

5123-17-02

Addressing major unusual incidents and unusual incidents to ensure health, welfare, and continuous quality improvement.**(A) Purpose**

This rule establishes the system for addressing major unusual incidents and unusual incidents and implements a continuous quality improvement process to prevent or reduce the risk of harm to individuals. The system is intended to create a culture that fosters trust through open communication, universal accountability, learning, and fair treatment of all persons involved.

(B) Scope

This rule applies to county boards of developmental disabilities and providers of services to individuals with developmental disabilities.

(C) Definitions

For the purposes of this rule, the following definitions apply:

(1) "Administrative investigation" means the gathering and analysis of information related to a major unusual incident in category A as described in paragraph (C)(16)(a) of this rule or a major unusual incident in category B as described in paragraph (C)(16)(b) of this rule, conducted by an investigative agent, so that a prevention plan can be developed and implemented. There are two administrative investigation procedures (category A set forth in appendix A to this rule and category B set forth in appendix B to this rule) that correspond to two categories of major unusual incidents.

(2) "Administrative review" means the gathering and analysis of information related to a major unusual incident in category C as described in paragraph (C)(16)(c) of this rule, using an administrative review form submitted by an individual's provider and completed by an investigative agent in collaboration with the individual's team, so that a prevention plan can be developed and implemented.

(a) The administrative review form varies based on the specific type of major unusual incident:

(i) "Law enforcement" will be completed using the administrative review form contained in appendix C to this rule.

(ii) "Unanticipated hospitalization" will be completed using the administrative review form contained in appendix D to this rule.

- (iii) "Unapproved behavioral support" will be completed using the administrative review form contained in appendix E to this rule.
- (b) The county board will initiate the administrative review form for a law enforcement major unusual incident when the individual is not being served by a provider at the time of the major unusual incident.
- (3) "Agency provider" means a provider, certified or licensed by the department, that employs staff to deliver services to individuals and that may subcontract the delivery of services. "Agency provider" includes a developmental center and a county board while the county board is providing specialized services.
- (4) "At-risk individual" means an individual whose health or welfare is adversely affected or whose health or welfare may reasonably be considered to be in danger of being adversely affected.
- (5) "Common law employee" has the same meaning as in rule 5123-9-32 of the Administrative Code.
- (6) "County board" means a county board of developmental disabilities established under Chapter 5126. of the Revised Code or a regional council of governments established under Chapter 167. of the Revised Code when it includes at least one county board of developmental disabilities.
- (7) "Department" means the Ohio department of developmental disabilities.
- (8) "Developmental center" means an intermediate care facility for individuals with intellectual disabilities under the managing responsibility of the department.
- (9) "Developmental disabilities employee" means:
 - (a) An employee of the department;
 - (b) A superintendent, board member, or employee of a county board;
 - (c) An administrator, board member, or employee of a residential facility licensed under section 5123.19 of the Revised Code;
 - (d) An administrator, board member, or employee of any other public or private provider of services to an individual with a developmental disability; or
 - (e) An independent provider.

- (10) "Incident report" means documentation that contains details about a major unusual incident or an unusual incident and will include, but is not limited to:
- (a) Individual's name;
 - (b) Individual's address;
 - (c) Date and time of incident;
 - (d) Location of incident;
 - (e) Description of incident that answers the questions, "who?, what?, when?, and where?";
 - (f) Type and location of injuries;
 - (g) Immediate actions taken to ensure health and welfare of individual involved and any at-risk individuals;
 - (h) Name of primary person involved and that person's relationship to the individual;
 - (i) Names of witnesses;
 - (j) Statements completed by persons who witnessed or have personal knowledge of the incident;
 - (k) Notifications with name, title, and time and date of notice;
 - (l) Further medical follow-up; and
 - (m) Name and signature of person completing the incident report.
- (11) "Independent provider" means a self-employed person or a common law employee who provides services for which the person is certified in accordance with rules promulgated by the department and does not employ, either directly or through contract, anyone else to provide the services.
- (12) "Individual" means a person with a developmental disability.
- (13) "Individual service plan" means the written description of services, supports, and activities to be provided to an individual and includes an "individual program plan" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.

- (14) "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.
- (15) "Investigative agent" means an employee of a county board or a person under contract with a county board who is certified by the department in accordance with rule 5123-5-07 of the Administrative Code to conduct administrative investigations of major unusual incidents. For the purposes of this rule, employees of the department who are designated investigators are considered certified investigative agents.
- (16) "Major unusual incident" means the alleged, suspected, or actual occurrence of an incident described in paragraph (C)(16)(a), (C)(16)(b), or (C)(16)(c) of this rule when there is reason to believe the incident has occurred. There are three categories of major unusual incidents:
- (a) Category A
- (i) Emotional abuse. "Emotional abuse" means the use of actions, words, gestures, or other communicative means to purposefully threaten, coerce, intimidate, harass, or humiliate an individual or a pattern of behavior that creates a hostile environment.
- (ii) 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.
- (iii) Failure to report. "Failure to report" means that a developmental disabilities employee does not immediately report the alleged, suspected, or actual occurrence of an individual suffering or facing a substantial risk of suffering any wound, injury, disability, or condition of such a nature as to reasonably indicate emotional abuse, exploitation, misappropriation, neglect, physical abuse, or sexual abuse to the agency provider, county board, or department.
- (iv) Misappropriation. "Misappropriation" means depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means prohibited by the Revised Code or the Administrative Code.
- (v) Neglect. "Neglect" means when there is a duty to do so, failing to provide an individual with medical care, personal care, or other support that consequently results in death or serious injury or places an individual or another person at risk of serious injury. Serious

injury means an injury that results in treatment by a physician, physician assistant, or nurse practitioner.

(vi) Physical abuse. "Physical abuse" means the use of physical force that can reasonably be expected to result in physical harm to an individual. Such physical force may include, but is not limited to, hitting, slapping, pushing, or throwing objects at an individual.

(vii) Prohibited sexual relations. "Prohibited sexual relations" means a developmental disabilities employee engaging in consensual sexual conduct or having consensual sexual contact with an individual who is not the developmental disabilities employee's spouse, and for whom the developmental disabilities employee was employed or under contract to provide care or supervise the provision of care at the time of the incident.

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

(ix) 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 Chapter 2907. of the Revised Code (e.g., public indecency, importuning, and voyeurism) when the sexual conduct, sexual contact, or act involves an individual.

(x) Unexplained or unanticipated death. "Unexplained or unanticipated death" means the death of an individual resulting from an accident or that was otherwise unexpected.

(b) Category B

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

(ii) Death other than unexplained or unanticipated death. "Death other than unexplained or unanticipated death" means the death of an individual by natural cause.

(iii) Medical emergency. "Medical emergency" means an incident where emergency medical intervention by a developmental disabilities

employee is required to save an individual's life (e.g., choking relief techniques, cardiopulmonary resuscitation, use of an automated external defibrillator, or administration of overdose reversal medication such as "Narcan").

(iv) Missing individual. "Missing individual" means law enforcement has been contacted because an individual's whereabouts are unknown and the individual is believed to be at or pose an imminent risk of harm to self or others.

(v) Peer-to-peer act. "Peer-to-peer act" means any of the following incidents involving two individuals:

(a) Exploitation which means the unlawful or improper act of using another individual or another individual's resources for monetary or personal benefit, profit, or gain.

(b) Theft which means intentionally depriving another individual of real or personal property valued at twenty dollars or more or property of significant personal value to the individual.

(c) Physical act which means a physical altercation that:

(i) Results in examination or treatment by a physician, physician assistant, or nurse practitioner; or

(ii) Involves strangulation, a bloody nose, a bloody lip, a black eye, a concussion, or biting which causes breaking of the skin; or

(iii) Results in an individual being arrested, incarcerated, or the subject of criminal charges.

(d) Sexual act which means sexual conduct and/or contact for the purposes of sexual gratification without the consent of the other individual.

(vi) Significant injury. "Significant injury" means an injury to an individual of known cause or unknown cause that results in a dental injury that requires treatment by a dentist, concussion, broken bone, dislocation, or second or third degree burns or that requires immobilization, casting, or five or more sutures. A significant injury will be designated in the Ohio incident tracking and monitoring system as either known cause or unknown cause.

(c) Category C

(i) Law enforcement. "Law enforcement" means any incident that results in an individual being tased, arrested, charged, or incarcerated.

(ii) Unanticipated hospitalization. "Unanticipated hospitalization" means:

(a) A hospital admission lasting forty-eight hours or longer that:

(i) Is not associated with planned evaluations, scheduled procedures, or routine diagnostic tests that are part of ongoing medical care, including the diagnosis of conditions; and

(ii) Is due to one or more of the following diagnoses:

(A) Aspiration pneumonia;

(B) Bowel obstruction;

(C) Dehydration;

(D) Medication error;

(E) Seizure; or

(F) Sepsis.

(b) A hospital re-admission lasting forty-eight hours or longer that:

(i) Is not associated with planned evaluations, scheduled procedures, or routine diagnostic tests that are part of ongoing medical care, including the diagnosis of conditions; and

(ii) Is due to any diagnosis that is the same diagnosis as a prior hospital admission lasting forty-eight hours or longer within the past thirty calendar days.

(iii) Unapproved behavioral support. "Unapproved behavioral support" means the use by a developmental disabilities employee of a prohibited measure as defined in rule 5123-2-06 of the Administrative Code or the use of a restrictive measure implemented without approval of the human rights committee or

without informed consent of the individual or the individual's guardian in accordance with rule 5123-2-06 of the Administrative Code, when use of the prohibited measure or restrictive measure results in risk to the individual's health or welfare. When use of the prohibited measure or restrictive measure does not result in risk to the individual's health or welfare, the incident will be investigated as an unusual incident.

- (17) "Ohio incident tracking and monitoring system" (also known as "OITMS") means the department's web-based system for reporting major unusual incidents.
- (18) "Physical harm" means any injury or other physiological impairment, regardless of its gravity or duration.
- (19) "Primary person involved" means the person alleged to have committed or to have been responsible for the emotional abuse, exploitation, failure to report, misappropriation, neglect, physical abuse, prohibited sexual relations, rights code violation, or sexual abuse.
- (20) "Program implementation incident" means an unusual incident involving the failure to carry out a person-centered plan when such failure causes minimal risk or no risk. Examples include, but are not limited to, failing to provide supervision for short periods of time, automobile accidents without harm, an individual's whereabouts are unknown for longer than the period of time specified in the individual service plan that does not result in imminent risk of harm to self or others, and self-reported incidents with minimal risk.
- (21) "Provider" means an agency provider or an independent provider.
- (22) "Qualified intellectual disability professional" has the same meaning as in 42 C.F.R. 483.430 as in effect on the effective date of this rule.
- (23) "Service and support administrator" means a person, regardless of title, employed by or under contract with a county board to perform the functions of service and support administration and who holds the appropriate certification in accordance with rule 5123-5-02 of the Administrative Code.
- (24) "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.
- (25) "Systems issue" means underlying circumstances (such as the physical environment, staffing levels, training provided to staff or supervisors,

supervisory support for staff, previous awareness of a potential event, adequacy of processes and procedures, or availability of resources and equipment) beyond the action or inaction of the primary person involved in a substantiated major unusual incident of neglect, that contributed to the situation or outcome.

(26) "Team" means, as applicable:

(a) The group of persons chosen by an individual with the core responsibility to support the individual in directing development of the individual service plan. The team includes the individual's guardian or adult whom the individual has identified, as applicable, the service and support administrator, direct support staff, providers, licensed or certified professionals, and any other persons chosen by the individual to help the individual consider possibilities and make decisions; or

(b) An "interdisciplinary team" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.

(27) "Unusual incident" means an event or occurrence involving an individual that is not consistent with routine operations, policies and procedures, or the individual service plan, but is not a major unusual incident. "Unusual incident" includes, but is not limited to, the events and occurrences described in appendix F to this rule.

(28) "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 for major unusual incidents

(1) A developmental disabilities employee will immediately report the alleged, suspected, or actual occurrence of a major unusual incident to the designated person at the agency provider (if employed by an agency provider), the county board system described in paragraph (D)(10) of this rule, or the department's abuse and neglect hotline.

(2) Reports regarding all major unusual incidents involving an individual who resides in an intermediate care facility for individuals with intellectual disabilities or who receives round-the-clock waiver services will be filed and the requirements of this rule followed regardless of where the incident occurred.

(3) Reports regarding the following major unusual incidents will be filed and the requirements of this rule followed regardless of where the incident occurred:

(a) Attempted suicide;

- (b) Death other than unexplained or unanticipated death;
 - (c) Emotional abuse;
 - (d) Exploitation;
 - (e) Failure to report;
 - (f) Law enforcement;
 - (g) Misappropriation;
 - (h) Missing individual;
 - (i) Neglect;
 - (j) Peer-to-peer act;
 - (k) Physical abuse;
 - (l) Prohibited sexual relations;
 - (m) Sexual abuse; and
 - (n) Unexplained or unanticipated death.
- (4) Reports regarding the following major unusual incidents will 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 provider at the time of the incident:
 - (a) Medical emergency;
 - (b) Rights code violation;
 - (c) Significant injury;
 - (d) Unanticipated hospitalization; and
 - (e) Unapproved behavioral support.
- (5) Immediately upon identification or notification of a major unusual incident, a provider will take all reasonable measures to ensure the health and welfare of at-risk individuals. Reasonable measures include, but are not limited to, securing immediate and ongoing medical attention and removal of a

developmental disabilities employee from direct contact with any individual when the developmental disabilities employee is alleged to have been involved in physical abuse or sexual abuse. The provider will document reasonable measures taken and by whom in the incident report. The provider and county board will 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 welfare of at-risk individuals, the department will make the determination.

(6) Immediately upon receipt of a report or notification of an allegation of a major unusual incident, the county board will:

(a) Ensure all reasonable measures necessary to protect the health and welfare of at-risk individuals have been taken;

(b) Determine if additional measures are needed; and

(c) Notify the department if the circumstances in paragraph (J)(1) of this rule that require a department-directed administrative investigation are present. Such notification will take place on the first working day the county board becomes aware of the incident.

(7) A provider other than a developmental center will, as soon as possible but no later than four hours following discovery of a major unusual incident, notify the county board through means identified by the county board of the following incidents or allegations:

(a) Emotional abuse;

(b) Exploitation;

(c) Misappropriation;

(d) Neglect;

(e) Peer-to-peer act;

(f) Physical abuse;

(g) Prohibited sexual relations;

(h) Sexual abuse;

(i) Unexplained or unanticipated death; and

- (j) When the provider has received an inquiry from the media regarding a major unusual incident.
 - (8) A provider other than a developmental center will submit an incident report to the county board contact or designee by three p.m. on the first working day following the day the provider becomes aware of a potential or determined major unusual incident. The incident report will be submitted in a format prescribed by the department.
 - (a) For a major unusual incident in category C, the provider will also submit the applicable administrative review form contained in appendix C, appendix D, or appendix E to this rule. The provider will submit the incident report and the administrative review form at the same time.
 - (b) When an individual is hospitalized, the provider is responsible for following up with the hospital so that a diagnosis is determined as soon as possible after forty-eight hours, an incident report made to the county board, and the administrative review form in appendix D to this rule submitted when the situation meets the definition of unanticipated hospitalization in paragraph (C)(16)(c)(ii) of this rule.
 - (9) The county board, or the developmental center when the provider is a developmental center, will enter preliminary information regarding the major unusual incident in the Ohio incident tracking and monitoring system and in the manner prescribed by the department by five p.m. on the first working day following the day the county board or developmental center becomes aware of the major unusual incident.
 - (10) The county board will 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 will communicate this system in writing to all individuals receiving services in the county or their guardians as applicable, providers in the county, and the department.
- (E) Removal of a developmental disabilities employee
- (1) An agency provider will remove a developmental disabilities employee from direct contact with any individual when the developmental disabilities employee is alleged to have been involved in physical abuse or sexual abuse until such time as the agency provider has reasonably determined that removal is no longer necessary. When an agency provider removes a developmental disabilities employee from direct contact with an individual:

- (a) The agency provider will inform the developmental disabilities employee of the alleged major unusual incident category and provide the developmental disabilities employee with the name of a person employed by the agency provider to whom the developmental disabilities employee may direct questions.
 - (b) The county board or department, as applicable, will keep the agency provider apprised of the status of the administrative investigation so that the agency provider can resume normal operations as soon as possible consistent with the health and welfare of individuals.
 - (c) The agency provider will notify the county board or department, as applicable, when the developmental disabilities employee returns to work.
- (2) In conjunction with the department, a county board has authority to remove an independent provider from direct contact with any individual when the independent provider is alleged to have been involved in physical abuse or sexual abuse until such time as the county board has reasonably determined that removal is no longer necessary. When a county board removes an independent provider from direct contact with an individual:
 - (a) The county board will inform the independent provider of the alleged major unusual incident category and provide the independent provider with the name of a person employed by the county board to whom the independent provider may direct questions.
 - (b) The county board will keep the independent provider apprised of the status of the administrative investigation so that the independent provider can resume normal operations as soon as possible consistent with the health and welfare of individuals.

(F) Reporting of alleged criminal acts

- (1) When a provider has reason to believe a criminal act has occurred, the provider will immediately report to the law enforcement entity having jurisdiction of the location where the incident occurred. The provider will document the date, time, and name of the person notified of the alleged criminal act. The county board will ensure the notification has been made.
- (2) The department will immediately report to the Ohio state highway patrol, any allegation of a criminal act occurring at a developmental center. The department

will document the date, time, and name of the person notified of the alleged criminal act.

(G) Abused or neglected children

- (1) All allegations of abuse or neglect as defined in sections 2151.03 and 2151.031 of the Revised Code of an individual under the age of twenty-one will be immediately reported to the local public children services agency. The notification may be made by the provider or the county board. The county board will ensure the notification has been made.
- (2) When a public children services agency is conducting an investigation, the investigative agent will submit a report to the Ohio incident tracking and monitoring system with a brief description of the allegation and immediate steps taken to protect the health and welfare of the individual. Upon notification of case closure by the public children services agency, the investigative agent will record the results in the Ohio incident tracking and monitoring system and ensure a prevention plan to address causes and contributing factors is implemented.

(H) Notification requirements for major unusual incidents

- (1) A provider will make notifications when a major unusual incident or discovery of a major unusual incident occurs when such provider has responsibility for the individual.
 - (a) The provider will notify, as applicable:
 - (i) Guardian or other person whom the individual has identified.
 - (ii) Service and support administrator serving the individual.
 - (iii) Other providers of services as necessary to ensure continuity of care and support for the individual.
 - (iv) Staff or family living at the individual's residence who have responsibility for the individual's care.
 - (b) The provider will make notification on the same day the major unusual incident or discovery of the major unusual incident occurs.
 - (c) The notification will include immediate actions taken.
 - (d) The provider will document all notifications or efforts to notify.

(e) The provider will not make notification:

(i) If the person to be notified is the primary person involved, the spouse of the primary person involved, or the significant other of the primary person involved; or

(ii) When such notification could jeopardize the health and welfare of an individual.

(f) 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.

(2) Staff of an agency provider will inform the director of operations or administrator of the agency provider within one working day following the day staff become aware of a potential or determined major unusual incident involving misappropriation, neglect, physical abuse, or sexual abuse.

(3) The county board will ensure notifications required by paragraph (H)(1) of this rule have been made.

(4) In any case where law enforcement is conducting an investigation or pursuing charges related to an alleged criminal act, the department may provide notification of the major unusual incident to any other provider or county board for whom the developmental disabilities employee involved works, for the purpose of ensuring the health and welfare of any at-risk individual. The notified provider or county board will take such steps necessary to address the health and welfare needs of any at-risk individual and may consult the department in this regard. The department will inform any notified entity as to whether the major unusual incident is substantiated. Providers or county boards employing the developmental disabilities employee involved will notify the department when they are aware that the developmental disabilities employee works for another provider.

(I) General requirements for administrative investigation and administrative review

(1) All major unusual incidents in category A or category B require an administrative investigation meeting the applicable administrative investigation procedure in appendix A or appendix B to this rule. Administrative investigations will be conducted and reviewed by investigative agents. An investigative agent will initiate an administrative investigation no later than twenty-four hours following submission of the incident report for a major unusual incident in category A and no later than three working days following submission of the

incident report for a major unusual incident in category B. If, however, law enforcement or a public children services agency has opened an investigation and asks the investigative agent to postpone initiating an investigation, the investigative agent may do so for the time period mutually agreed upon. "Initiate an administrative 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 when there is reason to believe a criminal act has occurred or the public children services agency when there is an allegation of abuse or neglect of an individual under the age of twenty-one and documenting the date, time, and name of the person notified.
 - (d) Initiating interviews with witnesses or victims.
- (2) All major unusual incidents in category C require an administrative review using the applicable administrative review form in appendix C, appendix D, or appendix E to this rule. The applicable administrative review form will be submitted by an individual's provider and completed by an investigative agent in collaboration with the individual's team. An investigative agent will initiate an administrative review no later than three working days following submission of the administrative review form. The investigative agent will ensure the major unusual incident was properly coded, resolve any outstanding questions or concerns with the individual's provider and/or the individual's team, identify the causes and contributing factors to the incident, and address the prevention plan.
- (3) Based on the facts discovered during administrative investigation or administrative review of the major unusual incident, the category may change or additional categories may be added to the record. If a major unusual incident changes category, the reason for the change will be documented and the new applicable category procedure will be followed.
- (4) Major unusual incidents that involve an active criminal investigation may be closed as soon as the county board ensures the major unusual incident is properly coded, the history of the primary person involved has been reviewed, causes and contributing factors are determined, a finding is made, and a prevention plan is implemented. Information needed for closure of the major unusual incident may be obtained from the criminal investigation.

- (5) Staff of county boards or agency providers may assist the investigative agent by gathering documents, entering information in the Ohio incident tracking and monitoring system, fulfilling category C administrative review requirements, or performing other administrative or clerical duties that are not specific to the investigative agent role.
- (6) Except when law enforcement or the public children services agency is conducting the investigation, the investigative agent will conduct all interviews for major unusual incidents in category A or category B. For a major unusual incident occurring at an intermediate care facility for individuals with intellectual disabilities, the investigative agent may utilize interviews conducted by the intermediate care facility for individuals with intellectual disabilities or personally conduct the interviews. If the investigative agent determines the information is reliable, the investigative agent may utilize other information received from law enforcement, the public children services agency, or providers in order to meet the requirements of this rule.
- (7) When the public children services agency notifies the county board that it has declined to investigate, the county board will initiate the administrative investigation or administrative review within a reasonable amount of time based on the initial information received or obtained and consistent with the health and welfare of all at-risk individuals.
- (8) An intermediate care facility for individuals with intellectual disabilities will conduct an investigation that complies with applicable federal regulations, including 42 C.F.R. 483.420 as in effect on the effective date of this rule, for any major unusual incident or unusual incident involving a resident of the facility, regardless of where the major unusual incident or unusual incident occurs. The intermediate care facility for individuals with intellectual disabilities will provide a copy of its full report of an investigation of a major unusual incident to the county board.
- (9) All developmental disabilities employees will cooperate with administrative investigations and administrative reviews conducted in accordance with this rule. Providers and county boards will respond to requests for information within the time frame requested. The time frames identified will be reasonable.
- (10) Except when law enforcement or the public children services agency is conducting an investigation, the investigative agent will endeavor to reach a preliminary finding regarding allegations of physical abuse or sexual abuse and notify the individual or individual's guardian and provider of the preliminary finding within fourteen working days. When it is not possible for the investigative agent to reach a preliminary finding regarding an allegation of

physical abuse or sexual abuse within fourteen working days, the investigative agent will instead notify the individual or individual's guardian and provider of the status of the investigation every seven working days thereafter.

- (11) The investigative agent will complete a report in the format prescribed by the department of each administrative investigation or administrative review and submit it for closure in the Ohio incident tracking and monitoring system within forty-five working days from submission of the incident report unless the county board requests and the department grants an extension 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.

(J) Department-directed administrative investigations of major unusual incidents

- (1) The department will conduct the administrative investigation or administrative review when the major unusual incident 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) A major unusual incident contact or designee employed by a county board;
 - (g) A current member of a county board;
 - (h) A person having a relationship with any of the persons specified in paragraphs (J)(1)(a) to (J)(1)(g) of this rule when such relationship may present a conflict of interest or the appearance of a conflict of interest; or
 - (i) An employee of a county board or a developmental center when it is alleged that the employee is responsible for an individual's death, has committed sexual abuse, engaged in prohibited sexual relations, or committed physical abuse or neglect resulting in emergency room treatment or hospital admission.

- (2) The department may conduct an administrative investigation or administrative review of any major unusual incident or request that an administrative investigation or administrative review be conducted by another county board, a regional council of governments, or any other governmental entity authorized to conduct an investigation.

(K) Written summaries of major unusual incidents in category A or category B

- (1) No later than five working days following the county board's, developmental center's, or department's recommendation for closure in the Ohio incident tracking and monitoring system, the county board, developmental center, or department, as applicable, will provide a written summary of the administrative investigation of each category A or category B major unusual incident, including the allegations, the facts and findings, whether the major unusual incident was substantiated or unsubstantiated, and the prevention plan implemented in response to the major unusual incident to:
- (a) The individual, individual's guardian, or other person whom the individual has identified, as applicable. In the case of a peer-to-peer act, both individuals, individuals' guardians, or other persons whom the individuals have identified, as applicable, will receive a written summary.
 - (b) The residential provider and provider at the time of the major unusual incident.
 - (c) The individual's service and support administrator and support broker, as applicable.
- (2) In the case of an individual's death, the written summary will be provided to the individual's family only upon request by the individual's family.
- (3) The written summary will not be provided to the primary person involved, the spouse of the primary person involved, or the significant other of the primary person involved.
- (4) When the primary person involved is a developmental disabilities employee or a guardian, the county board will, no later than five working days following recommendation for closure in the Ohio incident tracking and monitoring system, provide written notice to the primary person involved as to whether the major unusual incident was substantiated, unsubstantiated/insufficient evidence, or unsubstantiated/unfounded.

(L) Disputing the findings of a written summary

- (1) An individual, individual's guardian, other person whom the individual has identified, or provider (except when the primary person involved is the independent provider or the owner, director of operations, or administrator of the agency provider) may dispute the findings of a written summary of an administrative investigation described in paragraph (K)(1) of this rule by submitting a letter of dispute and supporting documentation to the county board superintendent, or to the director of the department if the department conducted the administrative investigation, within fifteen calendar days following receipt of the findings.
- (2) The superintendent of the county board or the superintendent's designee or the director of the department or the director's designee, as applicable, will 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.
- (3) 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 of the department will issue a decision within thirty calendar days.

(M) Review, prevention, and closure of major unusual incidents

- (1) Agency providers will implement a written procedure for the internal review of all major unusual incidents and are responsible for taking all reasonable measures necessary to prevent the recurrence of major unusual incidents.
- (2) Members of an individual's team will ensure risks associated with major unusual incidents are addressed in the individual service plan of each individual affected and collaborate on the development of a prevention plan to address the causes and contributing factors to the major unusual incident. The team members will jointly determine what constitutes reasonable measures necessary to prevent the recurrence of major unusual incidents.
- (3) The department will review and close the following major unusual incidents:
 - (a) Attempted suicide;
 - (b) Death other than unexplained or unanticipated death;

- (c) Emotional abuse;
 - (d) Exploitation;
 - (e) Failure to report;
 - (f) Medical emergency;
 - (g) Misappropriation;
 - (h) Neglect;
 - (i) Physical abuse;
 - (j) Prohibited sexual relations;
 - (k) Sexual abuse;
 - (l) Significant injury when cause is unknown;
 - (m) Unexplained or unanticipated death;
 - (n) Any major unusual incident that is the subject of a director's alert; and
 - (o) Any major unusual incident investigated by the department.
- (4) The county board will review and close the following major unusual incidents:
 - (a) Law enforcement;
 - (b) Missing individual;
 - (c) Peer-to-peer act;
 - (d) Rights code violation;
 - (e) Significant injury when cause is known;
 - (f) Unanticipated hospitalization; and
 - (g) Unapproved behavioral support.
- (5) The department may review any major unusual incident to ensure it has been properly closed and will conduct sample reviews to ensure proper closure by the county board. The department may reopen any administrative investigation or administrative review that does not meet the requirements of this rule.

(6) The department and the county board will consider the following criteria when determining whether to close a major unusual incident:

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

(b) Whether a thorough administrative investigation or administrative review has been conducted consistent with the standards set forth in this rule;

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

(d) Whether the county board has ensured the prevention plan was implemented to prevent recurrence;

(e) Whether the incident is part of a pattern or trend as flagged through the Ohio incident tracking and monitoring system requiring some additional action; and

(f) Whether all requirements set forth in statute or rule have been satisfied.

(N) Analysis of major unusual incident trends and patterns

(1) An agency provider will conduct, for each county in which the agency provider delivered services, an in-depth review and analysis of trends and patterns of major unusual incidents occurring during the preceding calendar year and compile an annual report which contains:

(a) Date of review;

(b) Name of person completing review;

(c) Time period of review;

(d) Comparison of data for previous three years;

(e) Explanation of data;

(f) Data for review by major unusual incident category type;

(g) Specific individuals involved in established trends and patterns (i.e., five major unusual incidents of any kind within six months, ten major unusual incidents of any kind within a year, or other pattern identified by the individual's team);

- (h) Specific trends by residence, region, or program;
 - (i) Previously identified trends and patterns; and
 - (j) Action plans and prevention plans implemented to address noted trends and patterns.
- (2) An agency provider other than a county board will send the annual report to the county board for all programs operated in the county by February twenty-eighth of each year. The county board will review the annual report to ensure all issues have been reasonably addressed to prevent recurrence of major unusual incidents. The county board will keep the annual report on file and make it available to the department upon request.
- (3) A county board that provides specialized services will send the annual report to the department for all programs operated by the county board by February twenty-eighth of each year. The department will review the annual report to ensure all issues have been reasonably addressed to prevent recurrence of major unusual incidents.
- (4) Each county board or as applicable, each council of governments to which county boards belong, will have a committee that reviews trends and patterns of major unusual incidents. The committee will be made up of a reasonable representation of the county board(s), providers, individuals who receive services and their families, and other stakeholders deemed appropriate by the committee.
 - (a) The role of the committee is to review and share the county board 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 served in the county or counties.
 - (b) The committee will meet each March to review and analyze data for the preceding calendar year. The county board or council of governments will send the aggregate data prepared for the meeting to all participants at least ten calendar days in advance of the meeting.
 - (c) The county board or council of governments will 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.
 - (d) The county board will ensure follow-up actions identified by the committee have been implemented.

(5) The department will prepare a report on trends and patterns identified through the process of reviewing major unusual incidents. The department will periodically, but at least semi-annually, review this report with a committee appointed by the director of the department which will consist of at least six members who represent various stakeholder groups, including disability rights Ohio and the Ohio department of medicaid. The committee will make recommendations to the department regarding whether appropriate actions to ensure the health and welfare of individuals served have been taken. The committee may request that the department obtain additional information necessary to make recommendations.

(O) Requirements for unusual incidents

(1) Unusual incidents will be reported and investigated by the provider.

(2) Each agency provider will:

(a) Develop and implement a written unusual incident policy and procedure that:

(i) Identifies what is to be reported as an unusual incident which will include unusual incidents as defined in this rule;

(ii) Requires an employee who becomes aware of an unusual incident to report it to the person designated by the agency provider who can initiate proper action;

(iii) Requires the report to be made no later than twenty-four hours following the occurrence of the unusual incident; and

(iv) Requires the agency provider to investigate unusual incidents, identify the causes and contributing factors when applicable, and develop a prevention plan to protect the health and welfare of any at-risk individuals.

(b) Ensure all staff are trained and knowledgeable regarding the unusual incident policy and procedure.

(3) The provider delivering services when an unusual incident occurs will notify other providers of services as necessary to ensure continuity of care and support for the individual.

(4) Each independent provider will complete an unusual incident report, notify the individual's guardian or other person whom the individual has identified, as

applicable, and forward the unusual incident report to the service and support administrator or county board designee on the first working day following the day the unusual incident is discovered.

- (5) Each provider will maintain a log of all unusual incidents. The log will contain only unusual incidents as defined in paragraph (C)(27) of this rule and will include, but is not limited to, the name of the individual, a brief description of the unusual incident, any injuries, date, time, location, causes and contributing factors, and prevention plan.
- (6) Each provider will review its log of all unusual incidents as necessary, but no less than monthly, to ensure appropriate prevention plans have been implemented and identified trends and patterns have been addressed as appropriate. When no unusual incidents occur during a calendar month, the provider will make a notation to that effect on its log of unusual incidents.
- (7) Members of an individual's team will ensure risks associated with unusual incidents are addressed in the individual service plan of each individual affected. When the unusual incident involves a hospital stay, the provider and the individual's team will review what preceded the hospital stay and consider what could have been done differently to prevent the hospital stay.
- (8) A provider will, upon request by the department or a county board, provide any and all information and documentation regarding an unusual incident and investigation of the unusual incident as well as unusual incident reports, documentation of identified trends and patterns, and the prevention plan.

(P) Oversight

- (1) The department will conduct reviews of county boards and providers as necessary to ensure the health and welfare of individuals and compliance with this rule. Failure to comply with this rule may be considered by the department in any regulatory capacity, including certification, licensure, and accreditation.
- (2) The department will review and take any action appropriate when a complaint is received about how an administrative investigation or administrative review is conducted.

(Q) 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 5123.613 and 5126.044 of the Revised Code, to any governmental

entity authorized to investigate the circumstances of the alleged abuse, neglect, misappropriation, or exploitation, and to any party to the extent that release of a record is necessary for the health or welfare of an individual.

(2) A county board or the department will not review, copy, or include in any report required by this rule a provider's personnel records 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. A provider will redact any confidential information contained in a record before copies are provided to the county board or the department. A provider will make all other records available upon request by a county board or the department. A provider will provide confidential information, including the date of birth and social security number, when requested by the department as part of the abuser registry process in accordance with rule 5123-17-03 of the Administrative Code.

(3) Any party entitled to receive a report required by this rule may waive receipt of the report. A party waiving receipt of a report will do so in writing.

(R) Training

(1) Agency providers and county boards will ensure:

(a) Staff employed in direct services positions are trained on the requirements of this rule prior to direct contact with any individual. Thereafter, staff employed in direct services positions will receive annual training on the requirements of this rule, including a review of health and welfare alerts issued by the department since the previous year's training.

(b) Staff employed in positions other than direct services positions are trained on the requirements of this rule no later than ninety calendar days following the date of hire. Thereafter, staff employed in positions other than direct services positions will receive annual training on the requirements of this rule, including a review of health and welfare alerts issued by the department since the previous year's training.

(c) Board members are trained on the requirements of this rule no later than ninety calendar days following the date of appointment to the board.

(2) Independent providers will be trained on the requirements of this rule prior to application for initial certification in accordance with rule 5123-2-09 of the Administrative Code. Thereafter, independent providers will receive annual

training on the requirements of this rule, including a review of health and welfare alerts issued by the department since the previous year's training.

Replaces: 5123-17-02

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03

Statutory Authority: 5123.04, 5123.19, 5123.612, 5126.311, 5126.313, 5126.34

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