



State Fiscal Year
2022
ANNUAL REPORT



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 SFY2022

1,701 investigations of abuse, neglect or exploitation were conducted.

515 allegations of abuse, neglect or exploitation were substantiated.

341 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), 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 requests a corrective/preventive action plan from the Provider agency (or the consultant or community supports coordinator) and an

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

Interdisciplinary team (IDT) meeting be held by the case manager if the investigation finding is substantiated, (this is known as the Decision Letter) detailing 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 SFY22 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.

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,

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.

for example Down syndrome. Some people with developmental disabilities also have significant medical or mental health needs. In FY2022, 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 5,867. In FY2020 the new Supports Waiver was introduced to assist with the support of the traditional waiver. The Supports Waiver 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

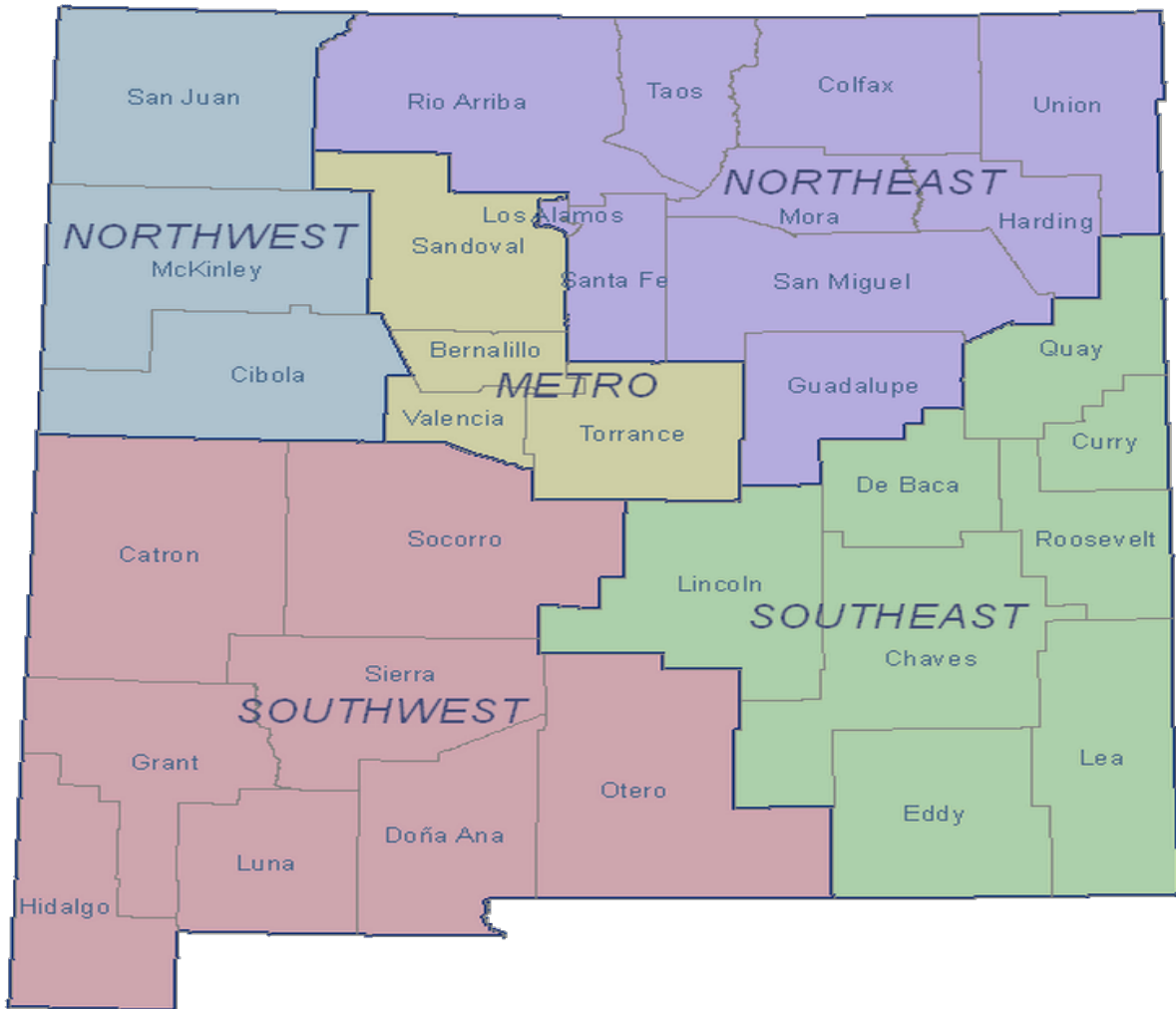
- Staff person accused of abuse is put on administrative leave or moved to a different position.

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.

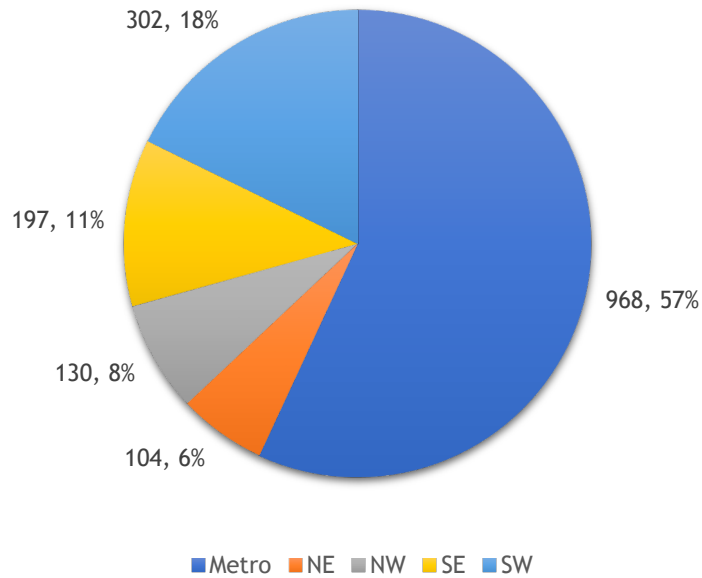
This allows the Investigators to become familiar with the Community-Based Service Providers in their Region, and to work collaboratively with the local providers and the Developmental Disabilities Supports Division (DDSD) staff to address issues specific to their programs, and their unique population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



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

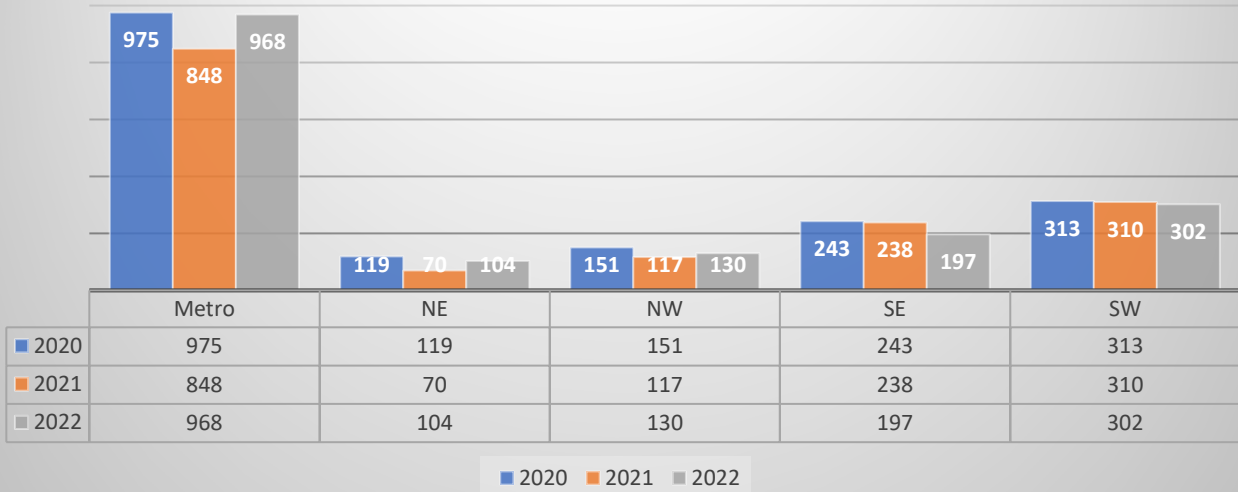
The following graph shows the division of ANE investigations by Region for FY22.

ANE Investigations by region



COMPARISON OF FISCAL YEAR 2020 thru 2022 DATA

Case assignment by region SFY20-22



This chart shows the number of ANE investigations assigned in each region of the state for **FY20, FY21 and FY22.**

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.

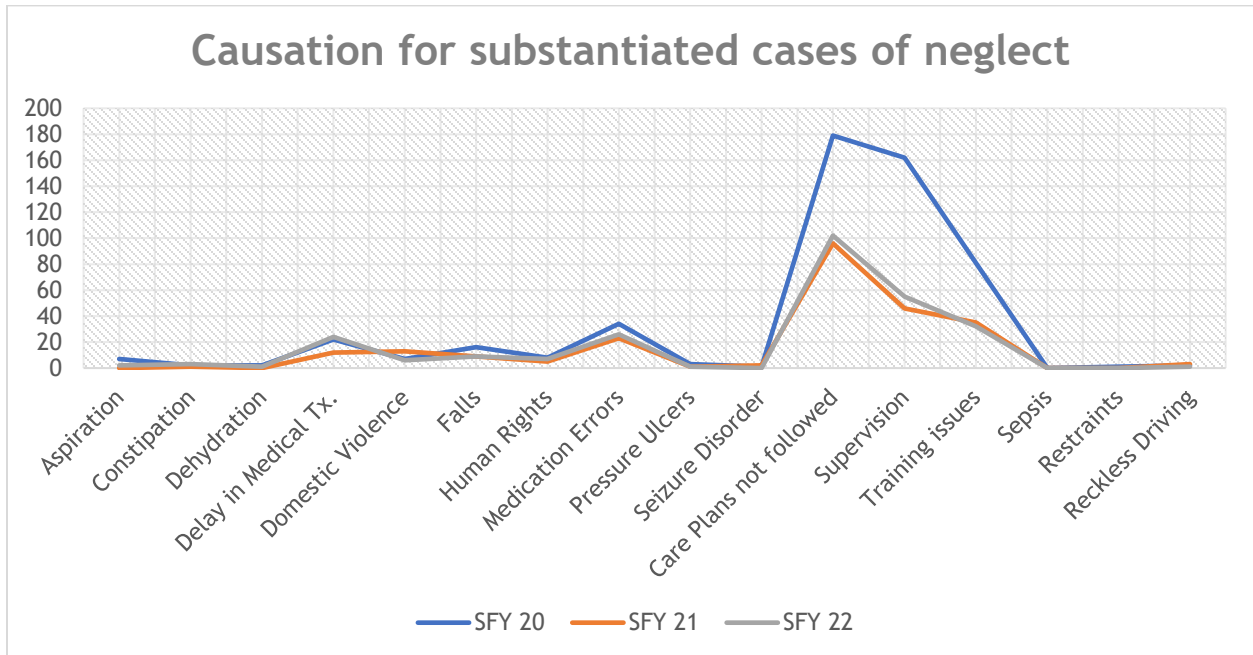
Placement on the Employee Abuse Registry (EAR) may occur when the abuse, neglect or exploitation rises to a certain level of severity as defined in New Mexico Administrative Code 7.1.12. This rule applies to a broad range of New Mexico providers of health care and services and employees of these providers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

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 67.75% of all IMB investigations in FY21 and 70% of all IMB investigations in FY22. 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 16 common causes of Neglect, including the “fatal five;” the five most common conditions that lead to premature death of people with I/DD which include: aspiration, supervision, dehydration, failure to follow service plans and sepsis. The 16 causes are aspiration, constipation,

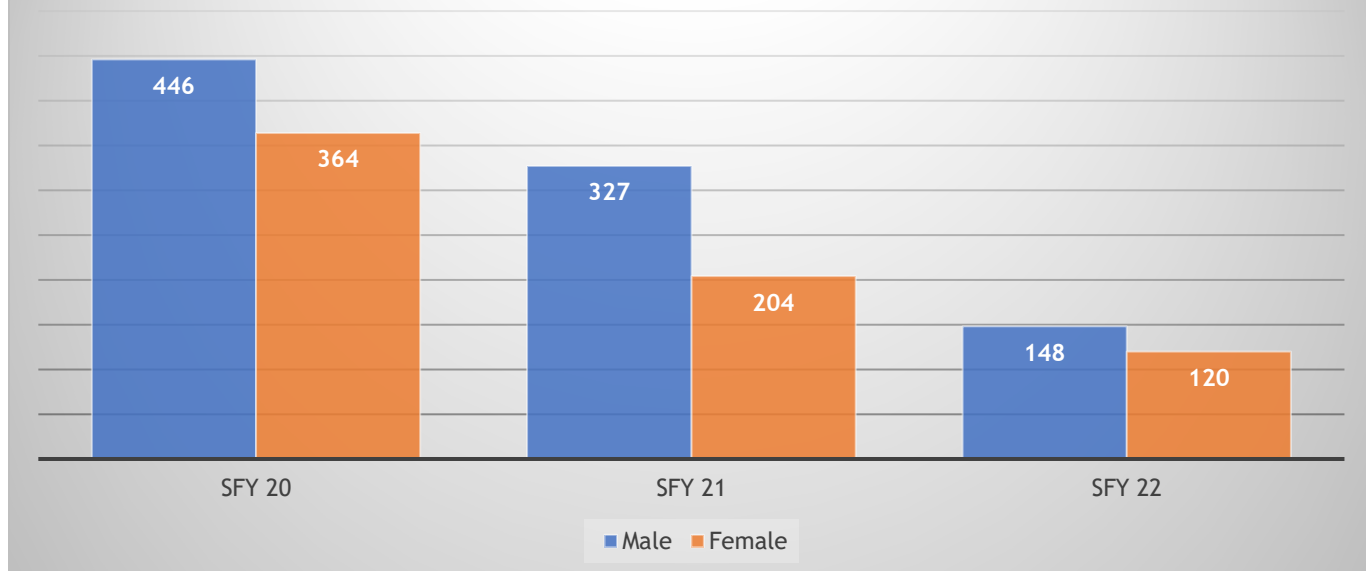
dehydration, delay in medical treatment, domestic violence, falls, human rights abuses, medication errors, pressure ulcers, sepsis, failure to follow healthcare plans, lack of appropriate supervision, the use of restraints, and lack of training. The following graph shows the comparison of the substantiated cases of neglect for fiscal years 2020, 2021, and 2022 and the causations related to the substantiations:



Gender

People with intellectual disabilities can be both the victims and perpetrators of abuse. 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. Below is a graph which shows the variation of substantiated allegations of ANE between the male and female I/DD population in New Mexico for fiscal years 2020, 2021, and 2022.

Substantiated allegations by gender

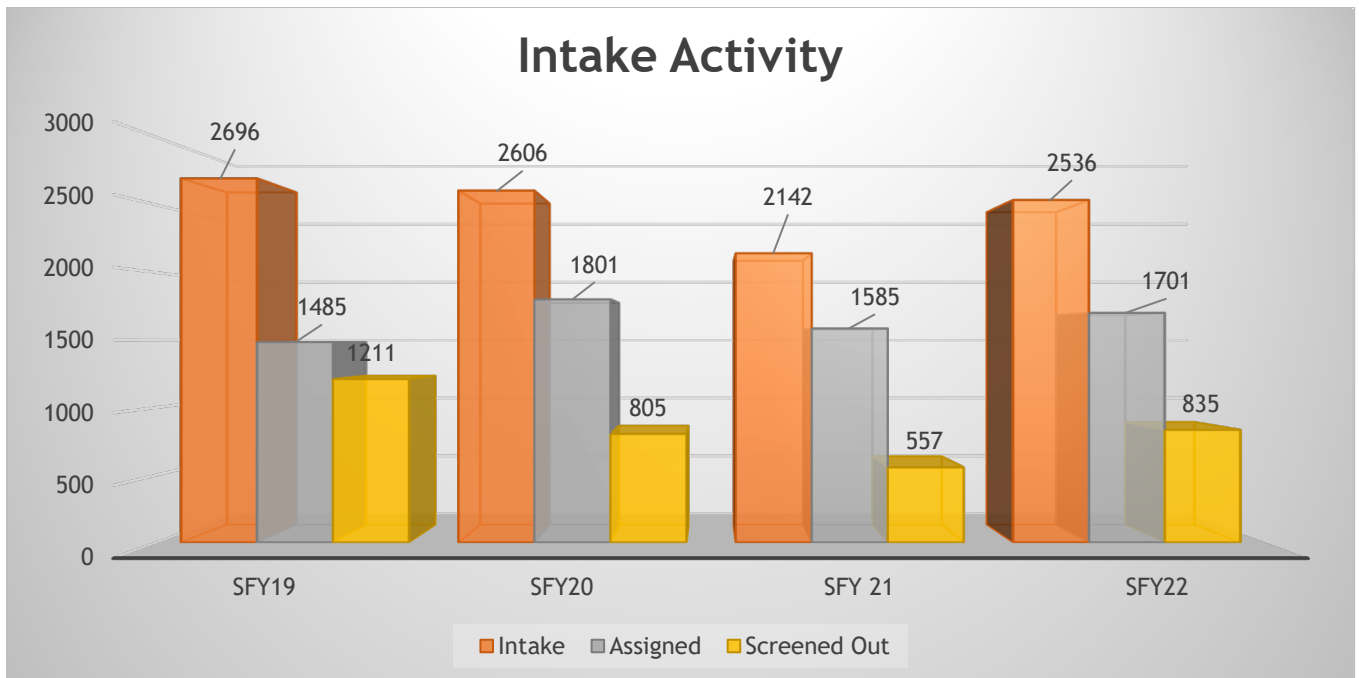


This graph shows the number of substantiated ANE allegations by gender. Both males and females are nearly equally the victims of abuse, neglect and exploitation.

Case Assignments

Incident reporting has remained consistent, despite a small decrease in SFY21 due to COVID-19. 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 Supports waiver or the Medically Fragile waiver. Authority refers to whether the allegation meets the definition of abuse, neglect or exploitation, as defined by the New Mexico Administrative Code 7.1.14.

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 is also known as the ANE training.



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 four years.

Accomplishments and Professional Development

- Throughout SFY21 and SFY22, IMB has held several specific Supervisor trainings for all of the IMB Supervisors which focused on the 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. These trainings have been a success, as there have been several new Supervisors added to the IMB Management team over the course of several years. On-going Supervisor training is provided each quarter for the Supervisors.
- IMB has also held several CORE Competency trainings for our new investigators along with several in-person all-staff trainings, which have included guest speakers from the ARC of New Mexico, DDSD, the Mi Via unit, BBS, and QMB to name a few. Staff found these in-person gatherings helpful and useful, since it had been before the pandemic since IMB had held an in-person meeting.

Summary

Fiscal year 2022 was an exceptional year at IMB, as it saw the end of the Jackson law suit after many years. IMB not only fulfilled the Jackson requirements, but created a protective incident management and intake system that is unlike any other nation wide. IMB has created a response system to critical incidents that mirror both the Adult Protective system and the Child Protective system with priority levels such as the emergent, the priority one and priority two response times. Our intake and investigators pride themselves on not only initiating in a timely manner, but responding according to the priority guidelines set forth in the NMAC 7.1.14. IMB has and continues to ensure the health and safety of the I/DD individuals here in New Mexico, today and years to come.