

DEVELOPMENTAL DISABILITIES ADMINISTRATION
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*
[DDA Policy 5.13](#), *Protection from Abuse – Mandatory Reporting*
[DDA Policy 7.05](#), *Mortality Reviews*
[DDA Policy 12.01](#), *Incident Reporting*

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

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.

BACKGROUND

Federal regulations require that Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) and Nursing Facilities (NF) have evidence that all incidents of suspected abuse, neglect, financial exploitation, or other serious incidents involving clients are thoroughly investigated, and that an immediate protection plan is implemented. The Developmental Disabilities Administration (DDA) established a Statewide Investigation Unit (SIU), independent of the Residential Habilitation Centers (RHCs), to conduct investigations of suspected client abuse, neglect, financial exploitation, 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 [DDA Policy 12.01](#), *Incident Reporting*, for instruction on reporting critical incidents, including alleged abuse, neglect, financial exploitation, and abandonment. See also [DDA 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 DDA-SIU investigates Category I incidents. The DDA-SIU does not investigate safety hazards, personnel performance, or major administrative allegations, unless they are directly related to the Category I incident list. SIU investigators may investigate other cases deemed necessary by the DDA Assistant Secretary or his or her designee, in conjunction with the SIU Unit Manager.

DEFINITIONS

Abuse means the willful action 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, personal exploitation of a vulnerable adult and improper use of restraint which have the following meanings:

Improper Use of Restraint means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that: (i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW; (ii) is not medically authorized; or (iii) otherwise constitutes abuse under this section.

Mental abuse means any willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, intimidating, yelling, or swearing.

Personal 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.

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, or prodding.

Sexual abuse means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, 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.

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

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](#).

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.

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

SIU Investigator means the DDA Compliance and Investigation Manager (CIM) who report to the DDA SIU Unit Manager.

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

POLICY

- A. The RHCs must have systems in place to provide immediate protective responses to incidents to prevent any further injury or harm to individuals.
- B. Incidents that may occur at the RHCs which require an investigation are classified into two categories: **Category I** and **Category II**. The RHCs must refer all **Category I** incidents to the DDA-SIU for investigation.
- C. All **Category I** incident investigations of suspected criminal acts by current or former DSHS employees must be completed by local law enforcement, WSP-SIU, or both.

1. When law enforcement is conducting an investigation, the DDA-SIU will continue its investigation without interviewing the accused employee(s) (if identified) and others as determined by law enforcement. In these cases, law enforcement gives the RHC administration permission to conduct the interview(s). The RHC administration informs the DDA-SIU that permission was received to conduct the interview(s).
 2. WSP-SIU will complete the administrative investigation for allegations that could lead to employee demotion or termination. Do not refer cases of progressive discipline to the WSP-SIU.
- D. All investigations must be conducted in a timely and thorough manner consistent with state and federal law and administration policies and protocols.
- E. The RHC Superintendents must ensure plans of correction are developed and implemented.
- F. **Incident Classification**
1. **Category I Incidents**

The following types of incidents and allegations are considered **Category I incidents**:
 - a. Abuse, including:
 - 1) Improper use of restraint;
 - 2) Mental Abuse;
 - 3) Personal Exploitation;
 - 4) Physical Abuse;
 - 5) Sexual Abuse;
 - b. Client-to-client altercations when there is suspected staff or facility neglect;
 - c. Death - Suspicious or unusual death including suicide;
 - d. Financial exploitation;
 - e. Medication error - which causes, or is likely to cause, injury or harm as assessed by a medical or nursing professional;
 - f. Medication errors - reported patterns;

- g. Neglect;
- h. Physical intervention or restraint resulting in injury requiring treatment beyond minor first aid; and
- i. Suicide attempt or threat (defined as the attempt or threat to take one's own life by an individual 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.)

2. **Category II Incidents**

The following types of incidents and allegations are considered **Category II incidents**:

- a. Client-to-client altercation;
 - b. Client who leaves the grounds of the RHC without needed support or supervision when suspected neglect is not involved;
 - c. Deaths that are not suspicious or unusual);
 - d. Physical intervention or restraint resulting in injury to the client that required basic first aid; and
 - e. Vehicular accident with client injury when operated by a state employee if suspected neglect is not involved.
- G. The DDA-SIU must conduct all **Category I** incident investigations. The DDA Assistant Secretary or designee, in conjunction with the SIU Unit Manager, may request other incident types be investigated by the DDA-SIU.
- H. The RHC's appointing authority or designee is responsible for the release of all SIU investigative documents, reports, evidence, etc., as required and according to federal and state law regarding confidentiality and disclosure.

PROCEDURES

A. Initial RHC Actions Following an Incident

- 1. Protect the person and develop and implement an immediate protection plan;
 - a. Ensure everyone is safe;
 - b. Assess for injury or trauma; and
 - c. Provide care and refer for treatment as needed.

2. Reporting
 - a. All incidents involving suspected abuse, improper use of restraint, neglect, self-neglect, personal or financial exploitation, abandonment or mistreatment of a child or vulnerable adult must be reported to the proper authorities pursuant to [RCW 26.44](#), *Abuse of Children* and [RCW 74.34](#), *Abuse of Vulnerable Adults*.
 - b. Follow the incident reporting procedures described in [DDA Policy 12.01](#), *Incident Reporting*.
 - c. Report to local law enforcement and the WSP-SIU if the incident is criminal in nature.
 - d. Report an incident to the WSP-SIU if the allegation was proven to be true and would result in employee demotion or dismissal.
 - e. Inform the client's legal representative, family, or both.
3. Initial Investigation
 - a. Immediately begin an initial investigation for incidents while notification to the SIU or other investigation units is in underway.
 - b. Ask witnesses to write a statement of what occurred. If a staff member refuses to make a statement, document the refusal. Do not ask for a verbal or written statement from the accused employee(s) if this person has been identified.
 - c. Enter the incident into the appropriate incident management systems or databases (e.g., local RHC IR system or database, DDA Electronic IR System, Employee Investigation Management System (EIMS)).
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;
 - b. Documentary evidence; and
 - c. Demonstrative evidence.
5. 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\(1\)](#).

6. The Superintendent must:
 - a. Ensure all procedures as noted above have occurred; and
 - b. Manage disclosure and release of investigation records according to state and federal law and department policy.

B. Referral to the DDA-SIU

1. Refer all **Category I** incidents to the DDA-SIU.
2. When law enforcement is conducting an investigation, DDA-SIU will complete the initial *5-Day Investigation Report*, [DSHS 16-202](#), without interviewing the accused staff, or others as determined by law enforcement.
3. If law enforcement either declines to take the investigation or complete the investigation, the RHC must notify the DDA-SIU for continuation of the 5-Day Investigation Report.
4. The DDA-SIU must submit the final *5-Day Investigation Report*, [DSHS 16-202](#), including the individual testimonies of all people involved in the incident.
5. The RHC must determine whether to return the accused staff member to providing client care after the DDA-SIU completes the investigation.
6. If at any time the appointing authority or the DDA-SIU is unsure whether an alleged action or inaction is a crime, contact the WSP-SIU for assistance.
7. See also *Attachment B, RHC Referral Flow Chart*.

C. DDA-SIU Investigation of Category I Incidents

1. The DDA-SIU investigator must, at a minimum:
 - a. Interview clients, witnesses, and other relevant parties. The DDA-SIU investigator must not interview an accused employee if a law enforcement or WSP-SIU investigation is pending, unless law enforcement has indicated that it is ok to conduct the interview;
 - b. Interview staff witnesses in compliance with all Collective Bargaining Agreements (CBA) for representation during an investigation;
 - c. Document interviews and obtain written statements, as appropriate;
 - d. Review all related documentation;

- e. Collaborate with outside agencies as needed;
- f. Identify regulations, procedures, and standard operating procedures, etc., that may be applicable to the incident or allegation;
- g. Maintain client confidentiality according to state laws;
- h. Immediately report to the Superintendent or designee and the SIU Unit Manager both verbally and by email information that:
 - 1) May reveal a current or new threat to the health or safety of RHC clients or staff or failed facility practices;
 - 2) May necessitate immediate action by the RHC or may be relevant to known pending administrative or personnel action(s); or
 - 3) Suggests there is reason to believe that abuse, neglect, exploitation, etc., may have occurred and that Residential Care Services' Complaint Resolution Unit (CRU) has been notified; and
- i. Complete and submit *5-Day Investigation Report*, [DSHS 16-202](#), and supporting documents to the Superintendent or designee and the DDA-SIU Unit Manager within five 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 conducts **Category II** incident investigations, unless after consultation with the SIU unit manager, the DDA Assistant Secretary or designee requests other incident types be investigated by the DDA-SIU.
- 2. The RHC investigator must follow incident reporting requirements and:
 - a. Interview clients, staff, and other involved parties;
 - b. Review all related documentation;
 - c. Collaborate with outside agencies, as needed;
 - d. Identify regulations, procedures, and standard operating procedures, etc., that may be applicable to the incident or allegation; and
 - e. Complete and submit their *5-Day Investigation Report*, [DSHS 16-202](#), to the Superintendent within five working days of the incident [per 42 CFR 483.420\(d\)\(4\)](#) and [42 CFR 483.13\(c\)\(2\)](#).

3. If at any time new information is discovered that indicates abuse, neglect, or a criminal act may have occurred, and has not already been reported, the RHC must immediately:
 - a. Upgrade the incident to a **Category I**;
 - b. Report the incident to Residential Care Services' Complaint Resolution Unit (CRU); and
 - c. Refer the incident to the DDA-SIU, local law enforcement, or WSP-SIU per policy requirements.

E. RHC Administrative Review and Plan of Correction

1. Upon receipt of the *5-Day Investigation Report*, [DSHS 16-202](#), the RHC must:
 - a. Document the corrective actions the RHC will take to address each of the findings in the SIU investigation report on a *Plan of Correction (5-Day Investigation)*, [DSHS 16-202A](#). For a **Category I** incident, the RHC must send the completed form to the SIU investigator within ten working days.
 - b. The Plan of Correction (POC) must contain the following elements:
 - 1) The specific correction actions the RHC will take;
 - 2) The person who must ensure that the correction action has been completed; and
 - 3) The date the RHC expects to complete each corrective action.
 - c. Enter the follow-up / outcome into the appropriate incident management systems or databases (e.g., local RHC IR system or database, DDA Electronic IR System, EIMS).
2. The RHC must record the completion date for each corrective action step in the completed date(s) section. The RHC must send the completed POC and any related documentation to the SIU investigator within thirty (30) calendar days of receipt of the final 5-Day Investigation Report.
3. The DDA-SIU investigator or RHC designee, as appropriate, must conduct a 30 day review of the status of the RHC's POC and complete Part C of *Plan of Correction (5-Day Investigation)* [DSHS 16-202A](#). The DDA-SIU investigator will continue to review the POC until its completion.

F. DDA-SIU Quality Assurance Functions

The DDA-SIU Unit Manager or designee must:

1. Review all **Category I** investigation reports to ensure investigations are thorough, complete, and to verify whether investigation procedures are being followed consistently and as required by this policy;
2. Maintain a system for tracking trends, patterns, and regularly analyze and prepare regular reports on **Category I** incidents. The DDA-SIU Unit Manager must submit reports for review by the Office Chief, Office of Quality Assurance and Communications, RHC Superintendents, RHC Program Manager, and the Special Assistant to the Deputy Assistant Secretary;
3. Conduct quarterly reviews of RHC data on **Category II** incidents and review a sample of these investigation reports to identify staff training needs and to verify whether investigation procedures are being followed consistently as required by this policy; and
4. Review incident reports sent from the RHCs to DDA Central Office to assure they are properly identified as **Category I** or **Category II**.

EXCEPTIONS

Any exception to this policy must have the prior written approval of the Deputy Assistant Secretary or designee.

SUPERSESSION

DDA Policy 12.02
Issued January 15, 2017

Approved: /s/ Donald L. Clintsman
Deputy Assistant Secretary
Developmental Disabilities Administration

Date: June 16, 2017

Attachment A, *Guidelines to Secure and Preserve Evidence*
Attachment B, *RHC Referral Flow Chart to Law Enforcement / WSP-SIU / DDA-SIU*

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/IID 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/protect the incident scene and do not disturb evidence.**
 3. **If evidence has to be disturbed, follow this guide:**
 - a. **Porous Materials** (e.g., clothing, sheets): Store in porous containers such as paper bags.
 - b. **Non-porous Materials** (e.g., plastics, metals, glass, latex gloves): 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.
 4. **Secure Location:** Maintain all evidence collected in a secured double locked location with limited access (e.g., locked closet or file cabinet secured by a locked exterior door). Record or track all evidence in writing, including the names of all persons who had access to the evidence.
- 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 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, progress notes, nursing/medical assessments, etc.):
- D. **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 key information disclosed during these initial inquiries for the

ATTACHMENT A

investigator. Record the names and phone numbers/contact information of any persons in the area (i.e., witnesses, responders). Formal interviews and written statements should be coordinated with the investigator.

E. **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.

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

