



DIVISION OF DEVELOPMENTAL DISABILITIES
Olympia, Washington

TITLE: RHC INCIDENT INVESTIGATIONS POLICY 12.02

Authority: 42 CFR 483.13 and 483.420
RCW Title 71A; RCW Chapters 26.44, 43.20A, 70.124, and 74.34

Reference: Executive Order 96-01, *Providing for the transfer of criminal and major administrative investigations involving DSHS employees to the State Patrol*
DSHS-WSP Interagency Agreement for Criminal and Administrative Investigations (2007-2009)
DSHS Administrative Policy 8.02, *Client Abuse*
DSHS Administrative Policy 9.01, *Incident Reporting*
DSHS Administrative Policy 9.03, *Administrative Review – Deaths of Residential Clients*
DDD Policy 5.13, *Protection from Abuse*
DDD Policy 7.05, *Mortality Reviews*
DDD Policy 12.01, *Incident Management*

BACKGROUND

Federal regulations require that ICF/MR facilities and Nursing Facilities have evidence that all alleged incidents of client abuse, neglect, financial exploitation or other serious incidents are thoroughly investigated and that actions are taken to prevent further harm while investigations are in progress. The Division of Developmental Disabilities (DDD) established a Statewide Investigation Unit (SIU) independent of the Residential Habilitation Centers (RHCs) to conduct investigations of suspected client abuse or neglect or other critical client incidents. This policy explains how the DDD-SIU operates in conjunction with the Washington State Patrol (WSP) Special Investigations Unit located within DSHS.

PURPOSE

This policy establishes a statewide process for critical incident identification, investigation, and follow up at the RHCs.

Refer to DDD Policy 12.01, *Incident Management* for instruction on reporting critical incidents, including alleged abuse, neglect, financial exploitation, and abandonment. See also DDD Policy 5.13, *Protection from Abuse*, for more information regarding mandatory reporting.

SCOPE

This policy applies to SIU investigators and RHC staff for critical client incident investigations. The DDD-SIU does not investigate personnel performance/misconduct incidents or safety hazard incidents unless they are directly related to the Category I incident list. Other incident types or events are managed by local RHC systems.

DEFINITIONS

Abuse means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult.

Sexual abuse means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter [71A.12](#) RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter [71A.12](#) RCW, whether or not it is consensual.

Physical abuse means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

Mental abuse means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

Neglect means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the

vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW [9A.42.100](#).

Exploitation means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

Financial exploitation means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

Note: For ICF/MR CFR definitions of abuse and neglect, refer to W127 and W149 in Appendix J of the State Operations Manual for ICF/MR.

For Nursing Facility CFR definitions relating to and including abuse and neglect, refer to F223, F224 and F225 in Appendix PP of the State Operations Manual for Long Term Care Facilities.

For Child Abuse/Neglect definitions, refer to Chapter 26.44 RCW.

Category I Incident refers to the most critical incident classification.

Category II Incident refers to a second class of incidents that require investigation. Category II incident investigations follow the procedures and reporting format described in this policy.

DDD RHC Statewide Investigation Unit (DDD-SIU) refers to the DDD independent investigation unit made up of investigators that are assigned to DDD Central Office and conduct investigations of Category I incidents at the RHCs.

SIU Investigator means the DDD Compliance and Investigation Managers (CIMs) who administratively report to the DDD SIU.

Washington State Patrol Special Investigation Unit (WSP-SIU) refers to the unit of the Washington State Patrol that is administratively assigned and located within DSHS.

POLICY

- A. Incidents that may occur at the RHCs which require an investigation have been classified into two categories described in Section F below as Category I and Category II. RHCs must refer all Category I incidents to the DDD-SIU for investigation.
- B. All Category I incident investigations of criminal misconduct by DSHS employees (current or former employees if the employee was a DSHS employee at the time of the

alleged event) must be completed either by local law enforcement with a WSP review or WSP personnel. When WSP is conducting an investigation, the DDD-SIU will pend its investigation.

If the allegations are proven true, and the discipline being considered is demotion or termination, the WSP Special Investigations Unit (WSP-SIU) will complete the administrative investigation. Do not refer cases of progressive discipline to the WSP-SIU.

- C. All investigations must be conducted in a timely and thorough manner consistent with state and federal law, and department/division policies and protocols.
- D. RHCs must have systems in place to provide immediate/initial protective reactions to incidents so that no further injury occurs.
- E. RHC Superintendents are responsible to ensure appropriate corrective actions are developed and implemented.
- F. **Incident Classification**
 - 1. As stated in Section A above, all Category I incidents must be referred to the DDD-SIU. Additionally, refer Category I incidents (a), (b), (d) and (e) listed below to the WSP-SIU. Only refer allegations of neglect (c) that could be criminal to the WSP-SIU. If at any time, the appointing authority or the DDD-SIU is in doubt about the criminal context of an incident, contact the WSP-SIU for assistance.

Category I Incidents

- a. Suspicious or unusual death (including suicide);
- b. Allegation of physical or mental abuse (refer the incidents to the WSP-SIU that, if the allegation was proven to be true, could result in demotion or dismissal);
- c. Allegation of neglect;
- d. Allegation of financial exploitation;
- e. Allegation of sexual abuse of a client;
- f. Medication errors causing injury/harm as assessed by a medical or nursing professional;

- g. Reported patterns of medication errors;
- h. Physical intervention or restraint resulting in injury requiring treatment beyond first aid;
- i. Suicide attempt; and
- j. Client to client altercation(s) when there is suspected staff or facility neglect.

Category II Incidents

- a. Death (other than suspicious or unusual);
 - b. Client who leaves the grounds of the RHC without needed support or supervision;
 - c. Physical intervention or restraint resulting in injury to the client requiring minor first aid;
 - d. Vehicular accident with client injury when operated by a state employee; and
 - e. Client to client altercation(s) when there is reasonable cause to believe abusive treatment resulting in physical or psychological harm has occurred.
- G. The DDD-SIU must conduct Category I incident investigations unless otherwise approved by the Division Director. The Superintendent or Regional Administrator (RA) may request any other incident type be investigated by the DDD-SIU.
- H. The RHC is the entity responsible for release all documents, reports, evidence, etc. as required and according to state laws and regulations regarding confidentiality and disclosure.

PROCEDURES

A. Initial RHC Actions Following an Incident

- 1. Protect the person(s) and develop and implement an immediate protection plan;
- 2. Ensure everyone is safe:
 - a. Assess for injury or trauma; and

- b. Refer for treatment or provide care as needed.
 3. Follow the Incident Reporting (IR) procedures (see also DDD Policy 12.01, *Incident Management*) and:
 - a. Report the incident to:
 - i. Supervisor(s); and
 - ii. The ADSA/RCS Complaint Resolution Unit (CRU); and
 - iii. Other required reporting agencies.
 - b. Complete an IR to document the incident.
 - c. The Superintendent or her/his designee must:
 - i. Report to local law enforcement and the WSP-SIU if the incident is criminal in nature (e.g., alleged physical or sexual assault, alleged abuse or exploitation); and
 - ii. Report an incident to the WSP-SIU if the allegation was proven to be true and it would result in employee demotion or dismissal.
 - d. Inform the client's legal representative and/or family;
 - e. Begin an immediate (initial) investigation for any incident while notification to the SIU or other investigation units is in process. Ask witnesses to write a statement of what occurred. Document if a staff refuses to make a statement. If the accused employee(s) is identifiable, do not ask for a statement; and
 - f. Log the incident into appropriate incident management systems or databases (e.g., local RHC IR system or database, DDD Electronic IR System);
 4. Secure and preserve evidence (see *Attachment A* for guidelines):

For internal investigations or in the event there will be a delay in the arrival of an outside investigator, it may be necessary to secure:

- a. Physical evidence (e.g., a weapon used, property, possessions, etc.). **Do not touch or move any item that was used as or could have been used as a weapon;**
 - b. Documentary evidence (e.g., witness statements, attendance records, staff logs, medical/program records, etc.); and
 - c. Demonstrative evidence (i.e., the way the physical evidence is maintained; examples include photos, diagrams of area, etc.).
5. Develop, document, and implement an immediate protection plan in the client's record pending the outcome of the investigation.
 6. Ensure that the identities of reporters of Category I and Category II incidents under this policy remain confidential and not subject to disclosure, except as permitted by RCW 74.34.035(8) and RCW 74.34.95(1).

B. Investigations of Category I Incidents

1. The Superintendent is responsible to:
 - a. Ensure that the actions specified in Section A above have occurred; and
 - b. Manage disclosure and release of any investigation records according to state law and department policy.
2. The DDD-SIU investigator must, at a minimum:
 - a. Interview clients, witnesses and other involved parties. Do **not** interview the accused employee(s) in cases of alleged criminal misconduct (see Section A.3.e. above);
 - b. Interview staff witnesses in compliance with all Collective Bargaining Agreements (CBA) for representation during an investigation;
 - c. Document the interview, review with the interviewee his/her statement, and obtain signatures of the alleged victim(s) and witnesses, as appropriate;
 - d. Review all related documentation;
 - e. Collaborate as required with outside agencies;

- f. Identify those regulations, procedures, and facility practices, etc., that may have contributed to the incident cause;
- g. Maintain client confidentiality according to state laws;
- h. Report immediately to the Superintendent or her/his designee any information that:
 - i. Reveals a current or new threat to the health or safety of RHC clients or staff;
 - ii. Is relevant to needed or pending RHC decisions regarding administrative or personnel actions; and/or
 - iii. Gives cause to believe that further abuse, neglect, etc. or criminal actions are occurring
- i. Complete and submit DSHS 16-202, *5-Day Investigation Report*, to the Superintendent and the DDD-SIU Program Manager within five (5) working days of the incident per [42CFR483.420 \(D\)\(4\)](#) and [42CFR483.13\(C\)\(2\)](#).

C. Investigations of Category II Incidents

1. The RHC must conduct Category II incident investigations and the Superintendent must assign an RHC staff to conduct the investigation.
2. The RHC investigator must follow IR reporting requirements and at a minimum:
 - a. Interview clients, staff, and other involved parties;
 - b. Review all related documentation;
 - c. Collaborate with outside agencies, as needed;
 - d. Identify relevant regulations, procedures, and facility practice; and
 - e. Complete and submit DSHS 16-202, *5-Day Investigation Report*, to the Superintendent within five (5) working days of the incident per [42 CFR 483.420\(d\)\(4\)](#) and [42 CFR 483.13\(c\)\(4\)](#).
3. If evidence of possible staff or facility neglect to clients is discovered at any time during the investigation, immediately upgrade the incident to a Category I and refer to the DDD-SIU and the WSP-SIU.

D. Management Review and Corrective Action

1. On receipt of the investigation report (DSHS 16-202), the RHC will determine appropriate follow up and:
 - a. Document the corrective actions on DSHS 16-202A, *Plan of Correction (5-Day Investigation)*, obtain signatures, and, if a Category I incident, send the completed form to the SIU investigator within ten (10) working days; and
 - b. Complete the follow up section in the Electronic IR System, including a brief summary of the investigation outcome.
2. The facility is expected to implement the identified corrective actions.
3. The DDD-SIU investigator or RHC investigator, as appropriate, must conduct a thirty (30) day review of the status of the RHC's corrective action plan and complete Part C of DSHS 16-202A, *Plan of Correction (5-Day Investigation)*.

E. DDD-SIU Quality Assurance Functions

The DDD-SIU Program Manager or his/her designee must:

1. Review all Category I investigation reports to determine that investigations are thorough, complete, and that investigation procedures are being followed consistently; and
2. Maintain a system for tracking trends and patterns, analyze these, and prepare regular reports on Category I incidents to the Chief, Office of Quality Programs and Services.
3. Conduct quarterly reviews of RHC data on Category II incidents and review a sample of Category II investigation reports to assure that investigation procedures as specified in this policy have been implemented consistently and to identify training needs.

EXCEPTIONS

No exceptions to these procedures may be granted without the prior written approval of the Division Director.

SUPERSESION

None

Approved: /s/ Linda Rolfe
Director, Division of Developmental Disabilities

Date: February 1, 2009

Attachment A, Guidelines to Secure and Preserve Evidence

Attachment B, DSHS 16-202, 5-Day Investigation Report

Attachment C, DSHS 16-202A, Plan of Correction (5-Day Investigation)

ATTACHMENT A

GUIDELINES TO SECURE AND PRESERVE EVIDENCE

For internal investigations, or in the event there will be a delay in the arrival of an outside investigator, it may be necessary to secure and preserve evidence. RHC staff must follow these guidelines:

- A. **Physical Evidence** (objects, property, possessions, other materials):
1. **Do not touch or move any item that was used as, or could have been used as, a weapon. Wait for law enforcement to arrive.**
 2. **IF POSSIBLE, SECURE THE INCIDENT SCENE AND DO NOT DISTURB ANY EVIDENCE. PROTECT THE SITE.**
 3. **IF EVIDENCE HAS TO BE DISTURBED, FOLLOW THIS GUIDE:**
 - a. **Porous Materials** (e.g., clothing, sheets, gloves): Store in porous containers such as paper bags.
 - b. **Non-porous Materials** (e.g., plastics, metals, glass): Store in non-porous containers such as plastic bags.
 - c. **Secure all Physical Evidence: The chain of custody is critical.** The investigator must show exactly where the evidence has been from the moment of collection to its presentation at a hearing.
- B. **Demonstrative Evidence** (photos, diagrams, maps, drawings, audio tapes, videotapes):
1. **Photograph** the area of the body where the alleged injury has occurred. This should be done whether or not any signs of injury are visible.
 2. **Photograph or sketch** the area of a possible incident scene when the scene cannot be secured.
- C. **Documentary Evidence** (staff statements, incident reports, attendance records, etc.):
1. **Staff Inquiries:** It may be necessary to talk with witnesses and other staff immediately to develop a protection plan necessary for client safety. Be sure to document any key information disclosed during these initial inquiries for the investigator. Record the names and phone numbers/contact information of any persons in the area (i.e., witnesses, responders).
 2. **Formal interviews and written statements** should be coordinated with the investigator.
- D. **Investigation Kits:** The facility must maintain an investigation kit and staff must be aware of its location and content. A basic investigation kit includes, at a minimum:

ATTACHMENT A

1. A camera (and film if necessary);
 2. Clean paper and plastic bags; and
 3. A notebook and pen.
- E. **Secure Location:** All evidence collected should be maintained in a secure location (e.g., locked closet or file cabinet) with limited access. All evidence must be recorded or tracked in writing, including the names of all persons who had access to the evidence.

ATTACHMENT B



DIVISION OF DEVELOPMENTAL DISABILITIES 5-Day Investigation Report

<input type="checkbox"/> Continuation
EXPECTED COMPLETION

INVESTIGATION REPORT DATE	INCIDENT REPORT NUMBER	OTHER INCIDENT ID IF APPLICABLE	<input type="checkbox"/> RHC Staff <input type="checkbox"/> SIU
ALLEGED VICTIM	DDD NUMBER	DATE OF BIRTH	PAT/HOME
INVESTIGATOR	REPORTER	PERSON WHO NOTIFIED GUARDIAN	DATE NOTIFIED
LOCATION OF INCIDENT		DATE OF DISCOVERY	TIME OF DISCOVERY
INVESTIGATIVE REPORT COMPLETED BY INVESTIGATOR PART A			
DESCRIPTION OF INCIDENT (Enter an exact description of the incident or allegation. Include names with identifying titles, dates, times, etc. that will answer who, what, where and when)			
ACCUSED STAFF/PERSON (Enter the name of the accused staff/person and their position or title if applicable)			
INVESTIGATION QUESTION (State the question(s) the investigation will attempt to answer)			
EVIDENCE LIST (Indicate the evidence considered. Evidence type: Testimonial, documentary, physical and demonstrative. Indicate time and date evidence was collected and who collected or provided the evidence if relevant)			
SUMMARY OF EVIDENCE (Include a summation of all evidence that has answered or helped to answer the investigatory question. Include the name and title of each person interviewed followed by a summation of their statement/interview)			
ANALYSIS (Enter a summary of the facts and what consideration was given to the evidence revealed by the investigation)			
FINDINGS (State the outcome(s) from the investigation; state what led to those outcomes/decisions. Identify any regulatory, procedural or facility practice concerns)			
INVESTIGATOR SIGNATURE			DATE COMPLETED
RECEIVED BY			DATE

DSHS 16-202 (07/2008)

ATTACHMENT C



DIVISION OF DEVELOPMENTAL DISABILITIES

Plan of Correction (5-Day Investigation)

INCIDENT REPORT NUMBER	ALLEGED VICTIM				
PLAN OF CORRECTION COMPLETED BY RHC DESIGNEE					
FOLLOW-UP & ACTION STEPS <input type="checkbox"/> N/A	RESPONSIBLE PERSON(S)	TARGET DATE	COMPLETED DATE	DOCUMENTATION ATTACHED	
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
<ul style="list-style-type: none"> Administrative Review – Develop Plan of Correction or check N/A box if no Plan of Correction is needed. RHC Designee is responsible to follow up to ensure any corrective actions are completed by target dates and documentation is included in the incident file. 					
FACILITY INPUT					
AREA ADMINISTRATOR SIGNATURE			DATE		
SUPERINTENDENT OR DESIGNEE SIGNATURE			DATE		
30 DAY COMPLIANCE REVIEW COMPLETED BY INVESTIGATOR PART C					
<input type="checkbox"/> N/A				Yes	No
Are follow up action steps completed?				<input type="checkbox"/>	<input type="checkbox"/>
If no, is the responsible person actively working towards completion by target date(s)?				<input type="checkbox"/>	<input type="checkbox"/>
If no, is further administrative attention recommended?				<input type="checkbox"/>	<input type="checkbox"/>
INVESTIGATOR SIGNATURE			DATE		

DSHS 16-202A (REV. 07/2008)