

DEPARTMENT OF HUMAN SERVICES

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**EFFECTIVE DATE:** August 17, 2022

**ISSUE DATE:** August 17, 2022

**SUBJECT: INCIDENT REPORTING AND MANAGEMENT**

**I. PURPOSE**

The purpose of this Administrative Order is to establish policy and procedures for reporting, managing and responding to allegations and events (incidents) affecting the health, safety and well-being of individuals receiving services from and/or through the Department of Human Services (DHS) utilizing the DHS New Jersey Incident Reporting and Management System (NJ-IRMS). Ensuring the health, safety and well-being of these individuals is of paramount concern. Reporting such incidents helps protect these individuals and allows DHS, its Divisions, facilities and provider agency partners to reduce risk and prevent recurrence. Facilities, provider agencies, and programs are mandated, and the general public is encouraged, to report all concerns and information related to allegations and/or events to DHS. Reporting ensures that incidents are documented, addressed and receive necessary follow up.

This Administrative Order:

- A. Establishes Department-wide practices for identifying, defining and documenting reportable allegations and/or events.
- B. Provides timeframes for reporting allegations and/or events.
- C. Establishes parameters for the timely and appropriate response to reported allegations and events.
- D. Identifies standards for closing reports related to allegations and/or events.
- E. Facilitates individual and aggregate data analyses, including identifying patterns and trends that can inform prevention strategies related to allegations and/or events on an individual and/or systemic level.

F. Promotes effective and efficient service management and strategies aimed at reducing risk.

This Administrative Order supersedes all Division-specific protocols. A Division may have Division-specific procedures regarding actions to be taken in response to incidents. However, all Division-specific procedures related to the subject of this Administrative Order must be reviewed and approved by the DHS Office of Program Integrity and Accountability (OPIA) before implementation.

## **II. SCOPE**

This Administrative Order applies to DHS and each entity operated, licensed, or regulated by, or receiving funding directly or indirectly from a Division, Office, or Commission of DHS.

## **III. AUTHORITY**

Various statutes and regulations govern the reporting of incidents and investigations in DHS facilities and programs including but not limited to:

N.J.S.A. 30:1-12.1 Investigations by Commissioner

N.J.S.A. 52:27G-7.1 Report of Suspected Abuse

N.J.S.A. 26:2H-12.23, et seq., Patient Safety Act

N.J.S.A. 30:6D-5.1 et seq., Danielle's Law

N.J.S.A. 30:6D-77 et seq., Central Registry of Offenders against Individuals with Developmental Disabilities

N.J.A.C. 8, Chapter 57, Communicable Diseases

45 CFR 2.1, et seq., Confidentiality of Substance Use Disorder Patient Records

P.L. 2017 Chapter 238 "Stephen Komninos' Law"

#### IV. **GENERAL DEFINITIONS**

**“Abuse”** means wrongfully inflicting or allowing to be inflicted physical abuse, sexual abuse, or verbal or psychological abuse or mistreatment by a caregiver upon an individual receiving services from DHS.

**“Allegation”** means an assertion that someone has committed an act of abuse, neglect, or exploitation against an individual receiving services from DHS.

**“Business day”** means Monday through Friday, 8:00 AM to 6:00 PM, except State holidays. If this Order directs reporting in terms of a business day for an event or allegation that occurs on a weekend or holiday, the reporting may take place on the next business day.

**“Caregiver”** means a person who receives State funding, directly or indirectly, in whole or in part, or who volunteers to provide services or supports, or both, to an individual receiving services from the Department of Human Services.

**“Entity”** means a program, facility, community care residence, or living arrangement licensed or funded by DHS, directly or indirectly, or a person or agency providing community-based services.

**“Event”** means an occurrence that affects the health, safety or well-being of an individual receiving services.

**“Exploitation”** means the act or process of a caregiver using an individual receiving services from DHS or his or her resources for another person's profit or advantage.

**“Incident”** means an allegation(s) and/or event(s) that are reportable to DHS.

**“Neglect”** shall consist of any of the following acts by a caregiver on an individual receiving services from DHS: willfully failing to provide proper and sufficient food, clothing, maintenance, medical care, or a clean and proper home; or failure to do or permit to be done any act necessary for the well-being of an individual with a developmental disability.

See Attachment A for definitions of specific allegations and events.

## V. **POLICY**

### A. Critical Incident Management Unit

1. The Critical Incident Management Unit (CIMU) within OPIA facilitates and oversees the appropriate tracking, management and organizational response to all reported incidents occurring in facilities, agencies and programs licensed, regulated, or receiving funding from DHS. CIMU has authority over the coding of incidents to ensure accuracy and consistency throughout DHS.

### B. Reporting

1. All DHS employees and any person employed or volunteering in a program, facility, community care residence, or living arrangement licensed or funded by DHS, directly or indirectly, or a person providing community-based services funded by DHS, as applicable, having reasonable cause to believe that an individual receiving services from DHS has been subjected to abuse, neglect, or exploitation by a caregiver shall report the same to DHS.
2. Incidents should be reported as quickly as safety allows (even during the event in some cases). All incidents must be reported, at a minimum, within the timeframes established by Section VI. A. 2. and 3. of this Order.
3. All reported incidents should include a summary of all actions taken in response to the allegation/event, including those taken to protect the health, safety and well-being of individuals served, personnel actions, and policy/procedure changes.
4. Failure to report acts of abuse, neglect or exploitation involving individuals receiving services from DHS may result in discipline and criminal or civil penalties.

### C. Maintaining Records

1. DHS will maintain a computerized database of all reported incidents, which is the New Jersey Incident Reporting and Management System (NJ-IRMS).

2. Access to data will be provided to appropriate staff in accordance with federal, state, and DHS confidentiality rules.
3. Each Division and its components will have specific access rights to such data. OPIA will review all requests for access rights and conduct periodic reviews of assigned access rights to ensure that staff has access appropriate to their job assignment and duties.
4. The database will enable DHS, its Divisions and Offices, and facility staff to conduct trend analysis and identify factors associated with incidents or cohorts of incidents.

#### D. Confidentiality of Reports

1. All records, reports, or other information, whether written, verbal, or electronic, that directly or indirectly identify an individual currently or formerly receiving services from DHS, shall be kept confidential.
2. Incident reports, investigation reports and other related records are not public and can only be released under certain circumstances upon consultation with DHS legal staff.
3. Each incident report will be maintained in accordance with the State Record Retention Schedules along with the state and federal confidentiality laws including, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA) and its implementing regulations.
4. Electronic files shall be protected in accordance with federal, state, and Department confidentiality rules.
5. DHS staff who fail to maintain the confidentiality of such records in accordance with this policy, or with state and federal laws, may be subject to monetary penalties and/or corrective/disciplinary action in accordance with DHS Administrative Order 4:08, Disciplinary Action Policies and Responsibilities.

#### E. Regulatory Compliance

1. This policy requires compliance with any existing federal and state laws and regulations mandating the reporting of incidents to other units or agencies as applicable, including but not limited to the following:
  - a. Human Services Police;
  - b. Centers for Medicaid and Medicare Services;
  - c. Department of Children and Families;
  - d. Disability Rights New Jersey;
  - e. Department of Community Affairs;
  - f. Department of Health;
  - g. Drug Enforcement Administration;
  - h. Adult Protective Services;
  - i. Office of the Ombudsman for Individuals with Intellectual and Developmental Disabilities and their Families;
  - j. Office of the Long-Term Ombudsman;
  - k. U.S. Department of Health and Human Services.

#### F. Guardian Notification

1. An individual's guardian shall be informed of all reportable incidents involving the individual within one business day of the incident. Notification to the guardian shall be documented in the incident report.
2. In DHS facilities, community residential settings, or day programs providing services to individuals with developmental disabilities, notification in-person or by phone within two hours must be made by the service provider/facility to an individual's guardian of all major, moderate and minor physical injuries related to incidents or allegations of abuse, neglect or exploitation, or any moderate or major injury regardless of the cause.
  - a. If there is no guardian, a family member who requests notification may be notified if consistent with state and federal confidentiality rules, unless the individual prohibits the family member from receiving this information.

- b. If notification cannot be provided within two hours for a legitimate reason, notification must be provided within eight hours and a written explanation of the cause for the delay must be provided to the guardian or family member and to DHS within 14 days. Such written notification shall be reported to DHS via an incident follow-up report forwarded to CIMU.

#### G. Law Enforcement Notification

1. Any allegation of a violation of the New Jersey Code of Criminal Justice involving an individual receiving services from and/or through DHS shall be reported to law enforcement authorities.
2. Notification to law enforcement authorities can occur before, during or after the investigation of the incident, depending on when the allegation of criminal misconduct is first known. Law enforcement notification may be required for incident types including but not limited to:
  - a. Unexpected, sudden or unusual deaths;
  - b. Sexual abuse or assault;
  - c. Physical abuse or assault;
  - d. Neglect;
  - e. Exploitation;
  - f. Theft/loss of money or property;
  - g. Major Injuries;
  - h. Illegal contraband.
3. Reporting entities may be directed to contact law enforcement by DHS in certain circumstances.
4. Pursuant to Administrative Order 1:50, Centralized Police Operations, the Chief Executive Officer, or other persons in charge at each DHS facility shall promptly alert police personnel to any criminal acts, violations of the law, or suspicious acts or incidents that may infringe upon the orderly and proper administration of the facility.

#### H. Incident Verification

1. Within 48 hours after receipt of a report of an incident involving moderate physical injury, major physical injury, or abuse, neglect, or exploitation in a State developmental center or community-based residential program providing services to individuals with developmental disabilities, a DHS employee shall verify the level of severity of the incident.
2. Results of the verification visit shall be documented in NJ-IRMS.

### VI. **PROCEDURES**

#### A. General Information

1. Each entity covered by the scope of this Administrative Order shall report all categories of incidents in compliance with the reporting categories and timeframes prescribed below.
2. Level A allegations or events, as defined in Attachment A, must be reported to DHS in writing using the designated incident reporting format as soon as possible but no later than the end of the business day.
3. Level B allegations or events, as defined in Attachment A, must be reported to DHS in writing using the designated incident reporting format within one business day.
4. Each Division and facility shall designate staff to enter required information about incidents into NJ-IRMS.
5. Incidents may include allegations of abuse, neglect or exploitation and/or events affecting the health, safety or well-being of individuals receiving services from DHS. Attachment A contains a list of reportable allegations and events. Allegations and events are further categorized into two levels – Level A and Level B. If any incident falls into more than one category with different reporting levels, it shall be assigned the higher reporting level.

#### B. Allegations from the Public

Each Division shall establish a policy/procedure for the receipt, handling, dissemination and response to complaints from the public that includes a review of all complaints for allegations and events that are reportable to DHS. The policy/procedure must be submitted to and approved by the director of OPIA. The policy/procedure shall include:

1. A process to ensure events and allegations identified in the complaint are entered into NJ-IRMS per the aforementioned timeframes and standards;
2. A process that identifies those responsible for reviewing complaints and routing to the appropriate unit(s) for response and follow up.

### C. Reporting

#### 1. Procedures

- a. Incident Reports should be e-mailed, uploaded, or faxed using DHS's incident reporting form to the appropriate Division personnel.
- b. Each Division shall designate personnel (primary and backup) to receive such reports/notification.
- c. Designated personnel shall enter an unusual incident report into NJ-IRMS in accordance with the timeframes set forth below:
  - i. Level A incidents shall be entered upon receipt;
  - ii. Level B incidents shall be entered by the end of the workday or as soon as possible on the next business day.
- d. If further investigation discloses the need for an upgrade or downgrade of the incident level, a follow-up report should be submitted as appropriate.
- e. Any delay in the reporting of any incident, regardless of the reporting level, must be explained in the initial incident report.

#### D. Investigations

1. All allegations of abuse, neglect, or exploitation require an investigation and a finding for each allegation. Other events may also require investigation and/or follow-up as determined by the identified code and location.
2. Certain allegations of abuse, neglect, and exploitation are investigated by the DHS Office of Investigations (OI), as indicated in Attachment A. OI conducts civil investigations and issues findings indicating whether an allegation is substantiated or unsubstantiated based on a preponderance of evidence standard. The preponderance of evidence standard means that an allegation is more likely true than not.
3. On a case-by-case basis, internal and/or external entities may, through CIMU, request an OI investigation for allegations or events not covered by number 2, above. Decisions regarding OI investigations are at the discretion of the Director of the Office of Performance Management (OPM) and/or OI Director.
4. For allegations related to abuse, neglect and/or exploitation, providers shall immediately initiate and conduct an internal investigation, unless otherwise directed not to do so by law enforcement or OI. Provider agencies shall ensure that investigations are conducted by staff who are impartial and not directly involved in the incident under investigation. Investigations conducted by providers shall, at a minimum, include the following:
  - a. Interview and summary of interview for all alleged perpetrators (or a statement as to why an alleged perpetrator could not be interviewed);
  - b. Interview and summary of interview for all alleged victims (or a statement as to why an alleged victim could not be interviewed);
  - c. Interview and summary of interview for all identified witnesses and/or collateral contacts (or a statement as to why a witness/collateral contact cannot be interviewed);
  - d. Summary of all physical and documentary evidence obtained;
  - e. Identified findings for each allegation, alleged victim, and alleged perpetrator, including a justification for each finding.
5. Providers shall notify the guardian of an individual receiving services from the Department of Human Services who is the alleged victim of an

allegation of abuse, neglect or exploitation at the start of the investigation. If there is no guardian, a family member who requests notification may be notified if consistent with State and federal confidentiality rules, unless the individual prohibits the family member from receiving this information.

6. Providers shall submit investigation reports to the respective DHS entity responsible for closure as indicated in Attachment A. Additional information may be requested by the responsible closing entity in order to close an incident.
7. Each DHS entity shall maintain a process/entity to receive provider corrective actions taken in response to an allegation or event. Providers shall also submit any required corrective action plans to the responsible DHS entity.

#### E. Closing Criteria

1. Events may be closed by Division/Facility staff or CIMU when sufficient information is provided to determine whether or not the event occurred.
2. Those entities responsible for closure of an incident (i.e., OI, CIMU, Division or Facility) are indicated on Attachment A.
3. Allegations of abuse, neglect or exploitation shall not be closed by CIMU or OI until the following steps are completed:
  - a. A thorough investigation and/or evaluation of the incident has been completed by an objective party in accordance with applicable statutory, regulatory, and/or policy-related timeframes;
  - b. The investigation or evaluation has arrived at an objective conclusion based upon the evidence and facts;
  - c. The investigation or evaluation has identified concern(s)/made recommendation(s) that delineate the scope of required corrective plans and designate targeted timeframes for implementation to prevent recurrences of the incident;
  - d. All relevant facts and conclusions regarding the incident have been presented to the facility administration, Division, and Department management;

- e. The entity responsible for completing the investigation has informed the legal guardian of the outcome of the investigation, including findings when the incident is closed;
- f. All allegations must have one of the following findings:
  - i. **Substantiated:** There is a preponderance of credible evidence that an allegation or a situation is true and/or occurred.
  - ii. **Unsubstantiated:** There is less than a preponderance of credible evidence, facts, or information to support the allegation or situation is true and/or occurred.
  - iii. **No Findings:** There is not enough available information to reach a conclusion, or the event does not require a finding.

#### F. Monitoring and Compliance

Facility, Division, and DHS administrators and supervisors are responsible for identifying deficiencies in the Incident Reporting System and implementing appropriate remedial action. OPIA shall monitor compliance with this Order.

### VII. PROCEDURAL HISTORY

This Administrative Order revises and replaces the latest revised Administrative Order 2:05 which was issued on August 18, 2004 and effective on October 1, 2004. Administrative Order 2:05 was initially issued on April 28, 1997.

Date: August 17, 2022

/s/

Sarah Adelman  
Commissioner