

## Frequently Asked Questions (FAQs)

### Administrative Issues

Q. Do we report injury to staff or others, such as community people?

A. The section of PORII on injury pertains to individuals, not staff. An incident must be reported if it involves an individual and someone in the community and/or if the police were involved.

Q. What happens if an agency deems an incident as internal and later, after further investigation, determines that the incident is reportable?

A. The licensee should report immediately upon making the re-determination. The licensee will not be penalized for not reporting the incident previously because all of the facts were not available. However, a pattern of mis-identifying incidents as non-reportable will be subject to review and possible sanctions.

Q. Who is the state protection and advocacy agency?

A. The Maryland Disability Law Center (MDLC).

Q: If you do not have any internally investigated incidents in a quarter, do you still need to complete a report?

A: Yes, on the A5 report the agency shall state that there were no internally investigated incidents during the particular quarter.

Q: Did the timeframe for submitting an Agency Investigation Report for a **reportable incident** change? Please describe the timeframe.

A: Yes, In 2013 the policy was revised. An agency is required to submit an Agency Investigation Report within 10 working days of discovery for all reportable incidents.

Q: What is the timeframe for completing the Agency Investigation Report for an **internally investigated** incident?

A: The timeframe for completion of the Agency Investigation Report for **internally investigated incidents** continues to be within 21 working days of discovery.

### OHCQ Screening and evaluation

Q: The OHCQ incident screening and evaluation process refers to “immediate jeopardy.” Please provide some examples of immediate jeopardy.

A: Examples of immediate jeopardy may include: fires; second and third degree burns; lack of food, medication or treatment; serious medication errors; status epilepticus; poor diabetic care or, suicide attempts.

Q: The OHCQ incident screening and evaluation process refers to “high priority incidents.” Please provide some examples of high priority incidents.

A: Examples of high priority incidents may include: being hit with an object; denied assistance with activities of daily living; or obtained suspicious injury.

Q: The OHCQ incident screening and evaluation process refers to “medium priority incidents.” Please provide some examples of medium priority incidents.

Examples of medium priority incidents may include: unplanned hospitalizations, certain rights violations; or lack of appropriate programs.

Q: When OHCQ evaluates incidents and complaints, what factors are taken into account when determining the need for investigation?

A: OHCQ takes into account many factors, including:

- i. Did the individual receive needed intervention and health care in a timely manner?
- ii. Did the agency’s staff competently respond to the incident?
- iii. Is there any indication that regulations have been violated?
- iv. Is there any evidence of a pattern of abuse or neglect?
- v. Is there a pattern of this incident type being reported by the agency?
- vi. What is the agency’s incident reporting and investigation track record?
- vii. Does the individual’s incident history add to the impact of the incident under review?
- viii. Is the agency currently under sanctions?
- ix. Does the situation indicate an on-going threat to the individual?
- x. What is the extent or severity of the incident or injury?

### **Agency Internal Protocol**

Q. Can the director designate someone within his/her agency to be contacted if he/she is not available?

A. A designee can be named in the director's absence (see page 5 of PORII). However, this needs to be addressed in the licensee's internal protocol.

Q. Who completes the reportable incident from the agency, the person who sees it or the person who reports it?

A. The licensee's internal protocol should address this issue. Keep in mind that staff should be qualified to report and investigate incidents as per page 5 of PORII.

Q. Should one person in the agency to do all the reporting?

A. This is up to the licensee's internal protocol. Keep in mind that staff should be qualified to report and investigate incidents as per page 5 of PORII.

Q. Where are the records for reportable incidents kept? In an individual's file or separate binder?

A. The licensee's internal protocol needs to address this issue. It is recommended that the agency keep the reports in a place where they are easy to locate. Reports need to be available to the individual and his/her team, but confidentiality of records also must be maintained. Records can be identified by individual name or a unique identifier. Incidents involving more than one individual must be retrievable for all individuals involved.

Q. In the situation where an individual is in residential and day services, within the same agency, who is responsible for reporting?

A. The discovering arm of the agency is responsible for reporting, but can defer to the other part of the agency, as per the licensee's internal protocol. Please remember that qualified staff from the agency must complete the reporting of all incidents. Please also refer to "Irregular Situations" below.

### **Irregular Situations**

Q: How does the policy require agencies to handle an incident that is alleged for an individual that:

- a) lives in a DDA-licensed residential site;
- b) attends a DDA-licensed day program; and/or
- c) receives a support service from a DDA-licensed provider, ***but the incident did not occur while the individual was under the direct supervision of the agency providing the service***, e.g., during a family visit, visit at a relative or friend's home, at another facility, in school, at a camp or while on a vacation trip?

A: The agency shall report to authorities and community resources, as indicated, e.g., law enforcement authorities, Protective Services, etc. and investigate per their direction.

Q: What are the reporting requirements of an agency that discovers an incident that occurred while the individual was receiving services from another agency? (For example, day program staff alleges that an incident occurred at a residential site or residential staff alleges that an incident occurred at a day program site.)

A: The discovering agency shall: (1) Document the allegation using the method determined in their internal protocol and (2) notify the other agency (agency 2) of the allegation<sup>1</sup>. Agency 2 (where the alleged incident occurred) shall report the incident, and shall investigate, correct and monitor the situation and inform the discovering agency of the progress and outcome of those activities. The IR and AIR are to be submitted to OHCQ, the DDA RO, and other authorities as dictated by the requirements of this policy. If the discovering agency is not satisfied that the event/situation is being handled appropriately, it shall bring the event/situation to the attention of OHCQ and/or the appropriate DDA regional office, by submitting an Incident Report (IR). OHCQ and/or DDA shall follow-up and take steps to assure appropriate action by agency 2.

Q: When there is disagreement between the two agencies as to the location of the incident and which agency is required to report the incident, which is required to report and investigate the incident?

A: When there is disagreement, both agencies are required to report and investigate the incident.

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<sup>1</sup> Article - Health – General; Title 7. Developmental Disabilities Law; Subtitle 10. Rights of Individuals §7–1005. (b) (1) In addition to any other reporting requirement of law, a person who believes that an individual with developmental disability has been abused promptly shall report the alleged abuse to the executive officer or administrative head of the licensee.

## **Issues Concerning Certain Incident Types**

### **Abuse:**

Q: What does the agency do with the staff person, if accused of abuse, while the police are completing their investigation?

A: The responsibility of the licensee is to ensure the safety and well-being of all individuals involved in an incident. Licensees should address this issue and their response in their internal protocol.

Q: Where can an agency learn more about the ethical responsibilities of a certified nursing assistant (CNA) or a medication technician (CMT)?

A: COMAR 10.39.07.02 delineates the ethical responsibilities of certificate holders. (Title 10 Department of Health and Mental Hygiene, Subtitle 39 Board of Nursing-Certified nursing Assistants, Chapter 07 Certified Nursing Assistants/Certified Medication Technicians (CNA/CMT) — Code of Ethics)

Q: What is a "Certificate holder?"

A: "Certificate holder" means an individual who is certified under Health Occupations Article, §8-6A-05 or 8-6A-08, Annotated Code of Maryland, as either a certified nursing assistant in any category or a medication technician.

Q: An agency's investigation indicates a Certificate holder (CNA and CMT) has violated the Code of Ethics. Is the agency required to report to the Maryland Board of Nursing?

A: Yes. For more information please see the Appendix 2A, 2B 2I.

Q: What format are agencies required to follow when making a report to the Maryland Board of Nursing (MBON) regarding a violation of the Code of Ethics?

A: There is no prescribed format, but a complaint form is available on the MBON website. The agency's internal protocol must indicate the agency's method of reporting. At the time the PORII was revised, ethical breaches are reported via e-mail to [econe@dnhm.state.md.us](mailto:econe@dnhm.state.md.us), by fax to 410-358-3530, or by mail to

Maryland Board of Nursing  
Complaints & Investigations Division  
4140 Patterson Avenue  
Baltimore, MD 21215-2254

For more information, the MBON can be reached by calling 410-585-1925 or 1-888-202-9861.

### **Neglect:**

Q: Are all incidents categorized as *neglect* reportable to the police?

A: No, in 2013 the policy was revised. Although all allegations of neglect are categorized as reportable incidents, only the following incidents of neglect are reportable to the police. The failure to provide proper care, attention, supervision to an individual that results in:

- (1) The existence of an immediate, substantial risk of life-threatening harm to an adult in need of protective services or
- (2) Circumstances or conditions which might reasonably result in mistreatment and could cause injury.

Q: Regarding neglect, can you provide examples of, “substantial risk of life-threatening harm?”

A: Examples of substantial risk of life-threatening harm include: Death, Hospitalization, ER visit due to a reportable injury, , Human/animal bites, 1<sup>st</sup> or 2<sup>nd</sup> degree burns, Lacerations and diagnosis of malnutrition by LHCP not related to an illness.

Q: Regarding neglect, can you provide examples of, “circumstances or conditions which might reasonably result in mistreatment and could cause injury?”

A: Examples of circumstances or conditions which might reasonably result in mistreatment and could cause injury include: dehydration not related to an illness, failure to follow up with LHCP recommendations due to a life threatening condition or to rule out a life threatening condition, failure to provide essential medical treatment or follow up that is consistent with those of the general population, failure to provide a safe environment (related to IP indication of a history (e.g. PICA) or Behavior Plan guidelines (e.g.: sharps lock due to suicidal ideation) or diagnosis of severe weight loss not related to an illness. Federal guidelines define the following as severe: 1 month-over 5% body weight; 3 months-over 7.5% body weight; 6 months-over 10% body weight

## **Deaths**

Q: How and where do agencies document that family does not want to be contacted except in case of death?

A: This documentation should be kept in the individual’s file.

Q: Do natural or expected deaths have to be reported to the police?

A: All deaths that occur at a licensed site or during the provision of a licensed service must be reported to the police. Agencies must notify the police as noted in §7–206. “Upon notification of the death of an individual in a program or facility funded or operated by the Administration, the administrative head of the program or facility shall report the death immediately to the sheriff, police, or chief law enforcement official in the jurisdiction in which the death occurred.”

Q: Who notifies the Medical Examiner’s Office?

A: In accordance with § 5-309(b) The sheriff, police, or chief law enforcement officer shall inform a medical examiner, and the medical examiner, if necessary, shall conduct an investigation.

Q: Do deaths need to be reported to the health department?

A: All deaths that occur at a licensed site or during the provision of a licensed service must be reported to the health officer in the jurisdiction where the death occurred by the close of business the next working day. Agencies must notify the health department as required by §7–206.

Q: Do deaths need to be reported to the State protection and advocacy system (MDLC)?

A: All deaths that occur at a licensed site or during the provision of a licensed service must be reported to the designated State protection and advocacy system by the close of business the next

working day. Agencies must notify the State protection and advocacy system as required by §7-206.

Q: Can report of death be left on regional office voice mail?

A: Yes, you can leave a message to report a death, but remember to follow-up with an Incident Report (IR) to both OHCQ and the regional office within one working day.

Q: If the individual is living at home with family, does a report of death have to be filled out?

A: Yes, a report must be completed if the individual is receiving any type of DDA funded service.

Q: If a person receives DDA-funded residential and day services (from more than one agency), who is responsible for reporting death?

A: Both agencies are required to report.

### **Hospitalization**

Q: Do all hospital admissions meet the criteria of a reportable incident?

A: No. If a person's IP **documents** a need for frequent/repeated hospitalizations because of a chronic condition then the hospital admission is treated as an internally investigated incident

Q: How do agencies report a planned hospital admission?

A: Agencies do not report (or internally investigate) planned hospital admissions. Examples of planned hospital admissions include scheduled surgery, planned treatments such as chemotherapy, dialysis, testing such as CT scan, ultrasound, colonoscopy, etc. Documentation regarding these planned admissions must be discussed by the team and made part of each individual's IP.

### **Injury**

Q: How does an agency classify specific injury types not listed on the Appendix 1E?

A: In the text of the policy, injuries have been categorized for the purpose of providing a guideline to agencies in determining the appropriate reporting and investigating requirements. Agencies should exercise cautious judgment in determining the extent of medical attention that is required for any injury in determining the appropriate reporting and investigation requirements. For additional information on terms, consult your agency nurse or "The American Red Cross First Aid and Safety Handbook." If still unsure, agencies should consult the DDA regional office for technical assistance.

### **Incidents Reported To or Requiring Services of a Law Enforcement Agency or Fire Department**

Q. At state residential centers and forensic residential centers, where security is considered a law enforcement agency, do we report to them?

A. Yes.

Q: Must all injuries result in either an internally investigated incident or a reportable incident?

A: No. Injuries that may or may not require minor routine treatment do not require the completion of an IR. These include Minor Abrasions, Blisters (intact, unopened), Skin Irritation, Minor Bruises/contusions of known origin or the result of medical treatment, Sunburn with no peeling or blisters, Insect bites, stings, or other bites (with no evidence of allergic reaction), Minor scratches, Shaving nicks, or Paper cuts.

### **Medication Error**

Q: Are "self-medication" errors reportable incidents?

A: Yes, if adverse effects are present (see Appendix 1F).

### **Choking**

Q: Is choking reportable?

A: In 2013 the policy was revised to include choking. Please see Appendix 1G to see when choking is internally investigated and when it is reportable.

### **Resource Coordination**

Q: Are Resource Coordinators required to report incidents?

A: Yes. The responsibilities of Resource Coordinators are outlined in this policy in Section C on page 8.

Q: Does the policy require agencies send the IR to the Resource Coordinator who works with the individual identified in the Appendix 4?

A: Yes, in 2013 the policy was revised.

Q: Under what authority are agencies required to disclose Incident Reports to Resource Coordinators?

A: Disclosure of the Incident Report is required under Maryland Code Health General Title 7- Developmental Disabilities Law, Subtitle 10 - Rights of Individuals, Section 7-1010 - Records - Consent to disclosure.

Q: Does the policy require agencies send the AIR to the Resource Coordinator who works with the individual identified in the incident report?

A: No. agencies are not required to provide the Resource Coordinator with the Agency Investigation Report (AIR). Agencies are required to collaborate with Resource Coordinators to make sure that appropriate action is taken to protect the participant from harm. The agency is required to advise the Resource Coordinator of the interventions taken and follow-up plan that will prevent future recurrence.

***INCIDENTS NOT REPORTED***

**MECHANICAL SUPPORTS-**

The use of a mechanical device to support a person's proper body position, balance or alignment, such as splints, wedges, bolsters or lap trays, or to protect a person with a continuing medical condition from sustaining an injury.

**PLANNED USE OF RESTRAINTS -**

The use of a mechanical device or physical intervention that is approved as part of a person's behavior plan which has been reviewed and approved by the standing committee.

**CHEMICAL SUPPORTS –**

The use of medication as an intervention to support a person for a medical appointment that would not typically require sedation which has been reviewed and approved by the standing committee.