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DHS OFFICE OF THE INSPECTOR GENERAL POLICY FOR REPORTING ABUSE/NEGLECT ALLEGATIONS

This policy was provided by OIG via an email on November 24, 2015. It replaces a previous OIG prepared policy and was accompanied by the following letter:

Authorized Representative
Community Agencies

RE: Rule 50 Policy Updates

Dear Authorized Representative:

Legislation initiated by the Office of the Inspector General (Senate Bill 1947) was signed into law by Governor Rauner on 7 August 2015, becoming Public Act 99-0323. As a result, several revisions were made to Rule 50. As the rule mandates that each agency have a policy detailing procedures for reporting abuse/neglect allegations, we must ask that you update your current one to reflect these changes.

OIG has developed a sample policy containing the revised requirements and definitions of Rule 50, a copy of which accompanies this email. Due to the significant nature of the revisions, OIG is requesting you adopt the sample policy as your own, adding any additional internal reporting procedures you may have, provided they do not conflict with Rule 50.

Once you have revised your local policy, please either e-mail it to Barry.Smoot@Illinois.gov or mail it to **Barry Smoot, OIG, 1107 West DeYoung, Suite 20, Marion, IL 62959** to be reviewed for compliance with the new provisions. We would appreciate receiving it by January 31, 2016. If you have any questions, Mr. Smoot may be reached at 618-993-7469.

Sincerely,
Michael J. McCotter
Inspector General

I. Purpose

To establish a uniform policy and procedures for reporting and responding to all abuse/neglect allegations and deaths.

II. Authority

- Department of Human Services Act (20 ILCS 1305/1-17)
- Section 7.3 of the Mental Health and Developmental Disabilities Administrative Act (20 ILCS 1705/)

- Illinois Administrative Code, Chapter 1, Title 59, Part 50 (herein referred to as "Rule 50")
- Section 25 of the Health Care Worker Background Check Act (225 ILCS 46/)
- Nursing Home Care Act (210 ILCS 45/)
- Section 11-9. 5 of the Illinois Criminal Code of 2012, Sexual misconduct with a person with a disability (720 ILCS 5/)
- Mental Health and Developmental Disabilities Code (405 ILCS 5/)
- Substance Abuse Confidentiality (42 CFR 2/)
- AIDS Confidentiality Act (410 ILCS 305/)
- MHDD Confidentiality Act (740 ILCS 110/)
- Freedom of Information Act (5 ILCS 140/)
- Health Insurance Portability and Accountability Act of 1996 (HIPAA), (45 CFR, Parts 160, 162, and 164)

III. Policy

It is the policy and the responsibility of Elm City Center to report all allegations of abuse/neglect and deaths to the Office of the Inspector General in the Illinois Department of Human Services within the required time frames in an appropriate and thorough manner. All employees (which includes owners/operators, contractors, subcontractors and volunteers) of Elm City Center shall adhere to the standards set forth in this policy directive. Nothing in this policy directive precludes the agency's responsibilities as outlined in Illinois Administrative Code, Chapter 1, Title 59, Part 50, herein referred to as "Rule 50."

IV. Objective

To describe the procedures for reporting and responding to allegations of abuse, neglect, death, and other reportable incidents to the Office of the Inspector General (OIG).

V. Responsibilities

The Elm City Center President/CEO or Authorized Representative shall ensure that all employees (which includes owners/operators, contractors, subcontractors and volunteers) are trained upon hire, and at least biennially thereafter, and are held responsible for carrying out the designated duties set forth in Rule 50 and this policy. The Rule 50 training should include, but not be limited to, the fact that identities of employees with substantiated physical abuse, sexual abuse, egregious neglect or financial exploitation shall be referred to the Department of Public Health's Health Care Worker Registry except when any appeal is pending or successful.

VI. Definitions

Abuse: See definitions for physical abuse, sexual abuse, mental abuse and financial exploitation.

Access: Admission to a community agency or facility for the purpose of conducting imminent risk assessments, conducting investigations, monitoring compliance with a written response, or completing any other statutorily assigned duty, such as annual unannounced site visits, including but not limited to conducting interviews and obtaining and reviewing any documents or records that OIG believes to be pertinent to an investigation.

Act: The Department of Human Services Act [20 ILCS 1305].

Administrative action: Measures taken by the community agency or the facility as a result of the findings or recommendations contained in the investigation that protect individuals from abuse, neglect, or financial exploitation, prevent recurrences, and eliminate problems.

Aggravating circumstance: A factor that is attendant to a finding and that tends to compound or increase the culpability of the accused.

Allegation: An assertion, complaint, suspicion or incident involving any of the following conduct by an employee, facility, or agency against an individual or individuals: mental abuse, physical abuse, sexual abuse, financial exploitation or neglect.

Authorized Representative: The administrative head or executive director of a community agency appointed by the community agency's governing body with overall responsibility for fiscal and programmatic management, or the facility director or hospital administrator of a Department facility. If this person is implicated in an investigation, the governing body of the community agency or the Secretary of the Department shall be deemed the authorized representative for that investigation.

Bodily harm: Any injury, damage, or impairment to an individual's physical condition, or making physical contact of an insulting or provoking nature with an individual.

Community agency or agency: A community agency or program licensed, funded, or certified by the Department but not licensed or certified by any other human services agency of the State, to provide mental health service or developmental disabilities service.

Complainant: The person who reports a death or an allegation of abuse, to include financial exploitation, or neglect, directly to OIG and is not the required reporter.

Complaint: A report of a death or an allegation of abuse, to include financial exploitation or neglect reported directly to the OIG Hotline.

Credible evidence: Any evidence that relates to the allegation or incident and that is considered believable and reliable.

Day: Working day, unless otherwise specified.

Deflection: A situation in which an individual is presented for admission to a facility or agency and the facility staff or agency staff do not admit that individual. Deflection includes triage, redirection and denial of admission.

Department: The Department of Human Services.

Egregious neglect: A finding of neglect as determined by the Inspector General that represents a gross failure to adequately provide for, or a callous indifference to, the health, safety, or medical needs of an individual and results in an individual's death or other serious deterioration of an individual's physical condition or mental condition.

Employee: Any person who provides services at the facility or the community agency on or off site. The service relationship can be with the individual or the agency. Also "employee" includes any employee or contractual agent of the Department of Human Services or the community agency involved in providing or monitoring or administering mental health or developmental disability services. This includes but is not limited to: owners, operators, payroll personnel, contractors, subcontractors, and volunteers. Employee also includes someone who is no longer working for an agency or facility, but is the subject of an ongoing investigation for which OIG has jurisdiction.

Facility: A mental health facility or developmental disabilities center operated by the Department.

Final report: A completed investigative report approved by the Inspector General that summarizes the evidence and that indicates whether the allegation of abuse, financial exploitation or neglect is substantiated, unsubstantiated, or unfounded based on the evidence gathered from the investigation, when the reconsideration and response period has expired.

Financial exploitation: Taking unjust advantage of an individual's assets, property, or financial resources through deception, intimidation, or conversion for the employee's, facility's, or agency's own advantage or benefit.

Finding: The Office of the Inspector General's determination regarding whether an allegation is substantiated, unsubstantiated, or unfounded.

Health Care Worker Registry or Registry: The Health Care Worker Registry created by the Nursing Home Care Act (210 ILCS 45/).

Imminent Danger: A preliminary determination of immediate, threatened or impending risk of illness, mental injury, or physical injury or deterioration to an individual's health that requires immediate action.

Individual: Any person receiving mental health services developmental disabilities services or both from a facility or agency, while either on-site or off-site.

Insulting and provoking: Conduct that offends a reasonable sense of personal dignity.

Investigative report: A written report that summarizes the evidence in an investigation, addresses the elements of the allegation, and contains a recommendation as to whether the findings of the investigation indicate that the allegation should be substantiated, unsubstantiated, or unfounded.

Medical treatment: Any treatment, other than diagnostic procedures, that may only be ordered or rendered to an individual by a physician or dentist regarding an injury.

Mental abuse: The use of demeaning, intimidating, or threatening words, signs, gestures, or other actions by an employee about an individual and in the presence of an individual or individuals that results in emotional distress or maladaptive behavior, or could have resulted in emotional distress or maladaptive behavior, for any individual present.

Mitigating circumstance: A condition that is attendant to a finding, and does not excuse or justify the conduct in question, but may be considered in evaluating the severity of the conduct, the culpability of the accused, or both the severity of the conduct and the culpability of the accused.

Neglect: An employee's, agency's, or facility's failure to provide adequate medical care, personal care, or maintenance, and that, as a consequence, causes an individual pain, injury, or emotional distress, results in either an individual's maladaptive behavior or the deterioration of an individual's physical condition or mental condition, or places an individual's health or safety at substantial risk of possible injury, harm or death.

Non-accidental: Occurring with volition, consciousness, not occurring by chance.

OIG: The Office of the Inspector General for the Illinois Department of Human Services.

Physical abuse: An employee's non-accidental and inappropriate contact with an individual that causes bodily harm. "Physical abuse" includes actions that cause bodily harm as a result of an employee directing an individual or person to physically abuse another individual.

Preponderance of the evidence: Proof sufficient to persuade the finder of fact that a fact sought to be proved is more likely true than not true.

Recommendation: An admonition, separate from a finding, that requires action by the facility, agency, or Department to correct a systemic issue, problem or deficiency identified during an investigation.

Required reporter: Any employee who suspects, witnesses, or is informed of an allegation of any one or more of the following: mental abuse, physical abuse, sexual abuse, financial exploitation or neglect.

Routine programmatic: Refers to services provided as part of the individual's habilitation plan, treatment plan, or as a regular or ongoing component of the community agency's or facility's general services or practices.

Sexual abuse: Any sexual contact or intimate physical contact between an employee and an individual, including an employee's coercion or encouragement of an individual to engage in sexual activity that results in sexual contact, intimate physical contact, sexual behavior or intimate physical behavior. Sexual abuse also includes:

- An employee's actions that result in the sending or showing of sexually explicit images to an individual(s) via computer, cellular telephone, electronic mail, portable electronic device, or other media with or without contact with the individual; OR
- An employee's posting of sexually explicit images of an individual online or elsewhere whether or not there is contact with the individual.

Sexual abuse does not include allowing individuals to, of their own volition, view movies or images of a sexual nature, or read text containing sexual content unless the individual's

guardian prohibits the viewing of such movies or images or reading of such material.

Sexual contact: Inappropriate sexual contact between an employee and an individual involving either an employee's genital area, anus, buttocks or breast(s) or an individual's genital area, anus, buttocks or breast(s). Sexual contact also includes sexual contact between individuals that is coerced or encouraged by an employee.

Sexually Explicit Images: Includes, but is not limited to, any material which depicts nudity, sexual conduct, or sadomasochistic abuse, or which contains explicit and detailed verbal description or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse.

Sexually Explicit Images do not include those images contained in sex education materials used by employees to educate individuals.

Substantiated: There is a preponderance of the evidence to support the allegation.

Unfounded: There is no credible evidence to support the allegation.

Unsubstantiated: There is credible evidence, but less than a preponderance of evidence, to support the allegation.

VII. Procedures

A. Reporting

1. If an employee witnesses, is told of, or suspects an incident of physical abuse, sexual abuse, mental abuse, financial exploitation, neglect or a death has occurred, the employee or agency shall report the allegation to the OIG Hotline (1-800-368-1463). The employee or agency shall report the allegation immediately, but no later than the time frames specified herein.
2. Nothing precludes the employee from reporting the allegation to the agency according to its procedures.
3. The agency shall then ensure that allegations of abuse, neglect and deaths are reported to OIG no later than the time frames specified herein.

B. Reporting to OIG

1. All allegations of abuse/neglect and death shall be reported to the OIG within the following required time frames:
 - a. Four-hour reporting - Within four hours after the initial discovery of an incident of alleged abuse or neglect, all allegations shall be reported to OIG's Hotline number: 1-800-368-1463. Four-hour reporting includes the following:
 - i.* Any allegation of abuse, including financial exploitation;
 - ii.* Any allegation of neglect; and
 - iii.* Any injury or death of an individual that occurs within the agency's programs when abuse or neglect is suspected.

- b. At a minimum, the following details must be reported to the OIG Hotline concerning the allegation or death:
 - i. Information about the victim, including name, date of birth, sex, disability, and identification number and/or social security number (if known);
 - ii. Information about the incident, including what happened, when it happened, where it happened, how it happened and the identification of all witnesses;
 - iii. Information about the accused (if known), including name, contact information and if the accused is presently working with or will be working with the victim, and
 - iv. Information about the person initiating the complaint, including name, contact information, and relationship to the victim.
- c. Deaths: The following reports of death shall be made to the OIG Hotline within 24 hours after initial discovery:
 - i. Any death occurring within 14 calendar days after discharge or transfer from a residential program;
 - ii. Any death occurring within 24 hours after deflection from a residential program; and
 - iii. Any other death of an individual occurring within a residential program or at any DHS-funded site even though not alleged to be a result of abuse or neglect.
- d. Screening, delaying or withholding reports of incidents or allegations of abuse or neglect from OIG is strictly prohibited. The Authorized Representative or his or her designee shall not delete, delay, withhold, limit or otherwise restrict any information contained in the report. Information may be added for clarification purposes only.
1. e. It is a violation of the Act to take retaliatory action against an employee who acts in good faith in conformance with his or her duties as a required reporter.
2. **OIG Hotline:** The OIG Hotline telephone number (1-800-368-1463) shall be communicated to individuals and guardians at the time of admission and the number shall be posted in plain sight at each community agency location where individuals receive services.

C. Process for Notification of Alleged Victim and Guardian

After OIG notifies the Elm City Center President/CEO that an allegation of abuse or neglect has been received, the Elm City Center President/CEO or Authorized Representative shall notify the victim or his/her legal guardian, if applicable, of the allegation within 24 hours. If the Elm City Center President/CEO or Authorized Representative is unable to reach the guardian by phone, a letter of notification shall be sent within 24 hours.

D. Incident Management/Investigation

1. If an allegation would meet the definition of abuse or neglect in OIG Rule 50, the Elm City Center President/CEO or Authorized Representative shall:
 - a. Ensure the immediate care and protection of the victim;
 - b. Obtain medical examinations, when applicable, and fully document the findings;

- c. Remove accused employees from having contact with any individuals at the agency, when there is credible evidence supporting an allegation of abuse, pending the outcome of any further investigation, prosecution or disciplinary action against the employee.
 - d. Report for emergency response when necessary:
 - i. When the Elm City Center President/CEO or Authorized Representative determines that a medical emergency exists, immediately contact 911 for assistance;
 - ii. When the Elm City Center President/CEO or Authorized Representative determines that law enforcement assistance is needed, immediately contact the appropriate local law enforcement authority, and notify OIG within one working day of the date and time the local law enforcement authority was notified and the name of the officer who took the report.
2. If there is an allegation or indication of a physical injury, sexual assault or any situation where a victim's health is in question, the agency shall immediately seek appropriate medical attention.
 3. The Elm City Center President/CEO or Authorized Representative shall ensure that OIG is notified of any changes in the alleged victim's condition, the nature of the injury or allegation, the involvement of any law enforcement authority, or the work status of the accused.
 4. Pursuant to statute, agencies are prohibited from conducting abuse/neglect investigations. The agency shall request approval from OIG prior to conducting its own investigation and before attempting to gather information related to an open investigation. If, however, the agency has a staff member trained in the investigative requirements under Rule 50. 30(f), the agency is required to begin the initial steps of the investigation as trained by OIG, unless directed otherwise by OIG or a law enforcement authority.
 5. Response and examination of scene of incident: Unless otherwise directed by OIG, ensure appropriate responses to the allegation, which may include the need to secure the scene of the incident and preserve evidence, when applicable:
 - a. Securing the scene entails cordoning off and preventing access to and removal of objects from the area where the incident occurred. When there may be physical or visual evidence, the scene should be photographed from several angles, and nothing in the scene will be altered (e. g. , floors washed, furniture moved, clothing laundered) until directed to do so by the appropriate investigating entity.
 - b. Immediately securing and preserving all relevant physical evidence.
 - i. After securing the scene and if either directed by law enforcement or OIG to secure evidence, then diagram the location of, clearly photograph, and collect all evidence placing it in a separate and appropriate container (e. g. , paper bag or envelope). Under no circumstance should any item of evidence be placed in a plastic bag.
 - ii. In an allegation of sexual abuse, ensure that the victim has a complete medical examination before the victim showers or bathes, unless the victim objects.
 - iii. Identify and separate potential witnesses, when applicable.

- iv. Copy and/or impound relevant documents as directed by the appropriate investigating entity.
- v. All evidence collected shall be maintained in a secure and locked space with access only by the person collecting the evidence, until transferred to the investigating entity. The chain of custody must be maintained and documented for all evidence collected.

6. Photographs

- a. When injuries are alleged to be the result of abuse or neglect, the Elm City Center President/CEO or Authorized Representative shall ensure that they are photographed immediately, even if the injury is not evident at the time.
 - i. Each photograph taken with 35mm film will be annotated by a label on the reverse with identifiers including the victim's name, date and time of the photograph, location of the injury, name of the person taking the photograph, and OIG case number, when known.
 - ii. Each photograph taken with a digital camera must be identified with the information above and submitted both as a hard copy and in electronic file format such as JPG or PNG.
 - iii. Take photographs both with and without an item of standard measurement, such as a ruler.
 - iv. Always include an identifying photo, one which shows both the alleged victim's face and injury site in the same photograph.
 - v. List all photographs taken on a photographic log.
- b. The privacy of the individual must be considered in all photographs. No photograph(s) will be taken of a female's breast or of any person's genital area unless necessary. If such are taken, only that portion of the area in question should be photographed and every effort should be made to insure that the photograph is taken by a person of the same gender as the alleged victim.

7. Initial written statements

- a. When accused persons and potential witnesses are separated pursuant to (VI)(E)(5)(a)(2)((3)) above, Elm City Center President/CEO or Authorized Representative may require written statements from each person, detailing what he or she knows about the alleged abuse/neglect or other incident. The statement must be written in a quiet and private location and be secured for delivery to OIG.
- b. The statement shall be obtained immediately upon the report of an allegation.
- c. The person providing the statement may also be required to draw a diagram of the location of the allegation, identifying all persons present.

8. Additional responsibilities

- a. If, at any point, OIG determines, and informs the agency that there is credible evidence of a possible criminal act, the agency shall notify the appropriate law enforcement authority immediately, but no later than 24 hours after such discovery, and shall notify OIG of that notification and any report/complaint number(s) within one working day.
- b. Confidentiality of Information
 - i. Any allegation(s) or investigations of reports of abuse and neglect shall remain confidential until a final report is completed and approved by OIG.

- ii.* Information concerning diagnosis and treatment for alcohol or drug abuse shall be disclosed to OIG in accordance with federal regulations. OIG investigations are exempted from restrictions under the federal Health Information Portability and Accountability Act (HIPAA).
- iii.* Information concerning tests for human immunodeficiency virus (HIV) and diagnosis and treatment for acquired immune deficiency syndrome (AIDS) shall be disclosed to OIG only in accordance with the AIDS Confidentiality Act.
- iv.* All personal health-related information contained in investigative reports shall remain confidential in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

F. Processing Investigative Reports

1. The Elm City Center President/CEO or Authorized Representative shall maintain a local investigative case file containing-copies of all investigatory materials. This includes all evidence, such as photographs, written statements and records. The file shall also include documentation of all corrective actions taken as a result of the case.
2. Notifications, Final Report Findings: After receiving a final report if the alleged victim is an individual with a guardian, the Elm City Center President/CEO or Authorized Representative shall inform the individual and the guardian, in an appropriate manner, whether the allegation was substantiated, unsubstantiated or unfounded.
3. Confidentiality of Final Reports
 - a. Final reports of substantiated investigations shall be released only in accordance with Section 1-17 of the DHS Act, Section 6 of the Abused and Neglected Long Term Care Facility Residents Reporting Act, federal confidentiality statutes, the Illinois Mental Health and Developmental Disabilities Confidentiality Act, the Freedom of Information Act (OIG investigations are governed by this Act), and court orders.
 - b. Final reports of unsubstantiated or unfounded allegations shall remain confidential except that final reports shall be released pursuant to Section 6 of the Abused and Neglected Long Term Care Facility Residents Reporting Act (210 ILCS 30/6), Section 1-17(m) of the Department of Human Services Act (20 ILCS 1305), or a valid court order.
 - c. The identity of any person as the complainant shall remain confidential in accordance with the Freedom of Information Act or unless authorized by the complainant.