

**POLICY 1200**  
**INCIDENTS ADVERSELY AFFECTING HEALTH AND WELFARE**

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## **1201 Purpose**

The Purpose of this policy is to define and establish a system to address major unusual incidents and unusual incidents and implement 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.

All Developmental Disabilities employees are responsible for safeguarding individuals from mistreatment, neglect, abuse, exploitation, misappropriation, unknown or suspicious injury and the effects of other Major Unusual Incidents.

All Developmental Disabilities employees will cooperate with investigation conducted by any entity authorized to conduct investigations. All Developmental Disabilities employees will respond to information requests within requested reasonable timeframes.

## **1202 Compliance**

This policy will reflect compliance with all applicable rules and laws, including but not limited to:

- ORC 5123.61 Duty to Report Abuse and Neglect
- ORC 2151.421 Duty to Report Child Abuse/ Neglect
- ORC 5126 County Board Structure and Responsibility
- ORC 5123.62 Bill of Rights for Persons with Disabilities
- OAC 5123-17-02 Addressing Major Unusual Incidents and Unusual Incidents to ensure health, welfare, and continuous quality improvement
- OAC 5123:2-1/ 5123-4 County Board of Developmental Disabilities
- OAC 5123:2-17-03 Abuser Registry
- ORC 5126.313 Investigations
- ORC 5123.612 Reporting Unusual Incidents

Compliance with changes in applicable rules and laws will supersede written policies until such time that the policy can be amended to reflect necessary changes.

## **1203 Definitions**

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

"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 OAC 5123-17-02 or a major unusual incident in category B as described in paragraph (C)(16)(b) of 5123-17-02, 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 of OAC 5123-17-02 and category B set forth in appendix B of OAC 5123-17-02) that correspond to two categories of major unusual incidents.

"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 OAC 5123-17-02, 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. The administrative review form varies based on the specific type of major unusual incident: "Law enforcement" will be completed using the administrative review form contained in appendix C of OAC 5123-17-02; "Unanticipated hospitalization" will be completed using the administrative review form contained in appendix D of OAC 5123-17-02; and "Unapproved behavioral support" will be completed using the administrative review form contained in appendix E to OAC 5123-17-02. 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.

"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.

"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.

"Common law employee" has the same meaning as in rule 5123-9-32 of the Administrative Code.

"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.

"Department" means the Ohio Department of Developmental Disabilities.

"Developmental center" means an intermediate care facility for individuals with intellectual disabilities under the managing responsibility of the department.

"Developmental disabilities employee" means: An employee of the department; A superintendent, board member, or employee of a county board; An administrator, board member, or employee of a residential facility licensed under section 5123.19 of the Revised Code; An administrator, board member, or employee of any other public or private provider of services to an individual with a developmental disability; or An independent provider.

"Incident report" means documentation that contains details about a major unusual incident or an unusual incident and will include, but is not limited to Individual's name; Individual's address; Date and time of incident; Location of incident; Description of incident that answers the questions, "who?, what?, when?, and where?"; Type and location of injuries;(g) Immediate actions taken to ensure health and welfare of individual involved and any at-risk individuals; Name of primary person involved and that person's relationship to the Individual; Names of witnesses; Statements completed by persons who witnessed or have personal knowledge of the incident; Notifications with name, title, and time and date of notice; Further medical follow-up; and Name and signature of person completing the incident report.

"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.

"Individual" means a person with a developmental disability.

"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 OAC 5123-17-02.

"Intermediate care facility for individuals with intellectual disabilities" has the same meaning as in section 5124.01 of the Revised Code.

"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 policy, employees of the department who are designated investigators are considered certified investigative agents.

"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 OAC 5123-17-02 when there is reason to believe the incident has occurred. There are three categories of major unusual incidents:

#### Category A

"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.

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

"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.

"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.

"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.

"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.

"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.

"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.

"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.

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

#### Category B

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

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

"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").

"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.

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

"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.

"Physical act" which means a physical altercation that: Results in examination or treatment by a physician, physician assistant, or nurse practitioner; or Involves strangulation, a bloody nose, a bloody lip, a black eye, a concussion, or biting which causes breaking of the skin; or Results in an individual being arrested, incarcerated, or the subject of criminal charges.

"Sexual act" which means sexual conduct and/or sexual contact or the purposes of sexual gratification without the consent of the other individual.

"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.

"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.

### Category C

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

"Unanticipated hospitalization" means: A hospital admission lasting forty-eight hours or longer that: 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 Is due to one or more of the following diagnoses: Aspiration pneumonia; Bowel obstruction; Dehydration; Medication error; Seizure; or Sepsis.

A hospital re-admission lasting forty-eight hours or longer that: 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 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.

"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.

"Ohio incident tracking and monitoring system" (also known as "OITMS") means the department's web-based system for reporting major unusual incidents.

"Physical harm" means any injury or other physiological impairment, regardless of its gravity or duration.

"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.

"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.

"Provider" means an agency provider or an independent provider.

"Qualified intellectual disability professional" has the same meaning as in 42 C.F.R. 483.430 as in effect on the effective date of OAC 5123-17-02.

"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.

"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.

"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.

"Team" means, as applicable: 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 An "interdisciplinary team" as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of OAC 5123-17-02.

"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 Of OAC 5123-17-02.

"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.

## **1204 Personnel**

The County Board will employ at least one investigative agent or contract with a person or governmental entity for the services of an investigative agent. The Investigative Agent will be certified by the department in accordance with rule 5123:5-07 of the Administrative Code and is responsible for conducting investigations in all MUIs unless the MUI is Ohio Department of Developmental Disabilities directed.

All Investigative Agents will receive training as approved by the Ohio Department of Developmental Disabilities for the performance of requirements in conducting investigations.

No Investigative Agent will do anything that interferes with the agent's objectivity in conducting investigations under ORC 5126.313

## **1205 Notification and Reporting Requirements for Major Unusual Incidents**

### **1205.01 Reporting Requirements**

All Developmental Disabilities employees are mandated reporters, nothing in this policy will relieve a mandated reporter of the responsibility to report any allegation of mistreatment, neglect, abuse, exploitation, misappropriation, or unknown/suspicious injury. All Developmental Disabilities employees are responsible for safeguarding individuals from mistreatment, neglect, abuse, exploitation, misappropriation, unknown/suspicious injury and the effects of other Major Unusual Incidents. All Developmental Disabilities employees are responsible for reporting of incidents in accordance with applicable laws, rules and this policy,

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 OAC 5123-17-02 followed regardless of where the incident occurred.

Reports regarding the following major unusual incidents will be filed and the requirements of OAC 5123-17-02 followed regardless of where the incident occurred: Unexplained or unanticipated death; Attempted suicide; Death other than unexplained or unanticipated; Exploitation; Failure to Report; Law Enforcement; Misappropriation; Missing Individual; Neglect; Peer-to-Peer acts; Physical Abuse; Prohibited Sexual Relations; Sexual Abuse; and Emotional Abuse.

Reports regarding the following major unusual incidents will be filed and the requirements of OAC 5123-17-02 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: Medical Emergency; Rights Code Violation; Significant Injury; Unanticipated Hospitalization; and Unapproved Behavioral Support.

All Category A, Peer to Peer incidents and inquiries from the media regarding a Major Unusual Incident will be reported immediately but no later than four hours after discovery. Reports must be made by actually speaking with a County Board Service and Support Administrator or Investigative Agent.

Any allegation of physical, sexual or verbal abuse, exploitation, failure to report; misappropriation, neglect, peer-to-peer acts, suspicious injury or mistreatment that may consistent a criminal act will be reported to local law enforcement or to Children's Protective Services for an individual under the age of 21. Reporters will document to whom the report was made and when. The County Board will ensure that the notification was made.

### **1205.02 Provider Responsibilities**

Immediately upon identification or notification of a major unusual incident, the provider will take all reasonable measures to ensure the health and welfare of at-risk individuals. 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 shall make the determination. Such measures will include: Immediate and ongoing medical attention, as appropriate; Removal of an employee from direct contact with any individual when the employee is alleged to have been involved in physical abuse or sexual abuse until such time as the provider has reasonably determined that such removal is no longer necessary; and other necessary measures to protect the health and welfare of at-risk individuals.

All Category A, Peer-to-Peer incidents and inquiries from the media regarding a major unusual incident will be reported immediately but no later than four hours after discovery. Reports must be made by actually speaking with a County Board Service and Support Administrator or Investigative Agent.

For all major unusual incidents, a provider will submit a written incident report to County Board Investigations by noon on the first working day following the day the provider becomes aware of a potential or determined major unusual incident. The report will be submitted in a format prescribed by the department, including but not limited to: Individual's name; individual's address; Date of incident; Location of incident; Description of incident; Type and location of injuries; Immediate actions taken to ensure health and welfare of individual involved and any at-risk individuals; Name of primary person involved and his or her relationship to the individual; Names of witnesses; Statements completed by persons who witnessed or have personal knowledge of the incident; Notifications with name, title, and time and date of notice; Further medical follow-up; and Name and signature of person completing the incident report.

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 of OAC 5123-17-02. The provider will submit the incident report and the administrative review form at the same time.

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 of OAC 5123-17-02 submitted when the situation meets the definition of unanticipated hospitalization in paragraph (C)(16)(c)(ii) of OAC 5123-17-02.

The Provider will make the following notifications as applicable on the same day of the incident or discovery of the incident. Notification of the occurrence of an MUI should include immediate actions taken: Guardian or other person whom the individual has identified; Service and support administrator serving the individual; Other providers of services as necessary to ensure continuity of care and support for the individual; Staff or family living at the individual's residence who have responsibility for the individual's care.

All notifications or efforts to notify will be documented. The county board will ensure that all required notifications have been made. Notification will NOT be made: If the person to be notified is the primary person involved (PPI), the spouse of the primary person involved (PPI), or the significant other of the primary person involved (PPI); or when such notification could jeopardize the health and welfare of an individual involved. 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.

### **1205.03 Investigative Agent Responsibilities**

Immediately, upon receiving a report of a major unusual incident, the County Board Investigative Agent shall: Ensure that all reasonable measures necessary to protect health and welfare of any at-risk individual have been taken and determine if additional measures are needed. The Ohio Department of Developmental Disabilities will be notified if the circumstances require an Ohio Department of Developmental Disabilities directed investigation. This notification will take place the day the County Board becomes aware of the incident

The Investigative Agent will enter preliminary information regarding the major unusual incident in the Ohio Incident Tracking and Monitoring System (OITMS) and in the manner prescribed by the department by five p.m. on the first working day following the day the county board receives notification or otherwise becomes aware of the major unusual incident.

The Investigative Agent county board or department, as applicable, will keep the provider apprised of the status of the administrative investigation so that the provider can resume normal operations as soon as possible consistent with the health and welfare of at risk individuals. The provider will notify the county board or department, as applicable, of any changes regarding the protective action.

Investigations will be the contact person(s) to receive and manage all reports of Major Unusual Incidents. 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 ORC 5123-17-02. 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 to the department.

If a report is received involving a resident of a developmental center, the report will be forwarded to the developmental center when the incident occurs or upon discovery. Developmental Center Investigative Agents are considered certified Investigative Agents and may have access to County Board records accordingly.

## **1206 Removal of a Developmental Disabilities Employee**

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.

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.

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.

The agency provider will notify the county board or department, as applicable, when the developmental disabilities employee returns to work.

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:

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.

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.

## **1207 Reporting of alleged criminal acts**

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.

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.

### **1208 Abused or neglected children**

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.

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.

### **1209 Notification requirements for Major Unusual Incidents**

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.

The provider will notify, as applicable: Guardian or other person whom the individual has identified; Service and support administrator serving the individual; Other providers of services as necessary to ensure continuity of care and support for the individual; Staff or family living at the individual's residence who have responsibility for the individual's care.

The provider will make notification on the same day the major unusual incident or discovery of the major unusual incident occurs. The notification will include immediate actions taken. The provider will document all notifications or efforts to notify.

The provider will not make notification: 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 When such notification could jeopardize the health and welfare of an

individual. 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.

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. The county board will ensure notifications as required by OAC 5123-17-02.

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.

## **1210 Investigating Major Unusual Incidents**

### **1210.01 Investigative Agent Responsibilities**

Immediately, upon receiving a report of a major unusual incident, the County Board Investigative Agent shall: Ensure that all reasonable measures necessary to protect health and welfare of any at-risk individual have been taken and determine if additional measures are needed.

All major unusual incidents require an administrative investigation meeting the applicable administrative investigation procedure in appendix A, or appendix B of OAC 5123-17-02. 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: Interviewing the reporter of the incident; Gathering relevant documents such as nursing notes, progress notes, or incident report; 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.

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.

Based on the facts discovered during administrative investigation 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 administrative investigation procedure will be followed to investigate the major unusual incident.

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, the history of the primary person involved has been reviewed, 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.

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

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.

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.

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.

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.

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.

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.

### **1210.02 Department-directed administrative investigations of major unusual incidents**

The Ohio Department of Developmental Disabilities may conduct a separate review or investigation of any Major Unusual Incident, or request that the investigation be completed by another county board, Regional Council of Government, or entity authorized to conduct investigations. Separate investigations may be conducted upon the request of a county board, developmental center, provider, individual, or guardian if the department determines that there is a reasonable basis for the request, and will be conducted in the following circumstances when the major unusual incident involves: The superintendent of a county board or developmental center or the Executive Director or equivalent of a Regional Council of Government; 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; An investigative agent; A service and support administrator; a major unusual incident contact or designee employed by a county board; An appointed member of the County Board; A person having any known relationship with any of the persons specified above: 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 activity, or committed physical abuse or neglect resulting in emergency room treatment or hospitalization.

### **1210.03 Written summaries of major unusual incidents in category A or category B**

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: 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; The residential provider and provider at the time of the major unusual incident; The individual's service and support administrator and support broker, as applicable.

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. 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.

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.

The Service and Support Administrator will be responsible for ensuring preventative measures are implemented based on the incident findings. If a service and support administrator is not assigned, a county board designee will be responsible for ensuring the preventive measures are implemented based upon the written summary.

### **1211 Complaint Resolution**

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 OAC 5123-17-02 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. An individual may receive assistance from any person selected by the individual to prepare a letter of dispute and provide supporting documentation.

The county board superintendent or his or her designee or the director of the department or his or her 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.

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.

## **1212 Review, Remedy, and Prevention of Major Unusual Incidents**

### **1212.01 Provider Responsibilities**

In addition to ensuring the immediate health and welfare of the individuals, the purpose of reporting and investigating major unusual incidents and unusual incidents is to identify and implement appropriate measures to prevent or reduce the likelihood of the reoccurrence.

Agency providers will implement a written procedure for the internal review of all major unusual incidents and will be responsible for taking all reasonable steps necessary to prevent the recurrence of major unusual incidents. 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.

Members of an individual's team will ensure that risks associated with major unusual incidents are addressed in the individual plan or individual service plan of each individual affected and collaborate on the development of preventive measures to address the causes and contributing factors to the major unusual incident. The team members will jointly determine what constitutes reasonable steps necessary to prevent the recurrence of major unusual incidents. If there is no service and support administrator, team, qualified intellectual disability professional, or agency provider involved with the individual, a county board designee will ensure that reasonably possible preventive measures are fully implemented.

### **1212.02 Investigative Agent Responsibilities**

The Ohio Department of Developmental Disabilities may review reports submitted by a county board. The department may obtain additional information necessary to consider the report, including copies of all administrative investigation reports that have been prepared. Such additional information will be provided within the time period specified by the department.

The Ohio Department of Developmental Disabilities will review and close reports regarding the following major unusual incidents: Attempted Suicide; Unexplained or unanticipated death; Death other than unexplained or unanticipated death; Exploitation; Medical emergency; Misappropriation; Neglect; Peer-to-peer act; Physical abuse; Prohibited sexual relations; Sexual abuse; Significant injury when cause is unknown; Emotional abuse; Failure to Report ;Any major unusual incident that is the subject of a director's alert; and any major unusual incident investigated by the department.

The county board will review and close reports regarding the following major unusual incidents: Law enforcement; Missing individual; Rights code violation; Peer to Peer act; Significant injury when cause is known; Unanticipated hospitalization; and Unapproved behavioral support.

The Ohio Department of Developmental Disabilities may review any case 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 that does not meet the requirements of OAC 5123-17-02. The county board will provide any information deemed necessary by the department to close the case.

The Ohio Department of Developmental Disabilities and the county board will consider the following criteria when determining whether to close a case: Whether sufficient reasonable measures have been taken to ensure the health and welfare of any at-risk individual; Whether a thorough administrative investigation has been conducted consistent with the standards set forth in OAC 5123-17-02; Whether the team, including the county board and provider, collaborated on developing preventive measures to address the causes and contributing factors; Whether the county board has ensured that preventive measures have been implemented to prevent recurrence; Whether the incident is part of a pattern or trend as flagged through the incident tracking system requiring some additional action; and Whether all requirements set forth in statute or rule have been satisfied.

### **1213 Analysis of Major Unusual Incidents**

Following the Investigation and remedy of Major Unusual Incidents, the County Board and Providers will review all reports of major Unusual Incidents in order to identify trends and patterns. The following guidelines for this analysis were developed by the Ohio Department of Developmental Disabilities.

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: Date of review; Name of person completing review; Time period of review; Comparison of data for previous three years; Explanation of data; Data for review by major unusual incident category type; 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); Specific trends by residence, region, or program; Previously identified trends and

patterns; and Action plans and preventive measures implemented to address noted trends and patterns.

Providers 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 that 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.

When the county board provides specialized services, an annual report for all programs operated by the county board will be sent to the department by February twenty-eighth of each year. The department will review the annual report to ensure that all issues have been reasonably addressed to prevent recurrence of major unusual incidents.

The county board 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.

The role of the committee will be to review and share the county data prepared by the county board to identify trends, patterns, or areas for improving the quality of life for individuals served in the county or counties.

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.

The county board 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.

The county board will ensure follow-up actions identified by the committee have been implemented.

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 as may be necessary to make recommendations.

#### **1214 Unusual Incidents**

Unusual incidents will be reported and investigated by the provider.

Each agency provider will develop and implement a written unusual incident policy and procedure that: Identifies what is to be reported as an unusual incident which will include unusual incidents as defined in OAC 5123-17-02; 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; Requires the report to be made no later than twenty-four hours after the occurrence of the unusual incident; and Requires the agency provider to investigate unusual incidents, identify the cause and contributing factors when applicable, and develop preventive measures to protect the health and welfare of any at-risk individuals. The agency provider will ensure that all staff are trained and knowledgeable regarding the unusual incident policy and procedure. The provider providing services when an unusual incident occurs will notify other providers of services as necessary to ensure continuity of care and support for the individual. Independent providers 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.

Each agency provider and independent provider will maintain a log of all unusual incidents. The log will contain only unusual incidents as defined in OAC 5123-17-02 and will include, but is not limited to, the name of the individual, a brief description of the unusual incident, any injuries, time, date, location, cause and contributing factors, and preventive measures. 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.

Members of an individual's team will ensure that risks associated with unusual incidents are addressed in the individual plan or 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.

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.

The department will conduct reviews of county boards and providers as necessary to ensure the health and welfare of individuals and compliance with OAC 5123-17-02. Failure to comply with OAC 5123-17-92 may be considered by the department in any regulatory capacity, including certification, licensure, and accreditation.

The department shall review and take any action appropriate when a complaint is received about how an administrative investigation or administrative review is conducted.

### **1215 Training**

All staff and providers in direct services positions are trained on the requirements of OAC 5123-17-02 prior to direct contact with any individual. Thereafter, staff employed in direct services positions will receive annual training on the requirements of OAC 5123-17-02 including a review of health and welfare alerts issued by the department since the previous year's training.

All staff employed in positions other than direct services positions are trained on the requirements of OAC 5123-17-02 no later than ninety calendar days from date of hire. Thereafter, staff employed in positions other than direct services positions will receive annual training on the requirements of OAC 5123-17-02 including a review of health and welfare alerts issued by the department since the previous year's training.

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

Independent providers will be trained on the requirements of OAC 5123-17-02 prior to application for initial certification in accordance with rule 5123-2-09 of the Administrative Code and will receive annual training on the requirements including a review of health and welfare alerts issued by the department since the previous year's training.

### **1216 Access to Records**

Reports made under section 5123.61 of the Revised Code and OAC 5123-17-02 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.

The county board will not review, copy, or include in any report required by OAC 5123-17-02 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. The 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.

Any party entitled to receive a report required by OAC 5123-17-02 may waive receipt of the report. Any waiver of receipt of a report will be made in writing.

### **1217 Abuser Registry**

The Clermont County Board of Developmental Disabilities and all providers of board services will make an inquiry to the Ohio Department of Developmental Disabilities Abuse Registry Unit prior to hiring any new personnel to ensure that the applicant is not listed in the Registry. The County Board or other providers of board services may not hire or contract with an individual whose name appears on the registry.

The County Board Investigative Unit is responsible for notifying the Department of Developmental Disabilities when an investigation may involve a potential registry issue.