

Abuse, Neglect, & Exploitation

Supplemental Information

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OVERVIEW

This guidance is intended to assist providers to comply with the DBHDS Human Rights regulations. However, providers are still required to establish policies and procedures for the conduct of abuse and neglect investigations in their agencies. Those policies and procedures will define the approaches the organization will take to protect the rights of individuals served. This manual is organized to follow the flow of the investigation process, as shown below.

Definitions, Responsibilities and Reporting Requirements

As licensed providers, we are required to abide by regulations that govern our services. As Department of Behavioral Health and Developmental Services (DBHDS) licensed providers, we are required to follow the Human Rights regulations 12 VAC 35-115 et seq. Through this manual and training, it is the hope that providers will be clearer in their responsibilities and have resources available to them to be more consistent in their investigations.

12 VAC 35-115-10 Authority

Section 37.2-400 of the Code of Virginia requires the State DBHDS Board to promulgate these regulations to further define and to protect the rights of individuals receiving services from providers of mental health, intellectual disabilities and substance use disorders in the Commonwealth of Virginia.

Responsibilities:

12 VAC 35-115-10 Applicability

Facilities operated by DBHDS

- *Sexually violent predator programs (Code § 37.2-909)*
- *Community Services Boards (§ 37.2-500) and Behavioral Health Authorities (§ 37.2-600)*
- *Providers licensed by DBHDS under Code § 37.2-403 except those operated by the Department of Corrections*
- *Any other provider receiving funding from DBHDS (except those receiving funding from Part C IDEA)*

12 VAC 35-115-20 Policy

Each individual is assured:

- *Protection to exercise legal, civil, human rights*
- *Respect for basic human dignity*
- *Services consistent with sound therapeutic practice*
- *Legal rights, privileges or benefits are not denied solely because he has been voluntarily*

or Involuntarily admitted, certified or committed to services.

Legal rights include the right to:

- *Acquire, retain, and dispose of property*
- *Buy or sell*
- *Sign legal documents*
- *Enter into contracts*
- *Register and vote*
- *Get married, separated, divorced, or have a marriage annulled*
- *Hold a professional, occupational, or vehicle operator's license*
- *Make a will*
- *Have access to lawyers and the courts.*

Definitions

CHRIS

Comprehensive Human Rights Information System (Virginia's Electronic Human Rights Reporting System): With the implementation of CHRIS V5.1, both licensed providers and State facilities will use CHRIS V5.1 to report all data related to abuse and neglect, and human rights complaints of individuals receiving services. Licensed providers will use CHRIS V5.1 to report deaths and serious injuries.

Abuse (12 VAC 35-115-50 Dignity)

Abuse means any act or failure to act by an *employee* or *other person* responsible for the care of an individual that was performed or was failed to be performed knowingly, recklessly or intentionally, and that caused or might have caused physical or psychological harm, injury or death to a individual receiving care or treatment for mental illness, developmental disability or substance abuse.

Abuse is a TWO-PRONG TEST:

1) An act/failure to act...that was performed...or failed to be performed.

- **KNOWINGLY:**

- Consciously, intentionally
- Aware of what one is doing
- Aware of possible consequences
- Determined to act in a certain way or to do a certain thing

DO NOT CONFUSE
MOTIVE WITH ACT

OR

- **RECKLESSLY:**

- Careless, inattentive, indifferent to consequences
- Disregards a substantial and unjustifiable risk
- Gross deviation from usual standard of conduct

OR

- **INTENTIONALLY:**

- Determined to act in a certain way or to do a certain thing
- Deliberate, voluntary

2) That caused or might have caused

- Physical/Psychological harm
 - Injury
 - Death

TYPES OF ABUSE:

Physical Abuse - Emergency Medical Attention Required:

- Physical abuse to a client by an employee in which the client sustains an injury or condition which requires emergency medical treatment by a physician. Physical abuse shall include but is

not limited to hitting, kicking, pinching, choking, shoving, pushing, biting, slapping, punching, burning, striking, cutting with an object or any other direct physical act that is the proximate cause of psychological harm or physical injury to a person receiving services.

Example: Emergency Medical Attention Required

- A client alleges that a large knife wound was caused by a worker.
- The roommate of an unconscious client reports that the unconscious person was choked by a staff member.
- A large bruise or cut that was noticed by staff during a showering routine

Physical Abuse/No Emergency Medical Attention Required:

- Any other physical abuse (as defined above) to a client by an employee regardless of whether there is any physical injury sustained by the action.

Example: No Emergency Medical Attention Required

- An individual is pushed to the floor by a staff person. He gets up and walks away.

Sexual Abuse:

- Sexual abuse to a client by an employee, in which sexual penetration or sexual conduct involving physical occurred. **ALLEGATIONS OF SEXUAL ABUSE MUST BE REPORTED TO LAW ENFORCEMENT PRIOR TO INITIATING AN INVESTIGATION.**
 - Sexual penetration means any contact, however slight, between the sex organ of one person and the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio and anal penetration.
 - Sexual conduct means any intentional or knowing touching or fondling by one person, either directly or through clothing, of the sex organs, anus, or breast of the other person, for the purpose of sexual gratification or arousal of either person.

Examples:

- Rape, Sexual Assault or Other Criminal Sexual Behavior i.e. sodomy
- Inappropriate sexual contact

Verbal/Psychological Abuse:

- A Verbal/psychological abuse shall include but not be limited to:
 - The use of words, signs, and/or gestures by an employee or actions taken by an employee which intimidate, demean, curse, harass, cause emotional anguish or distress, ridicule, or threaten harm to the person.
 - Words, signs and/or gestures or actions which the employee knows for that particular person will or is likely to incite and/or precipitate aggressive and/or regressive behavior by that person.

Note: Verbal abuse goes beyond the obvious use of vulgar, obscene or violent language which may include:

- Directing a racial slur at an individual.
- Using names which would demean an individual receiving services.
- Humiliating an individual by making fun of a prized belonging.

Example:

- Calling a client derogatory names or demeaning their character
- Intensify or worsen a particular fear that the individual may have.

Other Types of abuse:

- **Excessive force:** the use of excessive force when placing a person in physical or mechanical restraint.
- **Non-compliance with laws, regulation or policy or unauthorized use of physical or mechanical restraints-** use of a restraint that is not specifically designated in the individual's ISP or outside the what the company's policy and procedures dictate.

- **Use of punishment or any treatment technique that is inconsistent with services plan**

Examples:

- Denying an individual therapeutic recreational activities because of a disagreement with staff
- Placing an individual in seclusion
- Use of excessive force when placing a person in physical or mechanical restraint
- Use of physical/mechanical restraints on a person that is not in compliance with federal or state laws; regulations and policies; professionally accepted standards of practice or the persons individualized services plan
- Use of more restrictive or intensive services or denial of services to punish a person or that is not consistent with his/her individualized services plan

Neglect:

- Neglect means failure by a person, program, or facility operated, licensed, or funded by the department, responsible for providing services to do so, including nourishment, treatment, care, goods or services necessary to the health, safety or welfare of a person receiving care or treatment for mental illness, developmental disabilities or substance abuse.

Neglect shall include but is not limited to:

- Any failure to carry out required and appropriate clinical services as directed or ordered by a physician or authorized personnel which are necessary for the health, safety or welfare of that client.
- Any failure to carry out an individualized service plan.
- An act or omission, which endangers or places at risk an individual's physical or psychological health or safety or fails to respond to an obvious need of the individual without reasonable justification.
- Failing to provide for the individual's personal hygiene needs or withholding food or fluids or clothing or prosthetic devices, which the individual regularly uses unless this withholding is clinically appropriate or ordered by a physician or other authorized person and documented in the individual's record.

- Failure to provide and/or ensure immediate and/or appropriate medical attention to and reporting of physical injuries to an individual or individuals without reasonable justification.

Examples:

- Allowing an individual to hurt him or herself or others
- Failure to follow individualized service plan
- Failure to provide nourishment, medication or treatment

Neglect as it relates to peer- to- peer Aggression:

- **“peer-to-peer aggression”** means a physical act, verbal threat or demeaning expression by an individual against or to another individual that causes physical or emotional harm to that individual. Examples include hitting, kicking, scratching, and other threatening behavior. Such instances may constitute potential neglect.

There are times when the provider will investigate an incident where one individual being served has harmed another individual being served. In this case, the provider is not investigating whether the incident occurred. The provider is investigating whether there was neglect on the part of the staff that contributed to the peer to peer aggression occurring.

Example:

- Staff failed to sit in the back of the van with individuals per program policy
- Staff encouraged individuals to wrestle or scream at one another

Exploitation:

- ”Exploitation means the misuse or misappropriation of the individual's assets, goods, or property. Exploitation is a type of abuse. (See §37.2-100 of the Code of Virginia.) Exploitation also includes the use of a position of authority to extract personal gain from an individual. Exploitation includes violations of 12VAC35-115-120 (Work) and 12VAC35-115-130 (Research). Exploitation does not include the billing of an individual's third party payer for services.

Misuse of a Client’s Assets as a form of exploitation means improper employee conduct related to a client’s assets and it includes, but is not limited to:

- Accepting gifts, money or other payment of any type for personal use from a client, relative, guardian, representative or friend of a client.
- Keeping any personal property or belongings of any individual, except as approved by the DBHDS licensed provider or designee.
- Theft, misusing or borrowing any funds or property from an individual.
- Privately purchasing property belonging to an individual, except as provided by agency procedure.
- Entering into any transaction for personal profit with any person receiving services, or any representative of such person.
- Conducting financial transactions for any individual for any purpose, except as provided for in personal needs allowance accounting procedures or approved by the DBHDS licensed provider and his/her designee.

Example:

- Using an individual’s income to pay for other individual’s purchases
- Allowing an individual to pay for an employee purchase

Examples of related events comprising a single incident:

- **Related events at the same approximate time:** Fred Jones alleged that employee Mike Smith hit him and then cursed at him yesterday during showers.
- **Related events at the same location:** Fred Jones alleged that employee Mike Smith hit him before showers yesterday and then cursed at him after showers.
- **Related events at the same approximate time and location involving multiple victims:** Fred Jones and Bob Johnson alleged that employee Mike Smith hit them and cursed at them yesterday during showers.
- **Related events at the same approximate time and location involving multiple perpetrators:** Fred Jones alleged that employee Mike Smith and Julie Williams hit him and cursed at him yesterday during showers.

Examples of events comprising more than one incident:

- **Related events not at the same approximate time or location:** Fred Jones alleged that employee Mike Dott hit him during showers and employee Julie Williams hit him during breakfast.
- **Unrelated events at the same approximate time or locations:** Fred Jones alleged that employee Mike Dott hit him yesterday during showers for not cleaning his room and that employee Julie Williams cursed at Bob Johnson for being slow.

Examples of unrelated events not at the same approximate time or location:

- Fred Jones alleged that employee Mike Smith hit him yesterday during showers and that employee Julie Williams cursed at him this morning during breakfast.

REPORTING REQUIREMENTS

- **Department of Social Services:**
 - **DBHDS licensed providers are MANDATED REPORTERS.** This means that reporting to the Department of Social Services is required for all individuals that work in the healthcare field. Reporting can be done in one of two ways:
 - Child Protective Services-children under 18 yrs of age
 - Adult Protective Services-aged (over 60) or incapacitated (impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning his/her well being)

If there is reason to suspect abuse/neglect, it shall be reported within 24 hours. If an employer has an internal reporting procedure, a mandated reporter may meet the reporting requirements by reporting internally. Employers or their designee remains responsible for complying with the 24 hour reporting requirements. Failure to report may result in fines: \$500 for first offense or \$100 to \$1,000 for subsequent offenses.

- **DBHDS:**

- The Human Rights Regulations; 12VAC35-115-230 outline provider requirements for reporting to the department.

- **Abuse/neglect:**

1. Providers shall collect, maintain and report the following information concerning abuse, neglect, and exploitation:
2. The director of a facility operated by the Department shall report allegations of abuse and neglect in accordance with all applicable operating instructions issued by the Commissioner or her designee.
3. The director of a service licensed or funded by the Department shall report each allegation of abuse or neglect to the assigned human rights advocate within 24 hours from the receipt of the allegation (see 12VAC35-115-50).

- **Death and Serious Injuries:**

1. The director of a facility operated by the Department shall report to the Department
deaths and serious injuries in accordance with all applicable operating instructions issued by the Commissioner or her designee.
2. The director of a service licensed or funded by the department shall report deaths and serious injuries in writing to the department within 24 hours of discovery and by telephone to the authorized representative within 24 hours.
3. All reports of death and serious injuries shall include:
 - a. Date and place of the death or serious injury;
 - b. Nature of the injuries and treatment required; and
 - c. Circumstances of the death or serious injury.

- **Restraints:**

- Any instance of seclusion or restraint that does not comply with these regulations or approved variances, or that results in injury to an individual, shall be reported to the authorized representative, as applicable, and the assigned human rights advocate within 24 hours.

- **Department of Health Professions:**

- Providers shall report to the Department of Health Professions, Enforcement Division, violations of these regulations that constitute reportable conditions under §§54.1-2400.4, 54.1-2909, and 54.1-2900.6 of the Code of Virginia.

- **State Police/Local Law Enforcement:**

- The standard for this is reason to suspect a crime may have been committed.

Recognition of the event

ACTIONS AT THE SCENE OF AN ABUSE/NEGLECT INCIDENT

The DBHDS requires that the director take responsibility for ensuring that required standard procedures are followed at the scene of an incident. The provider director is primarily responsible with the designee as back-up. Upon discovery of a reportable incident or allegation and/or the existence of a related scene of the incident, the provider staff will initiate prescribed methods for securing and preserving the scene. The provider staff will notify the Director or designee responsible for this type of incident who will then gather basic information and contact the police, as necessary. The investigator, in consultation with Director, will make a reasonable determination regarding enacting preservation procedures.

At the scene of the alleged incident and which occurred during the shift for which it is reported, the provider, his designee and/or the designated investigator will follow initial investigative procedures described below. For all other categories of incidents, the provider or the investigator, as appropriate, will direct which of these procedures will apply.

- Conferring with the supervisor on duty. If relevant, coordinate with the ER regarding medical care.
- Taking appropriate action to ensure that the injury, if any, is properly treated.
- Securing all physical evidence and the scene itself. Steps should be taken to secure any documentary evidence which might be relevant (i.e., face-check sheets, progress notes, seclusion or restraint records, assignments sheets, etc.). Generally, interviews will be conducted before there is any extensive reading of the documents.
- Obtaining or developing a list of all individuals who may have any information pertaining to the allegation, including employees, clients and others (volunteers, visitors, employees of other agencies) who may have been present at the time of the incident.
- Reviewing the steps taken to retain and separate individual witnesses. In some cases, employee witnesses are expected to remain on duty until interviewed and released by the investigator or provider. The provider or investigator should meet with any employees as necessary to explain this process. If it is absolutely essential that a person leave the area before the investigative interview (e.g., a family emergency), that person should be advised that the investigator will contact him/her as soon as possible. Requests to leave should not be authorized unless absolutely necessary. To the fullest extent possible, everyone involved should remain at the provider until interviewed.
- Surveying the scene of the alleged incident with the supervisor nearest the scene. Questioning him/her thoroughly about the condition of the area to determine whether materials or objects have been removed or altered in any way since the alleged incident took place. It should be emphasized that, in some cases, the physical setting must remain as it was, to the fullest extent possible. If the area must be occupied and/or used for client care or other priority purposes, color photographs may need to be taken at once and a drawing of the scene may need to be prepared.
- If the incident involves injury to a client, ensure that s/he has been photographed to record visible injuries. If the client is conscious, mentally capable and has communication skills, the person should be advised that s/he will be interviewed about what happened.

- If the investigator is not there, the provider or trained designee should make notes on any information the client (or others) may volunteer.
- Upon arrival of the investigator, the provider or designee should brief him/her on the steps taken and the status of the situation.

REPORTS TO DBHDS ARE
ENTERED INTO CHRIS

Approach to Investigations

GUIDELINES FOR INVESTIGATORS

Duties of Designated Investigators:

- Investigators will carry out their duties in such a manner as to ensure that the physical well being, dignity and respect of each person are protected to the fullest extent. This mandate applies to staff, individuals receiving services, family members and all involved parties.
- Upon initiating an investigation, designated investigators may be relieved from their other responsibilities until the conclusion of the investigation.
- Designated investigators are to conduct interviews in a timely, thorough and professional manner as required by applicable rules and regulations and adhering to the requirement that investigations be completed within 10 days. If an extension is needed in order to appropriately conduct the investigation, those extension requests must be made
- Investigators must not reveal any information related to cases to anyone except as allowed by state law, regulations or the provider's policies. Additionally, witnesses are instructed that they are not to discuss the investigation
- Within 24 hours of being assigned to conduct an investigation into an allegation of abuse/neglect, the investigator must make a determination if there is reason to suspect abuse/neglect. Additionally, the report must be made in the CHRIS system.
- The investigation letter and required documentation are to be completed within 10 workdays of assignment to the case. Any extensions of this time frame must be approved in writing by the individual designated by the DBHDS Licensed Provider.

Response by investigator:

When an investigator receives a call from the provider regarding an incident listed below, the investigator will respond to that call. It is anticipated that the provider or designee contacting the investigator will have gathered preliminary information about the incident/allegation so that a reasoned plan of action can be developed. Investigative actions can only be initiated at the direction of the investigator or provider. It is usually expected that the investigator will return to the provider for incidents/allegations as listed below:

- Death, if alleged to have been caused by abuse and/or neglect
- Physical abuse with serious injury,
- Sexual abuse or sexual conduct conducted by an employee when there is some evidence or a witness,
- Neglect which has resulted in injury classified as serious.

Generally, when an investigator receives a call from the provider regarding incidents, which are not listed above, the investigator may decide whether the incident requires him/her to return to the DBHDS licensed provider.

Investigators will be completely familiar with the contents of this procedure handbook to assure compliance with standards therein.

Guidelines for Investigative Interviews:

- Normally, the most important source of information in an investigation is the testimony of persons on or near the scene of an event, and of others in a position to help piece together the facts.
- An interview is an investigative tool to gain information about the facts and circumstances surrounding an event; the face-to-face questioning and response between investigator and subject about an event that is of official interest to the investigator.

Preparation for Interviews:

- Develop an Investigative Plan. Before conducting interviews, study available evidence (201A Incident Form, incident reports, logs, etc.), determine who you need interview, what you will ask and what approach you will use with each individual.
- Conduct interviews, as soon as possible, after the incident.
- If possible, separate the participants and witnesses from one another to avoid discussion of the event.
- Interview everyone who has, or may have, pertinent information about the incident. In some cases, persons who have background or character information about the witnesses or participants may be interviewed.
- Interview each person separately and in private where you will not be interrupted.

Normally, the order of interviews should be as follows:

- Reporting Person
- Victim/patient
- Witness(es)
- Accused (if known)

Conducting the Interview:

- Set the climate
- Identify yourself and your official role in the investigation (e.g. how appointed, by whom).
- Inform the subject of the purpose of the interview and that you will be taking notes during the interview, in order to ensure that his/her statement is being recorded accurately.
- a written statement may be prepared by the investigator for the witnesses signature or a written statement may be required.

**NEVER REFUSE TO
ACCEPT A WITNESS
STATEMENT**

- If the subject is an alleged victim, ask about injuries or discomfort and provide for these first. Be prepared for him/her to express anger, fear or other strong emotions. Show concern and try to keep to the topic.

Getting the Information Styles and Ethics of Interviewing:

- Your choice of style should depend on who is being interviewed (victim/witness/suspect; staff/resident) and the degree to which the subject is complying with the investigation.
- You may need to vary your style during an interview depending on the response you get.
- Normally, try to be objective in your questions and non-judgmental in your reactions. Try not to preach or argue with the subject.
- Whenever necessary, it is appropriate to inform the subject of the consequences for failure to cooperate with an investigation in accordance with provider policies.
- Subjects should not be coerced or intimidated.

Development and Implementation of an Investigation Plan

INTERVIEWS AND STATEMENTS

All allegations of abuse or neglect are to be investigated in a comprehensive manner. Interviews should be conducted in a professional manner using all precautions necessary to ensure that all persons involved are afforded necessary safeguards.

Standards for Interviews:

- The investigator will conduct all interviews with the goal of obtaining all of the factual information which the witness may provide. To this end, the investigator will be attentive and straightforward in manner throughout all interviews, making eye contact during the interview. The investigator will not interrupt the witness, and will speak in a tone, at a speed and in a manner conducive to the development and maintenance of a positive rapport.
- All witnesses will be treated in a professional manner, with courtesy and calmness. There will be no presumption of guilt. An investigator should never use sarcasm, derogatory or blameful language toward any witness.
- Interviews must be conducted away from others and in privacy. Surroundings should be comfortable for the interviewee and free from commotion distracting to both the witness and the investigator.

Preparation for the Interview:

- For interviews of persons who may have witnessed the alleged incident, the investigator should survey the scene of the incident and formulate issues and questions which the investigation needs to address. However, since the goal will usually be simply to assist each individual to remember as much as s/he possibly can, as accurately and fully as s/he can, there will seldom be a need for more than a brief preparatory time.
- Before beginning an interview with a person who, the investigator has reason to believe, may have unusual difficulties in communication due to a disability or to a preferred mode of communication or language in which the investigator is not proficient, the investigator will obtain assistance so that the communications difficulty is surmounted. Staff familiar with the individual(s) to be interviewed may be questioned to determine whether any such difficulty exists and to supply necessary communications services. This should be liberally interpreted to include services such as accompanying the person to provide reassurance throughout the interview.
- For interviews with persons who can supply information which pertains to the incident (background information such as medical considerations, the unit routine, housekeeping reports), but who are not potential witnesses to the incident; the investigator will typically prepare specific questions prior to the interview.
- Using a diagram: It is often helpful to draw a diagram while interviewing a witness so that the individual can explain both his/her location or path at the time of the incident and also the placement of others at the scene. The investigator should obtain a diagram (an architectural drawing is preferable, if available) of the place where the incident occurred and its surroundings, before beginning the interview.

Who should be present:

- Ideally, one investigator should interview the witness. The specific needs of a witness are the most important factor in determining if another person is to be present.
- If a witness has a specific communications difficulty, an individual trained to understand him/her and to make information understandable to him/her should be present. This may require the services of an individual trained in speech and hearing, an interpreter or an individual who the witness trusts and with whom communication can occur.
- If the therapist and/or treatment team determine that it would be in the best interest of the witness to have a therapist or a member of the treatment team present, due to his/her mental status, that staff person should be present.

Collecting the Evidence and Facts

Conducting the Interview:

- The investigator should briefly explain who s/he is and what the investigator is doing in terms the individual can understand, while limiting the amount of potentially prejudicial information shared.
- The investigator should determine if the person knows why he is being interviewed and should help the person to feel oriented to the experience of being interviewed.
- If the individual does not have information relative to the incident, but may have collateral information, this potential contribution should be explained by the investigator.

Successive Approximate Recollections:

- Questioning will begin with the broadest invitation to inform the investigator, such as "What can you tell me about the incident?"
- The use of the diagram will often help the witness to move through space and time while narrating this/her recollection. The investigator should offer a diagram of the area, or ask the witness to draw a diagram, at the outset of the interview.
- Questions become progressively more targeted, as the witness produces a memory of the incident.
 - Ideally, questions will direct the witness to begin recalling a period shortly before the incident began and will move the witness successively through his/her recalled experience.
 - As these recollections are produced, they will increasingly approximate the individual's actual experience and provide as much information as possible to the investigation.
- Questioning will continue until the witness's account has reached a time after the incident after which it is improbable that additional information related to the incident can be obtained.
- Whenever possible, questions will begin with a "who", a "what", a "when", a "why", a "where", a "how". This tends to prevent the use of leading questions and to elicit more detail, and should exhaust each avenue. (For example, ask who was there until the witness says: No one else that I can remember.)
- In order to assure the most accurate succession of memory, the questions must be asked and answered one at a time. The questions should not provide alternative answers, since the actual response may be something other than the alternatives.

Basic techniques for all witnesses:

- Usually, you should let the subject tell what happened in his/her own words.
- During the witnesses' narrative, ask **clarifying** questions to get detail or to check areas that are unclear.
- Have the witness retell parts of the story that he/she seemed hesitant about.
- Rephrase questions to clarify casual statements, errors or contradictions. Periodically, paraphrase the witnesses' account of the incident to check your understanding and allow him/her to correct or change details.
- Be sure to ask everyone the **basics**:
 - **Who** was involved
 - **Who** else witnessed the event
 - **When** did it happen

- **Where** did it happen
 - **Where** were you standing
 - **Where** were other witnesses
 - **How** did it happen
 - **Why** do you think it happened, etc.
- This should confirm the facts or surface inconsistencies among witnesses that need further exploration.
 - Ask subjects about their own involvement in the incident:
 - Ask a victim- what preceded the incident?
 - Ask a witness-what did you do to intervene in the incident?
 - Ask witnesses about their relationships with others involved in the incident and if appropriate, their opinions of relationships between others. (e.g. Do you know of any reason why Tom would have accused Paul falsely?).
 - If the witness has agreed to answer questions, but you have serious doubts about the veracity and reliability of certain information he/she provides, get as much information as you can with the following in mind:
 - Question him/her about gaps in knowledge and/or areas that conflict with known facts. For example, if the witness claims he/she was not present when an incident took place, but you know or suspect otherwise, make him account for his whereabouts in great detail:
 - Where was he/she, from when to when
 - Who was he/she with
 - What did he/she do
 - Whom did he/she see, who saw him
 - **Always** make a record of negative statements (e.g. I didn't see anything or I wasn't there in case a subject changes his story later.
 - Point out obvious inconsistencies or falsehoods in the account. If a reliable witness has definitely placed this person on the scene at the time of an incident, tell him so and ask for an explanation. **Never reveal the names of other witnesses.**
 - If he/she insists the other party is lying, ask him why the person would do so. Rationalize with the witness. Ask him to assume he is an investigator, hearing officer, director or judge evaluating the information he's provided. Then point out the questionable areas, one at a time, asking if he thinks they have the Ring of truth. For example:
 - What if the person had clear, complete recollection of certain events, but almost no recall of others that occurred at the same time?

A client who is a witness:

A client may require more support, reassurance and encouragement to tell the investigator what s/he knows. The investigator should stress the seriousness of the matter and the importance of telling the truth.

- The investigator must remain open, neutral and objective and be aware of any reactions which could be interpreted as reinforcing certain responses and discouraging others. Clients are particularly sensitive to what the investigator wants to hear and may tailor their responses accordingly.

- The investigator should make sure that the language and words being used are understood by the client-witness.
 - The witness should be encouraged to tell the investigator when s/he is confused by a question, rather than trying to guess what the questions means and make up an answer.
 - Periodic checks should be made by having the witness explain or repeat items in his/her own words. If there are problems in understanding, the investigator should break down the concepts contained in the questions into simpler terms.
 - Questions should be direct, simple, as concrete as possible and as open-ended as possible depending upon the person's level of comprehension and ability to respond. The investigator must avoid leading questions.
 - The witness should be informed that some questions may be embarrassing or painful and that s/he may tell the investigator that s/he does not want to answer instead of saying s/he does not remember.
 - If the witness appears fearful or upset, the investigator should ask about the fear. It may be necessary to divert attention briefly to a different topic before returning to the point at which the witness became overwhelmed.
- The investigator must be flexible. The intellectual abilities, psychological functioning and physical stamina of some witnesses may dictate what the interview should be conducted in more than one meeting.
- The investigator may not understand all answers given by the witness, because statements may be cryptic or incomplete. Rather than assuming the meaning or ignoring the statements, the investigator should pursue their meaning later (and also review them with the witness's therapist, if appropriate).
- Allegations of sexual abuse: It is important in a sexual abuse allegation that the alleged victim describes where s/he was touched and how. A good prelude to questions about sexual abuse with an individual with developmental disabilities is to ask the individual to identify various body parts. The investigator could start with the arms, legs, etc., then move on to genitals, breasts and buttocks. The investigator should then use the terms the witness uses.
- Fears and reasons for secrecy: The investigator should try to determine if any threats, promises or requests were made or if rewards were given/promised to prevent the witness from revealing the abuse - ~~At~~o keep it a secret. This may be difficult to discover because of the coercion or because of the witness's positive feelings for the alleged offender. The investigator should approach directly, with questions such as, Did s/he want you to tell other people about it? If the answer is no, the investigator should then ask, How do you know s/he didn't? What do you think would happen if you told? If a threat has been made, the investigator should find out what type of threat and who made it.

THIS MAY OR MAY NOT RESULT IN AN ADMISSION THAT THE INITIAL INFORMATION WAS FALSE BUT IT FURTHER LOCKS THE WITNESS INTO A STORY HE/SHE WILL FIND DIFFICULT TO REFUTE LATE.

- Finding out who was involved: Most individuals receiving services know the alleged target and will be able to name him/her. The investigator should find out the relationship between them, and who was told about the incident and in what context.

Uncooperative Witnesses:

While there are many forms of behavior which are not compatible with the goal of an investigation, the investigator's behavior must remain calm and courteous. There are several ways in which a level of cooperation can be solicited:

- The witness's response to the interview may be diverting (tears) or provocative (physically threatening). The investigator must patiently remain on target with the interview. One tool which the investigator must make work for him/her is time. The capacity to wait out any behavior will greatly assist in obtaining cooperation.
- The investigator must not misrepresent their role in the investigation to give the person a false sense of security, such as may occur if a person believes that something can be said off the record or that s/he will be given immunity for testimony.
- If the witness is an employee, s/he may be reminded of the legal obligation to cooperate, even if the information s/he has may be incriminating. This should be the last resort, since it is apt to elicit less than full compliance.

An investigation may include one or more parties (including the alleged victim and/or witnesses) who evade the issue. Their behavior ranges from an outright refusal to answer questions to vague or conflicting recollections about things they should know. The reasons for such behavior include:

- A general belief that it is not appropriate to help management; that investigations of this sort are witch hunts intended to target blame for an incident on one or more people, even if no one is guilty of misconduct.
- The subject is friendly with another person whom he knows may become a target of discipline.
- The subject believes he may be disciplined for failure to stop or intervene in the incident.
- The subject caused or contributed to the incident, and knows that he will become the target of discipline.

Here are some points you may cover with uncooperative witnesses as necessary:

- Restate your objective of getting the facts of what occurred for everyone's mutual protection. Stress that management is equally concerned about the rights of the subject not be falsely or unjustly accused of misconduct. Only a full and fair investigation can protect this right and ensure that policies and procedures are followed.
- State that management has the right and obligation to investigate all such incidents. DBHDS licensed provider staff are **required** to cooperate fully in such investigations even though it may tend to implicate them or others in an act of misconduct.
- Finally, you may inform an employee that he is subject to disciplinary action, including termination, for failure to cooperate fully in an investigation of a major incident.

The witness statement

- When the investigator is satisfied that the interview has produced as much information as possible at this time, s/he will assist the witness in writing a detailed statement of what has been remembered.
- The investigator and the witness recapitulate the interview which has just taken place. The difference is, that after the investigator asks a question, the witness will answer out loud in

complete sentences and then write the answer in complete sentences (and must be so instructed by the investigator).

- When the complete statement is written (and it may include additional detail to what was stated the first time), it should be reread and any corrections should be made. Then, the witness and the investigator sign and date the statement.

Special Situations:

- **The non-writer:** There are several reasons why a witness may not wish to write his/her statement - poor or no writing skills and resistance to cooperation among them. The reason why the person declines to write a statement is not important, but finding another way to record the information is.
 - The investigator should offer to be the scribe for the statements of the witness. If this is done, a Q & A format should be used.
 - The Q & A should be written word for word. It should be explained that a third party will be called in, after the record is made, to read it back, so that the witness can make any necessary corrections and can feel certain that the record is accurate. When this method is used, the reader will also sign the record.
 - If a third party is present, the person may scribe the statement when the investigator and witness recapitulate the interview and then read it back to the witness before the witness signs it.
 - If the witness does not speak and/or understand English and the statement is made by means of another form of communication or another language, the interpreter should supply a translation which can be attached to the statement.
 - Should the witness remember another fact at a later date, an additional statement can be attached.
- **The time-limited interview:** There are several reasons why an interview may not provide enough time for making a statement - outside responsibilities of the witness and fatigue among them the reason for curtailing an interview without getting a hand-written record of the witness's recollection is not as important as finding the next best substitute for such a statement.
 - At the end of the interview process, the investigator may review the witness's story. The witness would be asked to repeat important portions, regarding which the investigator will make detailed notes.
 - If the witness won't go over the story again, maybe the investigator can write down his/her memory of those recollections in front of the witness. This would permit the investigator to ask questions if a memory is not complete or inaccurate.
 - If none of these alternatives is acceptable, the investigator should write down everything as soon as the interview is completed.
 - Finally, if the investigator assesses at the beginning that this witness will not afford any opportunity for creating a record at the end of the initial interview, then the investigator may have to stop the interview from time to time, to note significant information.

Designated investigators are responsible for obtaining initial written witness statements. Such initial written statements should be completed by all staff on duty, all client witnesses (if they are capable of doing so) and others who may be witnesses in the immediate area at the time of the alleged incident.

Initial written statements should be sought as soon as the incident is discovered or the allegation is reported.

Once it is determined by the provider and/or investigator that the reported circumstances warrant the gathering of initial written statements, the activity will proceed. A standard format will be used but should include sufficient information about the incident/allegation so that the responding person can know what s/he is being asked about. The form used should provide prompts for content or response (i.e. who, what, when, where, how, etc.) and timing of response (returned to the investigator director by the end of shift).

Upon notification of an incident/allegation requiring initial written statements, the provider and/or investigator will instruct the supervisor on duty:

- To compile a list of all staff persons on duty in the area of the incident at the time of the incident, any other staff persons who may have been in the area and any other person who may have been in the area (clients, volunteers, visitors, staff of another entity, first responders).
- As much as possible, separate the individuals identified in (a) above, directing them not to speak about the incident until their reports are completed, and/or they are interviewed.
- If persons are able to write, they should be provided privacy and requested to complete a written statement using standard DBHDS forms.

Closing the Interview:

- The investigator will thank the witness for his/her help and give the witness a chance to ask any questions s/he may have.
- Summarize the facts/observations solicited from a witness and get his agreement with the summation and the opportunity for any corrections.
- Tell subject not to discuss the event or his interview with others.
- As appropriate, tell the subject what will happen next (e.g. he will be given a written statement of his interview to sign; he may be called back for further questioning, etc.).
- Ask if he has any final questions or comments and that he may contact you if he has anything else to offer.

After the Interview:

- Record the subject's statement **immediately** to avoid confusion with others statements or loss of information.
- Record your reaction to or opinions about the subject, and give reasons for your opinion (e.g. behavior during the interview, character witness, etc.). Keep your opinions separate from the content of the statement.
- Adjust your plans for questioning of others, as appropriate, based on this subject's statement.

EVIDENCE

The designated Investigators will maintain evidence for all abuse/neglect cases. Investigators will be responsible for ensuring that the evidence is properly collected, recorded and maintained.

- Evidence will be collected, inventoried/documented and maintained in accordance with the procedures of the responsible investigative agency.
- All evidence should be identifiable by specific numbers, references numbers, case, numbers, or CHRIS numbers, so that it may be accessed consistent with regulations.
- If a Law Enforcement Agency indicates they will accept the case, direction on collecting and recording evidence should be obtained from that agency.

NOTE: Upon notification that the Law Enforcement Agency will not accept the case, the investigator will gather and preserve evidence according to the following:

- Prior to moving any evidence, take three photographs of the evidence. Photographs should be labeled with:
 - Date, time, identity of photographer
 - Full name of the client (s) involved in the incident
 - Case Number
 - Statement of what the photograph portrays
- Prior to moving any evidence, draw a diagram showing the location of the evidence. Measurements are often necessary.
- Carefully package each item separately in a paper bag or other appropriate container; labeling same with the following information:
 - Case number
 - Date and time collection made
 - Name of person collecting the item
 - Where the item was found
 - Statements of what the item is
- Ensure the appropriate safeguarding of evidence
- Evidence requiring further analysis will be coordinated through the Virginia State Police. The investigator must provide the State Police with the following information when submitting evidence:
 - Name of DBHDS licensed provider
 - DBHDS licensed provider telephone number
 - Case Number
 - Name and address of the investigator in order to receive report
 - Description of the allegation
 - Address or location of alleged offense
 - Date alleged offense occurred
 - Victim(s)'s name, sex, race and date of birth
 - Suspects(s)'s name, sex, race and date of birth
 - Printed name of the investigator if different from above
 - Printed name of the investigator delivering the evidence to the laboratory
- Evidence is to be maintained for a minimum of five years along with the investigator's case file

- When appropriate, all perishable evidence may be destroyed after photographs are taken and verification of quality prints has been made.

Medical assessment of victim-Physical Abuse:

When incidents of physical abuse occur, medical attention is to be secured promptly in the event of an injury to a client. The designated investigator is responsible for interviewing the physician completing the examination, if appropriate.

- If appropriate, the investigator will contact the examining physician, as soon as possible, and request the following information:
 - The precise nature of any injuries.
 - The probable time (age) of the injuries.
 - The most likely cause of the injury, or whether it is consistent with the allegations of the victim or witnesses.
- The investigator may wish that a second opinion be sought.
- If there is any difficulty obtaining the second opinion, the investigator should notify the Investigations Manager.
- If no injury is found, it is recommended that a re-examination by physician or nurse be completed 24 hours later. At this re-examination any injuries will be noted and photographed. This subsequent information is to be attached to the investigatory report package.

Note: The following is a guide and may be useful to approximate the age of bruises as suggested by the coloration of the skin:

<u>Age (days)</u>	<u>Color *</u>
0-2	red
0-5	blue/red
5-7	green
7-10	yellow
10-14	brown
14-28	clear

*Colors may vary with the skin pigmentation and condition of the individual and the severity and size of the injury.

Photographs:

The designated investigators will ensure that, when appropriate, photographs related to an incident are taken to use as permanent and comprehensive pieces of demonstrative evidence which may be presented in disciplinary hearings or in court to clarify a fact in question. The investigator will be responsible for ensuring that photographs are secured for assigned cases.

Photographs are required in cases involving any visible injury related to an allegation of physical abuse. Use of photographs should be considered in other cases for a variety of reasons:

- To pictorially recreate the original incident scene.
- To refresh the investigator’s memory and recall details which are significant to the case.
- To refresh the memory of witnesses.
- To show important relationships of objects in the scene.

- To make comparisons.
- To document appearance of injury.
- To advise new investigators.
- To serve as demonstrative evidence.

Requirements for photographs:

- Each provider must have the equipment and qualified personnel to take photographs as needed.
- When taking photographs of a individual's injury, three photographs should be taken. The first photograph will be of the client. The second photograph will be a close-up of the injury, and the third photograph will be a close-up of the injury with a ruler or other measuring device.
- The following information will be entered on the Photo Log for all photographs:
 - The case number.
 - The date and time photographs were taken.
 - The name of the photographer.
 - The names of other persons that were present when photographs were taken.
 - The photograph numbers.
 - The description of the photographs.
 - The distance between the camera and the object photographed.

PHOTOGRAPHS ARE NOT TO BE
VIEWED BY OTHERS WHO ARE
NOT AUTHORIZED TO DO SO.

Summarizing and Reporting the Findings

REPORT WRITING

Importance of Report Writing: It is very likely that you, the provider's investigator, will be called on to provide information. As a result, your actions and your documentation of the incident will determine the outcome in later review. It is also very likely that review of your documentation may occur long after the event or incident witnessed or that you may have been involved in. It is crucial that you develop the ability to write effectively. The provider depends on the information that you supply to them through your investigative report. Always remind yourself that your official report reflects upon you as a professional and your agency. What you write can strongly suggest the presence or absence of credibility.

Principles/Characteristics of Well-Written Reports:

- **FACTUAL**
 - Separate fact from opinion.
 - Facts are statements which can be proven.
 - Opinions or labels for behavior are merely personal beliefs.
 - The people who read your reports make decisions based on the information contained in your report. They need a means of assessing the accuracy and reliability of each statement in your report.

- **ACCURATE**

Accuracy involves statements of specific details/behaviors and facts. Use specific and concrete terms to paint a clear picture in the reader's mind. Using general terms will force the reader to second guess your meaning.

- **OBJECTIVE**

Stick with facts; avoid words with negative connotations; use an unbiased viewpoint.

- **COMPLETE**

A complete report contains the following **seven** essential elements:

 - **Who-** Identify everyone involved completely; lots of people have the same last names. Patients should be identified by name (can be redacted later) and living unit. Staff or other individuals should be identified by full name and position or title, to include the preparer of the report.
 - Who reported the abuse, violation or misconduct?
 - Who discovered the abuse, violation or misconduct?
 - Who are the victims/patients?
 - Who are the offenders?
 - Who are the witnesses?
 - Who are the possible suspects?
 - Who was the first person on the scene?
 - Who discovered the evidence?
 - Who took possession of the evidence?
 - To whom was the evidence given?

- **What-** Report the facts exactly how you learned them. What happened in full specific detail, not what you assume happened. What are the surrounding/extenuating circumstances of the event/incident?
 - What violation or incident occurred?
 - What is the nature of or extent of injury?
 - What evidence was left at the scene?
- **When-** What time, date and in some cases, during what activity did the event/incident happen?

Time - Standard is most universally understood. If using standard time, always include a.m. or p.m., which by the way are **NEVER** to be capitalized. Approximate time is considered safe in most instances.

 - Record the time and date of incident.
 - Record the time the incident or misconduct was discovered.
 - When was the victim/suspect observed?
 - Record the time and date evidence is collected.
- **Where-**Where precisely and specifically did the incident take place/start/move to/end? Where were the individuals involved? The reader needs to be able to reconstruct where people were during the incident in chronological order.
 - Where did the incident/event occur?
 - Where were victim(s)/suspect(s)?
 - Where were witness(s) situated in relation to the event?
 - Where was evidence found specifically?
- **Why-** In some cases, you may not be able to address this element. When in doubt, leave this element out. This element answers: why did it happen? Why was the patient/victim beaten with a belt? Don't try to guess what motivated the actor. If you are told why by the actor, record what the actor suggested motivated him or her.
 - Why did it happen/occur?
 - Why were certain methods/techniques/items used?
 - If hearsay, qualify statement by saying it is hearsay. Be careful not to prejudice your report against or for the person(s) involved.
- **How-**How did the incident start, progress and end? Some of this information you will know from your own observation, some you will have to gather from others.
 - How were activities/facts performed/carried out?
 - Describe scene, surrounding area/environment
 - How was evidence handled?
- **INCLUDE ACTIONS TAKEN**

What did you or other individuals involved do and/or say? Did you/they call for help? Was a supervisor called? State the final disposition of the incident. If no further action was necessary, state same. Document pending action, such as persons to be interviewed.

- **CONCISE**
To the point; write to express, not to impress. Avoid unnecessary wordiness and information that is not relevant. Delete words, sentences and phrases that do not add to your meaning. Use simple language.
- **CLEAR**
Present specific, concrete facts and details that help the reader visualize the event.
- **MECHANICALLY CORRECT**
Adhere to the rules of English grammar, capitalization and punctuation.
- **STANDARD ENGLISH**
Avoid using regional dialect, jargon, slang and nicknames, unless you are quoting someone.
- **LEGIBLE**
Ideally, the report would be typed. If this is not practical, reports should be hand printed in blue or black ink. White out should never be used. Check spelling, grammar and make sure report is neat and legible.

FINDINGS CATEGORIES

THERE ARE ONLY *TWO* POSSIBLE FINDINGS IN ABUSE/NEGLECT/EXPLOITATION INVESTIGATION:

- 1) Substantiated:** This finding will typically occur when the Investigator amasses a preponderance of evidence substantiating that a violation occurred. However, the finding does not have to reflect the initial classification of the incident, i.e. the original allegation may have initially alleged physical abuse, which could not be substantiated; however, the evidence does support a finding of neglect.
- 2) Not Substantiated:** This finding is applicable when the investigator amasses a preponderance of evidence to support a finding that a violation did not occur. However, even though a case is not substantiated, additional findings or determinations may be appropriate, such as:
 - **Inappropriate or Non-Therapeutic Behavior:** This determination is appropriate when the investigator finds the facts as a whole do not warrant a finding of abuse/neglect but believes the evidence does support a finding that staff acted or failed to act appropriately as defined by other DBHDS licensed provider policy, practice or procedure.

Example: Client gets up at 1:00 a.m. and asks for a PRN medication to help them sleep. While the staff gets up immediately and administers the medication, he comments to the individual "I'm getting tired of you getting up every night at this time asking for this PRN". While the staff person's behavior is inappropriate (or perhaps non-therapeutic), he rendered the required service, and therefore his actions do not constitute a violation.

- **Insufficient Evidence:** This determination is appropriate when the Investigator believes and some facts support that a violation may have occurred, does not amass a preponderance of evidence to support a finding to substantiate a violation. However, evidence is sufficient to identify employee misconduct.
- **Administrative Issues:** This determination will typically relate to defective policies and procedures; or systems issues or to misconduct by someone other than a DBHDS licensed provider employee.

Example:

- It was discovered that clients were not wearing their seatbelts and the provider’s policy relating to rider safety does not require seatbelts to be worn.
- The individual who spoke rudely to consumer is not an employee of the S licensed provider.
- The door was open, but staff is not able to provide information on who may have left the door open.

CASE CLOSURE

The DBHDS licensed provider will ensure that appropriate actions are completed on all cases prior to closure.

- When it is determined that violation has occurred, the provider shall implement and track any appropriate administrative or clinical care and treatment-related actions in order to prevent future occurrences. Such actions shall be developed in consultation with the Advocate and other appropriate personnel.
- If it is determined that violation has not occurred, the provider shall decide whether an administrative intervention is necessary (e.g., clinical review, fact-finding to determine appropriate course of disciplinary action, etc.). The provider may also seek consultation from appropriate Central Office staff in making this determination.

- **For Substantiated Cases:** A substantiated investigation is considered closed when the DBHDS licensed provider:
 - Takes any necessary disciplinary action
 - Develops any other appropriate corrective action plan; and
 - Writes a letter of closure.
- **For Unsubstantiated Cases:** An unsubstantiated investigation is considered closed upon:
 - The provider Director’s receipt of an investigative summary from the Investigator. This letter may include recommendations for further action.

Administrative Issues:

The provider shall address any administrative issue identified by the Investigator that is specific to the case findings. This shall be accomplished by:

- Taking correction action;
- Reporting that such action was taken to the [insert name/title] within seven days of the date of the transmittal letter.
- A description of these actions shall be maintained in the case file.

Examples:

- **Administrative action toward staff:** This recommendation includes the full range of disciplinary, counseling and training actions. It may relate to more than one staff person. This recommendation could also include actions recommended for a person employed by the entity contracting to provide services with the provider.
- **Both administrative and other action:** This recommendation includes situations in which more than one action is taken, one is related to at least one staff and other is not related to any specific staff person. For example, there may be a recommendation that a provider review its policy on visitors and contraband, and take administrative action with regard to one staff that improperly left her 1:1 supervision duty.
- **Other action:** This recommendation includes all action which is not directed at one or more staff. For example, changing the unit of a client, requesting additional supervision for a client, obtaining locks for cabinets, rewriting a policy for clarification, creating a review process.
- **No action:** This recommendation is appropriate when the findings of the case indicate nothing happened or what happened was not preventable (an accident).