



DIVISION OF DEVELOPMENTAL DISABILITIES
Olympia, Washington

TITLE: RHC INCIDENT INVESTIGATIONS POLICY 12.02

Authority: 42 CFR 483.13 and 483.420
[Chapter 26.44 RCW - Abuse of Children](#)
[Chapter 43.20A RCW - DSHS](#)
[Chapter 70.124 RCW - Abuse of Patients](#)
[Chapter 71A RCW - Developmental Disabilities](#)
[Chapter 74.34 RCW - Abuse of Vulnerable Adults](#)

Reference: Executive Order 96-01, *Providing for the transfer of criminal and major administrative investigations involving DSHS employees to the State Patrol*
DSHS-WSP Interagency Agreement for Criminal and Administrative Investigations

DSHS Administrative Policy 8.02, *Client Abuse*
DSHS Administrative Policy 9.01, *Incident Reporting*
DSHS Administrative Policy 9.03, *Administrative Review – Deaths of Residential Clients*

DDD Policy 5.13, *Protection from Abuse – Mandatory Reporting*
DDD Policy 7.05, *Mortality Reviews*
DDD Policy 12.01, *Incident Reporting*

BACKGROUND

Federal regulations require that Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/ID) and Nursing Facilities (NF) have evidence that all alleged incidents of client abuse, neglect, financial exploitation or other serious incidents are thoroughly investigated and that actions are taken to prevent further harm while investigations are in progress. The Division of Developmental Disabilities (DDD) established a Statewide Investigation Unit (SIU) independent of the Residential Habilitation Centers (RHCs) to conduct investigations of suspected client abuse or neglect or other critical client incidents.

PURPOSE

This policy establishes the statewide process for critical incident identification, investigation, and follow-up at the RHCs. Refer to DDD Policy 12.01, *Incident Reporting*, for instruction on reporting critical incidents, including alleged abuse, neglect, financial exploitation, and abandonment. See also DDD Policy 5.13, *Protection from Abuse – Mandatory Reporting*, for more information regarding mandatory reporting.

SCOPE

This policy applies to SIU investigators and RHC staff for critical client incident investigations. The DDD-SIU does not investigate personnel performance/misconduct incidents or safety hazard incidents unless they are directly related to the Category I incident list. Other incident types or events are managed by local RHC systems.

DEFINITIONS

Abuse means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult.

Sexual abuse means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under [Chapter 71A.12 RCW](#), and a vulnerable adult living in that facility or receiving service from a program authorized under [Chapter 71A.12 RCW](#), whether or not it is consensual.

Physical abuse means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

Mental abuse means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

Neglect means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a

vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under [RCW 9A.42.100](#).

Exploitation means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

Financial exploitation means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

Note: For **ICF/ID CFR definitions of abuse and neglect** refer to W127 and W149 in Appendix J of the State Operations Manual for ICF/ID.

For Nursing Facility CFR definitions relating to and including abuse and neglect, refer to F223, F224 and F225 in Appendix PP of the State Operations Manual for Long Term Care Facilities.

For Child Abuse/Neglect definitions, refer to [Chapter 26.44 RCW](#).

Category I Incident refers to the most critical incident classification.

Category II Incident refers to a second class of incidents that require investigation. Category II incident investigations follow the procedures and reporting format described in this policy.

DDD Statewide Investigation Unit (DDD-SIU) refers to the DDD independent investigation unit made up of investigators that are assigned to DDD Central Office and conduct investigations of Category I incidents at the RHCs.

SIU Investigator means the DDD Compliance and Investigation Managers (CIMs) who administratively report to the DDD SIU Program Manager.

Washington State Patrol Special Investigation Unit (WSP-SIU) refers to the unit of the Washington State Patrol (WSP) that is administratively assigned and located within DSHS.

POLICY

- A. Incidents that may occur at the RHCs which require an investigation have been classified into two categories described in Section F below as Category I and Category II. The RHCs must refer all Category I incidents to the DDD-SIU for investigation.

- B. All Category I incident investigations of criminal misconduct by DSHS employees (current or former employees if the employee was a DSHS employee at the time of the alleged event) must be completed either by local law enforcement with a WSP review or WSP personnel.
1. When the WSP is conducting an investigation, the DDD-SIU will suspend its investigation.
 2. If the allegations are proven true, and the discipline being considered is demotion or termination, the WSP Special Investigations Unit (WSP-SIU) will complete the administrative investigation. Do not refer cases of progressive discipline to the WSP-SIU.
- C. All investigations must be conducted in a timely and thorough manner consistent with state and federal law, and department/division policies and protocols.
- D. The RHCs must have systems in place to provide immediate/initial protective responses to incidents so that no further injury occurs.
- E. The RHC Superintendents are responsible to ensure appropriate corrective actions are developed and implemented.
- F. **Incident Classification**
1. **Category I Incidents**
The following types of incidents are considered Category I:
 - a. Suspicious or unusual death (including suicide);
 - b. Allegation of physical or mental abuse (refer incidents to the WSP-SIU that, if the allegation was proven to be true, could result in demotion or dismissal);
 - c. Allegation of neglect;
 - d. Allegation of financial exploitation;
 - e. Allegation of sexual abuse of a client;
 - f. Medication errors causing injury or harm as assessed by a medical or nursing professional;
 - g. Reported patterns of medication errors;

- h. Physical intervention or restraint resulting in injury requiring treatment beyond minor first aid;
- i. Suicide attempt or threat defined as the attempt or threat to take one's own life by someone with the capacity to do so. "Capacity to do so" means the individual has the physical ability and resources available to carry out the threat. A Central Office incident report is not required when suicide attempts/threats are identified in a client's Positive Behavior Support Plan (PBSP) when the PBSP was properly implemented and the incident does not result in injury requiring more than first aid.
- j. Client to client altercations when there is suspected staff or facility neglect.

2. **Category II Incidents**

The following types of incidents are considered Category II:

- a. Death (other than suspicious or unusual);
- b. Client who leaves the grounds of the RHC without needed support or supervision when suspected neglect is not involved;
- c. Physical intervention or restraint resulting in injury to the client that required basic first aid;
- d. Vehicular accident with client injury when operated by a state employee when suspected neglect is not involved; and
- e. Client to client altercation(s).

G. The DDD-SIU must conduct Category I incident investigations unless otherwise approved by the Division Director. The Superintendent or Regional Administrator (RA), in conjunction with the SIU Program Manager, may request any other incident type be investigated by the DDD-SIU.

H. The RHC and/or designated appointed authority is responsible for the release of all SIU investigative documents, reports, evidence, etc., as required and according to state laws and regulations regarding confidentiality and disclosure.

PROCEDURES

A. Referral to the DDD-SIU and Washington State Patrol

- 1. Refer all Category I incidents to the DDD-SIU; and

2. Immediately contact law enforcement for Category I incidents (a), (b), (d), and (e) listed in Section F above and when the initial [DSHS 16-202, 5-Day Investigation Report](#), supports misconduct, refer to the WSP-SIU. Refer allegations of Category I (c) and (j) to law enforcement that could be criminal. If at any time the appointing authority or the DDD-SIU is in doubt about the criminal context of an incident, contact the WSP-SIU for assistance.
3. When law enforcement/WSP is conducting an investigation, DDD-SIU will complete the initial [DSHS 16-202, 5-Day Investigation Report](#), without interviewing the accused staff. The DDD-SIU will then suspend its investigation.
4. If law enforcement/WSP-SIU either decline to take the investigation or complete the investigation, the RHC will then notify the DDD-SIU for continuation of the 5-Day Investigation Report.
5. The DDD-SIU will then submit the final investigative report, which will include all involved individual testimonies.
6. The RHC may return the accused staff to provide client care after the investigation by DDD-SIU is completed.
7. See also *Attachment B, RHC Referral Flow Chart*.

B. Initial RHC Actions Following an Incident

1. Protect the person(s) and develop and implement an immediate protection plan;
2. Ensure everyone is safe:
 - a. Assess for injury or trauma; and
 - b. Refer for treatment or provide care as needed.
3. Follow the incident reporting procedures described in DDD Policy 12.01, *Incident Reporting*, and:
 - a. Report the incident to:
 - i. Supervisor(s); and
 - ii. The Residential Care Services Division (RCS) Complaint Resolution Unit (CRU); and
 - iii. Other required reporting agencies.

- b. Complete a facility incident report (IR) to document the incident.
 - c. The Superintendent or designee must:
 - i. Report to local law enforcement and the WSP-SIU if the incident is criminal in nature (e.g., alleged physical or sexual assault, alleged abuse or financial exploitation); and
 - ii. Report an incident to the WSP-SIU if the allegation was proven to be true and it would result in employee demotion or dismissal.
 - d. Inform the client's legal representative and/or family;
 - e. Begin an immediate (initial) investigation for any incident while notification to the SIU or other investigation units is in process. Ask witnesses to write a statement of what occurred. Document if a staff refuses to make a statement. If the accused employee(s) is identifiable, do not ask for a statement; and
 - f. Enter the incident into the appropriate incident management systems or databases (e.g., local RHC IR system or database, DDD Electronic IR System);
4. Secure and preserve evidence (see *Attachment A* for guidelines). For internal investigations or in the event there will be a delay in the arrival of an outside investigator, it may be necessary to secure:
- a. Physical evidence (e.g., a weapon used, property, possessions, etc.). **Do not touch or move any item that was used as or could have been used as a weapon;**
 - b. Documentary evidence (e.g., witness statements, attendance records, staff logs, medical/program records, etc.); and
 - c. Demonstrative evidence (i.e., the way the physical evidence is maintained; examples include photos, diagrams of area, etc.).
5. Develop, document, and implement an immediate protection plan in the client's record pending the outcome of the investigation as needed.
6. Ensure that the identities of reporters of Category I and Category II incidents under this policy remain confidential and not subject to disclosure, except as permitted by [RCW 74.34.035\(8\)](#) and [RCW 74.34.095\(1\)](#).

C. Investigation of Category I Incidents

1. The Superintendent is responsible to:
 - a. Ensure that the actions specified in Section A and B above have occurred; and
 - b. Manage disclosure and release of any investigation records according to state law and department policy.
2. The DDD-SIU investigator must, at a minimum:
 - a. Interview clients, witnesses and other involved parties. Do **not** interview the accused employee(s) in cases of alleged criminal misconduct (see Procedures Section A.3 above) while a law enforcement/WSP investigation is pending.
 - b. Interview staff witnesses in compliance with all Collective Bargaining Agreements (CBA) for representation during an investigation;
 - c. Document the interview, review with the interviewee his/her statement, and obtain signatures of the alleged victim(s) and witnesses, as appropriate;
 - d. Review all related documentation;
 - e. Collaborate as required with outside agencies;
 - f. Identify those regulations, procedures, and facility practices, etc., that may have contributed to the incident cause;
 - g. Maintain client confidentiality according to state laws;
 - h. Report immediately to the Superintendent or designee any information that:
 - i. Reveals a current or new threat to the health or safety of RHC clients or staff;
 - ii. Is relevant to needed or pending RHC decisions regarding administrative or personnel actions; and/or
 - iii. Report to the CRU if there is reason to believe that further abuse, neglect, etc. or criminal actions are occurring.

- i. Complete and submit [DSHS 16-202](#), *5-Day Investigation Report* and supporting documents, to the Superintendent or designee and the DDD-SIU Program Manager within five (5) working days of the incident per 42 CFR 483.420(d)(4) and 42 CFR 483.13(c)(2).

D. Investigation of Category II Incidents

1. The RHC must conduct Category II incident investigations and the Superintendent must assign an RHC staff to conduct the investigation.
2. The RHC investigator must follow incident reporting requirements and, at a minimum, do the following:
 - a. Interview clients, staff, and other involved parties;
 - b. Review all related documentation;
 - c. Collaborate with outside agencies, as needed;
 - d. Identify relevant regulations, procedures, and facility practice; and
 - e. Complete and submit [DSHS 16-202](#), *5-Day Investigation Report*, to the Superintendent within five (5) working days of the incident per 42 CFR 483.420(d)(4) and 42 CFR 483.13(c)(2).
3. If evidence of possible staff or facility neglect, abuse, and/or criminal action to clients is discovered at any time during the investigation, immediately upgrade the incident to a Category I and refer to the DDD-SIU and the WSP-SIU and/or law enforcement.

E. Management Review and Plan of Correction

1. Upon receipt of the [DSHS 16-202](#), *5-Day Investigation Report*, the RHC will determine appropriate follow up and:
 - a. Document the corrective actions taken to address each of the findings in the SIU investigation report on [DSHS 16-202A](#), *Plan of Correction (5-Day Investigation)*, obtain signatures, and, if a Category 1 incident, send the completed form to the SIU investigator within ten (10) working days.
 - b. The Plan of Correction (POC) must contain, at a minimum, the following elements:
 - i. The specific correction/actions to be taken;

- ii. The person who is responsible to ensure the correction/action is completed; and
 - iii. The date(s) the corrective action is expected to be completed.
 - c. Complete the follow up section in the Electronic IR System, including a brief summary of the investigation outcome.
2. The facility is expected to implement the identified corrective actions.
3. The DDD-SIU investigator or RHC investigator, as appropriate, must conduct a thirty (30) day review of the status of the RHC's POC and complete Part C of [DSHS 16-202A](#), *Plan of Correction (5-Day Investigation)*.

F. **DDD-SIU Quality Assurance Functions**

The DDD-SIU Program Manager or designee must:

1. Review all Category I investigation reports to determine that investigations are thorough, complete, and that investigation procedures are being followed consistently;
2. Maintain a system for tracking trends and patterns, analyze these, and prepare regular reports on Category I incidents to the Chief, Office of Quality Programs and Services;
3. Conduct quarterly reviews of RHC data on Category II incidents and review a sample of Category II investigation reports to assure that investigation procedures as specified in this policy have been implemented consistently and to identify any staff training needs; and
4. Review incident reports sent from the RHCs to DDD Central Office to assure they are properly categorized.

EXCEPTIONS

No exceptions to this policy may be granted without the prior written approval of the Division Director.

SUPERSESSION

DDD Policy 12.02
Issued January 3, 2012

Approved: /s/ Linda Rolfe
Director, Division of Developmental Disabilities

Date: September 4, 2012

Attachment A, *Guidelines to Secure and Preserve Evidence*

Attachment B, *RHC Referral Flow Chart to Law Enforcement/WSP-SIU/DDD-SIU*

ATTACHMENT A

GUIDELINES TO SECURE AND PRESERVE EVIDENCE

For internal investigations or in the event there will be a delay in the arrival of an outside investigator, it may be necessary to secure and preserve evidence. RHC and ICF/ID staff must follow these guidelines:

- A. **Physical Evidence** (objects, property, possessions, other materials):
 1. **Do not touch or move any item that was used as or could have been used as a weapon. Wait for law enforcement to arrive.**
 2. **IF POSSIBLE, SECURE THE INCIDENT SCENE AND DO NOT DISTURB ANY EVIDENCE. Protect the site.**
 3. **IF EVIDENCE HAS TO BE DISTURBED, FOLLOW THIS GUIDE:**
 - a. **Porous Materials** (e.g., clothing, sheets, gloves): Store in porous containers such as paper bags.
 - b. **Non-porous Materials** (e.g., plastics, metals, glass): Store in non-porous containers such as plastic bags.
 - c. **Secure all Physical Evidence: *The chain of custody is critical.*** The investigator must show exactly where the evidence has been from the moment of collection to its presentation at a hearing.
- B. **Demonstrative Evidence** (photos, diagrams, maps, drawings, audio tapes, videotapes):
 1. **Photograph** the area of the body where the alleged injury has occurred. This should be done whether or not any signs of injury are visible.
 2. **Photograph or sketch** the area of a possible incident scene when the scene cannot be secured.
- C. **Documentary Evidence** (staff statements, incident reports, attendance records, etc.):
 1. **Staff Inquiries:** It may be necessary to talk with witnesses and other staff immediately to develop a protection plan necessary for client safety. Be sure to document any key information disclosed during these initial inquiries for the investigator. Record the names and phone numbers/contact information of any persons in the area (i.e., witnesses, responders).

ATTACHMENT A

2. **Formal interviews and written statements** should be coordinated with the investigator.
- D. **Investigation Kits**: The facility must maintain an investigation kit and staff must be aware of its location and content. A basic investigation kit includes, at a minimum, the following items:
1. A camera (and film if necessary);
 2. Clean paper and plastic bags; and
 3. A notebook and pen.
- E. **Secure Location**: Maintain all evidence collected in a secure location with limited access (e.g., locked closet or file cabinet). Record or track all evidence in writing, including the names of all persons who had access to the evidence.

RHC Referral Flow Chart To Law Enforcement/WSP-SIU/DDD-SIU

