

## **PRIORITIZATION PROTOCOL FOR INCIDENTS OF ABUSE, NEGLECT, SERIOUS INJURY, MEDICATION ERROR, DEATH AND COMPLAINTS**

### **A. Purpose.**

(1) The purpose of the Prioritization Protocol for Reportable Incidents of Abuse, Neglect, Serious Injury, Medication Errors, Death, and Complaints is to outline the reportable incident screening and prioritization process for these types of events; delineate the roles and responsibilities of the Office of Health Care Quality (OHCQ), Developmental Disabilities Administration (DDA), and any other entities involved in investigations; establish timelines for the investigation and issuance of reports related to certain specified reportable incidents; and, identify the procedures for monitoring the implementation of plans of correction.

(2) This protocol augments the DDA's *Policy on Reportable Incidents and Investigations* (PORI) and the OHCQ's *Incident Screening Committee Guidelines*. The protocol provides insight into how reportable incidents are reviewed, evaluated and prioritized for investigation. The protocol does not include procedures to be followed when an incident or complaint is referred to another unit within OHCQ or appropriate external agency.

(3) The OHCQ investigates reportable incidents, events or problems involving an individual in a community agency or state residential center based on their scope and severity. The OHCQ and DDA have the prerogative and authority to investigate any incident, including those which are not reported to OHCQ and/or DDA.

### **B. Incident Screening Process.**

(1) All licensed providers and state residential centers are required to identify, report, investigate, review, correct and monitor any event that threatens the health, safety or well-being of individuals receiving services. Licensee requirements for the submission of reportable incidents to DDA and OHCQ are outlined in DDA's PORI, under "General Requirements" and under "Appendices 1 and 2", which are incorporated by reference.

(2) Provider self reported incidents and complaints are reviewed upon receipt by OHCQ to ensure that those incidents posing immediate jeopardy to the individual are immediately investigated. This decision making process is not dependent upon the Incident Screening Committee (ISC). A triage specialist reviews each report and notifies the DD Investigations Unit manager of the need to evaluate the report for appropriate assignment based upon the severity and scope of the incident. (See Section C.)

(3) The ISC, at OHCQ, meets weekly to review all self reported incidents or complaints that have not been acted upon. The ISC takes into account the many factors as appropriate when reviewing incidents, such as:

- (a) Did the individual receive needed intervention and health care in a timely manner?
- (b) Did the licensee's staff competently respond to the incident?
- (c) Is there any indication that regulations have been violated?
- (d) Is there any evidence of a pattern of abuse or neglect?
- (e) Is there a pattern of this incident type being reported by the licensee?
- (f) What is the provider's incident reporting and investigation track record?

- (g) Does the individual’s incident history add to the impact of the incident under review?
- (h) Is the licensee currently under sanctions?
- (i) Does the situation indicate an on-going threat to the individual?
- (j) What is the extent or severity of the incident or injury?

In addition, the ISC takes into consideration the number and frequency of serious reportable incidents or complaints reported by the licensee and the quality of the licensee’s internal investigations.

(4) When an incident is alleged to have occurred outside of a site or service licensed by DDA, the ISC refers it to the appropriate entities or jurisdictions for their review and investigation. Incidents that could involve possible criminal prosecution are referred to the OHCQ Patient Abuse Unit (PAU). Incidents involving sexual and physical abuse often fall into this category. When indicated, the PAU refers incidents to the Attorney General’s Medicaid Fraud Control Unit for consideration of filing criminal charges. When an incident involves legal issues for the individual, the ISC refers it to the Maryland Disability Law Center (MDLC).

### C. Incident Prioritization and Guidelines for Investigation.

- (1) The ISC assigns a priority level based on the following:

| PRIORITY LEVEL                     | PRIORITY DESCRIPTION | CLASSIFICATION CRITERIA TO DETERMINE PRIORITY LEVEL OF INCIDENT  | RESPONSE TIME  |
|------------------------------------|----------------------|--|--|
| 1<br><br><i>ACTs-A<sup>1</sup></i> | IMMEDIATE JEOPARDY   | <p><b>DEFINITION: THE INCIDENT PRESENTS AN IMMEDIATE AND SERIOUS THREAT OF INJURY, HARM, IMPAIRMENT OR DEATH OF AN INDIVIDUAL.</b></p> <p><b>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.</b></p>                              | OHCQ WILL INITIATE, WHENEVER POSSIBLE, AN ON-SITE INVESTIGATION WITHIN 2 WORKING DAYS OF RECEIPT.  |
| 2<br><br><i>ACTs-B</i>             | HIGH                 | <p><b>DEFINITION: THE INCIDENT PRESENTS A SITUATION WHERE A SERIOUS THREAT EXISTS TO THE INDIVIDUAL’S HEALTH AND/OR SAFETY OR HARM THAT SIGNIFICANTLY COMPROMISES AN INDIVIDUAL PHYSICAL AND/OR MENTAL HEALTH.</b></p> <p><b>EXAMPLES OF A HIGH PRIORITY INCIDENT MAY INCLUDE: BEING HIT WITH AN OBJECT; DENIED ASSISTANCE WITH ACTIVITIES OF DAILY LIVING; OR OBTAINED SUSPICIOUS INJURY.</b></p> | OHCQ WILL INITIATE, WHENEVER POSSIBLE, AN ON-SITE INVESTIGATION WITHIN 4 WORKING DAYS OF RECEIPT.* |
|                                    | MINIMAL              | DEFINITION: THE INCIDENT INVOLVES A  | OHCQ WILL INITIATE,  |

<sup>1</sup>Aspen Complaint Tracking System (ACTs) Program Code.

| <b>PRIORITY LEVEL</b>         | <b>PRIORITY DESCRIPTION</b>                            | <b>CLASSIFICATION CRITERIA TO DETERMINE PRIORITY LEVEL OF INCIDENT</b>   | <b>RESPONSE TIME</b>   |
|-------------------------------|--|--|--|
| <b>3</b><br><br><i>ACTs-C</i> | <b>HARM OR POTENTIAL FOR NO MORE THAN MINIMAL HARM</b> | <b>SITUATION OR PRESENTS AN OPPORTUNITY FOR HARM THAT DID NOT AFFECT OR WOULD MINIMALLY AFFECT AN INDIVIDUAL’S PHYSICAL AND/OR MENTAL HEALTH.</b><br><br><b>EXAMPLES OF MINIMAL HARM MAY INCLUDE: CERTAIN RIGHTS VIOLATIONS; LACK OF APPROPRIATE PROGRAMS; AND USE OF CERTAIN AVERSIVE TECHNIQUES.</b> | <b>WHENEVER POSSIBLE, AN ON-SITE INVESTIGATION WITHIN 30 WORKING DAYS.</b> |

| <b>Priority Level</b>         | <b>Priority Description</b> | <b>Classification Criteria to Determine Priority Level of Incident</b>  | <b>Response Time</b>  |
|-------------------------------|-----------------------------|---|---|
| <b>4</b><br><br><i>ACTs-H</i> | Administrative Review       | Definition: The incident presents minimal risk for harm or no harm and an on-site investigation is not necessary. A provider submits an Appendix 4 that indicates situation has been addressed through the implementation of corrective and preventive measures.  | OHCQ will include these incidents when preparing for the agency’s annual survey. The Appendix 7 Report is reviewed by the DDA Regional Office. The Regional Office will notify the OHCQ within 5 working days of the receipt of any additional information that may require the OHCQ re-evaluate or investigate the incident. |
| <b>5</b><br><br><i>ACTs-F</i> | Referrals                   | The incident involves a situation or presents and opportunity where sexual abuse is suspected, physical abuse with severe injuries, theft, other criminal issues, issues that may require legal advocacy or the incident is outside of the OHCQ jurisdiction. Referrals may be made on an immediate jeopardy basis. | OHCQ will make referrals, whenever possible, within 1 working day to appropriate internal unit or appropriate agency for follow-up.   |
| <b>6</b><br><br><i>ACTs-G</i> | <b>DEATH</b>                | <b>THE INCIDENT INVOLVES THE DEATH OF AN INDIVIDUAL.</b>  | <b>WITHIN 1 WORKING DAY, WHENEVER POSSIBLE, THE OHCQ WILL REFER THE INCIDENT TO THE MORTALITY REVIEW UNIT FOR REVIEW AND INVESTIGATION.</b>   |

(3) When a provider or SRC reports three or more incidents that involve the same individual within a four week period, OHCQ will determine, based upon the provider’s compliance history and nature of the incidents, whether an on-site investigation is warranted. If an on-site investigation is warranted, a priority level will then be assigned.

(4) All deaths are immediately referred to the OHCQ Mortality Investigation Unit for review and investigation. The OHCQ Mortality Investigation Unit conducts investigation using its own policies and procedures and submits its findings to the Mortality Review Committee and to OHCQ. The DHMH Mortality Review Committee is independent of OHCQ and reviews the investigations of all deaths of individuals that occur in DDA licensed settings and services.

**D. Roles and Responsibilities:**

(1) During the investigation of an incident an OHCQ surveyor reviews the Agency Investigation Report (AIR), if already completed, and related documentation. The surveyor(s) will make his or her best effort to interview all persons with knowledge of the incident, including, but not limited to: the individual receiving services, her/his guardian or family member(s), the agency's direct care and administrative staff who were involved in the incident, etc. The surveyor also makes direct observations of the individual in her/his environment. When possible, evidence is corroborated between interviews, record reviews, and observations. Deficiencies are, to the extent practicable, cited at an exit conference held upon completion of the on-site investigation.

(2) The OHCQ may require a provider, depending on the severity of the incident, to make immediate correction to ensure the health and safety of the individual.

(3) When an investigation results in deficiencies, the agency's Plan of Correction (POC) is due to the OHCQ within 10 working days of the exit conference. The POC due date may be sooner than 10 working days when the nature of the deficiency warrants a more immediate response. The surveyor reviews the POC to: verify that all deficiencies have been addressed, review proposed corrective and preventative measures for appropriateness, and determine if responsible parties have been identified. POC are reviewed, to the extent practicable, by the surveyor within a week of its receipt.

(4) If a POC is deemed unacceptable, the OHCQ will send notice to the agency in writing, whenever possible, within 5 working days of review of the issues which require further review and consideration. The agency must submit a revised POC to OHCQ within five working days of receipt of notification that a POC is not accepted. The surveyor reviews the revised POC with procedures outlined in number three. These timeframes may be extended upon request with good cause shown.

(5) If the POC is accepted, OHCQ will send the Statement of Deficiency (SOD) and the approved POC, whenever possible, within 10 working days to the:

- Licensee;
- Complainant;
- Agency's Executive Director and Board President;
- DDA Regional Office;
- Maryland Disability Law Center;
- Medicaid Fraud Control Unit of the Attorney General's Office, if appropriate;
- Office of the Inspector General, if appropriate; and
- Any other parties deemed appropriate by the OHCQ.

(6) The licensee shall provide a copy of the SOD and the POC to the individual receiving services who is specifically the subject to the deficient practice, or to their resources coordinator, guardian or family as appropriate.

(7) The SOD and POC are also sent to any requesting party under the Public Information Act. In addition, the DDA Regional Office Representative and the MDLC Representative may receive a copy of the Investigation Summary completed by the OHCQ investigator when deficiencies are not cited. This summary is not a public document pursuant to the Md. Code Ann., Health Occ. Art., 1-401(a)(3) and may not be redisclosed.

**E. Follow-Up Procedures.**

(1) The DDA Regional Quality Assurance Teams conduct site visits, review quality assurance plans and provide technical assistance to agencies. These activities are designed to improve the agency's quality assurance plan and procedures to ensure that systems are in place for preventing the reoccurrence of incidents or patterns of deficiencies within an agency.

(2) The Regional Quality Assurance Teams review Appendix 4 and Appendix 7 and determine what follow-up from the Regional Office is appropriate, for example: no further action required, contact the agency, conduct an on-site visit, or discuss the need for further investigation with OHCQ. The Regional Office will notify the OHCQ within 5 working days of the receipt of any additional information that may require the OHCQ re-evaluate or investigate the incident or complaint.

(3) The OHCQ will conduct follow-up monitoring for all level one incidents and identify a 10-percent targeted sample taken from the level two incidents to be completed within six months of approval of the POC to determine whether or not the agency has implemented the POC. The OHCQ will identify the targeted sample based on criteria which include, but are not limited to: provider history, severity of the incident, and investigator recommendation.

**F. Information Sharing.**

(1) OHCQ will forward information to MDLC as required by law or on request.

(2) The DDA and OHCQ will have quarterly meetings with the region staff to facilitate the exchange of pertinent information.

(3) The DDA, OHCQ and MDLC will have quarterly meetings to facilitate the exchange of pertinent information.

(4) The OHCQ, DDA, providers and advocates will meet annually to share information and trends found during the survey process.