



LCBDD News & Updates!

Hello to all of our Provider Partners! Hope you're enjoying the summer. Sending along some useful info. Please let me know if you have questions on any of it.

Thanks,
David

- BWC Safety Grants available
- Employment Supports staff training requirements
- Wandering & the HCBS Settings Rule
- NADSP Code of Ethics webinars
- LCBDD Community Survey
- PCW changing to PSM
- Next Agency Staff training is Aug. 7th

Safety Grants available from BWC

If you are an employer wanting to ensure the safety of your workers when carrying out the services they provide to developmentally disabled children and adults, you have a partner in BWC. Our *Employers Working with Persons with Developmental Disabilities Grant Program (EWPDD)* provides financial assistance to purchase training and/or equipment to substantially reduce or eliminate injuries or illnesses associated with working with developmentally disabled children and adults.

Qualified employers may receive up to \$20,000 with a 5-to-1 match for equipment or no match for training for the duration of the EWPDD grant program.

Please see the attachment for additional info.

Individual Employment Support- summary of staff training requirements

Our friends at OPRA recently shared this summary of requirements (see attachment) for providing Individual Employment Supports.

Supporting Individuals who wander and the HCBS Settings Rule

If you provide Waiver Services to individuals who wander or try to exit your building unsafely, take a look at the attached CMS FAQs concerning wandering and the HCBS Settings rule.



LCBDD News & Updates!

NADSP Announces Second Webinar in the "Code of Ethics Series"

This webinar series of ten webinars focuses on The National Alliance for Direct Support Professionals Code of Ethics. Each webinar will highlight a tenet of the Code. The webinars are sponsored by the New York Regional Centers for Workforce Transformation and recordings of the webinars will be available on the RCWT website as well as the members- only section of the NADSP website. Webinar registration information can be found on the NADSP website at <https://nadsp.org/events>

NADSP Code of Ethics Webinar Series: Person Centered Supports on Jul 14, 2017 2:00 PM EDT

This webinar series focuses on The National Alliance for Direct Support Professionals Code of Ethics. Each webinar will highlight a tenet of the Code. The webinars sponsored by the New York Regional Centers for Workforce Transformation. Recordings of webinars will be available on the RCWT website as well as the member's only section of the NADSP website. Presenters: Melody Johnson, NADSP Faculty

Description: As a direct support professional my first allegiance is to the people I support. All other activities and functions flow from that allegiance. This happens to be the first tenet of the NADSP Code of Ethics. Mel Johnson has lived this as a family member, direct support professional and now as a trainer and advocate with and for direct support professionals. Join Mel and explore what it truly means to be person centered and the challenges inherent in this process.

Webinar registration information can be found on the NADSP website at <https://nadsp.org/events>
After registering, you will receive a confirmation email containing information about joining the webinar.

Licking County Board of D.D. Community Survey

We want to hear from the Licking County Community! Please share this link with anyone that might be interested in giving input.





LCBDD News & Updates!

PCW to Become PSM

Attention: All Providers

The Provider Certification Wizard (PCW) is transitioning into a new system titled Provider Services Management (PSM), which will be effective July 31, 2017. Read more about improvements to the system.

[Read Memo](#)

Provider Agency Staff Training

The next Agency Staff Training will be Monday August 7th. This FREE training is offered the first Monday of most months. Please note that July's training will be on Wednesday, July 5th and in September the training will be offered on Tuesday, September 5th. The calendar confirming the dates of each training class can be viewed via the link below. Staff at provider agencies in Licking County should ask a manager for instructions on attending these trainings. Please contact Teresa Whipkey for additional information. teresa.whipkey@lcountydd.org or (740) 349-6588

[Click here to see the calendar of trainings for Provider Agency Staff by LCBDD](#)

Employers Working with Persons with Developmental Disabilities Program

Why you should apply for Safety Grants

If you are an employer wanting to ensure the safety of your workers when carrying out the services they provide to developmentally disabled children and adults, you have a partner in BWC. Our Employers Working with Persons with Developmental Disabilities Grant Program (EWPDD) provides financial assistance to purchase training and/or equipment to substantially reduce or eliminate injuries or illnesses associated with working with developmentally disabled children and adults.

Grant funds

Qualified employers may receive up to \$20,000 with a 5-to-1 match for equipment or no match for training for the duration of the EWPDD grant program.

Grant eligibility

To be eligible to receive a EWPDD you must:

- Be a state-fund private or public employer taxing district employer.
- Work with children/adults with disabilities. All applicants must provide information in their application that clearly describes the services they provide to this population;
- Have active Ohio workers' compensation coverage. The employer must maintain continuous active coverage while participating in the program;
- Not have more than 40 days of cumulative lapses in workers' compensation coverage within the prior 12 months.
- Be current with respect to all payments due BWC as defined in Ohio Administrative Code 4123-17-14;
- Have been in existence for at least two years;
- Have reported payroll for at least one full policy year;
- Timely report actual payroll for the preceding policy year and pay any premium due upon reconciliation of estimated premium and actual premium;
- Safety Intervention Grants (SIG) program participants must be current on receipt documentation and reporting to be eligible to apply for the EWPDD program.

Application process

Process

1. Gather information for application.
2. Access BWC's website to download the PDF application.
3. Complete application and mail it to BWC.
4. BWC reviews grant application.

5. BWC approves grant.
6. BWC distributes funds.
7. Purchase training and/or purchase and install equipment.
8. Submit proof of spending.
9. Submit one-year case study.

Process notes

BWC will issue grant funds to the employer approximately two to eight weeks after approval of the application.

You must make your approved purchase within three months of the date on the grant check. Submit receipt documentation within 120 days to BWC.

Employers may apply for the EWPDD grant even if they have received \$40,000 or less in their current SIG program eligibility cycle.

Recipients agree to share results of their employers working with persons with developmental disabilities grant benefits. This allows BWC to communicate employers working with persons with developmental disabilities results with other employers and/or research organizations in the form of best practices.

Eligible equipment and training

- Ceiling lifts
- Floor-based lifting devices
- Ambulation devices
- Bathing and toileting chairs
- Hi-low tables
- Non violent de-escalation and/or trauma informed care training and care training certification
- Multi-sensory environment equipment

Additional information

You can reach BWC's Division of Safety & Hygiene by:

- Calling 1-800-644-6292;
- Sending an email to DSHSG@bwc.state.oh.us;
- Sending a fax to 614-365-4972;
- Visiting www.bwc.ohio.gov.



**Waiver Individual Employment Support Services
Training Requirements for Direct Support Staff
(Agency Providers)**

An agency provider shall develop and implement a written plan identifying training priorities for direct services staff who provide individual employment support.

- The training priorities shall be consistent with the needs of individuals served, best practice, and the provider's mission, vision, and strategic plan. The written plan of training priorities shall describe the method (e.g., written test, skills demonstration, or documented observation by supervisor) that will be used to establish competency in areas of training. The written plan of training priorities shall be updated at least once every twelve months and shall identify who is responsible for arranging or providing the training and projected timelines for completion of the training.

An agency provider shall ensure that a written record of training completed for direct services staff who provide individual employment support is maintained.

- The written record shall include a description of the training completed including a training syllabus and copies of training materials, the date of training, the duration of training, and the instructor's name, if applicable.

Upon Hiring:

Direct services staff who provide individual employment support successfully complete, no later than *ninety calendar days after hire*, an orientation program of *at least eight hours* that addresses, but is not limited to:

(a) Organizational background of the agency provider, including:

- Mission, vision, values, principles, and goals;
- Organizational structure;
- Key policies, procedures, and work rules;
- Ethical and professional conduct and practice;
- Avoiding conflicts of interest; and
- Working effectively with individuals, families, and other team members.

(b) Components of quality care for individuals served, including:

- Interpersonal relationships and trust;
- Cultural and personal sensitivity;
- Effective communication;
- Person-centered philosophy, planning, and practice;
- Development of individual service plans;
- Roles and responsibilities of team members; and
- Record keeping including progress notes and incident/accident reports.

(c) Health and safety, including:

- Signs and symptoms of illness or injury and procedure for response;
- Building/site-specific emergency response plans; and
- Program-specific transportation safety.

(d) Positive behavioral support, including:

- Principles of positive culture;
- Role of direct services staff in creating a positive culture;
- General requirements for intervention and behavioral support strategies and direct services staff role including documentation;
- Human rights committees established in accordance with rule [5123:2-2-06¹](#) of the Administrative Code; and
- Crisis intervention techniques.

(e) Services that comprise individual employment support.

**An agency provider shall ensure that direct services staff who provide individual employment support (other than those who have at least one year of experience providing individual employment support at the point of hire), during the first year after hire, are assigned and have access to a mentor.

During First Year of Employment:

Direct services staff who provide individual employment support (other than those who have at least one year of experience providing individual employment support at the point of hire), no later than one year after hire, successfully complete at least eight hours of training specific to the provision of individual employment support that includes, but is not limited to:

(a) Skill-building in job training and systematic instruction that assists the individual in maintaining employment and or advancing his or her career

(b) Self-determination which includes assisting the individual to develop self-advocacy skills, to exercise his or her civil rights, to exercise control and responsibility over the services he or she receives, and to acquire skills that enable him or her to become more independent, productive, and integrated within the community.

All Direct Support Staff Providing Individual Employment Support Services:

Direct services staff member who provide individual employment support successfully completes on-the-job training specific to each individual he or she serves that includes:

- (a) What is important to the individual and what is important for the individual
- (b) The individual's support needs including, as applicable, behavioral support strategy, management of the individual's funds, and medication administration/delegated nursing.

During Second Year of Employment and Continuing Annually:

Direct services staff who provide individual employment support, commencing in the second year of hire by the agency provider, annually complete at least eight hours of training, in accordance with the written plan of training priorities

(a) The training shall enhance the skills and competencies of the direct services staff member relevant to his or her job responsibilities and shall include, but is not limited to:

- The role and responsibilities of direct services staff with regard to services including person-centered planning, community integration, self-determination, and self-advocacy;
- (ii) The rights of individuals set forth in sections **5123.62 to 5123.64²** of the Revised Code;
- (iii) The requirements of rule **5123:2-17-02³** of the Administrative Code including a review of health and welfare alerts issued by the department since the previous year's training;
- (iv) The requirements relative to the direct services staff member's role in providing behavioral support to the individuals he or she serves; and
- (v) Best practices related to the provision of individual employment support.

*** The training may be structured or unstructured and may include, but is not limited to, lectures, seminars, formal coursework, workshops, conferences, demonstrations, visitations or observations of other services/programs, distance and other means of electronic learning, video and audio-visual training, and staff meetings.

References

1. **5123:2-2-06 – Behavioral support strategies that include restrictive measures** (<http://dodd.ohio.gov/RulesLaws/Documents/5123-2-2-06%20Effective%202015-01-01.pdf>)

....(F) Human rights committees

(1) Each county board, or county board jointly with one or more other county boards, or county board jointly with one or more providers, and each intermediate care facility shall establish a human rights committee to safeguard individuals' rights and protect individuals from physical, emotional, and psychological harm. The human rights committee shall:

(a) Be comprised of at least four persons;

(b) Include at least one individual who receives or is eligible to receive specialized services;

(c) Include qualified persons who have either experience or training in contemporary practices for behavioral support; and

(d) Reflect a balance of representatives from each of the following two groups:

(i) Individuals who receive or are eligible to receive specialized services or family members or guardians of individuals who receive or are eligible to receive specialized services; and

(ii) County boards or providers.

(2) All information and documents provided to the human rights committee and all discussions of the committee shall be confidential and shall not be shared or discussed with anyone other than the individual and his or her guardian and the individual's team.

5123:2-2-06 8

(3) The human rights committee shall review, approve or reject, monitor, and reauthorize strategies that include restrictive measures. In this role, the human rights committee shall:

(a) Ensure that the planning process outlined in this rule has been followed and that the individual or the individual's guardian, as applicable, has provided informed consent and been afforded due process;

(b) Ensure that the proposed restrictive measures are necessary to reduce risk of harm or likelihood of legal sanction;

(c) Ensure that the overall outcome of the behavioral support strategy promotes the physical, emotional, and psychological wellbeing of the individual while reducing risk of harm or likelihood of legal sanction;

- (d) Ensure that a restrictive measure is temporary in nature and occurs only in specifically defined situations based on risk of harm or likelihood of legal sanction;
 - (e) Verify that any behavioral support strategy that includes restrictive measures also incorporates actions designed to enable the individual to feel safe, respected, and valued while emphasizing choice, self-determination, and an improved quality of life; and
 - (f) Communicate the committee's determination in writing to the qualified intellectual disability professional or service and support administrator submitting the request for approval.
- (4) Members of the human rights committee shall receive department-approved training within three months of appointment to the committee in: rights of individuals as enumerated in section 5123.62 of the Revised Code, person-centered planning, informed consent, confidentiality, and the requirements of this rule.
- (5) Members of the human rights committee shall annually receive department-approved training in relative topics which may include but are not limited to: self-advocacy and self-determination; role of guardians and section 5126.043 of the Revised Code; effect of traumatic experiences on behavior; and court-ordered community controls and the role of the court, the county board, and the human rights committee.

2. 5123.62 - Rights of persons with a developmental disability

(<http://law.justia.com/codes/ohio/2011/title51/chapter5123/section5123-62/>)

The rights of persons with mental retardation or a developmental disability include, but are not limited to, the following:

- (A) The right to be treated at all times with courtesy and respect and with full recognition of their dignity and individuality;
- (B) The right to an appropriate, safe, and sanitary living environment that complies with local, state, and federal standards and recognizes the persons' need for privacy and independence;
- (C) The right to food adequate to meet accepted standards of nutrition;
- (D) The right to practice the religion of their choice or to abstain from the practice of religion;
- (E) The right of timely access to appropriate medical or dental treatment;
- (F) The right of access to necessary ancillary services, including, but not limited to, occupational therapy, physical therapy, speech therapy, and behavior modification and other psychological services;
- (G) The right to receive appropriate care and treatment in the least intrusive manner;

- (H) The right to privacy, including both periods of privacy and places of privacy;
- (I) The right to communicate freely with persons of their choice in any reasonable manner they choose;
- (J) The right to ownership and use of personal possessions so as to maintain individuality and personal dignity;
- (K) The right to social interaction with members of either sex;
- (L) The right of access to opportunities that enable individuals to develop their full human potential;
- (M) The right to pursue vocational opportunities that will promote and enhance economic independence;
- (N) The right to be treated equally as citizens under the law;
- (O) The right to be free from emotional, psychological, and physical abuse;
- (P) The right to participate in appropriate programs of education, training, social development, and habilitation and in programs of reasonable recreation;
- (Q) The right to participate in decisions that affect their lives;
- (R) The right to select a parent or advocate to act on their behalf;
- (S) The right to manage their personal financial affairs, based on individual ability to do so;
- (T) The right to confidential treatment of all information in their personal and medical records, except to the extent that disclosure or release of records is permitted under sections 5123.89 and 5126.044 of the Revised Code;
- (U) The right to voice grievances and recommend changes in policies and services without restraint, interference, coercion, discrimination, or reprisal;
- (V) The right to be free from unnecessary chemical or physical restraints;
- (W) The right to participate in the political process;
- (X) The right to refuse to participate in medical, psychological, or other research or experiments.

5123.63 Distributing copies of rights. (<http://codes.ohio.gov/orc/5123.63>)

Every state agency, county board of developmental disabilities, or political subdivision that provides services, either directly or through a contract, to persons with developmental disabilities shall give each provider a copy of the list of rights contained in section 5123.62 of the Revised Code. Each public and private provider of services shall carry out the requirements of this section in addition to any other posting or notification requirements imposed by local, state, or federal law or rules.

The provider shall make copies of the list of rights and shall be responsible for an initial distribution of the list to each individual receiving services from the provider. If the individual is unable to read the list, the provider shall communicate the contents of the list to the individual to the extent practicable in a manner that the individual understands. The individual receiving services or the parent, guardian, or advocate of the individual shall sign an acknowledgement of receipt of a copy of the list of rights, and a copy of the signed acknowledgement shall be placed in the individual's file. The provider shall also be responsible for answering any questions and giving any explanations necessary to assist the individual to understand the rights enumerated. Instruction in these rights shall be documented.

Each provider shall make available to all persons receiving services and all employees and visitors a copy of the list of rights and the addresses and telephone numbers of the Ohio protection and advocacy system, the department of developmental disabilities, and the county board of developmental disabilities of the county in which the provider provides services.

5123.64 Enforcement duties. (<http://codes.ohio.gov/orc/5123.64>)

(A) Every provider of services to persons with developmental disabilities shall establish policies and programs to ensure that all staff members are familiar with the rights enumerated in section 5123.62 of the Revised Code and observe those rights in their contacts with persons receiving services. Any policy, procedure, or rule of the provider that conflicts with any of the rights enumerated shall be null and void. Every provider shall establish written procedures for resolving complaints of violations of those rights. A copy of the procedures shall be provided to any person receiving services or to any parent, guardian, or advocate of a person receiving services.

(B) Any person with a developmental disability who believes that the person's rights as enumerated in section 5123.62 of the Revised Code have been violated may:

(1) Bring the violation to the attention of the provider for resolution;

(2) Report the violation to the department of developmental disabilities, the Ohio protection and advocacy system, or the appropriate county board of developmental disabilities;

(3) Take any other appropriate action to ensure compliance with sections 5123.61 to 5123.64 of the Revised Code, including the filing of a legal action to enforce rights or to recover damages for violation of rights.

3. 5123:2-17-02 - Addressing major unusual incidents and unusual incidents to ensure health, welfare, and continuous quality improvement.
(<http://codes.ohio.gov/oac/5123%3A2-17-02>)

(A) Purpose

This rule establishes the requirements for addressing major unusual incidents and unusual incidents and implements a continuous quality improvement process in order to prevent or reduce the risk of harm to individuals.

(B) Scope

This rule applies to county boards, developmental centers, and providers.

(C) Definitions

(1) "Administrative investigation" means the gathering and analysis of information related to a major unusual incident so that appropriate action can be taken to address any harm or risk of harm and prevent recurrence. There are three administrative investigation procedures (category A, category B, and category C) that correspond to the three categories of major unusual incidents.

(2) "Agency provider" means a provider, certified or licensed by the department or a provider approved by the Ohio department of medicaid to provide services under the transitions developmental disabilities waiver, that employs staff to deliver services to individuals and who may subcontract the delivery of services. "Agency provider" includes a county board while providing specialized services.

(3) "At-risk individual" means an individual whose health or welfare is adversely affected or whose health or welfare may reasonably be considered to be in danger of being adversely affected.

(4) "County board" means a county board of developmental disabilities as established under Chapter 5126. of the Revised Code or a regional council of governments as established under Chapter 167. of the Revised Code when it includes at least one county board.

(5) "Department" means the Ohio department of developmental disabilities.

(6) "Developmental center" means an intermediate care facility under the managing responsibility of the department.

(7) "Developmental disabilities employee" means any of the following:

(a) An employee of the department;

(b) An employee of a county board;

(c) An employee of an agency provider in a position that includes providing specialized services to an individual; or

(d) An independent provider.

(8) "Incident report" means documentation that contains details about a major unusual incident or an unusual incident and shall include, but is not limited to:

(a) Individual's name;

(b) Individual's address;

(c) Date of incident;

(d) Location of incident;

(e) Description of incident;

(f) Type and location of injuries;

(g) Immediate actions taken to ensure health and welfare of individual involved and any at-risk individuals;

(h) Name of primary person involved and his or her relationship to the individual;

(i) Names of witnesses;

(j) Statements completed by persons who witnessed or have personal knowledge of the incident;

(k) Notifications with name, title, and time and date of notice;

(l) Further medical follow-up; and

(m) Name of signature of person completing the incident report.

(9) "Incident tracking system" means the department's web-based system for reporting major unusual incidents.

(10) "Independent provider" means a self-employed person who provides services for which he or she must be certified under rule 5123:2-2-01 of the Administrative Code or a self-employed person approved by the Ohio department of medicaid to provide services under the transitions developmental disabilities waiver and does not employ, either directly or through contract, anyone else to provide the services.

(11) "Individual" means a person with a developmental disability.

(12) "Individual served" means an individual who receives specialized services.

(13) "Intermediate care facility" means an intermediate care facility for individuals with intellectual disabilities as defined in rule 5123:2-7-01 of the Administrative Code.

(14) "Investigative agent" means an employee of a county board or a person under contract with a county board who is certified by the department to conduct administrative investigations of major unusual incidents.

(15) "Major unusual incident" means the alleged, suspected, or actual occurrence of an incident when there is reason to believe the health or welfare of an individual may be adversely affected or an individual may be placed at a likely risk of harm, if such individual is receiving services through the developmental disabilities service delivery system or will be receiving such services as a result of the incident. There are three categories of major unusual incidents that correspond to three administrative investigation procedures delineated in appendix A, appendix B, and appendix C to this rule:

(a) Category A

(i) Accidental or suspicious death. "Accidental or suspicious death" means the death of an individual resulting from an accident or suspicious circumstances.

(ii) Exploitation. "Exploitation" means the unlawful or improper act of using an individual or an individual's resources for monetary or personal benefit, profit, or gain.

(iii) Failure to report. "Failure to report" means that a person, who is required to report pursuant to section 5123.61 of the Revised Code, has reason to believe that an individual has suffered or faces a substantial risk of suffering any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse, misappropriation, or exploitation that results in a risk to health and welfare or neglect of that individual, and such person does not immediately report such information to a law enforcement agency, a county board, or, in the case of an individual living in a developmental center, either to law enforcement or the department. Pursuant to division (C)(1) of section 5123.61 of the Revised Code, such report shall be made to the department and the county board when the incident involves an act or omission of an employee of a county board.

(iv) Misappropriation. "Misappropriation" means depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means prohibited by the Revised Code, including Chapters 2911. and 2913. of the Revised Code.

(v) Neglect. "Neglect" means when there is a duty to do so, failing to provide an individual with any treatment, care, goods, supervision, or services necessary to maintain the health or welfare of the individual.

(vi) Peer-to-peer act. "Peer-to-peer act" means one of the following incidents involving two individuals served:

(a) Exploitation which means the unlawful or improper act of using an individual or an individual's resources for monetary or personal benefit, profit, or gain.

(b) Theft which means intentionally depriving another individual of real or personal property valued at twenty dollars or more or property of significant personal value to the individual.

(c) Physical act that occurs when an individual is targeting, or firmly fixed on another individual such that the act is not accidental or random and the act results in an injury that is treated by a physician, physician assistant, or nurse practitioner. Allegations of one individual choking another or any head or neck injuries such as a bloody nose, a bloody lip, a black eye, or other injury to the eye, shall be considered major unusual incidents. Minor injuries such as scratches or reddened areas not involving the head or neck shall be considered unusual incidents and shall require immediate action, a review to uncover possible cause/contributing factors, and prevention measures.

(d) Sexual act which means sexual conduct and/or contact for the purposes of sexual gratification without the consent of the other individual.

(e) Verbal act which means the use of words, gestures, or other communicative means to purposefully threaten, coerce, or intimidate the other individual when there is the opportunity and ability to carry out the threat.

(vii) Physical abuse. "Physical abuse" means the use of physical force that can reasonably be expected to result in physical harm or serious physical harm as those terms are defined in section 2901.01 of the Revised Code. Such force may include, but is not limited to, hitting, slapping, pushing, or throwing objects at an individual.

(viii) Prohibited sexual relations. "Prohibited sexual relations" means a developmental disabilities employee engaging in consensual sexual conduct or having consensual sexual contact with an individual who is not the employee's spouse, and for whom the developmental disabilities employee was employed or under contract to provide care or supervise the provision of care at the time of the incident.

(ix) Rights code violation. "Rights code violation" means any violation of the rights enumerated in section 5123.62 of the Revised Code that creates a likely risk of harm to the health or welfare of an individual.

(x) Sexual abuse. "Sexual abuse" means unlawful sexual conduct or sexual contact as those terms are defined in section 2907.01 of the Revised Code and the commission of any act prohibited by Chapter 2907. of the Revised Code (e.g., public indecency, importuning, and voyeurism).

(xi) Verbal abuse. "Verbal abuse" means the use of words, gestures, or other communicative means to purposefully threaten, coerce, intimidate, harass, or humiliate an individual.

(b) Category B

(i) Attempted suicide. "Attempted suicide" means a physical attempt by an individual that results in emergency room treatment, in-patient observation, or hospital admission.

(ii) Death other than accidental or suspicious death. "Death other than accidental or suspicious death" means the death of an individual by natural cause without suspicious circumstances.

(iii) Medical emergency. "Medical emergency" means an incident where emergency medical intervention is required to save an individual's life (e.g., choking relief techniques such as back blows or cardiopulmonary resuscitation, epinephrine auto injector usage, or intravenous for dehydration).

(iv) Missing individual. "Missing individual" means an incident that is not considered neglect and an individual's whereabouts, after immediate measures taken, are unknown and the individual is believed to be at or pose an imminent risk of harm to self or others. An incident when an individual's whereabouts are unknown for longer than the period of time specified in the individual service plan that does not result in imminent risk of harm to self or others shall be investigated as an unusual incident.

(v) Significant injury. "Significant injury" means an injury of known or unknown cause that is not considered abuse or neglect and that results in concussion, broken bone, dislocation, second or third degree burns or that requires immobilization, casting, or five or more sutures. Significant injuries shall be designated in the incident tracking system as either known or unknown cause.

(c) Category C

(i) Law enforcement. "Law enforcement" means any incident that results in the individual served being arrested, charged, or incarcerated.

(ii) Unapproved behavior support. "Unapproved behavior support" means the use of an aversive strategy or intervention prohibited by paragraph (J) of rule 5123:2-1-02 of the Administrative Code or an aversive strategy implemented without approval by the human rights committee or behavior support committee or without informed consent, that results in a likely risk to the individual's health and welfare. An aversive strategy or intervention prohibited by paragraph (J) of rule 5123:2-1-02 of the Administrative Code that does not pose a likely risk to health and welfare shall be investigated as an unusual incident.

(iii) Unscheduled hospitalization. "Unscheduled hospitalization" means any hospital admission that is not scheduled unless the hospital admission is due to a pre-existing condition that is specified in the individual service plan indicating the specific symptoms and criteria that require hospitalization.

(16) "Primary person involved" means the person alleged to have committed or to have been responsible for the accidental or suspicious death, exploitation, failure to report, misappropriation, neglect, physical abuse, prohibited sexual relations, rights code violation, sexual abuse, or verbal abuse.

(17) "Provider" means an agency provider or independent provider that provides specialized services.

(18) "Qualified intellectual disability professional" has the same meaning as in 42 C.F.R. 483.430 (October 1, 2012).

(19) "Specialized services" means any program or service designed and operated to serve primarily individuals, including a program or service provided by an entity licensed or certified by the department.

(20) "Unusual incident" means an event or occurrence involving an individual that is not consistent with routine operations, policies and procedures, or the individual's care or individual service plan, but is not a major unusual incident. Unusual incident includes, but is not limited to, dental injuries; falls; an injury that is not a significant injury; medication errors without a likely risk to health and welfare; overnight relocation of an individual due to a fire, natural disaster, or mechanical failure; an incident involving two individuals served that is not a peer-to-peer act major unusual incident; and rights code violations or unapproved behavior supports without a likely risk to health and welfare.

(21) "Working day" means Monday, Tuesday, Wednesday, Thursday, or Friday except when that day is a holiday as defined in 1.14 of the Revised Code.

(D) Reporting requirements for major unusual incidents

(1) Reports regarding all major unusual incidents involving an individual who resides in an intermediate care facility or who receives round-the-clock waiver services shall be filed and the requirements of this rule followed regardless of where the incident occurred.

(2) Reports regarding the following major unusual incidents shall be filed and the requirements of this rule followed regardless of where the incident occurred:

- (a) Accidental or suspicious death;
- (b) Attempted suicide;
- (c) Death other than accidental or suspicious death;
- (d) Exploitation;
- (e) Failure to report;
- (f) Law enforcement;
- (g) Misappropriation;
- (h) Missing individual;
- (i) Neglect;
- (j) Peer-to-peer act;
- (k) Physical abuse;
- (l) Prohibited sexual relations;
- (m) Sexual abuse; and
- (n) Verbal abuse.

(3) Reports regarding the following major unusual incidents shall be filed and the requirements of this rule followed only when the incident occurs in a program operated by a county board or when the individual is being served by a licensed or certified provider:

- (a) Medical emergency;
- (b) Rights code violation;
- (c) Significant injury;

(d) Unapproved behavior support; and

(e) Unscheduled hospitalization.

(4) Immediately upon identification or notification of a major unusual incident, the provider shall take all reasonable measures to ensure the health and welfare of at-risk individuals. The provider and county board shall discuss any disagreements regarding reasonable measures in order to resolve them. If the provider and county board are unable to agree on reasonable measures to ensure the health and welfare of at-risk individuals, the department shall make the determination. Such measures shall include:

(a) Immediate and ongoing medical attention, as appropriate;

(b) Removal of an employee from direct contact with any at-risk individual when the employee is alleged to have been involved in abuse or neglect until such time as the provider has reasonably determined that such removal is no longer necessary; and

(c) Other necessary measures to protect the health and welfare of at-risk individuals.

(5) Immediately upon receipt of a report or notification of an allegation, the county board shall:

(a) Ensure that all reasonable measures necessary to protect the health and welfare of at-risk individuals have been taken;

(b) Determine if additional measures are needed; and

(c) Notify the department if the circumstances in paragraph (I)(1) of this rule that require a department-directed administrative investigation are present. Such notification shall take place on the first working day the county board becomes aware of the incident.

(6) The provider shall immediately, but no later than four hours after discovery of the incident, notify the county board through means identified by the county board of the following incidents or allegations:

(a) Accidental or suspicious death;

(b) Exploitation;

(c) Misappropriation;

(d) Neglect;

(e) Peer-to-peer act;

(f) Physical abuse;

(g) Sexual abuse;

(h) Verbal abuse; and

(i) When the provider has received an inquiry from the media regarding a major unusual incident.

(7) For all major unusual incidents, all providers shall submit a written incident report to the county board contact or designee no later than three p.m. the next working day following initial knowledge of a potential or determined major unusual incident. The report shall be submitted in a format prescribed by the department.

(8) The county board shall enter preliminary information regarding the incident in the incident tracking system and in the manner prescribed by the department by three p.m. on the working day following notification by the provider or of becoming aware of the major unusual incident.

(9) When a provider has placed an employee on leave or otherwise taken protective action pending the outcome of the administrative investigation, the county board or department, as applicable, shall keep the provider apprised of the status of the administrative investigation so that the provider can resume normal operations as soon as possible consistent with the health and welfare of at-risk individuals. The provider shall notify the county board or department, as applicable, of any changes regarding the protective action.

(10) If the provider is a developmental center, all reports required by this rule shall be made directly to the department.

(11) The county board shall have a system that is available twenty-four hours a day, seven days a week, to receive and respond to all reports required by this rule. The county board shall communicate this system in writing to all providers in the county and to the department.

(E) Reporting of alleged criminal acts

(1) Nothing in this rule relieves mandatory reporters of the responsibility to immediately report to the intermediate care facility administrator or administrator designee, allegations of mistreatment, neglect, or abuse and injuries of unknown source when the source of the injury was not witnessed by any person and the source of the injury could not be explained by the individuals and the injury raises suspicions of possible abuse or neglect because of the extent of the injury or the location of the injury or the number of injuries observed at one particular point in time or the incidences of injuries over time pursuant to 42 C.F.R. 483.420 (October 1, 2012).

(2) The provider shall immediately report to the law enforcement entity having jurisdiction of the location where the incident occurred, any allegation of exploitation, failure to report, misappropriation, neglect, peer-to-peer act, physical abuse, sexual abuse, or verbal abuse which may constitute a criminal act. The provider shall document the time, date, and name of person notified of the alleged criminal act. The county board shall ensure that the notification has been made.

(3) The department shall immediately report to the Ohio state highway patrol, any allegation of exploitation, failure to report, misappropriation, neglect, peer-to-peer act, physical abuse, sexual abuse, or verbal abuse occurring at a developmental center which may constitute a criminal act. The department shall document the time, date, and name of person notified of the alleged criminal act.

(F) Abused or neglected children

All allegations of abuse or neglect as defined in sections 2151.03 and 2151.031 of the Revised Code of an individual under the age of twenty-one years shall be immediately reported to the local public children's services agency. The notification may be made by the provider or the county board. The county board shall ensure that the notification has been made.

(G) Notification requirements for major unusual incidents

(1) The provider shall make the following notifications, as applicable, when the major unusual incident or discovery of the major unusual incident occurs when such provider has responsibility for the individual. The notification shall be made on the same day the major unusual incident or discovery of the major unusual incident occurs and include immediate actions taken.

(a) Guardian or other person whom the individual has identified.

(b) Service and support administrator serving the individual.

(c) Licensed or certified residential provider.

(d) Staff or family living at the individual's residence who have responsibility for the individual's care.

(e) Support broker for an individual enrolled in the self-empowered life funding waiver.

(2) All notifications or efforts to notify shall be documented. The county board shall ensure that all required notifications have been made.

(3) Notification shall not be made if the person to be notified is the primary person involved, the spouse of the primary person involved, or the significant other of the primary person involved.

(4) Notification shall be made to the individuals, individuals' guardians, and other persons whom the individuals have identified in a peer-to-peer act unless such notification could jeopardize the health and welfare of an individual involved.

(5) Notification to a person is not required when the report comes from such person or in the case of a death when the family is already aware of the death.

(6) In any case where law enforcement has been notified of an alleged crime, the department may provide notification of the incident to any other provider, developmental center, or county board for whom the primary person involved works, for the purpose of ensuring the health and welfare of any at-risk individual. The notified provider or county board shall take such steps necessary to address the health and welfare needs of any at-risk individual and may consult the department in this regard. The department shall inform any notified entity as to whether the incident is substantiated. Providers, developmental centers, or county boards employing a primary person involved shall notify the department when they are aware that the primary person involved works for another provider.

(H) General administrative investigation requirements

(1) Each county board shall employ at least one investigative agent or contract with a person or governmental entity for the services of an investigative agent. An investigative agent shall be certified by the department in accordance with rule [5123:2-5-07](#) of the Administrative Code. Developmental center investigators are considered certified investigative agents for the purpose of this rule.

(2) All major unusual incidents require an administrative investigation meeting the applicable administrative investigation procedure in appendix A, appendix B, or appendix C to this rule unless it is not possible or relevant to the administrative investigation to meet a requirement under this rule, in which case the reason shall be documented. Administrative investigations shall be conducted and reviewed by investigative agents.

(a) The department or county board may elect to follow the administrative investigation procedure for category A major unusual incidents for any major unusual incident.

(b) Based on the facts discovered during administrative investigation of the major unusual incident, the category may change. If a major unusual incident changes category, the reason for the change shall be documented and the new applicable category administrative investigation procedure shall be followed to investigate the major unusual incident.

(c) Major unusual incidents that involve an active criminal investigation may be closed as soon as the county board ensures that the major unusual incident is properly coded, the history of the primary person involved has been reviewed, cause and contributing factors are determined, a finding is made, and prevention measures implemented. Information needed for closure of the major unusual incident may be obtained from the criminal investigation.

(3) County board staff may assist the investigative agent by gathering documents, entering information into the incident tracking system, fulfilling category C administrative investigation requirements, or performing other administrative or clerical duties that are not specific to the investigative agent role.

(4) Except when law enforcement or the public children's services agency is conducting the investigation, the investigative agent shall conduct all interviews for major unusual incidents unless the investigative agent determines the need for assistance with interviewing an individual. For a major unusual incident occurring at an intermediate care facility, the investigative agent may utilize interviews conducted by the intermediate care facility or conduct his or her own interviews. If the investigative agent determines the information is reliable, the investigative agent may utilize other information received from law enforcement, the public children's services agency, or providers in order to meet the requirements of this rule.

(5) Except when law enforcement or the public children's services agency has been notified and is considering conducting an investigation, the county board shall commence an administrative investigation. If law enforcement or the public children's services agency notifies the county board that it has declined to investigate, the county board shall commence the administrative investigation within a reasonable amount of time based on the initial information received or obtained and consistent with the health and welfare of all at-risk individuals, but no later than twenty-four hours for a major unusual incident in category A or no later than three working days for a major unusual incident in category B or category C.

(6) An intermediate care facility shall conduct an investigation that complies with applicable federal regulations, including 42 C.F.R. 483.420 (October 1, 2012), for any unusual incident or major unusual incident involving a resident of the intermediate care facility, regardless of where the unusual incident or major unusual incident occurs. The intermediate care facility shall provide a copy of its full report of an administrative investigation of a major unusual incident to the county board. The investigative agent may utilize information from the intermediate care facility's administrative investigation to meet the requirements of this rule or conduct a separate administrative investigation. The county board shall provide a copy of its full report of the administrative investigation to the intermediate care facility. The department shall resolve any conflicts that arise.

(7) When an agency provider, excluding an intermediate care facility, conducts an internal review of an incident for which a major unusual incident has been filed, the agency provider shall submit the results of its internal review of the incident, including statements and documents, to the county board within fourteen calendar days of the agency provider becoming aware of the incident.

(8) All developmental disabilities employees shall cooperate with administrative investigations conducted by entities authorized to conduct investigations. Providers and county boards shall respond to requests for information within the time frame requested. The time frames identified shall be reasonable.

(9) The investigative agent shall complete a report of the administrative investigation and submit it for closure in the incident tracking system within thirty working days unless the county board requests and the department grants an extension for good cause. If an extension is granted, the department may require submission of interim reports and may identify alternative actions to assist with the timely conclusion of the report.

(10) The report shall follow the format prescribed by the department. The investigative agent shall include the initial allegation, a list of persons interviewed and documents reviewed, a summary of each interview and document reviewed, and a findings and conclusions section which shall include the cause and contributing factors to the incident and the facts that support the findings and conclusions.

(I) Department-directed administrative investigations of major unusual incidents (1) The department shall conduct the administrative investigation when the major unusual incident includes an allegation against:

(a) The superintendent of a county board or developmental center;

(b) The executive director or equivalent of a regional council of governments;

(c) A management employee who reports directly to the superintendent of the county board, the superintendent of a developmental center, or executive director or equivalent of a regional council of governments;

(d) An investigative agent;

(e) A service and support administrator;

(f) A major unusual incident contact or designee employed by a county board;

(g) A current member of a county board;

(h) A person having any known relationship with any of the persons specified in paragraphs (I)(1)(a) to (I)(1)(g) of this rule when such relationship may present a conflict of interest or the appearance of a conflict of interest; or

(i) An employee of a county board when it is alleged that the employee is responsible for an individual's death, has committed sexual abuse, engaged in prohibited sexual activity, or committed physical abuse or neglect resulting in emergency room treatment or hospitalization.

(2) A department-directed administrative investigation or administrative investigation review may be conducted following the receipt of a request from a county board, developmental center, provider, individual, or guardian if the department determines that there is a reasonable basis for the request.

(3) The department may conduct a review or administrative investigation of any major unusual incident or may request that a review or administrative investigation be conducted by another county board, a regional council of governments, or any other governmental entity authorized to conduct an investigation.

(J) Written summaries of major unusual incidents

(1) No later than five working days following the county board's, developmental center's, or department's recommendation via the incident tracking system that the report be closed, the county board, developmental center, or department shall provide a written summary of the administrative investigation of each category A or category B major unusual incident, including the allegations, the facts and findings, including as applicable, whether the case was substantiated or unsubstantiated, and preventive measures implemented in response to the major unusual incident to the following unless the information in the written summary has already been communicated:

(a) The individual, individual's guardian, or other person whom the individual has identified, as applicable; in the case of a peer-to-peer act, both individuals, individuals' guardians, or other persons whom the individuals have identified, as applicable, shall receive the written summary;

(b) The licensed or certified provider and provider at the time of the major unusual incident; and

(c) The individual's service and support administrator and support broker, as applicable.

(2) In the case of an individual's death, the written summary shall be provided to the individual's family only upon request by the individual's family.

(3) The written summary shall not be provided to the primary person involved, the spouse of the primary person involved, or the significant other of the primary person involved. No later than five working days following the closure of a case, the county board shall make a reasonable attempt to notify the primary person involved as to whether the major unusual incident has been substantiated, unsubstantiated/insufficient evidence, or unsubstantiated/unfounded.

(4) If a service and support administrator is not assigned, a county board designee shall be responsible for ensuring the preventive measures are implemented based upon the written summary.

(5) An individual, individual's guardian, other person whom the individual has identified, or provider may dispute the findings by submitting a letter of dispute and supporting documentation to the county board superintendent, or to the director of the department if the department conducted the administrative investigation, within fifteen calendar days following receipt of the findings. An individual may receive assistance from any person selected by the individual to prepare a letter of dispute and provide supporting documentation.

(6) The county board superintendent or his or her designee or the director or his or her designee, as applicable, shall consider the letter of dispute, the supporting documentation, and any other relevant information and issue a determination within thirty calendar days of such submission and take action consistent with such determination, including confirming or modifying the findings or directing that more information be gathered and the findings be reconsidered.

(7) In cases where the letter of dispute has been filed with the county board, the disputant may dispute the final findings made by the county board by filing those findings and any documentation contesting such findings as are disputed with the director of the department within fifteen calendar days of the county board determination. The director shall issue a decision within thirty calendar days.

(K) Review, prevention, and closure of major unusual incidents

(1) County boards and agency providers shall implement a written procedure for the internal review of all major unusual incidents and shall be responsible for taking all reasonable steps necessary to prevent the recurrence of major unusual incidents.

(2) The individual's team, including the county board and provider, shall collaborate on the development of preventive measures to address the causes and contributing factors to the major unusual incident. The team members shall jointly determine what constitutes reasonable steps necessary to prevent the recurrence of major unusual incidents. If there is no service and support administrator, individual team, qualified intellectual disability

professional, or agency provider involved with the individual, a county board designee shall ensure that preventive measures as are reasonably possible are fully implemented.

(3) The department may review reports submitted by a county board or developmental center. The department may obtain additional information necessary to consider the report, including copies of all administrative investigation reports that have been prepared. Such additional information shall be provided within the time period specified by the department.

(4) The department shall review and close reports regarding the following major unusual incidents:

- (a) Accidental or suspicious death;
- (b) Exploitation;
- (c) Failure to report;
- (d) Misappropriation;
- (e) Missing individual;
- (f) Neglect;
- (g) Peer-to-peer act;
- (h) Physical abuse;
- (i) Prohibited sexual relations;
- (j) Rights code violation;
- (k) Sexual abuse;
- (l) Significant injury when cause is unknown;
- (m) Unapproved behavior support;
- (n) Verbal abuse;
- (o) Any major unusual incident that is the subject of a director's alert; and
- (p) Any major unusual incident investigated by the department.

(5) The county board shall review and close reports regarding the following major unusual incidents:

- (a) Attempted suicide;
- (b) Death other than accidental or suspicious death;
- (c) Law enforcement;
- (d) Medical emergency;
- (e) Significant injury when cause is known; and
- (f) Unscheduled hospitalization.

(6) The department may review any case to ensure it has been properly closed and shall conduct sample reviews to ensure proper closure by the county board. The department may reopen any administrative investigation that does not meet the requirements of this rule. The county board shall provide any information deemed necessary by the department to close the case.

(7) The department and the county board shall consider the following criteria when determining whether to close a case:

- (a) Whether sufficient reasonable measures have been taken to ensure the health and welfare of any at-risk individual;
- (b) Whether a thorough administrative investigation has been conducted consistent with the standards set forth in this rule;
- (c) Whether the team, including the county board and provider, collaborated on developing preventive measures to address the causes and contributing factors;
- (d) Whether the county board has ensured that preventive measures have been implemented to prevent recurrence;
- (e) Whether the incident is part of a pattern or trend as flagged through the incident tracking system requiring some additional action; and
- (f) Whether all requirements set forth in statute or rule have been satisfied.

(L) Analysis of major unusual incident trends and patterns

(1) Providers shall produce a semi-annual and annual report regarding major unusual incident trends and patterns which shall be sent to the county board. The county board

shall semi-annually review providers' reports. The semi-annual review shall be cumulative for January first through June thirtieth of each year and include an in-depth analysis. The annual review shall be cumulative for January first through December thirty-first of each year and include an in-depth analysis.

(2) All reviews and analyses shall be completed within thirty calendar days following the end of the review period. The semi-annual and annual reports shall contain the following elements:

(a) Date of review;

(b) Name of person completing review;

(c) Time period of review;

(d) Comparison of data for previous three years;

(e) Explanation of data;

(f) Data for review by major unusual incident category type;

(g) Specific individuals involved in established trends and patterns (i.e., five major unusual incidents of any kind within six months, ten major unusual incidents of any kind within a year, or other pattern identified by the individual's team);

(h) Specific trends by residence, region, or program;

(i) Previously identified trends and patterns; and

(j) Action plans and preventive measures to address noted trends and patterns.

(3) County boards shall conduct the analysis and implement follow-up actions for all programs operated by county boards such as workshops, schools, and transportation. The county board shall send its analysis and follow-up actions to the department by August thirty-first of each year for the semi-annual review and by February twenty-eighth of each year for the annual review. The department shall review the analysis to ensure that all issues have been reasonably addressed to prevent recurrence.

(4) Providers shall conduct the analysis, implement follow-up actions, and send the analysis and follow-up actions to the county board for all programs operated in the county by August thirty-first of each year for the semi-annual review and by February twenty-eighth of each year for the annual review. The county board shall review the analysis to ensure that all issues have been reasonably addressed to prevent recurrence. The county

board shall keep the analyses and follow-up actions on file and make them available to the department upon request.

(5) The county board shall ensure that trends and patterns of major unusual incidents are included and addressed in the individual service plan of each individual affected.

(6) Each county board or as applicable, each council of governments to which county boards belong, shall have a committee that reviews trends and patterns of major unusual incidents. The committee shall be made up of a reasonable representation of the county board(s), providers, individuals who receive services and their families, and other stakeholders deemed appropriate by the committee.

(a) The role of the committee shall be to review and share the county or council of governments aggregate data prepared by the county board or council of governments to identify trends, patterns, or areas for improving the quality of life for individuals served in the county or counties.

(b) The committee shall meet each September to review and analyze data for the first six months of the calendar year and each March to review and analyze data for the preceding calendar year. The county board or council of governments shall send the aggregate data prepared for the meeting to all participants at least ten calendar days in advance of the meeting.

(c) The county board or council of governments shall record and maintain minutes of each meeting, distribute the minutes to members of the committee, and make the minutes available to any person upon request.

(d) The county board shall ensure follow-up actions identified by the committee have been implemented.

(7) The department shall prepare a report on trends and patterns identified through the process of reviewing major unusual incidents. The department shall periodically, but at least semi-annually, review this report with a committee appointed by the director of the department which shall consist of at least six members who represent various stakeholder groups, including disability rights Ohio and the Ohio department of medicaid. The committee shall make recommendations to the department regarding whether appropriate actions to ensure the health and welfare of individuals served have been taken. The committee may request that the department obtain additional information as may be necessary to make recommendations.

(M) Requirements for unusual incidents

(1) Unusual incidents shall be reported and investigated by the provider.

(2) Each agency provider shall develop and implement a written unusual incident policy and procedure that:

(a) Identifies what is to be reported as an unusual incident which shall include unusual incidents as defined in this rule;

(b) Requires an employee who becomes aware of an unusual incident to report it to the person designated by the agency provider who can initiate proper action;

(c) Requires the report to be made no later than twenty-four hours after the occurrence of the unusual incident; and

(d) Requires the agency provider to investigate unusual incidents, identify the cause and contributing factors when applicable, and develop preventive measures to protect the health and welfare of any at-risk individuals.

(3) The agency provider shall ensure that all staff are trained and knowledgeable regarding the unusual incident policy and procedure.

(4) If the unusual incident occurs at a site operated by the county board or at a site operated by an entity with which the county board contracts, the county board or contract entity shall notify the licensed provider or staff, guardian, or other person whom the individual has identified, as applicable, at the individual's residence. The notification shall be made on the same day the unusual incident is discovered.

(5) Independent providers shall complete an incident report, notify the individual's guardian or other person whom the individual has identified, as applicable, and forward the incident report to the service and support administrator or county board designee on the same day the unusual incident is discovered.

(6) Each agency provider and independent provider shall review all unusual incidents as necessary, but no less than monthly, to ensure appropriate preventive measures have been implemented and trends and patterns identified and addressed as appropriate.

(7) The unusual incident reports, documentation of identified trends and patterns, and corrective action shall be made available to the county board and department upon request.

(8) Each agency provider and independent provider shall maintain a log of all unusual incidents. The log shall include, but is not limited to, the name of the individual, a brief description of the unusual incident, any injuries, time, date, location, and preventive measures.

(9) The agency provider and the county board shall ensure that trends and patterns of unusual incidents are included and addressed in the individual service plan of each individual affected.

(N) Oversight

(1) The county board shall review, on at least a quarterly basis, a representative sample of provider logs, including logs where the county board is a provider, to ensure that major unusual incidents have been reported, preventive measures have been implemented, and that trends and patterns have been identified and addressed in accordance with this rule. The sample shall be made available to the department for review upon request.

(2) When the county board is a provider, the department shall review, on a monthly basis, a representative sample of county board logs to ensure that major unusual incidents have been reported, preventive measures have been implemented, and that trends and patterns have been identified and addressed in accordance with this rule. The county board shall submit the specified logs to the department upon request.

(3) The department shall conduct reviews of county boards and providers as necessary to ensure the health and welfare of individuals and compliance with this rule. Failure to comply with this rule may be considered by the department in any regulatory capacity, including certification, licensure, and accreditation.

(O) Access to records

(1) Reports made under section 5123.61 of the Revised Code and this rule are not public records as defined in section 149.43 of the Revised Code. Records may be provided to parties authorized to receive them in accordance with sections 5123.613 and 5126.044 of the Revised Code, to any governmental entity authorized to investigate the circumstances of the alleged abuse, neglect, misappropriation, or exploitation and to any party to the extent that release of a record is necessary for the health or welfare of an individual.

(2) A county board or the department shall not review, copy, or include in any report required by this rule a provider's personnel records that are confidential under state or federal statutes or rules, including medical and insurance records, workers' compensation records, employment eligibility verification (I-9) forms, and social security numbers. The provider shall redact any confidential information contained in a record before copies are provided to the county board or the department. A provider shall make all other records available upon request by a county board or the department.

(3) Any party entitled to receive a report required by this rule may waive receipt of the report. Any waiver of receipt of a report shall be made in writing.

(P) Training

(1) Agency providers and county boards shall ensure staff employed in direct services positions are trained on the requirements of this rule prior to direct contact with any individual. Thereafter, staff employed in direct services positions shall receive annual training on the requirements of this rule including a review of health and welfare alerts issued by the department since the previous year's training.

(2) Agency providers and county boards shall ensure staff employed in positions other than direct services positions are trained on the requirements of this rule no later than ninety days from date of hire. Thereafter, staff employed in positions other than direct services positions shall receive annual training on the requirements of this rule including a review of health and welfare alerts issued by the department since the previous year's training.

(3) Independent providers shall be trained on the requirements of this rule prior to application for initial certification in accordance with rule 5123:2-2-01 of the Administrative Code and shall receive annual training on the requirements of this rule including a review of health and welfare alerts issued by the department since the previous year's training.

FAQs concerning Medicaid Beneficiaries in Home and Community-Based Settings who Exhibit Unsafe Wandering or Exit-Seeking Behavior

December 15, 2016

The regulation issued by the Centers for Medicare & Medicaid Services (CMS) on January 16, 2014¹ finalized the criteria for home and community-based settings for the purposes of Medicaid funding. Applying to services authorized under 1915(c) home and community-based services (HCBS) waivers, and 1915(i) HCBS and 1915(k) Community First Choice state plan options, the criteria require settings receiving HCBS funding to facilitate beneficiary independence and decision-making in defining desired integration into their communities. As states, providers, beneficiaries and other stakeholders determine a strategy for complying with the setting requirements during a transition period that ends March 17, 2019, questions have arisen on how to adhere to the individualized nature of service provision for individuals with dementia or other conditions in which unsafe wandering or exit-seeking behavior is exhibited. The following guidance begins with an articulation of how regulatory requirements can be met by settings providing HCBS to individuals with such behavior, and concludes with describing some options for HCBS stakeholder education and consideration.

Q1: How can residential and adult day settings comply with the HCBS settings requirements while serving Medicaid beneficiaries who may wander or exit-seek unsafely?

A1: Many Medicaid beneficiaries living with dementia and other conditions can have a heightened risk of wandering, or attempting to leave a setting (exit-seeking) unsafely. These behaviors are not necessarily constant or permanent.

Wandering occurs in ways that may appear aimless but often have purpose. People may wander simply because they want to move. Sometimes wandering responds to an unmet basic need like human contact, hunger, or thirst; a noisy or confusing environment; or because people are experiencing some type of distress, like pain or the need to use the toilet. Wandering can be helpful or dangerous, depending on the situation. Although people who wander may gain social contact, exercise, and stimulation, they can also become lost or exhausted.²

Person-centered planning, staff training and care delivery are core components of provider operations to meet HCBS requirements while responding to unsafe wandering and exit-seeking behavior in an individualized manner.³ Person-centered services involve knowing individuals, and their conditions, needs, and history and using this knowledge to create strategies to assure that individuals are free to interact with others and the community in the most integrated way possible and still prevent injury for those who wander or exit-seek unsafely. Home and

¹ <https://www.gpo.gov/fdsys/pkg/FR-2014-01-16/pdf/2014-00487.pdf>

² Tilly, J., & Reed, P., (2009) Dementia Care Practice Recommendations for Assisted Living and Nursing Homes, Phases 1 & 2. Alzheimer's Association.

³ Required and defined in regulation for 1915(c) at 42 CFR §441.301(c)(1), for 1915(i) at 42 CFR §441.725, and for 1915(k) at 42 CFR §441.540

community-based settings must demonstrate that person-centered planning drives their operations and services for each person. The beneficiaries the settings serve must drive the person-centered planning process with assistance from a trained, competent, assessor, care manager or similar facilitator. The beneficiary should be able to get input from people who are important to him or her, while still reflecting the individual's input as much as possible. Person-centered plans and related decisions should be consistent with the person's needs and preferences, and informed by family members, caregivers, and other individuals that the beneficiary has identified as playing an important role in his or her life. The role of person-centered planning and the process for realizing this role is described in the final HCBS regulation and in guidance found on the Medicaid.gov website.

Person-centered service plans should be developed with the individual, and include their representatives as appropriate. The person-centered planning process should include a process that:

- is informed by discussions with family members or other individuals who are important to them about key aspects of daily routines and rituals;
- focuses on an individual's strengths and interests;
- outlines the individual's reaction to various communication styles;
- identifies the individual's favorite things to do and experience during the day, as well as experiences that contribute to a bad day;
- proposes experiences that the person may enjoy as community engagement, and describes those factors or characteristics that the individuals would find most isolating or stigmatizing.

To promote effective communication, which is at the core of person-centered planning and service delivery, provider staff serving beneficiaries who wander or exit-seek should receive education and training about how to communicate with individuals living with conditions that may lead to unsafe wandering or exit-seeking. Training programs may include important information on issues such as:

- The most common types of conditions, diseases and disorders that lead to wandering behavior; the various stages of key conditions that result in increased risk of wandering and what to expect over time; and the potential impact of these conditions on the individual's ability to function.
- Differentiating between most common types of conditions, diseases and disorders that lead to wandering behavior from serious mental illness or adverse environmental conditions such as overmedication or neglect.
- Assessing individuals for co-occurring conditions (including barriers to sufficient adaptive skills and the ability to communicate with others) that increase risk for unsafe wandering or exit-seeking.
- Understanding situations that led to past instances of unsafe wandering or exit-seeking or the desire to engage in them;
- Principles of person-centered care planning and service delivery;
- Strategies for identifying and handling behavioral expressions of need or distress.

In addition to previous guidance provided by CMS on the implementation of person-centered planning requirements outlined in the federal HCBS regulations defining home and community-

based settings, integration of the following promising practices around person-centered planning specifically for people who wander or exit-seek unsafely is recommended:

- Assessing the patterns, frequency, and triggers for unsafe wandering or exit-seeking through direct observation and by talking with the person exhibiting such behaviors, and, when appropriate, their families.
- Using this baseline information to develop a person-centered plan to address unsafe wandering or exit-seeking, implementing the plan, and measuring its impact.
- Using periodic assessments to update information about an individual's unsafe wandering or exit-seeking, and adjust the person-centered plan as necessary.

Q2: Can provider-controlled settings with Memory Care Units with controlled-egress comply with the new Medicaid HCBS settings rule? If so, what are the requirements for such settings?

A2: Yes, but only if controlled-egress is addressed as a modification of the rules defining home and community-based settings, with the state ensuring that the provider complies with the requirements of 42 C.F.R. 441.301(c)(4)(F), 441.530(a)(vi)(F) and 441.710(a)(vi)(F). Any setting using controlled-egress should assess an individual that exhibits wandering (and the underlying conditions, diseases or disorders) and document the individual's choices about and need for safety measures in his or her person-centered care plan. The plan should document the individual's preferences and opportunities for engagement within the setting's community and within the broader community.

Settings with controlled-egress should be able to demonstrate how they can make individual determinations of unsafe exit-seeking risk and make individual accommodations for those who are not at risk. Should a person choose a setting with controlled-egress, the setting must develop person-centered care plans that honor autonomy as well as minimize safety risks for each person, consistent with his or her plan goals. For example, spouses or partners who are not at risk for exit-seeking and who reside in the same setting should have the ability to come and go by having the code to an electronically controlled exit. Technological solutions, such as unobtrusive electronic pendants that alert staff when an individual is exiting, may be used for those at risk, but may not be necessary for others who have not shown a risk of unsafe exit-seeking. Importantly, such restrictions may not be developed or used for non-person-centered purposes, such as punishment or staff convenience.

In situations where a setting uses controlled-egress on an individual basis to support individuals who wander or exit-seek unsafely, consistent with our regulations, the person-centered plan must document the individual's:

- Understanding of the setting's safety features, including any controlled-egress,
- Choices for prevention of unsafe wandering or exit-seeking
- Consent from the individual and caregivers/representatives to controlled-egress goals for care
- Services, supports, and environmental design that will enable the individual to participate in desired activities and support their mobility
- Options that were explored before any modifications occurred to the person-centered plan

Regulations require the person-centered plan to be reviewed at least annually with the Medicaid beneficiary and his or her representative, to determine whether it needs revision⁴. If a secured memory unit is no longer necessary to meet the individual's needs, the individual must be afforded the appropriate services in that setting to integrate into the community and exercise greater autonomy as well as being offered the option of a setting that does not have controlled egress.

To assure fidelity in complying with the regulations defining home and community-based settings, Memory Care Units should attempt to implement as many options as possible that are outlined within this guidance regarding staffing, activities and environmental design to assure optimal community integration for HCBS beneficiaries.

Note that the regulations provide that Medicaid beneficiaries receiving services in home and community-based settings must be free from coercion and restraint. Consistent with this, home and community-based settings should not restrict a participant within a setting, unless such restriction is documented in the person-centered plan, all less restrictive interventions have been exhausted, and such restriction is reassessed over time.

Q3: What are some promising practices that HCBS settings use to serve people who are at risk of unsafe wandering or exit-seeking?

A3: Person-centered planning is at the core of all promising practices. That said, there are staff, activity, and environmental design approaches, as described below, which could be part of an individual's person-centered plan in response to unsafe wandering and exit-seeking. These promising practices have been compiled from industry and governmental sources⁵ and are offered as suggestions as they do not constitute requirements for HCBS services or providers.

Staffing:

- Ensure that staff have adequate training in person-centered planning and unsafe wandering or exit-seeking, including how to effectively engage and participate with individuals in both planned and spontaneous activities as well as strategies for addressing the underlying needs and preferences that may motivate wandering or exit seeking.
- Support individuals to move about freely with staff who help individuals walk or leave the room safely (e.g., providing a walking companion).
- Ensure adequate staffing for activities outside the facility.
- Ensure staff regularly escorts individuals to locations and activities outside of the setting as outlined in the person-centered services plan.

⁴42 CFR 441.301(c)(3) for 1915(c); 42 CFR 441.725(c) for 1915(i); and 42 CFR 441.540(c) for 1915(k).

⁵ See the Alzheimer's Association's Dementia Care Practice Recommendations at http://www.alz.org/professionals_and_researchers_dementia_care_practice_recommendations.asp, an issue brief from the Administration for Community Living titled "Responding to the Wandering Behavior of People with Dementia" in the Dementia section at http://www.acl.gov/Get_Help/BrainHealth/Index.aspx, and the Center on Excellence in Assisted Living guidance on this topic at <http://www.theceal.org/>

- Provide flexible supervision to assure adequate support from resident to resident and from time to time for the same resident dependent upon need.

Activities:

- Prevent under-stimulation by offering activities that engage the beneficiary's interest. Activities could include music, art, physical exercise, mental stimulation, therapeutic touch, pets, or gardening.
- Provide a wellness program to help people exercise, have a healthy diet, manage stress, improve balance and gait, and stimulate cognition.
- Support mobility through engaging activities, such as dog walking, gardening, yoga, and dance.
- Develop daily meaningful activities and minimize passive entertainment, such as television watching.
- Make available easily accessible activities, such as playing cards, reading books and magazines.
- Encourage interaction with others.
- Ensure that family and friends have unrestricted access to the individual if she or he wants this, and to the setting itself.

Environmental design:

- Eliminate overstimulation, such as visible doors that people use frequently; noise; and clutter.
- Create pictures on walls that can be sensory in nature to give individuals a place to stop and experience through sight or touch.
- Manage shift changes so that individuals do not see significant numbers of staff coming and going through the exit/entrance door at the same time.
- Use signage to orient the individual to the environment, such as indicating where toilets and bedrooms are, and assuring that there are places for individuals to sit and rest in large spaces within a setting that allow for safe wandering.
- Disguise exit doors using murals or covering door handles as safety codes permit.
- Use unobtrusive technological solutions, such as installing electronic coding lock systems on all building exits, or having individuals who wander or exit-seek unsafely wear electronic accessories that monitor their location.
- Include lockable doors on each individual's room unless the resident's person-centered plan documents that such an arrangement is unsafe, following the requirements of the rule on individual modifications. Alternative features designed for safety, such as doors on living units that are not lockable or secure exits, should be used only when they are part of the resident's person-centered plan, after less intrusive methods have been tried and did not work, as provided in the rule.
- Ensure unrestricted access to secured outdoor spaces and a safe, uncluttered path for people to wander, which has points of interest and places to rest.
- Identify quiet, public spaces for individuals to sit, observe and rest while simultaneously being part of the community, and may include items that are used to soften the senses or help with removing sensory stimulation.

- Enable people to leave the premises when they are not at risk of doing so unsafely. For example, wearable technologies can give people the ability to leave the setting or can limit the unsafe exiting of residents whose person-centered plans document that they are at risk of doing so.
- Using tools and technology to monitor an individual's activities to promote optimal independence and personal autonomy, but assuring that such resources are not used in place of adequate supervision.
- Ensure that Medicaid beneficiaries who may wander or exit-seek unsafely carry identification with their name and the service provider's location and contact information.
- Create a back-up plan or lost-person plan that describes roles and responsibilities when an individual has exited in an unsafe manner.
- Evaluate each lost-person incident to make revisions to person-centered care plans or to environmental design as necessary.

Q4: How can residential and adult day settings promote community integration for people who are at risk of unsafe wandering or exit-seeking? What are some examples of promising practices for implementing the community integration requirements of the regulations defining home and community-based settings and simultaneously assuring the safety of individuals who exhibit these behaviors?

A4: All settings must facilitate and optimize Medicaid beneficiaries to live according to their daily routines and rituals, pursue their interests, and maximize opportunities for their engagement with the broader community in a self-determined manner, as outlined in the individual's person-centered service plan. The plan must reflect clinical and support needs as identified through an assessment of functional need, and document the individual's preferences for community integration and how these preferences will be addressed in the setting they have chosen.

Settings can support community integration, in accordance with each individual's person-centered plan by strategies and practices such as:

- Finding out during initial assessments what individuals desire in terms of community engagement and educate them about how the setting's capabilities will meet the individual's needs and preferences. This should be done before the individual makes a decision about services and settings to allow the best fit between the person and place.
- Documenting the factors the person identifies as important in a community such as proximity to and involvement of family, connections to communities of faith, specific cultural resources and activities, and others.
- Recording individual preferences for community integration in the person-centered plan and how the setting will support those preferences (e.g., participating in their faith community, attending a favorite club, Sunday breakfast at the local diner, interests in volunteering or in working, etc.) as well as the transportation needed to achieve desired outcomes, recognizing that many of these activities are leveraged through natural supports and thus would not require Medicaid-funded resources.
- Providing individuals with opportunities to engage others in their settings through activities, outings, and socialization opportunities.

- Providing sufficient staff and transportation to enable individuals' participation in their activities of choice in the broader community. These could include opportunities for work, cultural enjoyment, worship, or volunteering. The person-centered service plan may also include provider-facilitated opportunities to engage in desired activities in the broader community.
- Ensuring that visitors are not restricted, and individuals can connect to their virtual communities of choice through social media noting that this alone does not substitute for community activities and integration.
- Ensuring that individuals have opportunities to visit with and go out with family members and friends, when they want this. Providing an inviting environment and flexible schedules and service times (e.g., meals, medication administration) can encourage family and friends' participation in the life of the residential setting and support their efforts to maintain individuals' connections to the external community.
- Reviewing at least annually whether any parts of the person-centered plan need change. It is important to note that the modifications requirement within the regulations defining home and community-based settings also applies to anyone in a residential or non-residential setting, and thus the person-centered plan needs to document what services and supports should be made available to allow people to live where they want and do what they want during the day to assure maximum integration with the broader community. For more information on the HCBS rule requirements on person-centered planning, please refer to CMS' previous FAQs on this topic.

All settings, including those in rural communities and those in low density suburban areas, are encouraged to provide adequate transportation opportunities to meet beneficiaries' desires for meaningful community engagement and participation in typical community activities.

Note that visits by community members have value but do not substitute for community access for Medicaid beneficiaries receiving services in residential and adult day settings.