

New Jersey Incident Reporting and Investigatory Process



Overview

The Office of Investigations (OI) within the Office of Program Integrity and Accountability (OPIA), works to protect individuals receiving services from the New Jersey Department of Human Services (DHS), including people with disabilities. OI conducts thorough, independent, objective and timely civil investigations of unusual incidents and allegations involving individuals served by the DHS and by its community partners.

Once a report is received, two types of cases can be created: administrative and criminal. An administrative investigation is conducted for every allegation of abuse and neglect. A criminal investigation is conducted into all cases that have an allegation of potential criminal offense. Any incident reported to DHS that may involve criminal activity is promptly reported to law enforcement by OPIA. Criminal investigations are conducted by local or state law enforcement.

Administrative investigations are conducted by OI or the provider, depending on the severity and setting of the allegation. Every investigation is reviewed by DHS once complete, regardless of what entity conducts it. Every allegation reported is either substantiated or unsubstantiated at the conclusion of the review process.

As part of its investigative and quality assurance activities, OI issues individual case findings and cites systemic concerns identified during the investigative process to help ensure providers address the continued health, safety and well-being of all individuals served.

Serious cases involving caregivers substantiated for acts of abuse, neglect and/or exploitation are subsequently referred by OI for DHS consideration to place the perpetrator's name on the DHS Central Registry of Offenders against Individuals with a Developmental Disability. Placement of the perpetrator's name on the Central Registry ensures an added level of protection to individuals served as he/she is prohibited from working with individuals with an intellectual/developmental disability.

OI investigation findings are forwarded to key DHS and DHS division entities for appropriate action and needed follow-up. OI investigation data is also a critical component of the DHS Risk Management System. OI investigation data is used to inform service providers and division staff and assists in developing prevention strategies and policies to further ensure individuals served are safe and protected.

Jurisdiction

The Office of Program Integrity and Accountability (OPIA) works collaboratively to strengthen and integrate best and promising practices in the operations of the Department of Human Services (DHS). OPIA has direct responsibility for:

- Incident Reporting and Management of DHS programs;
- Investigations, involving individuals and DHS agency programs, which are licensed, regulated, or funded by DHS;
- Licensing of Division of Developmental Disabilities (DDD) community residential settings, DDD community care residences, and limited DDD private residential facilities;
- Licensing of Division of Disability Services Traumatic Brain Injury (TBI) programs;

- Implementation of components of the Stephen Komminos Law;
- Criminal background checks for DHS and Department of Children and Families (DCF);
- Drug testing and Child Abuse Record Information (CARI) for DDD community employees;
- The Risk Management System; and
- The Central Registry of Offenders against Individuals with Developmental Disabilities.

Making a Report

What can I do if I suspect an adult with an intellectual or developmental disability has been abused, neglected, and/or exploited?

- Any person, including a guardian or family member, who suspects abuse, neglect and/or exploitation (physical and/or emotional) of an adult with an intellectual or developmental disability can call the NJ Division of Developmental Disabilities (DDD) hotline 24 hours a day, 365 days a year: DDD Abuse Hotline: 1-800-832-9173 (then press 1). Service providers and other human services professionals are required to report incidents. Service providers are required to submit a written report using a standardized format.

Can anyone find out who called in a report to the hotline?

- Suspected abuse can be reported anonymously or the caller can provide his/her name and request that it not be identified to the provider agency. There is the potential that, upon examining the facts of the allegation and the content of the incident report, an agency or individual will draw their own conclusion as to the source of the allegation; however, DDD does not tolerate retaliatory actions or the threat of retaliatory actions by providers. An individual, guardian or family member who has been threatened with and/or believes they are the victim of retaliatory actions by a provider should call the DDD hotline at 1-800-832-9173 (press 1), so the issue can be reported and reviewed.

What happens when I make a report?

- When you call the hotline, you will be asked to provide as much information as possible about the incident, including the date, location and nature of the incident, and the names of people involved. Within 48 hours after receipt 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 will verify the level of severity of the incident. All allegations of abuse, neglect, or exploitation require an investigation and a finding for each allegation, and require providers to immediately initiate and conduct an internal investigation. Upon receipt of the incident, Division staff also enter the incident information into the NJ-IRMS incident management system.

During the Investigation

Do guardians receive notification when a report is made?

- All reported incidents are required to be reported to the guardian of the individual receiving services. Per the Stephen Komninos' law, service providers must notify an individual's guardian within two hours of all major, moderate, and minor physical injury related to incidents or allegations of abuse, neglect or exploitation, or any moderate or major injury regardless of the cause. Guardians are also notified at the completion of an investigation.

Who verifies the facts of an incident?

- The Stephen Komninos' Law requires that within 48 hours after receipt of a report of an incident involving moderate physical injury, major physical injury, or abuse, neglect, or exploitation, an employee of the department be dispatched to the incident site to verify the level of severity of the incident.

Who can be interviewed during an investigation?

- Investigators will interview anyone who has knowledge or information about an allegation. At a minimum, investigations will include interviews of all alleged perpetrators, alleged victims, and identified witnesses, including individuals receiving services, employees, volunteers, subjects, and family members. All guardians or authorized family members are invited to attend a DHS OI interview of the individual the guardian represents.

What can I expect during an interview?

- The purpose of an interview with a victim or witness is to learn what an individual knows about the reported incident. The victim/witness will be notified of the location, date, and time of the interview. The interview is voluntary, and you will be allowed breaks if necessary. The victim/witness should let the investigator know if an accessibility accommodation is needed during the interview or if they do not understand something that was said. Investigators collect materials and documents as needed, but will only ask for personal items if they are needed to complete the investigation.

What happens during an investigation?

- All incidents are routed to the Division of Developmental Disabilities, the Critical Incident Management Unit, or the Office of Investigations. Following assignment, the incident report is reviewed and an investigation plan is developed. If applicable, the OI investigator obtains clearance to conduct the civil investigation, and guardian notification is made. The guardian will be invited to attend the investigator's interview with their loved one. The investigator will visit the scene, and begin interviews of all pertinent parties and begin document collection. The investigator will submit drafts at 15 day intervals for review by their supervisor. Any immediate health, safety, or well-being concerns are discussed with the OI chain of command and brought to the attention of the provider agency. Depending on the finding, the case is closed by the supervisor, chief, or director, and detailed findings letters are completed for guardians.

Who can find out the results of an investigation?

- The guardian of an individual will be provided with a written summary of the findings of a DHS investigation involving an alleged incident of abuse, neglect, or exploitation of the individual. If the individual does not have a guardian, a family member may receive the summary, unless the individual prohibits the family member from receiving information. The actual reports and records of an investigation shall be provided to the guardian or a person responsible for the welfare of the individual if the information is needed in connection with providing care, treatment, an assessment, evaluation, or supervision of the individual, and DDD determines that providing information is in the best interest of the individual.

What happens during a criminal case?

- When an allegation of abuse and/or neglect rises to the level of a criminal offense, OI coordinates with law enforcement in the course of their investigation. OI does not conduct a civil investigation until cleared by law enforcement to begin. As needed, OI routinely collaborates with law enforcement when there is suspicion or evidence of criminal activity or in serious cases involving abuse, neglect and/or exploitation. This ongoing partnership frequently results in criminal convictions of identified perpetrators and further helps to ensure the health, safety and well-being of individuals receiving services.

What is Stephen Komninos' Law?

As of May 1, 2018, every person who is employed by or volunteering in any DHS-funded, licensed, or regulated program serving adults with developmental disabilities is subject to the requirement of the Stephen Komninos' Law. Per this law, notification requires that in residential settings or day programs, the service provider must notify an individual's guardian within two hours of all major, moderate, and minor physical injury related to incidents or allegations of abuse, neglect or exploitation, or any moderate or major injury regardless of the cause. If there is a legitimate reason that the notification was not provided within two hours, it must be provided within eight hours with a written explanation for the cause of delay.

The law requires all persons employed by, or volunteering in, any DHS-funded, licensed or regulated program, or a person providing services with indirect State funding to an individual with a developmental disability to report incidents or suspicions of abuse, neglect or exploitation. There are criminal penalties and a monetary fine for failing to report abuse, neglect or exploitation of an adult with a developmental disability. A person employed or volunteering who fails to report, but has reason to believe such an act has been committed, is a disorderly person under the law. A person convicted of this offense may be fined \$350 for each day that the abuse, neglect or exploitation was not reported.

Final Determinations

In conducting a civil investigation, OI is statutorily required to use a "preponderance of evidence" standard to determine whether an allegation or incident is substantiated or not substantiated. "Preponderance of the evidence" means that based on evidence and information gathered through the investigation, an allegation or incident is more likely true than not. A preponderance of evidence is attained when 51 percent of the evidence supports a substantiated finding.

Provider agencies may take corrective action at any time during their investigations to fulfill their obligation to protect an individual's health, welfare, and safety. Following an OI investigation for allegations of abuse, neglect or exploitation, the provider agency must submit a plan of correction within 30 days. The Department may also take corrective actions to ensure that the incident does not reoccur, including, but not limited to: relocating an individual receiving services to a safe environment or removal of a staff person from a program; assignment of additional staff to a residence; staff training; improvements in the physical plant; revision of operating procedures; contractual sanctions; suspension or revocation of a license; and other disciplinary actions.

What happens to staff found responsible?

When the Department can substantiate abuse, neglect, and exploitation, agencies are required to take personnel action pursuant to their agency policies. In certain circumstances, when it is clear that a person willfully intended harm, individuals are placed on the Central Registry of Offenders against Individuals with Developmental Disabilities. Being placed on this registry prohibits an individual from working with this population ever again. If appropriate, law enforcement may also file criminal charges.

Why would an allegation of abuse and/or neglect be determined to be "unsubstantiated"?

An allegation may be determined to be "unsubstantiated" for a variety of reasons, including a lack of evidence showing that an incident of abuse, neglect, or exploitation occurred, or that a specific individual is responsible for the incident. An unsubstantiated finding does not prevent other consequences for the provider, which may include a finding of administrative neglect, employee discipline, additional supervision, training, or other items specified in a plan of correction.

Appendix A – Definitions

Abuse – 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

Administrative investigation – an investigation conducted by OI or the provider into every allegation of abuse and neglect.

Allegation – an assertion that someone has committed an act of abuse, neglect, or exploitation against an individual receiving services from DHS

Caregiver – 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 DHS

Criminal investigation – an investigation conducted by state or local law enforcement into all cases that have an allegation of potential criminal offense

Event – an occurrence that affects the health, safety, or well-being of an individual receiving services

Minor Injury – an injury that requires no treatment beyond basic first aid administered by a medical professional or service provider. Basic first aid includes, but is not limited to, cleaning; use of bandages, over-the-counter medications, and/or ice packs; and monitoring/observation

Moderate Injury – an injury that requires treatment beyond basic first aid, but does not require treatment that can only be performed at a hospital. Includes, but is not limited to, all fractures, tooth avulsion/fractures, injuries that require devices (crutches/brace/splint/boot), invasive diagnostic treatment with or without anesthesia/sedatives, and prescription medications.

Major Injury – an injury that requires treatment that can only be performed in a hospital facility and may or may not include admission to the hospital for additional treatment or observation

No Findings – not enough information is available to reach a conclusion regarding an allegation, or the event does not require a finding

Preponderance of Evidence - based on evidence and information gathered through the investigation, an allegation or incident is more likely true than not

Incident – an allegation(s) and/or event(s) that are reportable to DHS

Exploitation – the act or process of a caregiver using an individual receiving services from DHS for the individual's resources for another person's profit or advantage

Neglect – consists of any of the following acts by a caregiver on an individual receiving services from DHS: willfully failing to provide proper or sufficient food, clothing, maintenance, medical

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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

Substantiated – a preponderance of credible evidence indicates that an allegation or situation is true and/or occurred

Unsubstantiated – less than a preponderance of credible evidence, facts, and information support that an allegation or situation is true and/or occurred

Appendix B- Administrative Order 2:05 Incident Reporting and Management

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.

https://www.nj.gov/humanservices/providers/policies/AO%202_05%20Final.pdf

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Appendix C- Incident Reporting Levels and Categories Grid

<https://nj.gov/humanservices/staff/opia/documents/Incident%20Reporting%20Levels%20and%20Categories%2012-15-21.pdf>

