

DELAWARE DIVISION OF SUSTANCE ABUSE AND MENTAL HEALTH COMMUNITY INCIDENT REPORTING POLICY

I. PURPOSE:

Each individual served by the Division of Substance Abuse and Mental Health ("DSAMH") has the right to be free from abuse, neglect and mistreatment in their receipt of mental health and substance use disorder services. The Community Incident Reporting Policy (the "Policy") is intended to guide the identification of reportable incidents and allegations of abuse, neglect and exploitation, which may arise in the context of community mental health and substance use disorder services. The Policy sets forth DSAMH's expectations for standardized reporting and investigative procedures. DSAMH expects all employees and contracted provider to ensure community treatment services are delivered in a respectful manner and do not create a threat to individual safety, health and welfare.

II. SCOPE:

The reporting obligations and procedures in the Policy shall apply to all DSAMH employees, all individuals who independently contract with DSAMH to provide clinical services or Quality Assurance or Quality Improvement services, DSAMH-contracted community mental health and substance use disorder provider agencies including all administrators, clinicians, other employees, subcontractors, and volunteers (collectively "Reporters").

This policy is intended to compliment the procedure for reporting certain incidents set out by the Department of Health and Social Services ("DHSS") Policy Memorandum 46 ("PM-46," attached as Appendix A). The Departmental PM-46 process shall take precedence over this Divisional policy. Thus, if a PM-46 report is required, this policy and the DSAMH Incident/Death Reporting Form will not be used; the provider will follow the PM-46 process using the required PM-46 documentation and will not have to submit any additional information pursuant to this policy.

III. DEFINITIONS:

- A. Abuse means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish (as defined at 42 CFR § 488.301). , and the deprivation of goods or services that are necessary for an individual to attain or maintain physical, mental, and psychosocial well-being. This definition subsumes and includes all subcategories of Abuse defined below.
Subcategories of Abuse include:

1. Verbal Abuse means the use of oral, written, signed or gestured language that willfully includes disparaging and derogatory terms to individuals served or their families, or within their hearing distance, regardless of their age, ability to comprehend, or disability. Examples of verbal abuse include, but are not limited to: threats of harm; saying things to frighten an individual, such as telling them that he/she will never be able to see his/her family again.
2. Sexual Abuse means, but is not limited to, sexual harassment; sexual coercion; sexual assault such as rape, sexual molestation, sexual exploitation or inappropriate or unwanted touching of an individual by another; or any other form of sexual contact, sexual touching, or sexual penetration between a client and an employee, subcontractor, or volunteer of the treatment program, regardless of whether such interaction was consensual.
3. Physical Abuse means the unnecessary or intentional infliction of pain or injury to an individual. Physical abuse includes, but is not limited to, striking an individual using a part of the body such as pushing, kicking, hitting, slapping, pinching, biting, punching, shoving, or pulling hair; throwing objects at a person or in a manner which causes the individual to believe that they will be injured; forcibly touching an individual using an inanimate object (ex: belt, electrical cord); and corporal punishment.
4. Psychological Abuse means exposing an individual to behavior that is likely to result in psychological trauma, anxiety, or depression. Psychological abuse includes, but is not limited to, humiliation, harassment, threats of harm, punishment, derogatory remarks, or deprivation. It may inflict emotional harm, invoke fear or intimidation, degrade or demean an individual. Psychological abuse may be inflicted in various ways that may or may not be verbal.
5. Restrictive Intervention means an action or procedure that physically limits an individual's movement, an individual's access to other people, locations, activities, or otherwise restricts an individual's ability to move their body or change their location.

Subcategories of Restrictive Intervention include:

- a. Involuntary Seclusion means the involuntary confinement of a person in a room or an area where the person is physically prevented from leaving.
- b. Restraint means:
 - i. Any physical or mechanical intervention that restricts the movement or function of the individual or a portion of the individual's body;

ii. Any drug or medication when it is primarily used to restrict the individual's movement and is not a standard treatment or dosage for the individual's physical or mental condition; iii. A restraint does not include orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other restrictions which are consistent with an individual's specific medical needs or otherwise permit the individual to participate in activities (including recreational, social, or of daily living) without the risk of physical harm.

B. Adult Abuse Registry means the Delaware's Adult Abuse Registry, as set forth at 11 Del.

c. § 8564.

C. Criminal History or Background Investigation means the screening of applicants for employment for a history of abuse, neglect or mistreatment of persons in accordance with all applicable state law and federal laws.

D. Critical Incident means the occurrence of the following events while an individual is under the care and supervision of a community mental health or substance use disorder provider:

1. Death of an individual, no matter the cause, including but not limited to natural causes, suicide, or homicide;
2. Suspected Abuse or Neglect of an individual;
3. Financial Exploitation of an individual;
4. Severe injury sustained by an individual, regardless of whether it was accidental or self-inflicted;
5. Medication error and/or suspected medication diversion;
6. Inappropriate or unprofessional conduct by a provider, including by an employee, subcontractor, or volunteer
7. Mistreatment;
8. Individual elopement when whereabouts are unknown and harm occurs; whereabouts of individual are unknown; whereabouts are unknown and police are notified;
9. Suicide attempt;
10. Poisoning;
11. House fire;
12. Suspicion of drug diversion of an individual's prescription(s);
13. Utility interruption lasting 8 hours or more;

14. Structural damage or unsafe conditions in an individual's home or place of current residence; and
 15. Use of Restrictive Interventions.
- E. Division of Substance Abuse and Mental Health (DSAMH): DSAMH, established pursuant to 29 Del. C. § 7908, is responsible for Delaware's publically funded system of services and supports for adults with mental health, substance use, or co-occurring disorders.
- F. Financial Exploitation means an act of depriving, defrauding or otherwise obtaining the personal property or financial rights of an individual by taking advantage of a person's disability or impairment. This includes but is not limited to:
1. Theft of an individual's money or property;
 2. Use of individual money or property without the permission of the individual or guardian;
 3. Acceptance by staff money or property regardless of permission;
 4. Mishandling of individual money or property;
- G. General Incident means any event, not considered a Critical Incident, that adversely affects the client, including, but not limited to: psychiatric or medical hospitalization of a client; an emergency department visit; a need for urgent medical care, the arrest of a client; an unexplained absence of a client; significant destruction of property; adverse reactions to medication that require urgent medical care; falls without injury; behavior that have the potential to involve the legal system like unacceptable sexual behavior, physical aggression, or criminal activity; self-injurious behaviors.
- H. Incident and Mortality Review Committee (IMRC) means a diverse group of DSAMH Administrative staff, peers, and community stakeholders who meet quarterly as a standing committee to review investigative and evidence findings pertaining to alleged incidents of Individual deaths, abuse, neglect, mistreatment, or significant injury, individual care, policy and procedures violations, and other related issues.
- I. Investigator means State-designated employee or independent contractor who has the responsibility to conduct an investigation into allegations of a Critical Incident.
- J. Neglect means but is not limited to the following:
1. Lack of attention to the physical needs of an individual including but not limited to toileting, bathing, meals, and safety that creates a threat to the individual's health and well-being;
 2. Failure to report individual health problems or changes in health problems or changes in health condition to an immediate supervisor or otherwise assist the individual in seeking appropriate treatment;

3. Failure to carry out a prescribed treatment plan for an individual. Examples include, but are not limited to:
 - a. Putting an individual at risk by allowing him or her choices inconsistent with safety concerns
 - b. Failure to maintain 1:1 or 2:1 observation or other special precautions on an individual for whom such precautions have been ordered;
4. Any act, failure to act, or omission that may cause a delay in treatment or a delay in referring an individual for emergency services; or
5. Failure to adequately supervise mental health, substance use disorder, or co-occurring disorder treatment and/or milieu that results in individual-individual or individual-staff altercations.

IV. POLICY GUIDELINES:

- A. All individuals served by DSAMH, including those served by private community providers who are contracted by DSAMH to provide publically funded-community mental health, substance use disorder, or co-occurring treatment (hereinafter "Community Providers"), shall be treated with respect and dignity at all times. Each individual, receiving services or supports from a DSAMH contracted provider is entitled to, and shall receive, appropriate quality care, free of adverse preventable risks, and treatment that is consistent with his/her needs.
- B. Reporters who have witnessed, received a verbal or written report, or who otherwise have reason to suspect that a General Incident or a Critical Incident has occurred, shall report the incident within twenty-four (24) hours of the General Incident or Critical Incident or the Reporter's knowledge of the General Incident or Critical Incident, whichever is earlier.
- C. Reporters shall utilize the "DSAMH Incident/Death Reporting Form" (hereinafter "Reporting Form," attached as Appendix A) for reporting General Incidents and Critical Incidents to DSAMH. The information provided by the Reporter on the Reporting Form shall include sufficient detail of the General Incident or Critical Incident, including the names of person(s) involved in the General Incident or Critical Incident, to allow DSAMH to proceed expeditiously with its own review and investigation. Deaths, which are Critical Incidents, shall also be reported to DSAMH in the same manner as all other Critical Incidents. Consistent with the reporting for Critical Incidents, deaths shall be reported to DSAMH within twenty-four (24) hours of the death or the Reporter's knowledge of the death, whichever is earlier. Deaths must also be reported to DSAMH using the DSAMH Incident/Death Reporting Form. The information provided by the Reporter on the Reporting Form shall include sufficient detail of the death to allow DSAMH to proceed expeditiously with its own review and investigation. If, at any time, during the

investigation of a death the Investigator, DSAMH Medical Director, DSAMH Director, or designee, suspects that Abuse or Neglect by a Reporter or other Staff contributed to an individual's death, he/she shall immediately contact DSAMH Risk Management to initiate an appropriate investigation either through the PM-46 process or through a secondary investigation initiated by Risk Management.

V. REPORTING PROCEDURES:

A. Reporting General Incidents to DSAMH.

Reporters must report General Incidents to DSAMH within twenty-four (24) hours of the General Incident or the Reporter's knowledge of the General Incident, whichever is earlier. General Incidents must be reported to DSAMH using the Reporting Form. The DSAMH Incident/Death Reporting Form should be emailed to DSAMH Risk Management at complaintandincidentreporting@state.de.us. The Reporter shall also document the General Incident in the individual's medical record progress notes.

B. Reporting Critical Incidents to DSAMH.

1. Reporters must report Critical Incidents to DSAMH within twenty-four (24) hours of the General Incident or the Reporter's knowledge of the Critical Incident, whichever is earlier. General Incidents must be reported to DSAMH using the Reporting Form. The DSAMH Incident/Death Reporting Form should be emailed to DSAMH Risk Management at complaintandincidentreporting@state.de.us. In addition to providing DSAMH with the Reporting Form, Reporters must to report the Critical Incident to DSAMH by contacting DSAMH Risk Management via telephone or email as soon as practicable after ensuring the safety and welfare of the client and after carrying out the immediate actions and notifications outlined in this policy. The Reporter shall also document the incident in the individual's medical record progress notes.
2. In the case of reporting deaths, the DSAMH Incident/Death Reporting Form should be completed by a healthcare professional whenever practicable. Otherwise, the reporting of deaths should follow the same procedure as all other Critical Incident reporting.

C. Caring For the Physical and Emotional Needs of the Individual Following a Critical Incident

1. Reporters, to whom a Critical Incident is reported or who observes or suspects that a Critical Incident has occurred is required to first ensure that the physical and emotional well-being, safety and needs of the individual are addressed before initiating any related reporting.

D. Reporting Suspected Crimes to the Police

1. If Staff reasonably believe that a crime has occurred in the course of a General Incident or Critical Incident, Staff shall immediately call 911.

2. Only law enforcement is authorized to collect evidence of a suspected crime.

VI. INVESTIGATIVE PROCESS:

- A. If a Community Provider is required to file a PM-46 Investigative report (Appendix B), the DSAMH Incident/Death Reporting Form will not be used, and the Community Provider will follow the PM-46 process.
- B. If the Critical Incident occurred in a program that is not mandated to follow PM-46 process:
 1. The Community Provider will report the Critical Incident using the Reporting Form
 2. DSAMH Quality Assurance will assign an Investigator to the Critical Incident.
 3. The Community Provider will immediately begin its own investigation of the Critical Incident, consistent with this policy.
 4. Once the investigation by the Community Provider is concluded, the Community Provider will submit the Community Provider Critical Incident Investigation Report (hereinafter "Community Provider Report," attached as Appendix C) to the Investigator for review.
 5. The Investigator will review the Investigative Report. The investigator's documented conclusions, as well as any recommended corrective actions (hereinafter "DSAMH Investigator's Summary"), will be submitted to the DSAMH Medical Director for final review and recommendations.
 6. The DSAMH Medical Director will review the Investigator's Report and the Community Provider Report and may take any of the following actions:
 - a. Conclude the Critical Incident is not substantiated and recommend no further action;
 - b. Conclude the Critical Incident is not substantiated, but make recommendations for corrective actions;
 - c. Conclude the Critical Incident is substantiated and recommend corrective actions without second level review by Long Term Care Residents Protection ("LTCRP"); or
 - d. Conclude the Critical Incident is substantiated, recommend corrective actions, and recommend the incident be forwarded to LTCRP for further investigation.
 7. The DSAMH Medical Director will forward his/her conclusions and recommendations to the DSAMH Division Director. The DSAMH Division Director will review the Community Provider Report, the Investigator's Report and the DSAMH Medical Director's conclusions and recommendations. The DSAMH Division Director may take any of the following actions:
 - a. Accept the conclusions and recommended corrective actions without second level review;

- b. Accept the conclusions and recommended corrective actions and forward to LTCRP for second level review;
 - c. Accept the conclusions and make referrals to other agencies (i.e. Attorney General Office's senior protection unit, law enforcement, or Medicaid Fraud Control Unit) without forwarding to LTCRP for second level review; or
 - d. Decline the recommendations and pursue no further action.
8. The DSAMH Quality Assurance Unit ("QA") will notify the Community Provider of the resolution of the investigation, any recommended corrective actions, and, if applicable, DSAMH's intent to forward the incident to LTCRP or any other State agencies for second level review.
 9. Should a Critical Incident be forwarded to LTCRP, then LTCRP will perform second level review of the Critical Incident. LTCRP's second level review shall be limited to those issues specifically identified in DSAMH's final report.
 10. LTCRP will notify DSAMH QA in writing of its conclusion of the second level review. LTCRP will state clearly whether it concurs with the determination regarding substantiation made by DSAMH. If the Critical Incident is substantiated by LTCRP, LTCRP will clearly document its planned course of action which may include reporting staff to adult abuse registry or forwarding information to attorney general's office. LTCRP will notify DSAMH of any additional issues related to the Critical Incident not previously identified in DSAMH's first level, which may require additional follow-up by DSAMH.
 11. DSAMH QA will forward LTCRP's conclusions and plans to DSAMH Medical Director, DSAMH Performance Improvement Director, DSAMH Division Director, and DSAMH Director of Community Mental Health Services.
 12. DSAMH QA will notify the Community Provider of LTCRP's conclusions, recommendations, or planned reporting actions.

The Community Provider shall make available to DSAMH during reasonable business hours any Staff that DSAMH believes it needs to speak with or any facilities DSAMH believes it needs to visit in the course of its investigation of any Critical Incident. DSAMH shall provide reasonable notice of its intention to either meet with Staff or tour Community Provider facilities

- C. DSAMH Risk Management will log each Critical Incident investigation and create a report for each investigation that includes at a minimum:
 1. The DSAMH Incident/Death Reporting form on which the original report was provided;
 2. The Investigator's report, which will include a summary of facts, any accompanying evidence, conclusions and recommendations for follow up or corrective actions;
 3. Documentation of conclusions of DSAMH Medical Director and DSAMH Division Director;
 4. Documentation of any further investigation by LTCRP;
 5. Documentation of any actions or recommendations from LTCRP; and

6. Documentation of the contracted provider's completion of corrective actions.
- D. DSAMH Risk Management will label each Reporting Form and DSAMH Critical Incident Investigation Report as "Confidential and Privileged pursuant to 24 Del. C., § 1768."

Vii. CORRECTIVE ACTIONS

- A. DSAMH QA will notify a Community Provider of any recommended corrective actions and provide associated timelines for any recommended corrective actions that result from a critical incident investigation. Failure of a provider agency to implement a corrective action plan may result in financial sanctions or other consequences as allowed for by the Community Provider's contract with DSAMH.
- B. DSAMH QA will monitor a Community Provider's compliance with recommended corrective actions.
- C. DSAMH may recommend immediate corrective action of any problems relating to the immediate health and welfare of clients.

VIII. REVIEW OF CRITICAL INCIDENT DATA AND INVESTIGATIONS

- A. Community Providers shall prepare for DSAMH an annual report of all Critical Incidents . This annual report shall summarize the number, type, and outcome of all Critical Incidents. The report will be sent to the DSAMH QA thirty (30) days before the close of the fiscal year.
- B. The IMRC will review data on Critical Incidents on a quarterly basis.
- C. The IMRC may review any specific Critical Incident Investigation Report as it determines appropriate or as requested by the DSAMH Division Director, DSAMH Medical Director, or DSAMH Performance Improvement Director.
- D. Based on its review, the IMRC may make recommendations to the DSAMH Division Director for corrective actions, performance improvement initiatives, or specific actions by providers.

'X. CONFIDENTIALITY

In carrying out the Policy, all Community Providers, Reporters, and Staff must protect the confidentiality of records and persons involved in any General Incident or Critical Incident, consistent with the Health Information Portability and Accountability Act (45 CFR Part 160, 164) and 16 Del. C. §§ 1210-1213. Any records transmitted pursuant to the Policy are exempt from

Delaware's Freedom of Information Act ("FOIA"), pursuant to 24 Del. C. § 1768 and 29 Del. C. Ch. 100.

DOCUMENTS ATTACHED:

DSAMH Incident/Death Reporting Form

Community Provider Critical Incident Investigation Report

PM-46 Investigative Report