

5123:2-17-02

~~Incidents adversely affecting health and safety~~Addressing major unusual incidents and unusual incidents to ensure continuous quality improvement.

(A) Purpose

This rule establishes the requirements for ~~managing incidents adversely affecting health or safety~~ addressing major unusual incidents and unusual incidents 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. There are three administrative investigation procedures (category A, category B, and category C) that correspond to the three categories of major unusual incidents.
- (2) "Agency provider" means a provider, certified or licensed by the department or a provider approved by the Ohio office of medical assistance to provide services under the transitions developmental disabilities waiver, that employs staff to deliver services to individuals and who may subcontract the delivery of services. "Agency provider" includes a county board while providing specialized 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) "Chosen representative" means an adult family member or other person providing support and guidance to an individual in accordance with section 5126.043 of the Revised Code.
- ~~(4)~~(5) "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~~ intermediate care facility under the managing responsibility of the department.

(8) "Developmental disabilities employee" means any of the following:

(a) An employee of the department;

(b) An employee of a county board;

(c) An employee of an agency provider in a position that includes providing specialized services to an individual; or

(d) An independent provider.

~~(8)~~(9) "ICF/MR" "Intermediate care facility for individuals with intellectual disabilities" (or "intermediate care facility") means an intermediate care facility for the mentally retarded certified as in compliance with applicable standards for the medicaid program by the director of health in accordance with Title XIX of the Social Security Act, 79 Stat. 286 (1965), 42 U.S.C. 1396.

~~(9)~~(10) "Incident tracking system" (ITS) means the department's on-line system for reporting major unusual incidents.

(11) "Independent provider" means a self-employed person who provides services for which he or she must be certified under rule 5123:2-2-01 of the Administrative Code or approved by the Ohio office of medical assistance and does not employ, either directly or through contract, anyone else to provide the services.

~~(10)~~(12) "Individual" means a person with mental retardation or other a developmental disability.

(13) "Individual served" means an individual who receives specialized services.

~~(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)~~(14) "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)~~(15) "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~~likely risk of harm ~~as listed in this paragraph~~, if such individual is receiving services through the ~~MR/DD~~ developmental disabilities service delivery system or will be receiving such services as a result of the incident. ~~Major unusual incidents (MUIs) include the following: There are three categories of major unusual incidents that correspond to three administrative investigation procedures delineated in appendix A, appendix B, and appendix C to this rule:~~

(a) Category A

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

(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 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, misappropriation, or exploitation that results in a risk to health and safety 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.

(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.

including Chapters 2911. and 2913. of the Revised Code.

(v) 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.

(vi) Peer-to-peer act. "Peer-to-peer act" means one of the following incidents involving two individuals served:

(a) Exploitation which means intentionally depriving another individual of real or personal property in the amount of twenty dollars or more or improperly using an individual or an individual's resources for monetary or personal benefit, profit, or gain.

(b) Physical act that occurs when an individual is targeting, or firmly fixed on another individual and the act is not accidental or random. The incident results in an injury that is treated by a physician, physician assistant, or nurse practitioner. Allegations of one individual choking another or any head or neck injuries shall be considered major unusual incidents. Minor injuries such as scratches or reddened areas shall be considered unusual incidents and shall require immediate action, a review to uncover possible cause/contributing factors, and prevention measures.

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

(d) Verbal act which means the use of words, gestures, or other communicative means to purposefully threaten, coerce, or intimidate the other individual when there is the opportunity and ability to carryout the threat.

(vii) 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.

(viii) 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 employee's spouse, and for whom the

developmental disabilities employee was employed or under contract to provide care at the time of the incident and includes persons in the developmental disabilities employee's supervisory chain of command.

(ix) 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 safety of an individual.

(x) 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).

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

(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) Medical emergency. "Medical emergency" means an incident where emergency medical intervention is required to save an individual's life (e.g., Heimlich maneuver and related choke relief techniques such as back blows or cardiopulmonary resuscitation, "Epi-Pen" usage, or intravenous for dehydration).

(iii) Missing individual. "Missing individual" means an incident that is not considered neglect and an individual's whereabouts, after immediate measures taken, are unknown and the individual is believed to be at or pose an imminent risk of harm to self or others.

(iv) Significant injury. "Significant injury" means an injury of known or unknown cause that is not considered abuse or neglect and that results in concussion, broken bone, dislocation, second or third degree burns or that requires immobilization, casting, or five or more sutures. Significant injuries shall be designated in the incident tracking system as either known or unknown.

(c) Category C

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

(ii) Unapproved behavior support. "Unapproved behavior support" means the use of any aversive strategy or intervention prohibited by paragraph (J) of rule 5123:2-1-02 of the Administrative Code implemented without approval by the human rights committee or behavior support committee or without informed consent, that results in a likely risk to the individual's health and safety. An intervention that is prohibited by paragraph (J) of rule 5123:2-1-02 of the Administrative Code and does not pose a likely risk to health and safety shall be investigated as an unusual incident.

(iii) Unscheduled hospitalization. "Unscheduled hospitalization" means any hospital admission that is not scheduled unless the hospital admission is due to a pre-existing condition that is specified in the individual service plan indicating the specific symptoms and criteria that require hospitalization.

~~(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)~~(16) "Primary person involved" ~~(PPI)~~ means the person alleged to have

committed or to have been responsible for the [physical](#) abuse, [sexual abuse](#), [verbal abuse](#), exploitation, failure to report, misappropriation, neglect, prohibited sexual relations, rights code violation, or ~~suspicious or accidental~~ death.

~~(16)~~[\(17\)](#) "Provider" means any ~~person or entity~~[agency provider or independent provider](#) 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.~~

[\(18\)](#) "[Qualified intellectual disability professional](#)" has the same meaning as in [42 C.F.R. 483.430 \(2012\)](#).

~~(17)~~[\(19\)](#) "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)~~[\(20\)](#) "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~~ [includes, but is not limited to: dental injuries; falls; an injury that is not a significant injury; medication errors; overnight relocation of an individual due to a fire, natural disaster, or mechanical failure; an incident involving two individuals served that is not a peer-to-peer act major unusual incident; and unapproved behavior supports without a likely risk to health and safety.](#)

~~(19)~~[\(21\)](#) "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~~[Major unusual incidents](#)

[\(1\) 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.~~

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

~~(2)(b) 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. Reports regarding the following major unusual incidents shall be filed and the requirements of this rule followed regardless of where the incident occurred:~~

(i) Death;

(ii) Exploitation;

(iii) Law enforcement;

(iv) Misappropriation;

(v) Neglect;

(vi) Physical abuse;

(vii) Prohibited sexual relations;

(viii) Sexual abuse; and

(ix) Verbal abuse.

(c) Reports regarding the following major unusual incidents 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:

(i) Attempted suicide;

(ii) Failure to report;

(iii) Medical emergency;

(iv) Missing individual;

(v) Peer-to-peer act;

(vi) Rights code violation;

(vii) Significant injury;

(viii) Unapproved behavior support; and

(ix) Unscheduled hospitalization.

~~(3)~~(2) Immediately upon identification or notification of ~~an MUI~~ a major unusual incident, 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; and
- (c) Other necessary measures to protect the health and safety of at-risk individuals.

~~(4)~~(3) 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; and
- (c) Notify the department if the circumstances in paragraph ~~(D)~~(D)(14) 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)~~(4) 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.~~

(a) Death.

(b) Exploitation.

(c) Misappropriation.

(d) Neglect.

~~(e) Suspicious or accidental death.~~

(e) Physical abuse.

(f) Sexual abuse.

(g) Verbal abuse.

~~(f)~~(h) When the provider has received inquiries from the media regarding ~~an~~ MUI a major unusual incident.

~~(6)~~(5) For all ~~MUIs, including those listed in paragraph (D)(5) of this rule,~~ major unusual incidents, all ~~agency providers and county boards as a provider~~ providers shall submit a written incident report to the county board ~~contact or designee~~ no later than three p.m. the next working day following initial knowledge of a potential or determined ~~MUI~~ major unusual incident. 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)~~(6) The county board shall enter preliminary information regarding the incident ~~on the IFS~~ in the incident tracking system and in the manner prescribed by the department by three p.m. on the working day following notification by the provider or of becoming aware of the ~~MUI~~ major unusual incident.

~~(8)~~(7) 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. The provider shall notify the county board or department, as applicable, of any changes regarding the protective action.

~~(9)~~(8) 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)~~(9) 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.~~

(10) Reporting of alleged criminal acts

(a) Nothing in this rule relieves mandatory reporters of the responsibility to report abuse, neglect, misappropriation, and/or exploitation pursuant to section 5123.61 of the Revised Code.

(b) Nothing in this rule relieves mandatory reporters of the responsibility to immediately report to the intermediate care facility administrator or administrator designee, allegations of mistreatment, neglect or abuse, and injuries of unknown source when the source of the injury was not witnessed by any person and the source of the injury could not be explained by the individuals and the injury raises suspicions of possible abuse or neglect because of the extent of the injury or the location of the injury or the number of injuries observed at one particular point in time or the incidences of injuries over time pursuant to 42 C.F.R. 483.420(d)(2).

(c) 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 physical abuse, sexual abuse, verbal

abuse, misappropriation, exploitation, neglect, or peer-to-peer act which may constitute a criminal act. The county board shall ensure that the notification has been made.

(d) The department shall immediately report to the Ohio state highway patrol, any allegation of physical abuse, sexual abuse, verbal abuse, misappropriation, exploitation, neglect, or peer-to-peer act occurring at a developmental center which may constitute a criminal act.

~~(F)~~(11) Abused or neglected children

All allegations of abuse or neglect as defined in ~~section~~ sections 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)~~(12) Notification requirements

~~(1)~~(a) 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)~~(i) Guardian or ~~advocate selected by the individual~~chosen representative or other person whom the individual has identified.

~~(b)~~(ii) Service and support administrator serving the individual.

~~(c)~~(iii) Licensed or certified residential provider.

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

(v) Support broker for an individual enrolled in the self-empowered life funding waiver.

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

~~(3)~~(c) Notification shall not be made if the person to be notified is the ~~PPI,~~ the

~~PPI's spouse, or the PPI's significant other~~ primary person involved, the spouse of the primary person involved, or the significant other of the primary person involved.

(d) Notification shall be made to the individuals/guardians in a peer-to-peer act unless such notification would jeopardize the health and safety of an individual involved.

~~(4)~~(e) 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)~~(f) 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~~ primary person involved 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~~ primary person involved shall notify the department when they are aware that the ~~PPI~~ primary person involved works for another provider.

~~(H)~~(13) 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)~~(a) 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 in accordance with rule 5123:2-5-07 of the Administrative Code. Developmental center investigators are considered certified investigative agents for the purpose of this rule. ~~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.~~

(b) All major unusual incidents require an investigation meeting the applicable investigation procedure requirements established in appendix A, appendix B, or appendix C to this rule unless it is not possible or relevant to the investigation to meet a requirement under this rule, in which case the reason shall be documented. Investigations shall be conducted and reviewed by investigative agents.

(i) The department or county board may elect to follow the investigation procedure for category A major unusual incidents for any major unusual incident.

(ii) Based on the facts discovered during investigation of the major unusual incident, the category may change. If a major unusual incident changes category, the reason for the change shall be documented and the new applicable category investigation procedure shall be used to conduct the major unusual incident investigation.

(iii) Major unusual incidents that involve an active criminal investigation may be closed as soon as the county board ensures that the major unusual incident is properly coded, cause and contributing factors are determined, a finding is made, and prevention measures implemented. Information needed for closure of the major unusual incident may be obtained from the criminal investigation.

~~(4)~~(c) County board staff may assist the investigative agent by gathering documents, ~~or~~ entering information into the ~~HFS~~ incident tracking system, fulfilling category C investigation requirements, or performing other administrative or clerical duties that are not specific to the investigative agent role.

~~(5)~~(d) Except when law enforcement or the public children's services agency is conducting the investigation, the investigative agent shall conduct all interviews for ~~MUIs~~ major unusual incidents unless the ~~investigator~~ investigative agent determines the need for assistance with interviewing an individual. For ~~an MUI~~ a major unusual incident occurring at an ~~ICF/MR~~ intermediate care facility, the investigative agent may utilize interviews conducted by the ~~ICF/MR~~ intermediate care facility 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)~~(e) 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~~ major unusual incident, 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)~~(f) ~~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)~~(g) If the provider is an ICF/MR intermediate care facility, the ICF/MR intermediate care facility shall meet all applicable federal regulations, including 42 C.F.R. 483.420 ~~(dated October 1, 2005)~~(2012).

~~(9)~~(h) An ICF/MR intermediate care facility is required to conduct an

investigation regardless of where an incident involving ~~an individual~~a resident of the ~~ICF/MR~~intermediate care facility occurs. If the ~~MU~~major unusual incident involves an individual who resides in an ~~ICF/MR~~intermediate care facility, including a developmental center, and the incident occurs at a program operated by a county board, it is the responsibility of the ~~ICF/MR~~intermediate care facility to complete an investigation and assure that the investigation complies with federal guidelines. The investigative agent may utilize information from the ~~ICF/MR~~intermediate care facility's 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~~intermediate care facility 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)~~(i) When an agency provider, excluding a developmental center, conducts an internal review of an incident for which ~~an MU~~a major unusual incident 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)~~(j) All ~~MR/DD~~developmental disabilities 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)~~(k) The investigative agent shall complete a report of the investigation and submit it for closure in the ~~IFS~~incident tracking system within thirty working days unless the department grants an extension.
- ~~(13)~~(l) 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)~~(m) 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.

~~(H)~~(14) Department-directed investigations

~~(H)~~(a) The department shall conduct the administrative investigation when the ~~MUI~~ major unusual incident includes an allegation against:

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

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

~~(c)~~(iii) 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)~~(iv) An investigative agent.

~~(e)~~(v) A service and support administrator.

~~(f)~~(vi) ~~An MUI~~ A major unusual incident contact or designee employed by a county board.

~~(g)~~(vii) A current member of a county board.

~~(h)~~(viii) A person having any known relationship with any of the persons specified in paragraphs ~~(H)(1)(a) to (H)(1)(g)~~ (D)(14)(a)(i) to (D)(14)(a)(vii) of this rule when such relationship may present a conflict of interest or the appearance of a conflict of interest.

~~(i)~~(ix) 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)~~(b) 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)~~(c) The department may conduct a review or investigation of any ~~MUI~~major unusual incident 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.

~~(15)~~(15) Written summaries

~~(1)~~(a) No later than five ~~calendar~~working days following the county board's, developmental center's, or department's recommendation via the ~~ITS~~incident tracking system that the report be closed, the county board, ~~or~~ developmental center, or department shall provide a written summary of the investigation of each category A or category B major unusual incident, 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)~~(i) The individual, ~~or~~ individual's ~~legal~~ guardian, ~~or an advocate selected by the individual~~individual's chosen representative, as applicable; in the case of a peer-to-peer act, both individuals/guardians shall receive the written summary;

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

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

~~(2)~~(b) 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)~~(c) The written summary shall not be provided to the ~~PPI, the PPI's spouse, or the PPI's significant other~~primary person involved, the spouse of the primary person involved, or the significant other of the primary person involved. No later than five working days following the closure of a case, the county board shall make a reasonable attempt to notify the

primary person involved as to whether the ~~MUI~~major unusual incident has been substantiated, unsubstantiated/insufficient evidence, or unsubstantiated/unfounded.

~~(4)~~(d) ~~Except for an ICF/MR, if~~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)~~(e) An individual, individual's guardian, individual's ~~advocate~~chosen representative, 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~~finding. An individual may receive assistance from any person selected by the individual to prepare a letter and provide supporting documentation.

~~(6)~~(f) The county board 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)~~(g) 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)~~(16) Review, prevention, and closure of ~~MUIs~~major unusual incidents

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

~~(2)~~(b) 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~~ major unusual incidents. If there is no service and support administrator, individual team, qualified intellectual disability professional, or agency provider involved with the individual, a county board designee shall ensure that preventive measures as are reasonably possible are fully implemented.

~~(3)~~(c) The department ~~shall~~ may 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)~~(d) The department shall review and close reports regarding ~~all~~ major unusual incidents listed below:

~~(a)~~ Abuse.

~~(b)~~(i) Death.

~~(c)~~(ii) Exploitation.

~~(d)~~(iii) Failure to report.

~~(e)~~(iv) Misappropriation.

~~(f)~~(v) Missing individual.

~~(g)~~(vi) Neglect.

~~(h)~~(vii) Peer-to-peer acts.

(viii) Physical abuse.

~~(i)~~(ix) Prohibited sexual relations.

~~(j)~~(x) Rights code violation.

(xi) Sexual abuse.

(xii) Significant injury when cause is unknown.

~~(k)~~(xiii) Unapproved behavior support.

~~(l)~~ ~~Unknown injury.~~

(xiv) Verbal abuse.

~~(m)~~(xv) ~~Any~~ Any major unusual incident that is the subject of a director's alert.

~~(n)~~(xvi) ~~Any MUH~~ Any major unusual incident investigated by the department.

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

~~(a)~~(i) Attempted suicide.

~~(b)~~ ~~Known injury.~~

~~(c)~~(ii) Law enforcement.

~~(d)~~(iii) Medical emergency.

(iv) Significant injury when cause is known.

~~(e)~~(v) Unscheduled hospitalization.

~~(6)~~(f) 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)~~(g) The department and the county board shall consider the following criteria when determining whether to close a case:

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

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

forth in this rule;

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

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

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

~~(f)~~(vi) 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.~~

~~(17)~~(17) Analysis of ~~MUI~~major unusual incident trends and patterns

~~(1)~~(a) All ~~agency~~ providers, including county boards as providers, shall send the county board a ~~quarterly~~semi-annual and annual report regarding MUI major unusual incident trends and patterns. The county board shall semi-annually review all ~~individual providers quarterly~~providers for MUI major unusual incident 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)~~(b) All reviews and analyses shall be completed within thirty calendar days following the end of the ~~quarter~~six-month period. The semi-annual and annual analyses shall contain the following elements:-

(i) Date of review;

(ii) Name of person completing review;

(iii) Time period of review;

(iv) Comparison of data for previous three years:

(v) Explanation of data:

(vi) Data for review by major unusual incident category type:

(vii) 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):

(viii) Specific trends by residence, region, or program:

(ix) Previously identified trends and patterns; and

(x) Action plans and preventive measures to address noted trends and patterns.

~~(3)~~(c) 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)~~(d) 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)~~(e) The county board and department shall review the analysis to ensure that all issues have been reasonably addressed to prevent reoccurrence.

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

~~(7)~~(g) 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~~major unusual incidents. The committee shall be made up of a reasonable representation of the county board(s), ~~provider agencies~~providers, families, and other stakeholders deemed

appropriate by the committee.

~~(8)~~(h) 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)~~(i) 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)~~(j) 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)~~(k) The ~~department~~county board shall ensure follow-up actions identified by the committee have been implemented.

~~(12)~~(l) The department shall prepare a report on trends and patterns identified through the process of reviewing ~~MUIs~~major unusual incidents. 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~~disability rights Ohio and the Ohio ~~department of job and family services~~office of medical assistance. 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)~~(E) ~~UI requirements~~Unusual incidents

(1) Unusual incidents shall be reported and investigated by the provider of service.

~~(1)~~(2) 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~~an unusual incident which shall include ~~UIs~~unusual incidents as defined by this rule;
 - (b) Requires anyone who becomes aware of ~~a-UI~~an unusual incident 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 unusual incident;
 - (d) Requires ~~appropriate actions be taken~~the provider to investigate unusual incidents, identify the cause and contributing factors when applicable, and develop preventive measures to protect the health and safety of any at-risk individuals.
- ~~(2)~~(3) The agency provider ~~and county board as a provider~~ shall ensure that all staff are trained and knowledgeable regarding the policy and procedure.
- ~~(3)~~(4) If the ~~UI~~unusual incident 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, guardian, or ~~family~~chosen representative, as applicable, at the individual's ~~home~~residence. The notification shall be made the same day that the incident is discovered.
- ~~(4)~~(5) ~~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.~~Independent providers shall complete an incident report, notify the individual's guardian or chosen representative, as applicable, and forward the incident report to the service and support administrator or county board designee on the day an unusual incident is discovered.
- ~~(5)~~(6) Each agency provider ~~and county board as a provider~~ and independent provider shall review all ~~UIs~~unusual incidents 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)~~(7) The ~~UI~~unusual incident reports, documentation of identified trends and patterns, and corrective action shall be made available to the county board and department upon request.

~~(7)~~(8) Each agency provider ~~and county board as a provider~~ and independent provider shall maintain a log of all ~~UIs~~unusual incidents. 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)~~(9) The agency provider and the county board ~~as a provider~~ shall ensure that trends and patterns of ~~UIs~~unusual incidents are included and addressed in each individual's service plan.

~~(N)~~(F) Oversight

(1) The county board shall review, on at least a quarterly basis, a representative sample of provider logs, including logs where the county board is a provider, to ensure that major unusual incidents have been reported, preventive measures have been developed, and that trends and patterns have been identified and addressed in accordance with this rule. The sample shall be made available to the department for review upon request.

(2) When the county board is a provider of services, the department shall review, on a monthly basis, a representative sample of county board logs to ensure that major unusual incidents have been reported and that trends and patterns have been identified and addressed in accordance with this rule. The county board shall submit the specified logs to the department upon request.

~~(1)~~(3) 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.~~

~~(E)~~(G) 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 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)~~(3) 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)~~(4) Upon the department's request, the provider shall provide to the department copies of personnel records that are not confidential.
- ~~(6)~~(5) The provider may redact any confidential information contained in a record as identified in paragraph ~~(E)~~(2)(G)(2) of this rule before the copies are provided to the county board or the department.
- ~~(7)~~(6) 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)~~(H) 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~~direct 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~~annual training on the requirements of this rule including a review of health and safety alerts ~~released~~issued by the department since the previous ~~calendar~~ year's training.
- (2) All ~~individual~~independent providers shall follow the requirements for initial training on the provisions of this rule ~~according to their certification requirements in accordance with rule 5123:2-2-01 of the Administrative Code~~ and shall receive annual training ~~from the date of certification on identification and reporting of MUIs and UIs and~~on the requirements of this rule including a review of health and safety alerts ~~released~~issued by the department 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~~are trained on the 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~~a review of health and safety alerts ~~released~~issued by the department 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.~~