

# Determining When an Event Constitutes Neglect for Purposes of Reporting Incidents Involving Provider Employees

## ODP Announcement 21-083

### AUDIENCE:

Licensees and Enrolled Providers (“Providers”) subject to Office of Developmental Programs (ODP) incident management requirements, All interested parties

### PURPOSE:

The purpose of this announcement is to provide guidance for providers when determining whether an event involving staff employed by the provider<sup>1</sup> constitutes alleged neglect in accordance with ODP’s regulations<sup>2</sup> such that it must be reported as an incident in the Enterprise Incident Management (EIM) system. This announcement also provides guidance about applying regulatory requirements related to complaint management<sup>3</sup> when an event does not require reporting as an incident of alleged neglect.

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<sup>1</sup> “Employed by the provider” refers to staff who are directly employed by the provider or who are employed as consultants or contractors.

<sup>2</sup> [§ 2380.17. Incident report and investigation](#); [§ 2390.18. Incident report and investigation](#); [§ 6100.401. Types of incidents and timelines for reporting](#); [§ 6400.18. Incident report and investigation](#); and [§ 6500.20. Incident report and investigation](#)

<sup>3</sup> [§ 6100.51. Complaints](#)

## DISCUSSION:

This QA&I Annual Statewide Report provides QA&I review results of AEs, SCOs, and Providers, and includes a summary analysis of statewide data collected during IY1 of the QA&I cycle for ODP's Consolidated, Person/Family Directed Support (P/FDS), Community Living, and Adult Autism waivers. It highlights successes and opportunities for systemic quality improvement discovered during QA&I reviews, in a streamlined, easy-to-use format. Key results are underscored in entity-specific subsections entitled "Reasons to Celebrate" and "Highlighting Opportunities." The intent of the latter is to encourage entities to target these low performing areas with quality improvement activities.

The Department of Human Services does not tolerate neglect in any form. When alleged neglect is reported for events that do not meet the criteria it compromises ODP's ability to identify and act on events that do constitute neglect or an allegation of neglect. When an event does not meet such criteria, providers should address and manage the event as a complaint in accordance with applicable regulatory requirements. By properly determining whether an event is a reportable as either an incident or a complaint, it allows:

- ODP to ensure that it is responding properly to the event
- Services to be flexible, innovative, and person-centered in an effort to improve the overall quality of the intellectual and developmental disability service system
- Data collection to have integrity so that analysis can be used for effective policy development
- Providers to allocate their resources more effectively to address concerns related to service delivery

## **Determining Whether an Event Must Be Reported as an Allegation of Neglect**

The following is an outline of which events involving staff employed by the provider require reporting as alleged neglect.

An event must be reported as alleged neglect when it is alleged that any of the following occurred due to a caregiver's failure to provide services:

- The individual did not receive basic care such as food, clothing, personal hygiene, prompt and adequate medical care, medication management, proper medication administration, or any needed emergency services.
- The individual did not receive medical services as outlined in the ISP such that the individual was at imminent risk of harm.
- The individual did not receive behavioral supports as outlined in the ISP such that the individual was at imminent risk of harm.
- The individual did not receive interventions (including any approved restrictive procedures) as outlined in the ISP such that the individual was at risk of imminent harm.
- The Individual experienced a healthcare need that was not promptly and properly acted upon.
- The scope, duration and/or frequency of support needed as specified in the ISP was not provided such that the individual was at imminent risk of harm or there was an impact to the individual's health or safety.

- Strategies or supports to mitigate risk to the individual as outlined in the ISP were not implemented such that the individual was at imminent risk of harm or there was an impact to the individual's health or safety.
- The individual's supervision needs as recommended or required by a court of law or as a condition of probation or parole were not met.

### **Managing Events That Are Not Neglect Incidents as Complaints**

A complaint is defined as an expression of dissatisfaction with or allegation of wrongdoing by the provider, including staff persons. Providers are required by [regulation](#) to develop and implement procedures to receive, document, and manage complaints. The procedures must include the provider's investigation process, complaint findings, and actions to resolve the complaint.

A report of alleged neglect *should not be filed* when a service was not rendered due to the absence of direct care staff and the absence did not place the individual at a health or safety risk. In this circumstance, a provider should follow their complaint management process as opposed to filing a reportable incident.

As part of the complaint management process, a review of the plan to identify a needed service if the absence of staffing would place the individual at a health or safety risk in accordance with [6100.223\(10\)](#) should also occur.

### **CONTACT**

Questions about this announcement should be directed to the appropriate ODP regional office.