

State Fiscal Year

2020

ANNUAL REPORT

NEW MEXICO
DEPARTMENT OF
HEALTH

Division of Health Improvement
Incident Management Bureau

How is the Division of Health Improvement working to prevent abuse of individuals with intellectual and developmental disabilities?

Individuals with intellectual and developmental disabilities (I/DD) are a diverse group of people with different vulnerabilities. Cognitive challenges, dependence on the care provided by other people, difficulty communicating needs, challenging behaviors and poor memory or recall are some of the factors that contribute to the increased vulnerability of people with I/DD. Many adults with I/DD are unable to recognize danger, understand rights and protect themselves against actions or inactions that are illegal, abusive or in any way threatening to their health and emotional, financial and physical well-being. Historically, people with I/DD have been discriminated against because of their disabilities, separated from society-at-large and denied opportunities for education and other life experiences.

Misperceptions and stereotypes about people with disabilities also put people with I/DD at an increased risk to experience abuse and neglect. Many people with I/DD have limited social contacts and activities and experience negative attitudes from other people, or social stigma. They are often not believed or listened to by immediate contacts and not seen as credible with law enforcement or in court. In addition, the desire to please people in authority positions or peers and the desire to be included may influence these individuals' decision-making. In other cases, they are not aware that what is occurring is abusive, do not want to end a relationship that is unhealthy, or fear the change in living arrangements.

The Incident Management Bureau (IMB) serves individuals with I/DD by assessing needs and providing protective services in community-based programs through investigations of allegations of abuse, neglect and exploitation, often collectively referred to as "abuse" or ANE. New Mexico state law requires all persons with knowledge about potential ANE to

In SFY2020

1,808 investigations of abuse, neglect or exploitation were conducted.

641 allegations of abuse, neglect or exploitation were substantiated.

446 consumers were determined to have been the victim of abuse, neglect or exploitation.

report; this includes people who work directly with individuals with I/DD. All family, friends and people who provide support can report abuse. Reports also come from law enforcement, medical providers and other sources. IMB maintains a 24-hour ANE reporting hotline.

- An IMB Intake Specialist gathers preliminary information to assess the need for protection of the vulnerable adult and determine if a situation meets the definitions of abuse, neglect, or exploitation (ANE). An adult is considered anyone over 18 years of age. The **Community-Based Provider** is responsible for delivery of an immediate action and safety plan (IASP) to the DHI Hotline and is required to update the IASP if instructed to by the assigned Investigator.¹
- Once it is determined that an allegation meets the definition of abuse, neglect or exploitation, as defined by the New Mexico Administrative Code (NMAC) 7.1.14, the case is screened in and an Investigator is assigned. The case is assigned a Priority Level, depending on the seriousness of the allegation. An Emergency requires the Investigator respond within three hours, a Priority One requires a 24-hour response and a Priority Two requires the Investigator respond within five calendar days.
- The Investigator will begin an investigation into the nature and cause of the abuse. The Immediate Action and Safety Plan (IASP) is continually assessed to ensure the health and safety of the alleged victim while the investigation progresses. Examples of actions that can be taken in an IASP can be found below.
- The Investigator also makes a mandatory report to law enforcement if they believe a crime has been committed, if the provider agency or others have not already done so.
- When an investigation is complete, the investigator determines a finding: either Substantiated or Unsubstantiated based on a preponderance of the evidence.
- Next, the Investigator notifies the provider agency if the investigation is substantiated, (this is known as the Decision Letter) and requests a

¹ If the person is under 18 years of age, the report is forwarded to the Children, Youth and Families Department (CYFD).

corrective/preventive action plan from the Provider agency and an Interdisciplinary team (IDT) meeting be held to detail what actions will be taken to ensure the individual remains safe. These corrective/preventive actions and IDT meetings are individually tailored to each situation. The purpose of corrective/preventive actions and IDT meetings are to mitigate risk, increase safety, and provide education and training, based on deficient practice. An example of a corrective/preventive actions could include: re-training on healthcare plans, mandatory abuse, neglect and exploitation reporting training for all program staff, updating the persons Individual Service Plan, re-evaluating the need for increased supervision or disciplinary action for the agency employee, including termination of employment, for serious violations.

In SFY20 law enforcement agencies were involved in several IMB sexual, financial and physical abuse allegations. A law enforcement agency is notified any time there is reasonable cause to believe a crime has been committed.

As part of our ongoing effort to work more closely with law enforcement agencies around the state, in FY2017 IMB conducted a training with over a dozen law enforcement agencies throughout New Mexico, to educate them about the Incident Management Bureau, what we do, and how to work more effectively with people with Intellectual and Developmental Disabilities. It is IMB's intension to hold these trainings periodically to law enforcement agencies, as new recruits onboard often.

In FY2018 IMB also provided outreach to about 3,000 physicians in the state, to educate them on how to recognize the signs and symptoms of abuse, neglect and exploitation, and where to report their concerns. In FY2020 IMB sent similar information to home health agencies to educate them on how to recognize the signs and symptoms of abuse, neglect, and exploitation for those who are providing services to recipients of the traditional Developmental Disabilities (DD) Waiver, Mi Via Waiver, Medically Fragile Waiver and the new Supports Waiver.

COVID-19

Due to the COVID-19 pandemic beginning in March of 2020, IMB altered their investigative processes and began conducting investigations via telephone and using technological assistance such as FaceTime, Skype, and Google Duo to interview the consumers, witnesses, and others concerning the investigation, as well as being able to see injuries and other relevant information such as conducting virtual site visits, in order to maintain safety for the consumers, staff, and the IMB Investigators as directed by the State's Health Orders implemented by the Governor beginning in March of 2020. As of November 2020, the investigation process has remained timely and the safety of the consumers is the priority always.

Who do we serve?

DHI and its partners provide supports and services to adults who meet eligibility criteria for the Medicaid Developmental Disabilities (DD) Waiver, Mi Via Self-Directed Waiver, the Medically Fragile² Waiver program, and the Supports Waiver. Intellectual disability is characterized by limitations both in intellectual functioning (reasoning, problem solving) and in adaptive behavior, which covers a wide range of everyday social and practical skills. The disability originates before the age of 18. "Developmental Disabilities" is an umbrella term that includes intellectual disability but also includes other disabilities that are apparent before the age of 22 and are likely lifelong. Some developmental disabilities are largely physical issues, such as cerebral palsy or epilepsy. Some individuals may have a condition that includes physical and intellectual disability, for example Down syndrome. Some people with developmental disabilities also have significant medical or mental health needs. In FY2020, the number of adults enrolled in I/DD services through the DD Waiver, Mi Via Self-Directed Waiver and the Medically Fragile Waiver programs continues at about 5,108. In FY2020 the new Supports Waiver was introduced to assist with the support of the traditional waiver. The Supports Waiver

² For the Medically Fragile waiver, IMB only has authority to investigate cases involving adults. Any allegation involving a child (under the age of 18) on the waiver is referred the Children, Youth and Families Department.

has an annual budget of \$10,000 to assist recipients with environmental modifications, day habilitation services, transportation services, and case management.

Mission Statement

IMB exists to ensure the health, safety, and well-being of individuals served on the DD Waiver, the Mi Via Self-Directed Waiver, adults on the Medically Fragile Waiver, and the Supports Waiver, by investigating allegations of abuse, neglect, exploitation, suspicious injury, environmental hazard, and death.

What is Abuse, Neglect or Exploitation?

Abuse is defined as:

- (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; or
- (3) sexual abuse, including criminal sexual contact, incest and criminal sexual penetration. New Mexico Administrative Code 7.1.14.7(A).

Abuse can be physical (as described above): inflicting pain, injury, and/or mental anguish. It can also be sexual or verbal.

Sexual Abuse is defined as the inappropriate touching of a recipient of care or services for sexual purpose or in a sexual manner, and includes kissing, touching the genitals, buttocks, or breasts, causing the recipient of care or services to touch another for sexual purpose, or promoting or observing for sexual purpose any activity or

performance involving play, photography, filming, or depiction of acts considered pornographic. Sexual conduct engaged in by an employee with a person for whom they are providing care or services is sexual abuse per se. NMAC 7.1.14.7(AA).

Verbal Abuse is defined as profane, threatening, derogatory, or demeaning language, spoken or conveyed with the intent to cause mental anguish. NMAC 7.1.14.7(EE).

* **Mental Anguish** is defined as 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. NMAC 7.1.14.7(Q).

Neglect is defined as 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. NMAC 7.1.14.7(S).

Exploitation is defined as an unjust or improper use of a person's money or property for another person's profit or advantage, financial, or otherwise. NMAC 7.1.14.7(K).

Suspicious Injuries: Suspicious injuries are not defined in the New Mexico Administrative Code; however, some examples of suspicious injuries include:

- A patterned bruise, no matter its size, that is in the shape of an identifiable object such as a belt buckle, shoe, hanger, etc.
- Unexplained serious injuries or multiple bruises, cuts, abrasions.
- A spiral fracture.
- Dislocated joints (e.g. shoulders, fingers).
- Facial or head injuries (e.g. black eyes, injuries to the scalp).
- Bruising to an area of the body which does not typically or easily bruise (e.g. midline - stomach, breasts, genitals or middle of the back).
- Injuries that are not consistent with what is reported to have happened, for example:
 - bruising to the inner thighs are explained to have been sustained in a fall that happened in the driveway.
 - injuries explained as caused by self-injury to parts of the body the consumer has not previously injured or cannot access.

- Injuries are explained as having been caused by another consumer, but the consumer has no history of such behavior or there is no documentation of an incident.
- A pattern of injuries such as injuries recurring during certain shifts or at certain times of the day.
- The explanation for how an injury occurred is not reasonable, probable, or is unlikely.
- Petechiae (definition: pinpoint round spots appearing on the skin as the result of bleeding under the skin or the result of minor hemorrhages caused by physical trauma).
- The consumer is repeatedly injured when certain staff is working, even when there is an explanation of how the injury occurred.

Environmental Hazard: A condition in the physical environment which creates an immediate threat to health and safety of the individual. NMAC 7.1.14.7(J).

Immediate Action and Safety Plan (IASP)

The need for an Immediate Action and Safety Plan (IASP) is assessed in all types of settings and regardless of the investigation findings. Some examples of protective services include:

- Arrange for an adult to stay somewhere temporarily or a permanent move;
- Change the adult’s phone number or email address;
- Change locks at the adult’s residence;
- Provide domestic violence shelter information or other domestic violence resources;
- Offer and assist with safety planning;
- Offer information on obtaining a protection order (restraining order, stalking order, sexual assault order);
- Assist with obtaining medical assistance or assessment;

Categories of Protective Services

- Advocacy
- Alternative living arrangement
- Counseling
- Legal Services
- Medical Services
- Mental state examination
- Physical state examination
- Removal of staff involved

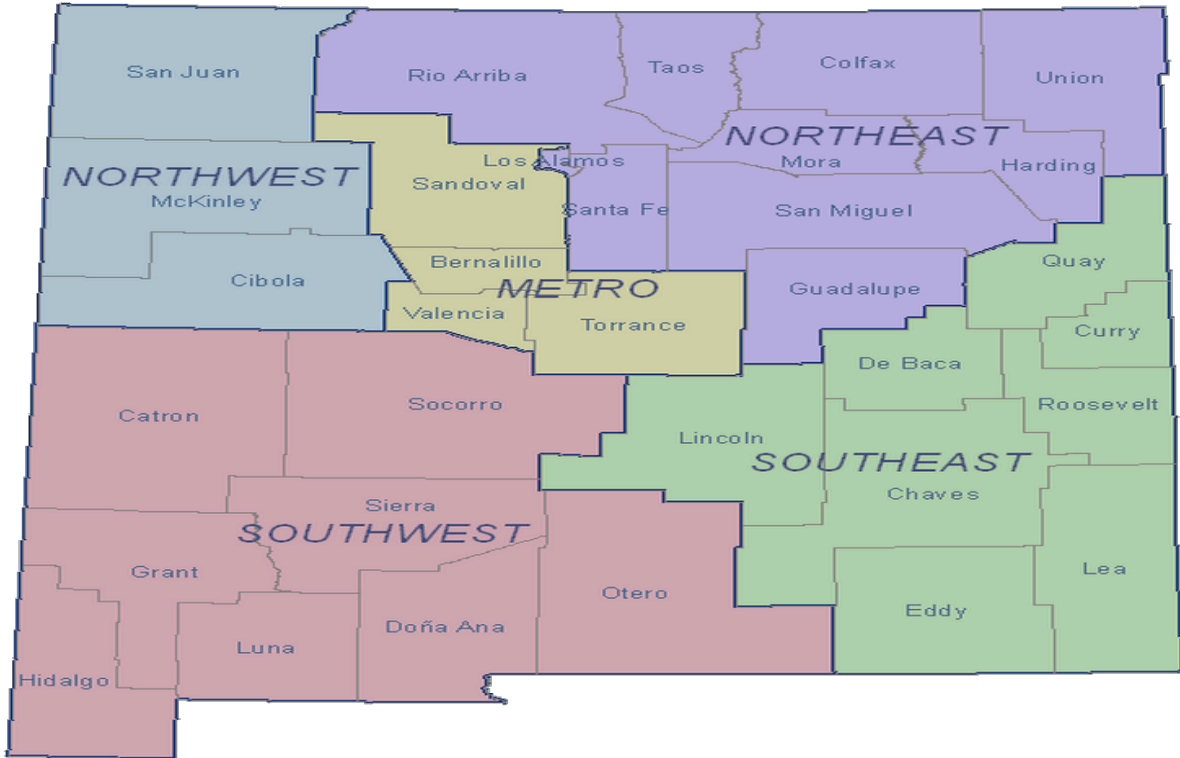
- Staff person accused of abuse is put on administrative leave or moved to a different position.

The Incident Management Bureau maintains a 24-hour Hotline for reporting abuse, neglect, exploitation, suspicious injury, environmental hazard and reports of death at **(800) 445-6242**. See NMAC 7.1.14 for Incident Reporting Requirements for Community Providers.

DDSD Regional Offices

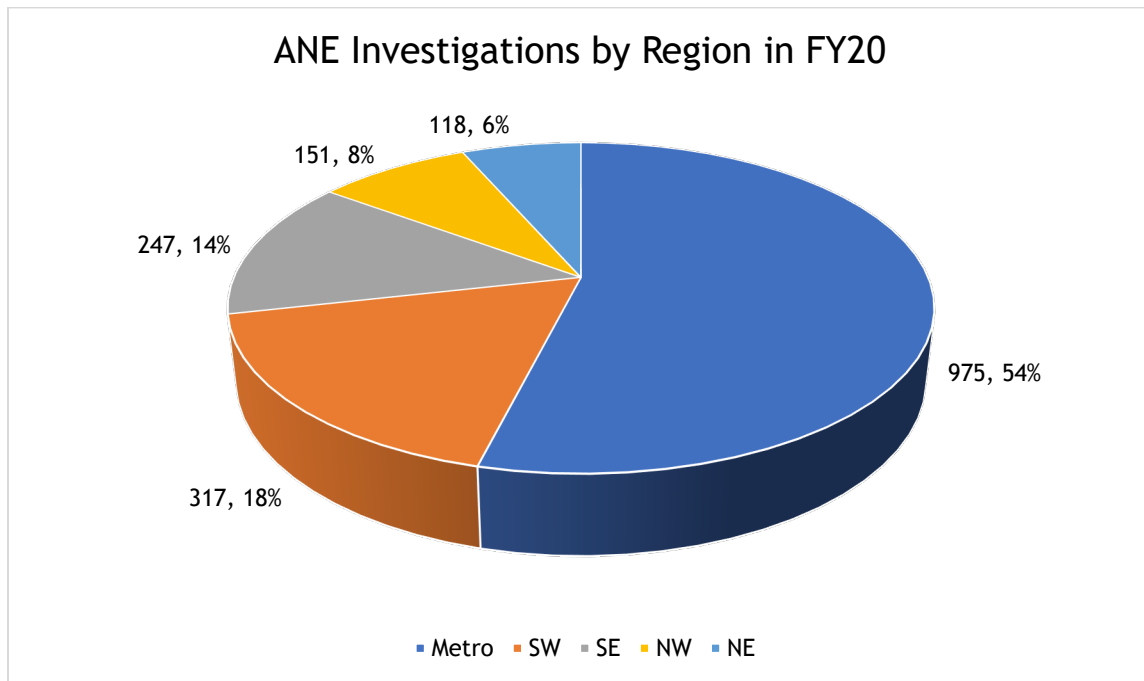
For purposes of service delivery, the Department of Health (DOH), Developmental Disabilities Supports Division (DDSD) has divided the state of New Mexico into five Regions. Each Regional Office is responsible for the delivery of DOH services in their region. The IMB has established an investigative presence in each Region to correspond with their DOH counterparts in the other DOH Divisions and Bureaus.

This allows the Investigators to become familiar with the Community-Based Service Providers in their Region, and to work collaboratively with the local providers and the Developmental Disabilities Supports Division (DDSD) staff to address issues specific to their programs, and their unique population of individuals.

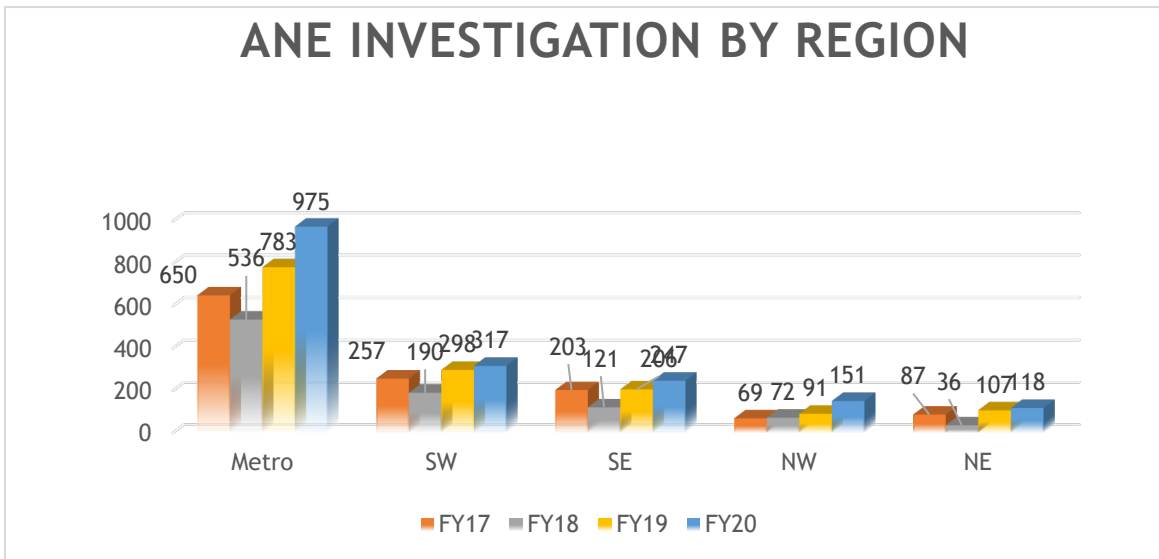


Map of the State of New Mexico showing the five DDSD Regions.

The following graph shows the division of ANE investigations by Region for FY20.



COMPARISON OF FISCAL YEAR 2017 thru 2020 DATA



This chart shows the number of ANE investigations assigned in each region of the state for **FY17, FY18, FY19 and FY20.**

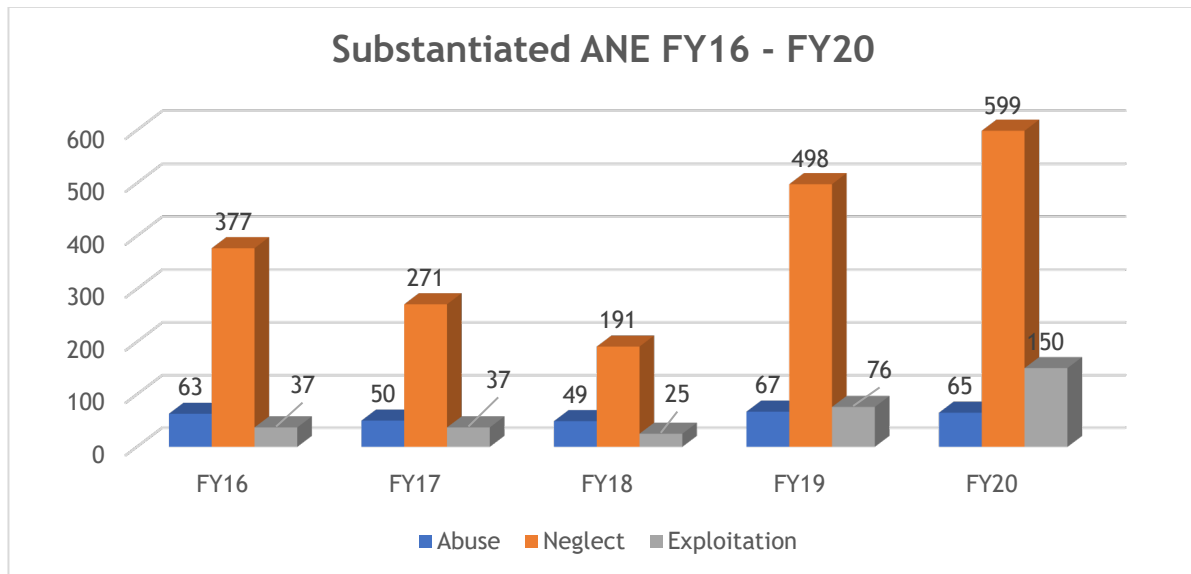
SUBSTANTIATED INVESTIGATIONS

At the completion of an IMB investigation, allegations of abuse, neglect or exploitation are either substantiated, which means the ANE occurred, as defined by the NMAC, and the Accused Person or Agency committed the ANE. Or, unsubstantiated, which means the ANE did not occur, or the Accused Person or Agency was not responsible.

Occasionally, Investigators may investigate and substantiate against an “unknown staff” or “unknown person.” It is important to acknowledge that abuse, neglect or exploitation occurred, even if we’re unable to identify who was responsible.

Placement on the Employee Abuse Registry (EAR) may occur when the abuse, neglect or exploitation rises to a certain level of severity as defined in New Mexico Administrative Code 7.1.12. This rule applies to a broad range of New Mexico providers of health care and services and employees of these providers who are not licensed

healthcare professionals or certified nurse aids.³ After three years from the time of placement to the EAR, the person may petition to be removed from the EAR, and must demonstrate rehabilitation in the area of ANE they were substantiated in.



This chart shows a comparison of substantiated ANE allegations investigated in DD Waiver, the Mi Via Self-Directed Waiver and Medically Fragile Waiver programs over a five-year period.

In January 2019, changes were implemented at the Intake Hotline to ensure allegations were being properly screened in for investigation. As a result, case assignments rose 37% over the previous year. With an increase in case assignments, also came an increase in substantiated allegations. For the FY20 there were 2,153 case assignments which resulted in 653 cases substantiated for a substantiation rate of 3.29%. This is a slight increase compared to FY19 which had a total case assignment of 1,556 which resulted in 498 cases that were substantiated for a substantiation rate of 3.12%.

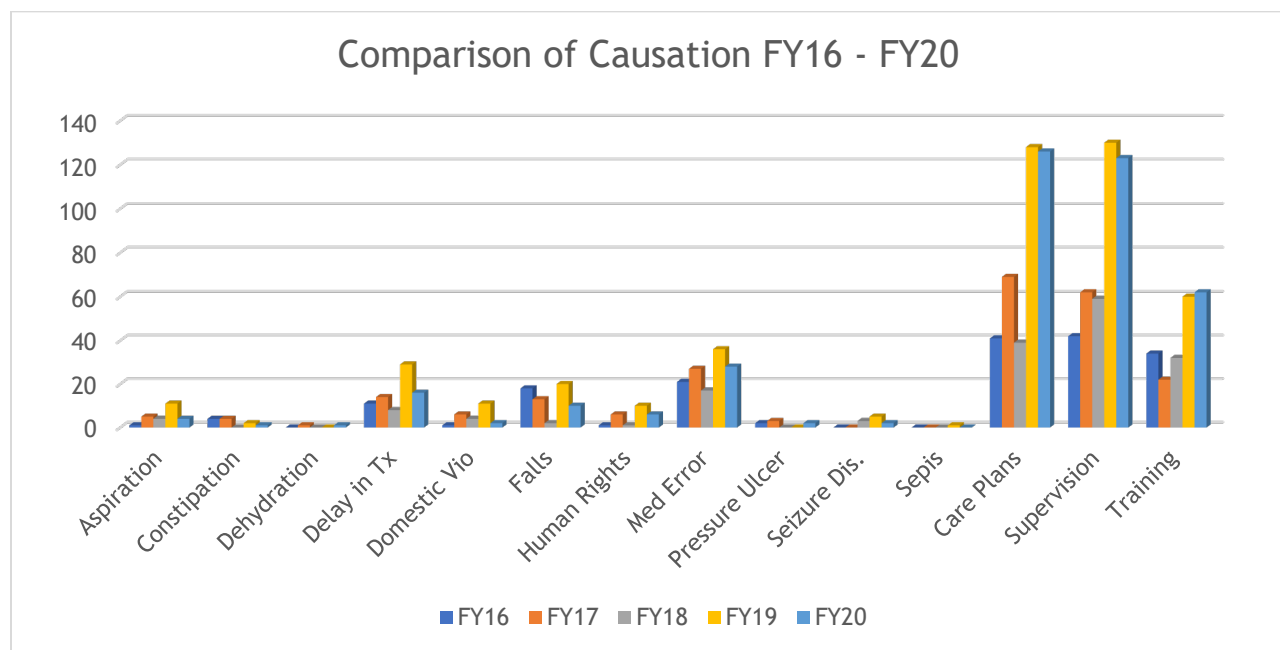
Causation

IMB has been collecting information on the causes and contributing factors of ANE; more specifically related to Neglect. Reports/allegations of Neglect accounted for 68% of all

³ NMAC 7.1.12 Employee Abuse Registry

IMB investigations in FY19 and 67% of all IMB investigations in FY20. It is therefore imperative to use the IMB database to try and determine the most common causes of neglect, and take steps to mitigate those causes.

The “causation” tab in the IMB database is a quick-reference guide to determine the most common causes of Neglect. IMB has identified 14 common causes of Neglect, including the “fatal five;” the five most common conditions that lead to premature death of people with I/DD. ⁴ The 14 causes include; aspiration, constipation, dehydration, delay in medical treatment, domestic violence, falls, human rights abuses, medication errors, pressure ulcers, seizure disorder, sepsis, failure to follow healthcare plans, lack of appropriate supervision, and lack of training.



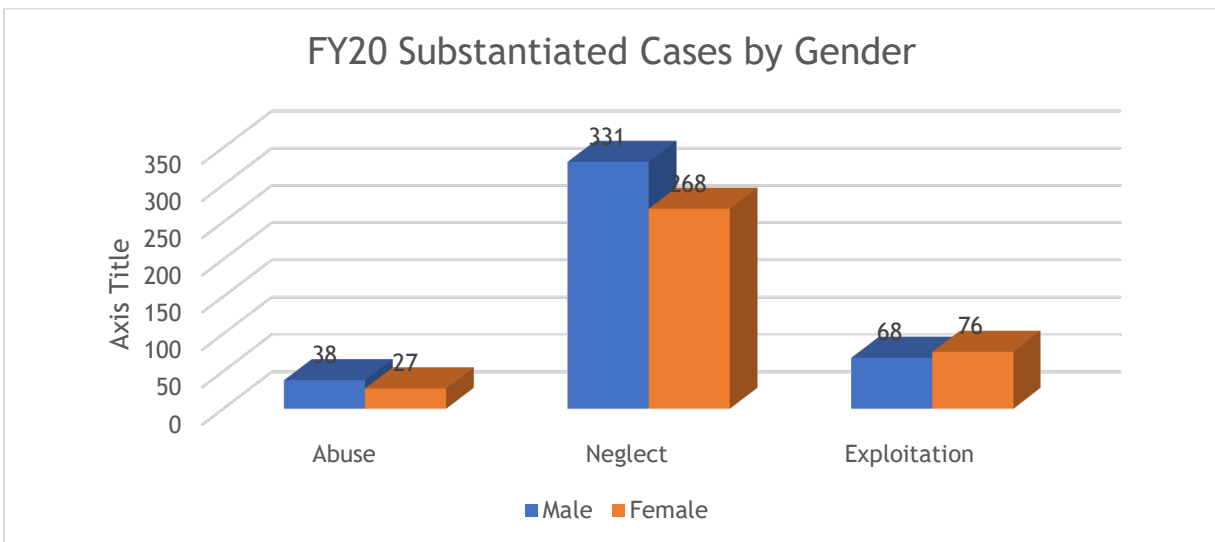
This graph shows a comparison of substantiated Neglect in FY16 through FY20. The top three causes of Neglect in FY2020 include failure of staff to follow healthcare plans, lack of appropriate supervision for the client and failure of the Agency to provide proper training.

⁴ According to the National Alliance for Direct Support Professionals, the “fatal five” includes; aspiration, bowel obstruction, dehydration, gastroesophageal reflux disease and seizures.

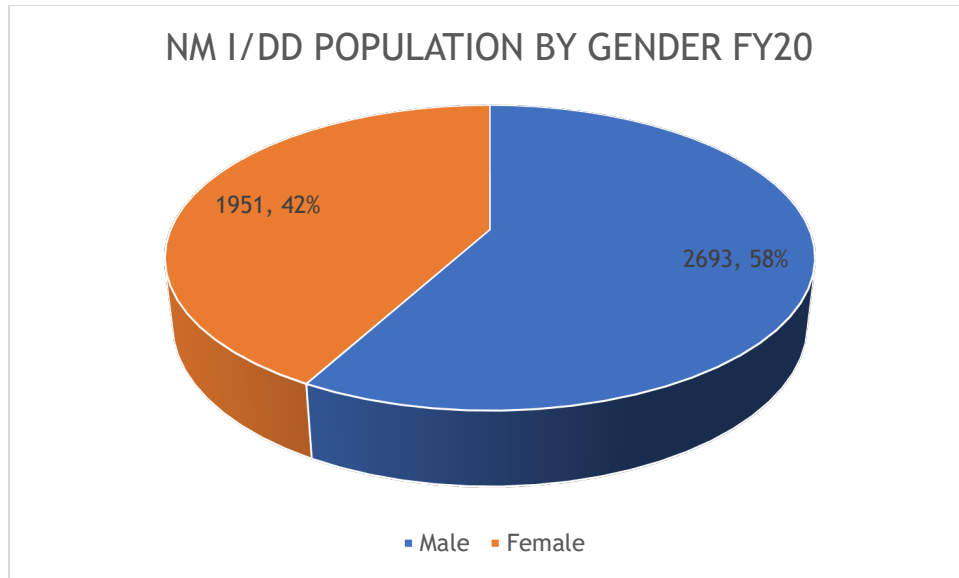
Gender

People with intellectual disabilities can be both the victims and perpetrators of sexual violence (often termed **sexual abuse**). Prevalence rates of sexual violence against people with I/DD are high when compared with the experience of the general population. According to US Department of Justice statistics, people with intellectual disabilities are sexually assaulted at a rate seven times higher than those without disabilities. While people with intellectual disabilities experience sexual violence in many of the same ways as the general population, they may encounter additional issues related to their impairments and/or the social environments in which they live. These can include increased vulnerability, questions around ability to consent to sexual activities, social attitudes about intellectual disability and sexuality, and restricted access to suitable support and recovery services.

A comparison of how gender plays a role in the victimization of people with I/DD may help develop insight on how to prevent certain kinds of abuse.



This graph shows the number of substantiated ANE allegations by gender in FY20. Both males and females are nearly equally the victims of abuse, neglect and exploitation. The Gender gap has decreased significantly over the past four-years.



The New Mexico I/DD population served by the DD Waiver, Mi Via Self-Directed Waiver and the Medically Fragile Waiver has a 16% higher population of males than females.

Case Assignments

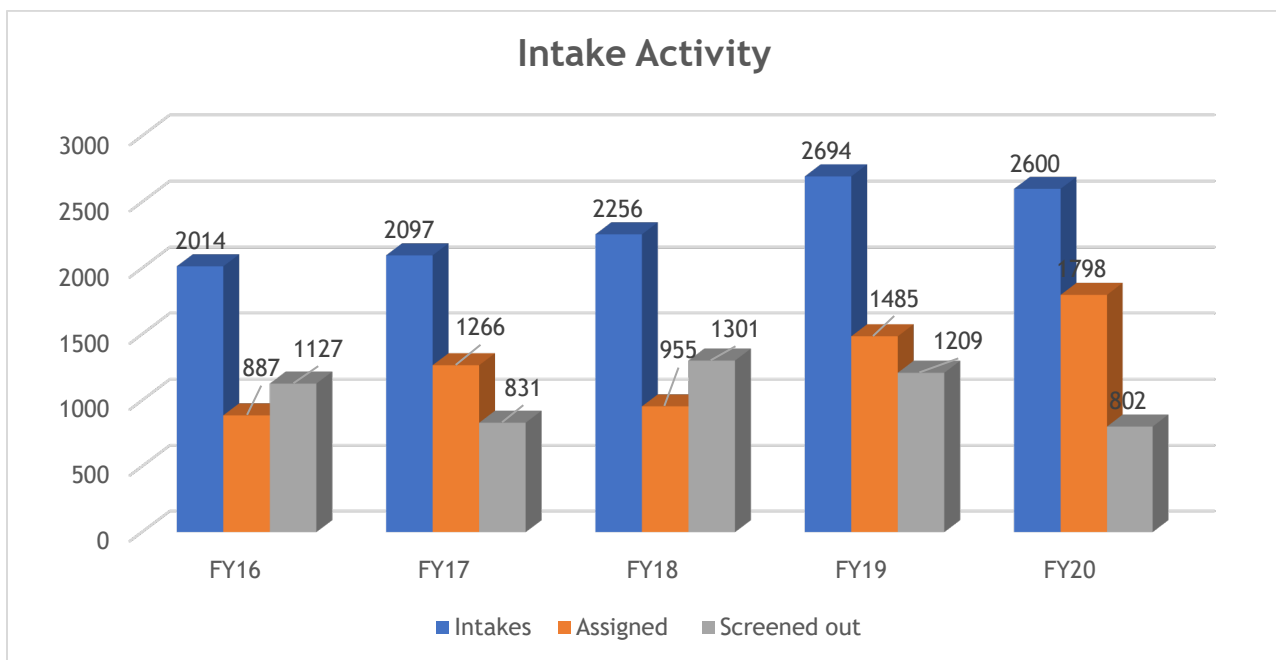
Incident reporting has remained consistent. As incidents are reported to the Hotline, IMB Intake staff screen the reports to ensure IMB has the jurisdiction and authority to conduct an investigation. Jurisdiction refers to whether the alleged victim is served under the Developmental Disabilities waiver, the Mi Via (self-directed) waiver, the Medically Fragile waiver, or the new Supports Waiver. Authority refers to whether the allegation meets the definition of abuse, neglect or exploitation, as defined by the New Mexico Administrative Code (NMAC 7.1.14.)

Beginning in FY2015, IMB began refining the screening process, to ensure the health and safety of the alleged victim was assured pending the screening process and case assignment, speeding up the decision-making process, and working with Provider agencies to more quickly get information in order to make an informed decision.

Each Quarter, IMB conducts a quality assurance review of a sample of reports. The review looks at timely reporting, the use of a consultant, when necessary, timely screening, if the appropriate screening decision was made, assigning an appropriate severity level, obtaining relevant information from the Reporter, obtaining an adequate

Immediate Action and Safety Plan, identifying if a late/fail notice is necessary and proper notification of the screening decision to the responsible provider agency. This information is then used to provide additional training to the Intake staff to improve the operation of the Hotline and ensure cases are assigned appropriately.

In addition, Direct Care Staff and other Provider personnel are required to complete a one-day, face-to-face training on recognizing and reporting abuse, neglect and exploitation, and an annual Online refresher course.



This graph shows the number of referrals received by Intake, the number of cases assigned and the number of cases screened out over the past five years.

Accomplishments and Professional Development

- As of September 30, 2019, IMB was able to eliminate approximately 782 ‘back log’ investigations. With the assistance of contractors, IMB was able to complete the investigations and close all outstanding cases. To date, IMB has not had a backlog and continues to maintain the quality and timeliness of all investigations.

- A new Bureau Chief was hired in December of 2019. The Bureau Chief comes with 14 years of experience in IMB; six years as an IMB Investigator and eight years as the IMB Deputy Bureau Chief.
- In February of 2020 IMB held a specific Supervisor training for all of the IMB Supervisors which focused on understanding of the NMAC definitions of ANE, how they are to be applied to the investigations, what information should be included in the investigative report, report format, and how to effectively review investigative reports. This training was a success, as there have been several new Supervisors added to the IMB Management team over the course of the year. On-going Supervisor training is provided each quarter for the Supervisors.
- Beginning in late March of 2020, when COVID-19 restrictions were put in place, all of the IMB staff began working from home. That meant conducting investigations mainly through the use of the telephone and other technologies such as FaceTime, Skype, and Google Duo. Although challenging at times, the investigators have done an excellent job conducting thorough and timely investigations during this pandemic. The provider agencies have assisted IMB in providing photographic documentation, when needed, when injuries and other concerns were noted.

Summary

Although the later half of the fiscal year did present some challenges, IMB has managed to have many successes. The elimination of the investigative back log, the hiring of additional staff, including several new Supervisors and a new Bureau Chief as of December 2019 with 14 years of IMB experience. Other areas of success include the Supervisor trainings, CORE trainings, and the ability to work from home and continue the investigative process; keeping our individuals safe. This has been a very positive year for IMB and the department and IMB looks forward to success in 2021 as well.