



*Our mission is to reunite people
living with physical disabilities
with the community.*

POLICY: **SERIOUS REPORTABLE AND RECORDABLE INCIDENT REPORTING**

EFFECTIVE: **August 2011**

PURPOSE: This policy describes NHTD waiver provider agency responsibilities for reporting, investigating, reviewing and tracking serious and non-serious categories of incidents involving individuals in the HCBS / NHTD waiver.

BACKGROUND & INTENT:

Incidents and the providers involved must be reported to HCBS / NHTD Waiver program staff in order to ensure the quality of care provided to participants, maintain the participants' health and welfare as outlined in the State's agreement with the federal government and to identify patterns and trends that will assist providers in developing education programs to reduce the risk of recurrence.

Two types of incidents are defined for the purpose of this policy:

1. *Serious Reportable Incidents*, which must be reported to DOH
2. *Recordable Incidents*, which must be reported, investigated and tracked within the provider agency

I. Serious Reportable Incidents

Serious Reportable Incidents are defined as any situations in which the Participant experiences a perceived or actual threat to his/her health and welfare or to his/her ability to remain in the community. These incidents must be reported to DOH via the appropriate Regional Resource Development Specialist (RRDS)

Depending on the nature of the incident, the program may also determine that additional notifications are indicated such as Adult Protective Services or local law enforcement. Some of these incidents must also be reported to Adult Protective Services and the police.

Serious Reportable Incidents include:

1. **Allegations of Abuse and Neglect** are defined as the maltreatment or mishandling of a Participant which would endanger his/her physical or emotional well-being through the action or inaction on the part of anyone, including but not limited to, any employee, intern, volunteer, consultant, contractor, or visitor of any HCBS waiver provider, or another Participant, family member, friend, or others, whether or not the Participant is

or appears to be injured or harmed. Types of allegations of abuse and neglect must be classified as follows:

- a. **Physical Abuse** is defined as physical actions such as hitting, slapping, pinching, kicking, hurling, strangling, shoving, unauthorized or unnecessary use of physical interventions, or other mishandling of a participant. Physical contact that is not necessary for the safety of the person and causes discomfort to the Participant or the use of more force than is reasonably necessary is also considered to be physical abuse. Situations where physical intervention is used to assure the health and welfare of the Participant or others must also be reported as a Serious Reportable Incident.
- b. **Sexual Abuse** is defined as any sexual contact between a Participant and any employee, intern, volunteer, consultant, contractor or visitor of the HCBS waiver provider providing services to the participant. Sexual abuse may also occur with any other person living in the community if it is non-consensual or if, according to New York State law, the participant is not competent to consent. Sexual contact is defined as the touching or fondling of the sexual or other body parts of a person for the purpose of gratifying the sexual desire of either party, whether directly or through clothing. Sexual contact also includes causing a person to touch someone else for the purpose of arousing or gratifying personal sexual desires. Forcing or coercing a Participant to watch, listen to, or read material of a sexual nature is also considered sexual abuse. A situation in which one Participant has a sexual contact with another participant, who is either not capable of consent to or did not agree to participate in the relationship, is considered to be a Serious Reportable Incident.
- c. **Psychological Abuse** is defined as the use of verbal or nonverbal expressions that subject the Participant to ridicule, humiliation, scorn contempt or dehumanization, or are otherwise denigrating or socially stigmatizing. Use of language and/or gestures and a tone of voice, such as screaming or shouting at or in the presence of a Participant, may in certain circumstances constitute psychological abuse.
- d. **Seclusion** is defined as the placement of the waiver Participant alone in a locked room or area from which he / she cannot leave at will, or from which his / her normal egress is prevented by someone's direct and continuous physical action. The act of seclusion should not be confused with a limited quiet time procedure. Quiet time is a procedure in which a HCBS waiver participant is accompanied by staff away from an activity for a brief

period of time to help the Participant recompose him / herself. In removing the Participant from ongoing activity, the objective is to offer a changed environment in which the individual may calm down. The use of quiet time is not considered to be an incident unless it is excessive or used as a punishment.

e. **Unauthorized or Inappropriate Use of Restraint** is defined as:

- The use of a mechanical restraining device to control a Participant without the written, prior authorization of a physician if the physician cannot be present within 30 minutes;
- The use of a mechanical restraining device without it being specified in a Service Plan;
- The use of restraint for medical purposes without a physician's order;
- The intentional use of a medication to control a person's behavior that has not been prescribed by a physician for that purpose. Inappropriate use of a restraint shall include, but not be limited to, the use of a device(s) or medication for convenience, as a substitute for programming, or for disciplinary (punishment) purposes.

NOTE: This does not preclude the use of mechanical supports to provide stability necessary for therapeutic measures such as immobilization of fractures, administration of intravenous fluids or other medically necessary procedures.

f. **Use of Aversive Conditioning** is defined as the use of unpleasant or uncomfortable procedures when trying to change the behaviors of a Participant

g. **Violation of Civil Rights** is defined as action or inaction that deprives a participant of the ability to exercise his or her legal rights, as articulated in state or federal law (e.g., the Americans with Disabilities Act).

h. **Mistreatment** is defined as a deliberate decision to act toward the participant in a manner that goes against that person's individual human rights, the Service Plan, or that is not generally considered acceptable professional practice.

i. **Neglect** is defined as a condition of deprivation in which a Participant's health and welfare is jeopardized because of inconsistent or inappropriate services, treatment or care which does not meet their needs, or failure to provide an appropriate and/or safe environment. Failure to provide appropriate services, treatment or medical

care through gross error in judgment and inattention is considered to be a form of neglect. For example, neglect occurs if a Service Coordinator is aware that an agency listed in a Service Plan cannot provide the requested services, but does not seek an alternate waiver provider to meet the participant's needs.

2. **Missing Person** is defined as unexpected absence of a Participant from his/her home or scheduled waiver service. It is mandated that formal search procedures be initiated immediately upon discovery of the absence of a Participant whose absence constitutes a recognized danger to the well being of that individual or others. For others, consideration should be given to the missing person's habits, deficits, capabilities, health problems, etc. in making the decision of when to begin a formal search, but this must be initiated no more than 24 hours after the Participant has been missing.
3. **Death of a Participant** is defined as any loss of life, regardless of cause. The follow-up report of the investigation submitted to the RRDS must include information concerning the death, medical records, death certificate, police reports, autopsy reports, EMS records, emergency room records and any other information deemed relevant.
4. **Hospitalization** is defined as any unplanned admission to a hospital.
NOTE: The planned overnight use of a hospital for any procedure is not considered a Serious Reportable Incident, but should be noted in the subsequent Revised Service Plan.
5. **Medical Treatment Due to Accident/Injury:** If an injury has occurred that warrants medical attention and treatment – this is considered a serious reportable incident regardless of whether hospitalization is occurred.
6. **Possible Criminal Action** is defined as any action by a Participant that is or appears to be a crime under New York State or Federal Law.
7. **Sensitive Situation** is defined as any situation which needs to be brought to the attention of DOH, through the RRDS office, as expeditiously as possible, and does not fit within the categories described above. This includes any situation that would threaten the Participant's ability to remain in the community or the health and welfare of the participant, such as the admission to a psychiatric facility/unit or substance abuse facility/unit.
8. **Medication Error** is defined as taking medication in an incorrect dosage, form or route of administration, taking medication on an incorrect schedule; taking medication which was not prescribed, or failure on the part of the staff of a provider of waiver services to properly follow the plan for assisting the participant in self medication.

9. **Medication / Refusal** is defined as any situation in which a Participant experiences marked adverse reactions, which threaten his/her health and welfare due to: refusing to take prescribed medication.

II. **Procedures for Reporting Serious Reportable Incidents**

1. Service Coordinator Responsibility:

- Notifies the Program Coordinator or Program Manager immediately of any incidents.
- Initiates incident report and submits via email or fax.
- Within 24 hours of the discovery, the discovering waiver service provider's SC must complete and send the "24 hour Provider Report" to RRDC.

Note: If the SC is alleged to be involved in the incident, the "24 hour Provider Report" is sent to the SC's Supervisor.

2. Program Coordinator / designee responsibility:

- Notifies local RRDS office via email phone/fax of any occurrence of a Serious Reportable Incident.
- Reviews incident report and forwards to RRDS office.
- Reviews DOH Report of Serious Reportable Incident and forwards to the RRDS.

If the Service Coordinator is not the person reporting the incident, the investigating agency must also inform the Service Coordinator within 24 hours of the incident.

3. The RRDS will provide the reporting agency with an identification number for the incident that must be used on all subsequent communications regarding the incident.

- a. **Within 7 calendar days** of the incident, the provider agency must submit a Serious Reportable Incident Follow-Up Report to the RRDS, including all formal investigating agency reports, interview statements and any contact made with the SIRC. The RRDC must forward a copy of the "Provider Follow Up Report" to the SC.
- b. **Within 7 calendar days** of receiving the "Provider Follow Up Report" the RRDC will make the decision whether to close the case or leave it open for further investigation, using the RRDS for consultation as needed. The RRDC will complete the RRDC "Status Report" indicating whether the case.
 - Is re-classified (with explanation)
 - Remains open (and the reason why) and or
 - Is closed

4. If further investigation is needed, the investigating waiver provider must continue the investigation process and prepare information for submission of the completed "Provider Follow Up "(30 DAY).

If further investigation is needed past the first 30 days, Provider Follow Up Report must be submitted monthly, based on the first 30 day provider report to the RRDC for review with copies of all reports, statements and supporting documentation attached. The RRDC will forward the report to the SC. This must continue monthly, until the RRDC closes the SRI.

5. The RRDS will continue to respond to each Follow-up Report using the Incident Resolution Status Report until the incident is considered closed by the RRDS.
6. All waiver providers must submit a report on a quarterly basis, to the RRDC regarding SRI investigations.

III. Reporting Process

Any employee of a HCBS/NHTD waiver provider witnessing any actions or lack of action that constitutes a Serious Reportable Incident as described in this policy must notify the RRDS and the Service Coordinator *immediately* by phone, followed by a fax and following the timeframes described above. It is understood any employee may need to notify their supervisor and the supervisor may be the person to notify the RRDS and the Service Coordinator. However, the staff that witnesses the Serious Reportable Incident must complete the Report of Serious Reportable Incidents Form.

- In situations where no HCBS/NHTD waiver provider has witnessed the Serious Reportable Incident, the employee who first became aware of the incident is responsible for filling out the reporting form. Again, the supervisor may report the incident to the RRDS and Service Coordinator.
- When a provider's employee reports a Serious Reportable Incident that he/she did not directly witness, the RRDS will assign the responsibility for the investigation to the agency whose employee was allegedly involved. If the incident does not involve a provider's employee, the RRDS has the discretion to assign the responsibility of the investigation to any of the participant's HCBS/TBI waiver providers.
- If the RRDS is concerned that the provider responsible for investigating the Serious Reportable Incident is not in a position to conduct an objective, thorough investigation, the RRDS has the discretion to involve DOH in conducting the investigation.

Notification of the Waiver Participant, Legal Guardian, and Others

Any Serious Reportable Incident must be reported by the Participant to the Participant or the waiver Participant's court appointed legal guardian within 24 hours. The waiver Participant has the right to decide whether or not other individuals are to be notified.

Notification of Other HCBS/TBI Waiver Providers

It is the responsibility of the HCBS/NHTD waiver provider agency originating the incident report to notify any other program or waiver provider when there is visible evidence of injury to the HCBS/TBI waiver Participant or when the incident or response to the incident may impact services or activities. Consideration of the individual's privacy should be balanced against the need to notify other service providers.

IV. Investigation of Serious Reportable Incidents

Investigations by the Provider

The provider must designate at least one individual to be responsible for conducting a thorough and objective investigation. The investigator is required to have experience and/or training in conducting investigations. A provider may choose to contract with another agency to perform the investigation. However, the contracted agency must not have any involvement or stake in the outcome of the investigation. The decision of the contracted agency is binding. The results of the investigation are presented to the Incident Review Committee, which will determine if the investigation is complete, the appropriate action and necessary follow-up.

People conducting the investigation must not include:

- Individuals directly involved in the incident.
- Individuals whose testimony is incorporated in the investigation.
- Individuals who are the supervisor, supervisee, spouse, significant other or immediate family member of anyone involved in the investigation.

An investigation of a Serious Reportable Incident must contain the following information:

1. A clear and objective description of the event under investigation. This must include a description of the people involved in the alleged incident, the names of all witnesses and the time and place the incident occurred;

2. Identification of whether this was a unique occurrence or if this is believed to be related to previously reported incidents;
3. Details of structured interviews with all individuals involved in the events and all witnesses;
4. The investigator's conclusions if the allegation is substantiated, unsubstantiated or whether no definitive conclusions can be reached. The reasoning behind this decision must be included; and
5. The investigator's recommendations for action must be included. This action may be directed towards individual employers or the participant, or may address larger program concerns such as training, supervision or agency policy. If a participant is alleged to have abused another participant or member of the community (including staff), it is necessary for the investigation to take into consideration the aggressor's cognitive abilities to make a judgment as to the interventions that should follow the investigation of the incident.

Any employee under investigation for Serious Reportable Incidents by DOH or another State agency is not permitted to provide service to any HCBS/NHTD waiver participant.

V. Provider's Serious Incident Review Committee

Organization and Membership of the Serious Incident Review Committee

- The Serious Incident Review Committee may be organized on an agency wide, multi program or program specific basis.
- The Committee is comprised of at least five individuals from cross section of staff,
- The Executive Director of the agency shall not serve on the committee but may be consulted by the committee
- The committee must meet at least quarterly, and always within one (1) month of a report of a SRI involving a NHTD waiver participant.

The Serious Incident Review Committee is responsible for:

- Reviewing the investigation of every Serious Reportable Incident.
- Evaluating whether the investigation has been thorough and objective.
- Determining if the conclusions and recommendations of the investigator are appropriate and comply with the guidelines of the HCBS/NHTD waiver.

In addition, the Committee will:

- Assure that the providers' Incident Reporting Policies and Procedures comply with DOH HCBS/NHTD Waiver Incident Reporting Policy.
- Review all Serious Reportable Incidents and Recordable Incidents to assure that incidents are appropriately reported, investigated and documented.
- Ascertain that necessary and appropriate corrective, preventive, and/or disciplinary action has been taken in accordance with the Committee's recommendations. If other actions are taken, the Committee must document the original recommendations and explain why these recommendations were revised
- Develop recommendations for changes in provider policy and procedure to prevent or minimize the occurrence of similar situations. These recommendations must be presented to the appropriate administrative staff.
- Identify trends in Serious Reportable Incidents (by type, client, site, employee, involvement, time, date, circumstance, etc.), and recommend appropriate corrective and preventive policies and procedures.
- Report, at least annually, to the HCBS/NHTD waiver staff regarding reportable incidents and allegations of HCBS/NHTD waiver providers and corrective, preventive and/or disciplinary action pertaining to identify trends. This report must include the name and position of each of the members of the committee and documentation of any changes in the membership during the reporting period. This report will be submitted to the RRDS in the agency's region between January 1 and January 31 of each year for the prior year. The RRDS will review and submit these reports to DOH. In addition, DOH may request reports at any time.

Documentation of Serious Incident Review Committee Activity

The chairperson shall ensure that minutes are maintained and stored in a central location.

Minutes addressing the review of Serious Reportable Incidents shall state the identification number of the incident (provided by the RRDS), the waiver participant's name and CIN number, a brief summary of the situation that caused the report to be generated (including date and type of incident).

Committee findings and recommendations, and actions taken on the part of the agency/program as a result of such recommendations.

Minutes are to be maintained in a manner that ensures confidentiality.

All information regarding Serious Reportable Incident reports, including but not limited to the information collected to complete the investigation and the investigation report and minutes of the standing Serious Incident Review Committee, must be maintained separately from the participant's records.

VI. Recordable Incidents

Recordable Incidents are defined as incidents that do not meet the level of severity as described in Serious Reportable Incidents.

Reportable Incidents that impact the Participant's life in the community. An example of these incidents is a fall that does not require medical attention. These Recordable Incidents do not need to be reported to DOH. However, DOH reserves the right to review these incidents at any time.

The Service Coordinator will be responsible for completing the Incident Report using the Wheels of Progress Incident Reporting Form.

The Service Coordination Supervisor will:

1. Review the accident/incident report to insure that appropriate action was taken.
2. Will review each incident report to identify trends and patterns, which may indicate the need for an in-depth study.
3. Make recommendations to the Performance Improvement Committee for focus review if indicated
4. Summarize incident/accidents for the quarter and report findings to Quality Assurance Committee.

SERIOUS INCIDENT REVIEW COMMITTEE

NAME	POSITION
DR. ROSEMARIE MURRAY	V.P. COMPLIANCE OFFICER
CAROLE MARSHALL MEYERS	SERVICE COORDINATOR
SUSAN C. MURPHY	LCSW
SILVIA RIVERA-BELARADO	RN
JAMES CESARIO	ADVISORY BOARD MEMBER