure for minimizing preventable risk to the health and well-being of children and youth enrolled in the CLTS Waiver Program. Recognizing patterns in the types of incidents that occur across different children or youth as well as trends of incidents that occur to a particular child or youth helps to identify particular circumstances that can be modified to prevent future incidents. Examples of modifications include but are not limited to:
• Increased frequency of or changes to the content of contacts and communication between service systems, such as the CWA and CPS.
• Increased frequency of or changes to the content of contacts and communication between the CWA and service providers.
• Educational information from the CWA to families and providers about seasonal changes that increase certain types of risks to children’s and youth’s well-being.
9.04 Restrictive Measures

Restrictive measures are used rarely as part of the CLTS Waiver Program. Restrictive measures should be considered the method of last resort and only after less intrusive, alternate strategies to address the child’s or youth’s dangerous or challenging behavior have been determined ineffective. Restrictive measures may not be used as part of an intervention plan or in an emergency, unless there is imminent harm or risk to the child or youth or others. If restrictive measures are considered, the provider must develop a behavior intervention plan detailing replacement skill development, prevention measures, and response strategies including de-escalation techniques and apply for county and DHS approval for their use. Prior to the use of restrictive measures, positive behavior support strategies must be employed and exhausted.

Children and youth who are receiving services for mental illness, developmental disabilities, alcoholism, or drug dependency and enrolled in the CLTS Waiver Program are covered by the provisions in Wis. Stat. § 51.61 and have the right to be free of restraints. “Unreasonable confinement or restraint” includes the intentional and unreasonable confinement of an individual in a locked room, involuntary separation of a child or youth from their living area, use of physical restraining devices on a child or youth, or the provision of unnecessary or excessive medication to a child or youth. It does not include the use of these methods or devices in entities regulated by DHS if the methods or devices are used in conformance with state and federal standards governing confinement and restraint.

CWAs are required to maintain documentation of any application for and/or use of restrictive measures for children or youth enrolled in the CLTS Waiver Program. Refer to the Guidelines and Requirements for the Use of Restrictive Measures for detailed information, including documentation requirements, about restrictive measures and the CLTS Waiver Program.

9.05 Resources

- Child Protective Services and Children’s Long-Term Support Waiver Program Collaboration (DMS, DCF Information Memo 2019-03)
- Children with Disabilities: Preventing Abuse and Neglect (DCF-P 5324)
- Guidelines and Requirements for the Use of Restrictive Measures
- Incident Report - Medicaid Waiver Programs (F-22541)
- Incident Reporting - Medicaid Waiver Programs - Instructions (F-22541I)
- Incident Reporting Consumer Guide for Children (P-00069A)
- Mandated Reporter Online Training
- Wis. Stat. § 48.981
- Wis. Stat. § 51.61