

5123:2-17-02 Incidents adversely affecting health and safety.

(A) Purpose

This rule establishes the requirements for managing incidents adversely affecting health or safety and implements a continuous quality improvement process in order to prevent or reduce the risk of harm to individuals.

(B) Application

This rule applies to county boards, developmental centers, and providers. Nothing in this rule relieves any person of the responsibility to comply with section 5123.61 of the Revised Code, which requires the reporting of abuse, neglect, and misappropriation.

(C) Definitions

(1) "Administrative investigation" means the gathering and analysis of information related to a major unusual incident so that appropriate action can be taken to address any harm or risk of harm and prevent future occurrences.

(2) "Agency provider" means a provider, certified or licensed by the department, that employs staff to deliver services to individuals and who may subcontract the delivery of services.

(3) "At-risk individual" means an individual whose health or safety is adversely affected or whose health or safety may reasonably be considered to be in danger of being adversely affected.

(4) "County board" means a county board of mental retardation and developmental disabilities as established under Chapter 5126. of the Revised Code or a regional council of governments as established under Chapter 167. of the Revised Code when it includes at least one county board.

(5) "County board as a provider" means the county board when acting as the provider to the individual who is the subject of the incident.

(6) "Department" means the Ohio department of mental retardation and developmental disabilities as established by section 121.02 of the Revised Code.

(7) "Developmental center" means an ICF/MR under the managing responsibility of the department.

(8) "ICF/MR" means an intermediate care facility for the mentally retarded.

(9) "Incident tracking system" (ITS) means the department's on-line system for reporting major unusual incidents.

(10) "Individual" means a person with mental retardation or other developmental disability.

(11) "Individual provider" means a provider certified by the department who is self-employed and not an agency and who personally delivers services to individuals and who may not subcontract the delivery of services.

(12) "Investigative agent" means an employee of a county board or a person under contract with a county board who is certified by the department to conduct investigations of major unusual incidents.

(13) "Major unusual incident" (MUI) means the alleged, suspected, or actual occurrence of an incident when there is reason to believe the health or safety of an individual may be adversely affected or an individual may be placed at a

reasonable risk of harm as listed in this paragraph, if such individual is receiving services through the MR/DD service delivery system or will be receiving such services as a result of the incident. Major unusual incidents (MUIs) include the following:

(a) Abuse. "Abuse" means any of the following when directed toward an individual:

(i) Physical abuse. "Physical abuse" means the use of physical force that can reasonably be expected to result in physical harm or serious physical harm as those terms are defined in section 2901.01 of the Revised Code. Such force may include, but is not limited to, hitting, slapping, pushing, or throwing objects at an individual.

(ii) Sexual abuse. "Sexual abuse" means unlawful sexual conduct or sexual contact as those terms are defined in section 2907.01 of the Revised Code and the commission of any act prohibited by section 2907.09 of the Revised Code (e.g., public indecency, importuning, and voyeurism).

(iii) Verbal abuse. "Verbal abuse" means purposefully using words or gestures to threaten, coerce, intimidate, harass, or humiliate an individual.

(b) Attempted suicide. "Attempted suicide" means a physical attempt by an individual that results in emergency room treatment, in-patient observation, or hospital admission.

(c) Death. "Death" means the death of an individual.

(d) Exploitation. "Exploitation" means the unlawful or improper act of using an individual or an individual's resources for monetary or personal benefit, profit, or gain.

(e) Failure to report. "Failure to report" means that a person, who is required to report pursuant to section 5123.61 of the Revised Code, has reason to believe that an individual has suffered or faces a substantial risk of suffering any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse (including misappropriation) or neglect of that individual, and such person does not immediately report such information to a law enforcement agency, a county board, or, in the case of an individual living in a developmental center, either to law enforcement or the department. Pursuant to division (C)(1) of section 5123.61 of the Revised Code, such report shall be made to the department and the county board when the incident involves an act or omission of an employee of a county board.

(f) Known injury. "Known injury" means an injury from a known cause that is not considered abuse or neglect and that requires immobilization, casting, five or more sutures or the equivalent, second or third degree burns, dental injuries, or any injury that prohibits the individual from participating in routine daily tasks for more than two consecutive days.

(g) Law enforcement. "Law enforcement" means any incident that results in the individual being charged, incarcerated, or arrested.

(h) Medical emergency. "Medical emergency" means an incident where emergency medical intervention is required to save an individual's life (e.g., Heimlich maneuver, cardiopulmonary resuscitation, intravenous for dehydration).

(i) Misappropriation. "Misappropriation" means depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means prohibited by the Ohio Revised Code, including Chapters 2911. and 2913. of the Revised Code.

(j) Missing individual. "Missing individual" means an incident that is not considered neglect and the individual cannot be located for a period of time longer than specified in the individual service plan and the individual cannot be located after actions specified in the individual service plan are taken and the individual cannot be located in a search of the immediate surrounding area; or circumstances indicate that the individual may be in immediate jeopardy; or law enforcement has been called to assist in the search for the individual.

(k) Neglect. "Neglect" means when there is a duty to do so, failing to provide an individual with any treatment, care, goods, supervision, or services necessary to maintain the health or safety of the individual.

(l) Peer-to-peer acts. "Peer-to-peer acts" means acts committed by one individual against another when there is physical abuse with intent to harm; verbal abuse with intent to intimidate, harass, or humiliate; any sexual abuse; any exploitation; or intentional misappropriation of property of significant value.

(m) Prohibited sexual relations. "Prohibited sexual relations" means an MR/DD employee engaging in consensual sexual conduct or having consensual sexual contact with an individual who is not the employee's spouse, and for whom the MR/DD employee was employed or under contract to provide care at the time of the incident and includes persons in the employee's supervisory chain of command.

(n) Rights code violation. "Rights code violation" means any violation of the rights enumerated in section 5123.62 of the Revised Code that creates a reasonable risk of harm to the health or safety of an individual.

(o) Unapproved behavior support. "Unapproved behavior support" means the use of any aversive strategy or intervention implemented without approval by the human rights committee or behavior support committee or without informed consent.

(p) Unknown injury. "Unknown injury" means an injury of an unknown cause that is not considered possible abuse or neglect and that requires treatment that only a physician, physician's assistant, or nurse practitioner can provide.

(q) Unscheduled hospitalization. "Unscheduled hospitalization" means any hospital admission that is not scheduled unless the hospital admission is due to a condition that is specified in the individual service plan or nursing care plan indicating the specific symptoms and criteria that require hospitalization.

(14) "MR/DD employee" means any of the following:

(a) An employee of the department.

(b) An employee of a county board.

(c) An employee in a position that includes providing specialized services to an individual.

(15) "Primary person involved" (PPI) means the person alleged to have committed or to have been responsible for the abuse, exploitation, failure to report, misappropriation, neglect, prohibited sexual relations, rights code violation, or suspicious or accidental death.

(16) "Provider" means any person or entity that provides specialized services and that is subject to certification, licensure, or regulation by the department regardless of source of payment. "Provider" includes a county board

providing services and a county board contracting entity as defined in section 5126.281 of the Revised Code when providing specialized services.

(17) "Specialized services" means any program or service designed and operated to serve primarily individuals, including a program or service provided by an entity licensed or certified by the department.

(18) "Unusual incident" (UI) means an event or occurrence involving an individual that is not consistent with routine operations, policies and procedures, or the care or individual service plan of the individual, but is not an MUI. Unusual incidents (UIs) include, but are not limited to, medication errors; falls; peer-to-peer incidents that are not MUIs; overnight relocation of an individual due to fire, natural disaster, or mechanical failure; and any injury to an individual that is not an MUI.

(19) "Working day" means Monday, Tuesday, Wednesday, Thursday, or Friday except when that day is a holiday as defined in section 1.14 of the Revised Code.

(D) Reporting requirements

(1) All incidents of possible abuse, including misappropriation, or neglect, of any individual, as defined in section 5123.61 of the Revised Code, shall be reported to the local law enforcement entity with jurisdiction and the county board or the to the public children's services agency and the county board. The county board shall report these incidents on ITS and indicate the entity or entities notified.

(2) Reports of MUIs involving abuse, neglect, exploitation, misappropriation, or death shall be filed in all cases regardless of where the incident occurred, and all requirements of this rule shall be followed. Reports regarding the remaining categories of MUIs shall be filed and the requirements of this rule followed only when the incident occurs in a program operated by a county board or when the individual is being served by a licensed or certified provider.

(3) Immediately upon identification or notification of an MUI, the provider or county board, when acting as the provider for the individual, shall take all reasonable measures to ensure the health and safety of any at-risk individuals. The provider and county board shall discuss any disagreements regarding reasonable measures in order to resolve them. If the provider and county board are unable to agree on reasonable measures to ensure the health and safety of at-risk individuals, the department shall make the determination. Such measures shall include:

(a) Immediate and ongoing medical attention, as appropriate;

(b) Removal of an employee from direct contact with any at-risk individual when the employee is alleged to have been involved in abuse or neglect until such time as the provider has reasonably determined that such removal is no longer necessary;

(c) Other necessary measures to protect the health and safety of at-risk individuals.

(4) Immediately upon receipt of a report or notification of an allegation, the county board shall:

(a) Ensure that all reasonable measures necessary to protect the health and safety of any at-risk individual have been taken;

(b) Determine if additional measures are needed;

(c) Notify the department if the circumstances in paragraph (l) of this rule that require a department-directed investigation are present. Such notification shall take place on the first working day the county board becomes aware of the incident.

(5) The provider or county board staff shall immediately, but no later than four hours after discovery of the incident, notify the county board through means identified by the county board of the following incidents or allegations:

(a) Abuse.

(b) Exploitation.

(c) Misappropriation.

(d) Neglect.

(e) Suspicious or accidental death.

(f) When the provider has received inquiries from the media regarding an MUI.

(6) For all MUIs, including those listed in paragraph (D)(5) of this rule, all agency providers and county boards as a provider shall submit a written incident report to the county board no later than three p.m. the next working day following initial knowledge of a potential or determined MUI. The report shall be submitted in a format prescribed by the department. Individual providers shall make the notification to the county board contact person designated to receive or manage these reports, no later than three p.m. the next working day following initial knowledge of a potential or determined MUI.

(7) The county board shall enter preliminary information regarding the incident on the ITS and in the manner prescribed by the department by three p.m. on the working day following notification by the provider or becoming aware of the MUI.

(8) When a provider has placed an employee on leave or otherwise taken protective action pending the outcome of the investigation, the county board or department, as applicable, shall keep the provider apprised of the status of the investigation so that the provider can resume normal operations as soon as possible consistent with the health and safety of any at-risk individuals.

(9) If the provider is a developmental center, all reports required by this rule shall be made directly to the department or as specified by the department.

(10) The county board shall have a system that is available twenty-four hours a day, seven days a week, to receive and respond to all reports required by this rule. The county board shall communicate this system in writing to all providers in the county and to the department.

(E) Alleged criminal acts

The provider or county board shall immediately report to the law enforcement entity having jurisdiction of the location where the incident occurred, any allegation of abuse, including misappropriation, or neglect, which may constitute a criminal act. The county board shall ensure that the notification has been made.

(F) Abused or neglected children

All allegations of abuse or neglect as defined in section 2151.03 and section 2151.031 of the Revised Code of an individual under the age of twenty-one years shall be immediately reported to the local public children's services agency. The notification may be made by the provider or the county board. The county board shall ensure that the notification has been made.

(G) Notification requirements

(1) The provider, including a county board as a provider, shall make the following notifications, as applicable, when the incident or discovery of the incident occurs when such provider has responsibility for the individual. The notification shall be made on the same day the incident or discovery of the incident occurs and include immediate actions taken.

(a) Guardian or advocate selected by the individual or other person whom the individual has identified.

(b) Service and support administrator serving the individual.

(c) Licensed or certified residential provider.

(d) Staff or family living at the individual's home who have responsibility for the individual's care.

(2) All notifications or efforts to notify shall be documented. The county board shall ensure that all required notifications have been made.

(3) Notification shall not be made if the person to be notified is the PPI, the PPI's spouse, or the PPI's significant other.

(4) Notification to a person is not required when the report comes from such person or in the case of a death when the family is already aware of the death.

(5) In any case where law enforcement has been notified of an alleged crime, the department may provide notification of the incident to any other provider, developmental center, or county board for whom the PPI works, for the purpose of ensuring the health and safety of any at-risk individual. The notified provider or county board shall take such steps necessary to address the health and safety needs of any at-risk individual and may consult the department in this regard. The department shall inform any notified entity as to whether the incident is substantiated. Providers, developmental centers, or county boards employing a PPI shall notify the department when they are aware that the PPI works for another provider.

(H) General investigation requirements

(1) All MUIs require an investigation meeting the requirements established in either appendix A or appendix B to this rule. Investigations shall be conducted by investigative agents certified under rule 5123:2-5-07 of the Administrative Code.

(2) Each county board shall employ at least one investigative agent or contract with a person or governmental entity for the services of an investigative agent. An investigative agent shall be certified by the department. All investigative agents

shall annually receive department-approved training. Except for department-directed investigations as provided for in paragraph (I) of this rule, the investigative agent is responsible for conducting investigations for all MUIs.

(3) Developmental center investigators are considered certified investigative agents for the purpose of this rule.

(4) County board staff may assist the investigative agent by gathering documents or entering information into the ITS or other administrative or clerical duties that are not specific to the investigative agent role.

(5) Except when law enforcement or the public children's services agency is conducting the investigation, the investigative agent shall conduct all interviews for MUIs unless the investigator determines the need for assistance with interviewing an individual. For an MUI occurring at an ICF/MR, the investigative agent may utilize interviews conducted by the ICF/MR or conduct his/her own interviews. If the investigative agent determines the information is reliable, the investigative agent may utilize other information received from law enforcement, the public children's services agency, or providers in order to meet the requirements of this rule. If a requirement cannot be met, the investigative agent shall document that the requirement cannot be met and the reason(s) therefore.

(6) Except when law enforcement or the public children's services agency has been notified and is considering conducting an investigation, the county board shall immediately, but no later than twenty-four hours after the discovery of any of the incidents listed below, commence and document the initiation of the investigation. If law enforcement or the public children's services agency notifies the county board that it has declined to investigate, the county board shall commence the investigation within twenty-four hours of such notification. "Commencing an investigation" means any of the actions defined as such in appendix A to this rule.

(a) Abuse.

(b) Exploitation.

(c) Misappropriation.

(d) Neglect.

(e) Prohibited sexual relations.

(f) Rights code violation.

(g) Suspicious or accidental death.

(h) Any other MUI that the county board determines should be initiated immediately or within twenty-four hours.

(7) For all MUIs other than those listed in paragraph (H)(6) of this rule, the county board shall commence an investigation within a reasonable amount of time based upon the initial information received or obtained and consistent with the health and safety of all at-risk individuals, but no later than three working days from notification or identification by the county board.

(8) If the provider is an ICF/MR, the ICF/MR shall meet all applicable federal regulations, including 42 C.F.R. 483.420 (dated October 1, 2005).

(9) An ICF/MR is required to conduct an investigation regardless of where an incident involving an individual of the ICF/MR occurs. If the MUI involves an individual who resides in an ICF/MR, including a developmental center, and the incident occurs at a program operated by a county board, it is the responsibility of the ICF/MR to complete an investigation and assure that the investigation complies with federal guidelines. The investigative agent may utilize information from the ICF/MR investigation to meet the requirements of this rule or conduct a separate investigation. Copies of the full investigation shall be provided to the ICF/MR and the county board. All requirements in this rule shall be met. The department shall resolve any conflicts that arise. This paragraph shall not affect the responsibility of an ICF/MR to investigate all reports of abuse or neglect and to conduct an investigation in accordance with all applicable federal regulations, including 42 C.F.R. 483.420 (dated October 1, 2005).

(10) When an agency provider, excluding a developmental center, conducts an internal review of an incident for which an MUI has been filed, the agency shall submit the results of its internal review of the incident, including statements and documents, to the county board within fourteen calendar days of the agency becoming aware of the incident.

(11) All MR/DD employees shall cooperate with administrative investigations conducted by entities authorized to conduct investigations. Providers and county boards shall respond to requests for information within the timeframe requested. The timeframes identified shall be reasonable.

(12) The investigative agent shall complete a report of the investigation and submit it for closure in the ITS within thirty working days unless the department grants an extension.

(13) The report shall follow the format prescribed by the department. The investigative agent shall include the initial allegation, a list of persons interviewed and documents reviewed, a summary of each interview and document reviewed, and a findings and conclusions section which shall include the cause and contributing factors to the incident and the facts that support the findings and conclusions.

(14) The county board may request extensions of the time period for submission of the report. The department shall grant such extensions for good cause. If an extension is granted, the department may require submission of interim reports and may identify alternative actions to assist with the timely conclusion of the report.

(I) Department-directed investigations

(1) The department shall conduct the administrative investigation when the MUI includes an allegation against:

(a) The superintendent of a county board or developmental center.

(b) The executive director or equivalent of a regional council of governments.

(c) A management employee who reports directly to the superintendent of the county board, the superintendent of a developmental center, or executive director or equivalent of a regional council of governments.

(d) An investigative agent.

(e) A service and support administrator.

(f) An MUI contact employed by a county board.

(g) A current member of a county board.

(h) A person having any known relationship with any of the persons specified in paragraphs

(l)(1)(a) to (l)(1)(g) of this rule when such relationship may present a conflict of interest or the appearance of a conflict of interest.

(i) An employee of a county board when it is alleged that the employee is responsible for an individual's death, has committed sexual abuse, engaged in prohibited sexual activity, or committed physical abuse or neglect resulting in emergency room treatment or hospitalization.

(2) A department-directed investigation or investigation review may be conducted following the receipt of a request from a county board, developmental center, provider, individual, or guardian if the department determines that there is a reasonable basis for the request.

(3) The department may conduct a review or investigation of any MUI or may request that a review or investigation be conducted by another county board, a regional council of governments, or any other governmental entity authorized to conduct an investigation.

(J) Written summaries

(1) No later than five calendar days following the county board's, developmental center's, or department's recommendation via the ITS that the report be closed, the county board or developmental center shall provide a written summary of the investigation including the allegations, the facts and findings, including as applicable, whether the case was substantiated or unsubstantiated, and preventive measures implemented in response to the incident to:

(a) The individual or individual's legal guardian or an advocate selected by the individual, as applicable;

(b) The licensed or certified provider and provider at the time of the incident; and

(c) The service and support administrator serving the individual or other person selected by the individual to coordinate services for the individual.

(2) In the case of an individual's death, the written summary shall be provided to the individual's family, only upon request by the individual's family.

(3) The written summary shall not be provided to the PPI, the PPI's spouse, or the PPI's significant other. No later than five working days following the closure of a case, the county board shall make a reasonable attempt to notify the PPI as to whether the MUI has been substantiated, unsubstantiated/insufficient evidence, or unsubstantiated/unfounded.

(4) Except for an ICF/MR, if a service and support administrator is not assigned, a county board designee shall be responsible for ensuring the preventive measures are implemented based upon the written summary.

(5) An individual, individual's guardian, individual's advocate, or provider may dispute the findings by submitting a letter of dispute and supporting documentation to the county board superintendent, or to the director of the department if the department has conducted the investigation, within fifteen calendar days following receipt of the summary. An

individual may receive assistance from any person selected by the individual to prepare a letter and provide supporting documentation.

(6) The superintendent or designee or the director or designee, as applicable, shall consider the letter of dispute, the supporting documentation, and any other relevant information and issue a determination within thirty calendar days of such submission and take action consistent with such determination, including confirming or modifying the findings or directing that more information be gathered and the findings be reconsidered.

(7) In cases where the letter of dispute has been filed with the county board, the disputant may dispute the final findings made by the county board by filing those findings and any documentation contesting such findings as are disputed with the director of the department within fifteen calendar days of the county board determination. The director will issue a decision within thirty calendar days.

(K) Review, prevention, and closure of MUIs

(1) County boards and agency providers shall implement a written procedure for the internal review of all MUIs and shall be responsible for taking all reasonable steps necessary to prevent the reoccurrence of MUIs.

(2) The individual's team, including the county board and agency provider, shall collaborate on the development of preventive measures to address the causes and contributing factors to the incident. The team members shall jointly determine what constitutes reasonable steps necessary to prevent the reoccurrence of MUIs. If there is no service and support administrator, individual team, or agency provider involved with the individual, a county board designee shall ensure that preventive measures as are reasonably possible are fully implemented.

(3) The department shall review reports submitted by a county board or developmental center for incidents listed in paragraph (K)(4) of this rule. The department may review any other report and may obtain additional information necessary to consider the report, including copies of all investigation reports that have been prepared. Such additional information shall be provided within the time period specified by the department.

(4) The department shall review and close reports regarding all incidents listed below:

(a) Abuse.

(b) Death.

(c) Exploitation.

(d) Failure to report.

(e) Misappropriation.

(f) Missing individual.

(g) Neglect.

(h) Peer-to-peer acts.

(i) Prohibited sexual relations.

(j) Rights code violation.

(k) Unapproved behavior support.

(l) Unknown injury.

(m) An incident that is the subject of a director's alert.

(n) Any MUI investigated by the department.

(5) The county board shall review and close reports regarding all incidents listed below:

(a) Attempted suicide.

(b) Known injury.

(c) Law enforcement.

(d) Medical emergency.

(e) Unscheduled hospitalization.

(6) The department may review any case to ensure it has been properly closed and shall conduct sample reviews to ensure proper closure by the county board. The department may reopen any investigation that does not meet requirements of this rule. The county board shall provide any information deemed necessary by the department to close the case.

(7) The department and the county board shall consider the following criteria when determining whether to close a case:

(a) Whether sufficient reasonable measures have been taken to ensure the health and safety of any at-risk individual;

(b) Whether a thorough investigation has been conducted consistent with the standards for protocol and non-protocol investigations;

(c) Whether the team, including the county board and provider, collaborated on developing preventive measures to address the causes and contributing factors;

(d) That the county board has ensured that the preventive measures have been implemented to prevent reoccurrence;

(e) Whether the incident is part of a pattern or trend as flagged through ITS requiring some additional action;

(f) Whether all requirements set forth in statute or rule, including appendix A and appendix B to this rule, have been satisfied.

(8) As soon as possible, but no later than five working days after a case is closed, the county board shall provide notification to the provider that the case was closed.

(L) Analysis of MUI trends and patterns

(1) All agency providers including county boards as providers shall send the county board a quarterly report regarding MUI trends and patterns. The county board shall review all individual providers quarterly for MUI trends and patterns. The semi-annual review shall be cumulative for the first two quarters and include an in-depth analysis. The annual review shall be cumulative for all four quarters and include an in-depth analysis. Each review period shall include the preventive measures taken to address the trends and patterns.

(2) All reviews and analyses shall be completed within thirty calendar days following the end of the quarter.

(3) County boards shall conduct the analysis and follow-up for all entities operated by county boards such as workshops, schools, transportation, and for all individual providers. The county board shall send its analysis and follow-up actions to the department by August thirty-first for the semi-annual review and by February twenty-eighth for the annual review.

(4) Each agency provider shall send its analysis and follow-up actions to the county board for all programs operated in the county by August thirty-first for the semi-annual review and by February twenty-eighth for the annual review. The county board shall keep the analysis and follow-up actions on file and make them available to the department upon request.

(5) The county board and department shall review the analysis to ensure that all issues have been reasonably addressed to prevent reoccurrence.

(6) The county board shall ensure that trends and patterns of MUIs are included and addressed in the affected individual's service plan.

(7) Each county board or as applicable, each council of governments to which the county board belongs, shall have a committee that reviews trends and patterns of MUIs. The committee shall be made up of a reasonable representation of the county board(s), provider agencies, families, and other stakeholders deemed appropriate by the committee.

(8) The role of the committee shall be to review and share the county or council of governments aggregate data prepared by the county board or council of governments to identify trends, patterns, or areas for improving the quality of life for individuals supported in the county or counties.

(9) The committee shall meet each September to review and analyze data for the first six months of the calendar year and each March to review and analyze data for the preceding calendar year. The county board or council of governments shall send the aggregate data prepared for the meeting to all participants ten calendar days in advance of the meeting. The county board or council of governments shall hold the first meeting no later than September 30, 2007.

(10) The county board or council of governments shall record and maintain minutes of each meeting, distribute the minutes to members of the committee, and make the minutes available to any person upon request.

(11) The department shall ensure follow-up actions identified by the committee have been implemented.

(12) The department shall prepare a report on trends and patterns identified through the process of reviewing MUIs. The department shall periodically, but at least semi-annually, review this report with a committee appointed by the director of the department which shall consist of at least six members who represent various stakeholder groups, including Ohio legal rights service and the Ohio department of job and family services. The committee shall make recommendations to the department regarding whether appropriate actions to ensure the health and safety of individuals served have been taken. The committee may request that the department obtain additional information as may be necessary to make recommendations.

(M) UI requirements

(1) Each agency provider and county board as a provider shall develop and implement a policy and procedure that:

(a) Identifies what is to be reported as a UI which shall include UIs as defined by this rule;

(b) Requires anyone who becomes aware of a UI to report it to the person designated by the provider who can initiate proper action;

(c) Requires the report to be made no later than twenty-four hours after the occurrence of the incident;

(d) Requires appropriate actions be taken to protect the health and safety of any at-risk individuals.

(2) The agency provider and county board as a provider shall ensure that all staff are trained and knowledgeable regarding the policy and procedure.

(3) If the UI occurs at a site operated by the county board or at a site operated by an entity with which the county board contracts, the county board or contract entity shall notify the licensed provider or staff or family, as applicable, at the individual's home. The notification shall be made the same day that the incident is discovered.

(4) Individual providers shall make reports to the person designated by the county board on the day the UI is discovered. The county board shall designate a person responsible for logging these incidents.

(5) Each agency provider and county board as a provider shall review all UIs as necessary, but no less than monthly, to ensure appropriate preventive measures have been implemented and trends and patterns identified and addressed as appropriate.

(6) The UI reports, documentation of identified trends and patterns, and corrective action shall be made available to the county board and department upon request.

(7) Each agency provider and county board as a provider shall maintain a log of all UIs. The log shall include, but not be limited to, the name of the individual, a brief description of the incident, any injuries, time, date, location, and preventive measures.

(8) The county board shall review, on a monthly basis, a representative sampling of provider logs, individual provider log(s), and logs where the county board is a provider for the purpose of ensuring that all MUIs required to be reported have been reported and that trends and patterns have been identified and addressed. The sampling shall be made available to the department for review upon request.

(9) When the county board is a provider of relevant services, the department shall review, on a monthly basis, a representative sampling of county board logs. The county board shall submit the specified logs to the department upon request. The department shall review the logs to ensure all MUIs have been reported and trends and patterns have been identified and addressed.

(10) The agency provider and the county board as a provider shall ensure that trends and patterns of UIs are included and addressed in each individual's service plan.

(N) Oversight

(1) The department shall conduct such reviews of county boards and providers as necessary to ensure the health and safety of individuals and compliance with the requirements of this rule. Failure to comply with the requirements of this rule may be considered by the department in any regulatory capacity, including certification, licensure, and accreditation.

(2) The department shall provide access to the ITS to the single state medicaid agency and the Ohio legal rights service in accordance with section 5123.604 of the Revised Code.

(O) Access to records

(1) Reports made under section 5123.61 of the Revised Code and this rule are not public records as defined in section 149.43 of the Revised Code. Records may be provided to parties authorized to receive them in accordance with sections 5123.61 3 and 5126.044 of the Revised Code, to any governmental entity authorized to investigate the circumstances of the alleged abuse or neglect, misappropriation, or exploitation and to any party to the extent that release of a record is necessary for the health or safety of an individual.

(2) A county board shall not review, copy, or include in any report required by this rule personnel records of an employee that are confidential under state or federal statutes or rules, including medical and insurance records, workers' compensation records, employment eligibility verification (I-9) forms, and social security numbers.

(3) A county board may review, but not copy, personnel records that include confidential information about an employee which may include, but is not limited to, payroll records, performance evaluations, disciplinary records, correspondence to employees regarding status of employment, and criminal records checks. The county board may include in reports required by this rule information about the results of the review of personnel records specified in this paragraph.

(4) A county board may review and copy personnel records prepared in connection with the provider's daily operations, such as training records, timesheets, and work schedules.

(5) Upon the department's request, the provider shall provide to the department copies of personnel records that are not confidential.

(6) The provider may redact any confidential information contained in a record as identified in paragraph (O)(2) of this rule before the copies are provided to the county board or the department.

(7) Any party entitled to receive a report required by this rule may waive receipt of the report. Any waiver of receipt of a report shall be made in writing.

(P) Training

(1) All agency providers and county boards shall ensure their staff are trained on the requirements of this rule regarding the identification and reporting of MUIs and UIs prior to unsupervised contact with any individual and in all cases, no later than thirty calendar days after employment. Thereafter, all employees shall receive training during each calendar year which shall include a review of health and safety alerts released since the previous calendar year's training.

(2) All individual providers shall follow the requirements for initial training on the provisions of this rule according to their certification requirements and shall receive annual training from the date of certification on identification and reporting of MUIs and UIs and health and safety alerts released since the previous calendar year's training.

(3) All agency providers and county boards shall ensure that all staff responsible for administrative compliance with this rule receive training on all applicable requirements of this rule at the time of employment or no later than ninety calendar days from the time of employment and each calendar year thereafter. The training shall include the review of health and safety alerts released since the previous calendar year's training.

(4) The county board shall ensure that staff responsible for conducting investigations receive initial and annual department-approved training.

(5) The department shall provide technical assistance and training to providers and county boards as necessary. The department shall periodically monitor compliance with the provisions of this rule.

Appendix A

Standards for Conducting Protocol Investigations

Protocol Investigation Categories

Protocol investigations shall be conducted for the following MUIs:

1. Physical abuse
2. Sexual abuse
3. Verbal abuse
4. Suspicious or accidental death
5. Exploitation
6. Failure to report
7. Misappropriation

8. Neglect

9. Peer-to-peer acts

10. Prohibited sexual relations

11. Rights code violation

If it is not reasonably possible or relevant to the investigation to meet a requirement under this appendix, the reason shall be documented.

The department or county board may elect to conduct a protocol investigation on any MUI, even when not required to do so by this rule.

Protocol Investigation Findings

Findings in protocol investigations shall be based upon a preponderance of the evidence standard. "Preponderance of evidence" means that credible evidence indicates that it is more probable than not that the incident occurred. There are three possible findings of a protocol investigation:

1. "Substantiated" means there is a preponderance of evidence that the alleged incident occurred;
2. "Unsubstantiated/insufficient evidence" means there is insufficient evidence to substantiate the allegation. "Insufficient evidence" means there is not a preponderance of evidence to support the allegation or there is conflicting evidence that is inconclusive; or
3. "Unsubstantiated/unfounded" means the allegations are unfounded. "Unfounded" means evidence supports a finding that the alleged incident did not or could not have occurred.

Steps in Conducting a Protocol Investigation

1. Commence the investigation immediately, or no later than twenty-four hours after discovery of the incident.

"Commencing the investigation" means any of the following:

- a. Interviewing the reporter of the incident.
- b. Gathering relevant documents such as nursing notes, progress notes, or incident report.
- c. Notifying law enforcement or the public children's services agency and documenting the time, date, and name of the person notified. If law enforcement or the public children's services agency decides not to conduct an investigation, the investigative agent shall commence the investigation.
- d. Initiating interviews with witness(es) or victim(s).

2. Interview the victim no later than three working days following notification of the major unusual incident and document the results. Exceptions to this requirement are when the individual is unable to provide any information or the investigative agent determines that the circumstances warrant interviewing the individual later in the investigation.
3. Visit the scene of the incident.
4. Follow-up with law enforcement. Include a copy of the police report, as applicable.
5. Secure physical evidence. Take photographs of injuries, as applicable. Secure and sketch and/or photograph the scene of the incident. Provide a detailed description of any injury that may have resulted from the incident, including the shape, color, and size. Take a photograph of any injury that may have resulted from the incident; record the name of the person who took the photograph and the date and time the photograph was taken. Provide a written description of the physical evidence along with the date, time, and location of the gathering of the evidence. Photograph and/or describe materials or objects that played a part in the incident. Provide a written description, sketch, or photograph of the area where the incident occurred. Note environmental factors that may have caused or contributed to any injury.
6. Review all relevant documents relating to the primary person involved that form the basis for the reported incident and the relevant documents relating to the individual who is the alleged victim.
7. Gather written statements from all relevant witnesses. Alternative methods include a statement written by the investigator using the individual's words and/or videotaping the individual's statement.
8. Interview direct witnesses to the incident and provide documentation of the interviews.
9. Interview medical professionals as to the possible cause/age of the injuries and provide documentation of the interviews. Include a statement from a qualified medical professional as to whether or not the injury is consistent with the description of the incident, including the apparent age of the injury and probable force necessary to cause the injury. Include a description of treatment received or ordered. Qualified medical professionals include, but are not limited to, physicians, nurses, emergency medical technicians, and therapists.
10. Interview others who may have relevant information and provide documentation of each interview.
11. Conduct follow-up interviews if needed.
12. Include a clear statement of the allegation.
13. Evaluate all witnesses and documentary evidence in a clear, complete, and nonambiguous manner.
14. Evaluate the relative credibility of the witnesses. Factors to be considered in judging the credibility of a witness include:
 - a. whether the witness's statements are logical, internally consistent, and consistent with other credible statements and known facts (e.g., does the witness appear to leave out or not know about information that he/she should know about?);
 - b. whether the witness was in a position to hear or see what is claimed;

- c. whether the witness has a history of being reliable and honest when reporting incidents or making statements regarding incidents;
 - d. whether the witness has a special interest or motive for making a false statement (e.g., is there a possible bias of the witness?);
 - e. the relevant disciplinary history of the primary person involved (PPI), such as involvement in similar past allegations;
 - f. the witness's demeanor during the interview (e.g., did the witness appear evasive or not forthcoming?); and
 - g. whether the witness did other things that might affect his/her credibility.
15. Include a succinct and well-reasoned analysis of the evidence.
16. Include a clearly stated conclusion that identifies which allegations were and were not substantiated.

Incident Specific Requirements—Physical Abuse

1. Provide written statements that include a description of the amount of physical force used which may include, but is not limited to, speed of the force, range of motion, open or closed hand (fist), the sound made by impact, texture of surface if the individual was dragged or pulled, and the distance the individual was dragged, pulled, or shoved.
2. Provide a description of the individual's reaction to the physical force used. This may include, but is not limited to, the individual fell backwards or individual's head or other body part jerked backward and any other indication of pain or discomfort by the individual which may include words, vocalizations, or body movements.
3. Include comments made during the incident by the PPI.
4. Document how the harm to the individual is linked to the physical force used by the PPI.

Incident Specific Requirements—Sexual Abuse

1. Document that the sexual activity was unwanted or the individual was unwilling.
2. Document that the PPI engaged in importuning, voyeurism, public indecency, pandering, or prostitution with regard to an individual.
3. Document the individual's capacity to consent.
4. Document any touching of an erogenous zone for the apparent sexual arousal or gratification of either person.
5. Describe the sexual conduct/contact, including any penetration of the individual.
6. Include the results of any physical assessment conducted by a medical professional.

7. Include the results of any human sexuality assessment.
8. Provide a copy of the police report.
9. Include all medical information related to the incident.
10. Document the date, time, and officer's name (for law enforcement agency notification).

Incident Specific Requirements—Verbal Abuse

1. Provide a statement of the exact words or gestures used to threaten, coerce, intimidate, harass, or humiliate the individual and the context in which these were used.
2. Provide a description of the reaction of the individual to the words or gestures, including any words or vocalizations.
3. Describe the volume used, including such description as loud, soft, and tone of voice, and where the PPI was located in relation to the individual.
4. Describe the past history of verbal interactions between the PPI and the individual.

Incident Specific Requirements—Suspicious or Accidental Death

1. Provide a statement explaining why the death is considered suspicious or accidental.
2. Document relevant medical interventions, treatment, or care received by the individual.
3. Include a copy of the police and/or coroner's investigation report.
4. Complete the required questions following deaths as specified by the department.

Incident Specific Requirements—Exploitation or Misappropriation

1. Document that there was an unlawful or improper act of using an individual or an individual's resources for monetary or personal benefit or gain of the PPI.
2. Document the depriving, defrauding, or otherwise obtaining the real or personal property of an individual by means prohibited by the Revised Code. Include any indication of the intent of the PPI.
3. Describe any items taken from the individual or anything received by the PPI as a result of the exploitation or misappropriation.
4. Gather copies of all financial records related to the incident, including cancelled checks.
5. Document the time, date, and officer's name (for law enforcement agency notification).

6. Include any indication that the individual may have consented or not consented to the taking of his/her property or to the exploitation.

7. Verify that the property belonged to the individual.

8. Provide a description of how the improper act occurred.

9. Obtain the outcome of a criminal case, if resolved.

Incident Specific Requirements—Failure to Report

1. Provide a statement indicating the abuse, neglect, or misappropriation the PPI did not report, including when and how it occurred.

2. Provide a statement indicating that the PPI was aware of the abuse, neglect, or misappropriation, including when and how the PPI became aware of the abuse, neglect, or misappropriation.

3. Provide a statement of how the PPI's failure to report the abuse, neglect, or misappropriation caused physical harm or a substantial risk of harm to the individual; be specific regarding any wound, injury, or increased risk of harm to which the individual was exposed as a result of the failure to report.

4. Explain why the PPI knew or should have known that failing to report would result in a substantial risk of harm to the individual.

5. Provide a written description of any injury.

6. Provide an explanation from the PPI of why he/she failed to report.

7. Provide a statement of any reasons or circumstances explaining the PPI's failure to report.

Incident Specific Requirements—Neglect

1. Verify and document the PPI's duty to provide care to the individual.

2. Document the treatment, care, goods, services, or supervision required but not provided by the PPI. Include the time period of the alleged neglect.

3. Verify and document the PPI's knowledge that the withheld treatment, care, goods, services, or supervision was needed by the individual. Such documentation might include the individual's plan of care, medical information available to the PPI, statements made by others to the PPI, statements made by the PPI, or training received by the PPI.

4. Verify that the PPI's action or inaction resulted in, or reasonably could have resulted in, harm to the individual.

5. Specifically describe the harm or any risk of harm to the individual caused by the PPI's action or inaction.

Incident Specific Requirements—Prohibited Sexual Relations

1. Describe and document the type of sexual conduct or contact.

2. Document whether or not the incident was consensual.

(Note: Consent does not excuse sexual contact by a caregiver with an individual when the caregiver is paid to care for the individual.)

3. Verify and document that the PPI was providing paid care to the individual.

4. Verify and document that the PPI was not married to the individual.

5. Provide a statement of any known, long-term, personal relationship the PPI has with the individual or other circumstances relevant to the sexual contact or conduct.

Incident Specific Requirements—Rights Code Violation

1. Indicate the specific right(s) of the individual violated by the PPI and describe how each right was violated, including any information or circumstances relevant to the incident.

2. Describe the harm or risk of harm caused to the individual as a result of the rights code violation by the PPI.

Appendix B

Standards for Conducting Non-Protocol Investigations

Non-Protocol Investigation Categories

Non-protocol investigations shall be conducted for the following MUIs:

1. Attempted suicide

2. Non-suspicious or natural death

3. Missing individual

4. Known injury

5. Unknown injury

6. Law enforcement

7. Medical emergency

8. Unapproved behavior support

9. Unscheduled hospitalization

Steps in Conducting a Non-Protocol Investigation

1. Determine that the MUI is properly coded.
2. Review relevant documents, which may include recent medical history, individual service plan, progress notes, nursing notes, hospital records, police report, and behavior support documentation.
3. Interview witnesses as necessary to determine the cause or resolve conflicting information.
4. Interview others with relevant information as necessary.
5. Maintain a summary of each interview conducted.
6. Identify the cause(s) and any contributing factors to the incident.
7. Review past related incidents as appropriate, including but not limited to, prior immediate health and safety measures taken and other preventive measures.
8. Verify that the preventive measures have been implemented.
9. In the case of a death, complete the required questions as specified by the department.

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