In an effort to clarify the Incident Management statement of policy listed below, the wording in the first paragraph under Discussion has been modified. As a result, Informational Packet 031-15 is being reissued today, 4/30/15. Please discard the original version of the packet and replace it with the revised version reissued this date. We apologize for any inconvenience this may have caused.

AUDIENCE: All Providers who receive funds from the Office of Developmental Programs (ODP), Administrative Entities (AEs), County Mental Health/Intellectual Disability (MH/ID) Programs, Supports Coordination Organizations (SCOs), and other interested parties.

PURPOSE: The purpose of this communication is to amend the requirements set forth in 55 PA Code §6000, ODP Statement of Policy, Subchapter Q Incident Management (IM) to include the notification of Adult Protective Services Agency and the Department of Human Services as stipulated in the Adult Protective Services Act (Act 70).

BACKGROUND: In October 2010 the General Assembly of the Commonwealth of Pennsylvania enacted the Adult Protective Services (APS) Act which provides for protection of abused, neglected, exploited or abandoned adults; establishes a uniform Statewide reporting and investigative system for suspected abuse, neglect, exploitation or abandonment of adults; provides for protective services; and prescribes penalties.
DISCUSSION: Entities listed under the scope of the IM statement of policy, must immediately make an oral report to the APS Agency when there is reasonable cause to suspect that a recipient, age 18-59, is a victim of abuse, neglect, exploitation or abandonment. Within 48 hours of making the oral report, entities will make a written report to the APS agency. Incident reports submitted in the Department’s incident reporting system are considered written reports which can be printed and forwarded to the entities requiring a written report.

In addition, when there is reasonable cause to suspect that an individual is the victim of sexual abuse, serious injury, or serious bodily injury, or that a death is suspicious; entities must make an oral to the Department. Entities must also make an oral and written report to law enforcement. Incident reports submitted in the Department’s incident reporting system are considered written reports which can be printed and forwarded to the entities requiring a written report.

The Office of Developmental Programs Incident Management (IM) statement of policy §6000 is amended to include the reporting requirements set forth in the APS Act. The amended sections of the statement of policy are included as attachments to this informational packet.

- Attachment 1 includes the amendments to the Roles section, specifically § 6000.951--Initial reporter and § 6000.952--Point person.
- Attachment 2 includes the amendments to Appendix F Related Laws, Regulations, and Policy.
- Attachment 3 includes the amendments to the Reporting Matrix. Please note this is only a guide and does not substitute for the applicable statutes and regulations.

ADDITIONAL INFORMATION: Also included with this informational packet is a guidance document with the title: Mandatory reporting requirements regarding abuse or neglect of adults covered by the Adult Protective Services Act of 2010 issued from the Bureau of Human Services Licensing, Division of Adult Protective Services. This document is attachment 4.

For clarification regarding this Informational Packet, please contact your respective Risk Manager within the ODP Regional Program Office.
ROLES

§ 6000.951. Initial Reporter.

The initial reporter is any person who witnesses the incident or is the first to discover or be made aware of the signs of an incident. The initial reporter first responds to the situation by taking prompt action to protect the individual’s health, safety and rights. The protection may include dialing 911, escorting to medical care, or calling ChildLine, Older Adult Protective Services Act (OAPSA) Agency, or Adult Protective Services (APS) Agency. As soon as the immediate needs of the person have been met, the initial reporter notifies the provider point person of the incident and receives instructions on next steps to take. The initial reporter documents his observations in a narrative report which is kept in the provider/entity’s files. In cases of alleged abuse or neglect, the initial reporter will comply with the applicable laws and regulations. See Appendix F (relating to related laws, regulations and policies).

§ 6000.952. Point Person.

A point person is assigned and authorized to perform specific duties as described in provider/entity or county policy. In general, a point person is to receive verbal or other reports or allegations of incidents from individuals, families and initial reporters. They are to safeguard the individual, ensure that HCSIS Incident Reports are submitted, communicate with others involved in investigations, follow-up and review of incidents. This role is pivotal in the incident management process. When an incident is reported, the point person, as a representative of the agency, is to:

1) First confirm that appropriate actions have been taken or order additional actions to secure the safety of the individual involved in the incident.
2) Separate the individual from the target when the individual’s health and safety may be jeopardized.
3) Ensure notification requirements are met of the:
   ○ Older Adults Protective Services Act (35 P. S. § § 10225.101—10225.5102)
   ○ Child Protective Services Law (23 Pa.C.S. § § 6301—6384)
   ○ Adult Protective Services Act (Act 70)
4) Determine whether an investigation or other follow-up is needed.
5) Secure the scene of an incident when an investigation may be required.
6) Ensure that, when needed, a certified investigator is promptly assigned.
7) Notify appropriate supervisory/management personnel within 24 hours of the incident, as specified in provider/entity or county policies.
8) Initiate a HCSIS Incident Report within 24 or 72 hours as described in the Reportable Incident section of this bulletin.
9) Notify the family within 24 hours (72 hours for medication error and restraint) unless otherwise indicated in the individual support plan.
10) If required, verify that a report was submitted to the APS Agency within 48 hours.
   Acceptable reports include HCSIS or EIM printable incident summaries of the first section submitted.
Appendix F.

RELATED LAWS, REGULATIONS AND POLICIES

The incident management and reporting detailed in this subchapter are related to a variety of laws, regulations and policies. The applicable licensing regulations (and facilities licensed under those regulations) include:

Related Laws:

- The Mental Health and Mental Retardation Act of 1966 (50 P.S. §§ 4101-4704)
- Title XIX Social Security Act (42 U.S.C.A. §§ 1396-139br)
- 18 Pa. C.S. § 2713 (relating to the neglect of care-dependent person)
- The Older Adults Protective Services Act (35 P.S. §§ 10225.101-10225.5102)
- Elder Care Payment Restitution Act (35 PS §§ 10226.101-10226.107)
- Early Intervention Services System Act (11 P.S. §§ 875.101-875.503)
- The Whistleblower Law (43 P.S. §§ 1422-1428)
- Adult Protective Services Law (Act 70)

Title 55 of the Pennsylvania Code.

- Chapter 20 – Relating to Licensure or Approval of Facilities and Agencies
- Chapter 2380 – Relating to Adult Training Facilities
- Chapter 2390 – Relating to Vocational Facilities
- Chapter 3490 – Relating to Child Protective Services
- Chapter 3800 – Relating to Child Residential and Day Treatment Facilities
- Chapter 5310 – Relating to Community Residential Rehabilitation Services for the Mentally Ill
- Chapter 6400 – Relating to Community Homes for Individuals with Mental Retardation
- Chapter 6500 – Relating to Family Living Homes
- Chapter 6600 – Relating to Intermediate Care Facilities for the Mentally Retarded

Title 6 of the Pennsylvania Code. Aging.

- Chapter 11 – Relating to Older Adult Daily Living Centers

Related Policy Guidelines:

- Mental Retardation Bulletin 00–94–32 - Assessments: Lifetime Medical History (effective December 6, 1994)
- Mental Retardation Bulletin 00–03–01 - Passage of Act 171 relating to the Older Adults Protective Services Act (OAPSA)
Additional Reporting:

In addition to the reporting methodologies described in this statement of policy, the following is provided as a guide to assist in identifying additional reporting. This does not fully define, nor is it intended to substitute for, the applicable statutes and regulations.

Reportable incidents involving individuals who reside in facilities licensed as ICF/MRs (both state and privately-operated), are to be reported to the appropriate Regional Field Office of the Pennsylvania Department of Health, Division of Intermediate Care Facilities.

Reportable incidents that occur in facilities licensed by the Department of Human Services, involving individuals whose support needs are not funded through the Commonwealth or county intellectual disability systems, are to be reported to whomever funds the individual's support and to the Commonwealth/Regional Office of Developmental Programs. This includes individuals from other states, individuals who are funded by agencies not part of the intellectual disability system and individuals whose support needs are privately funded.

Neglect of care-dependent person (Title 18 Pa.C.S. § 2713)

The neglect of care-dependent person 18 Pa.C.S. § 2713 covers any adult who, due to physical or cognitive disability or impairment, requires assistance to meet his needs for food, shelter, clothing, personal care or health care. 18 Pa.C.S. § 2713 extends to certain listed facilities and to home health services provided to care-dependent persons in their residence. The statute criminalizes intentional, knowing or reckless conduct by a caregiver which results in bodily injury or serious bodily injury to a care-dependent person by the failure to provide treatment, care, goods or services necessary to preserve the health, safety or welfare of a care-dependent person for whom the caregiver is responsible to provide care. A caregiver may also be prosecuted if he intentionally or knowingly uses a physical restraint, a chemical restraint or medication on a care-dependent person, or isolates that person, contrary to law or regulation, such that bodily or serious bodily injury results.

Anyone aware of possible violations of this may make a report to the appropriate law enforcement authorities. The reporting requirements of this bulletin are to be followed even if a report of a possible violation of this statute is made to law enforcement authorities. Copies of the statute were distributed via Mental Retardation Bulletin 00–95–25, issued December 26, 1995 and Mental Retardation Bulletin 00–97–06, issued August 29, 1997.

The Child Protective Services Law (23 Pa. C.S. §§ 6301-6385)

The Child Protective Services Law (CPSL) establishes procedures for the reporting and investigation of suspected child abuse. Certain types of suspected child abuse must be reported to law enforcement officials for investigation of criminal offenses. Children
under the age of 18 are covered by the Act including those who receive supports and services from the mental retardation system. Providers covered within the scope of this bulletin are required to report suspected child abuse in accordance with the procedures established in the CPSL and the Protective services Regulations. The CPSL defines child abuse as any of the following when committed upon a child under 18 years of age by a parent, person responsible for a child's welfare, an individual residing in the same home as a child or a paramour of a child’s parent.

- Any recent act or failure to act that causes non-accidental serious physical injury.
- Any act or failure to act that causes non-accidental serious mental injury or sexual abuse or sexual exploitation.
- Any recent act or series of such acts or failures to act that creates an imminent risk of serious physical injury or sexual abuse or sexual exploitation.
- Serious physical neglect constituting prolonged or repeated lack of supervision or the failure to provide essentials of life including adequate medical care which endangers a child’s life or development or impairs the child’s functioning.

Reports of suspected abuse are received by the Department of Human Services (DHS) ChildLine and Abuse Registry (800-932-0313), which is the central register for all investigated reports of abuse. Individuals who come into contact with children in the course of practicing their profession are required to report when they have reasonable cause to suspect on the basis of their medical, professional or other training or experience, that a child is an abused child. Every facility or agency is required by the CPSL to funnel reports to the director or a designee to be promptly reported to ChildLine. The reporting, investigation and documentation requirements of this Mental Retardation Bulletin must also be followed when a report of suspected child abuse is made. It must be noted that the definition of abuse found in the CPSL differs greatly from the definition promulgated in this bulletin. Because of this difference it is possible that an allegation may be “unconfirmed” in terms of the CPSL but still substantiated with reference to these guidelines. Likewise, the scope of reports subject to investigation differs so it is important to be familiar with the requirements of the CPSL.

The Older Adults Protective Services Act (35 P.S. §§ 10225.101-10225.5102)

The Older Adults Protective Services Act (OAPSA) of 1987 was enacted to protect all Pennsylvanians age 60 and older. The OAPSA established a detailed system for reporting and investigating suspected abuse, neglect, exploitation, and abandonment for care-dependent individuals. Act 13 was signed into law in 1997 as an amendment to the OAPSA. Unlike the other provisions of OAPSA that applied only to adults age 60 and above, Act 13 applied to adults age 18 and above who were considered “care-dependent” individuals and to “care-dependent” individuals under age 18 if they resided in a facility serving individuals over 18.

Employees or administrators of a covered entity reported suspected abuse incidents to the local Area Agency on Aging (AAA), where indicated, to the Pennsylvania Department of Aging and to local law enforcement pursuant to Chapter 7 of the OAPSA. These requirements existed in addition to the reporting procedures contained in this Bulletin. In 2002, the OAPSA was further amended by the Elder Care Payment Restitution Act.
The Elder Care Payment Restitution Act (35 P.S. §§ 10226.101 - 10226.107)

The Elder Care Payment Restitution Act eliminated the requirements of Act 13 for which suspected abuse of individuals with mental retardation under the age of 60 was reported to the Area Agency on Aging and in some cases, to the Department of Aging. This Act became effective February 9, 2003.

Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191)

HIPAA and the applicable regulations at 45 CFR Parts 160 and 164 (Privacy Rule) established a set of national standards for the protection of personal health information. The Privacy Rule addresses the use and disclosure of individuals’ health information or “protected health information” by organizations subject to the Privacy Rule or “covered entities”. The Privacy Rule establishes standards for individuals’ rights to understand and control how their personal health information is used. The U.S. Department of Health and Human Services, Office of Civil Rights is responsible to implement and enforce the Privacy Rule.

The Adult Protective Services Act of 2010 (Act 70) (Public Law 484 No. 70)

In 2010, the APS Act was implemented to provide for the protection of abused, neglected, exploited or abandoned adults. The APS Act protects residents of this Commonwealth between 18 and 59 years of age who have a physical or mental impairment that substantially limits one or more major life activities. The act establishes a detailed system for reporting and investigating suspected abuse, neglect, exploitation, and abandonment for care-dependent individuals.
# REPORTING MATRIX Guide

The following is provided as a guide to assist in identifying additional reporting. This does not fully define, nor is it intended to substitute for, the applicable statutes and regulations.

<table>
<thead>
<tr>
<th>Reportable Incident Category</th>
<th>Written Report to ODP ID Services</th>
<th>Written Report to County, Or the Bureau of Autism Services</th>
<th>Oral Report to ChildLine, If under 18</th>
<th>Oral and Written Report to Adult Protective Services (APS) Agency, If 18-59</th>
<th>Oral Report to PA Department of Human Services, If 18-59</th>
<th>Oral Report to AAA, If 60 or older</th>
<th>Oral and Written Report to PA Department of Aging, If 60 or older</th>
<th>Written Report to Department of Health (DOH)</th>
<th>Oral and Written Report to Local Law Enforcement</th>
<th>Acts 28/26</th>
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<td>If suspicious</td>
<td>If suspicious</td>
<td>If suspicious</td>
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<td>If suspicious</td>
<td>If ICF/ID</td>
<td>If suspicious</td>
<td>If result of neglect.</td>
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</tbody>
</table>

1 If an individual is not funded by ODP or by County ID services, a report should be made to the funding agent.
2 A report should be made to the Bureau of Autism Services for individuals enrolled with the Bureau of Autism services.
3 Reporting under Acts 28/26 is only mandated for Commonwealth Employees.
4 Unauthorized or misapplied/improper restraints are considered physical abuse.
SUBJECT: Mandatory reporting requirements regarding abuse, neglect, exploitation or abandonment of adults covered by the Adult Protective Services Act of 2010

TO: Employees and administrators of facilities as defined by the Adult Protective Services Act (Act 70 of 2010). Refer to the definition section of this document to review the definition of an employee, administrator and facility.

FROM: Bureau of Human Services Licensing, Division of Adult Protective Services

PURPOSE

To notify employees and administrators of facilities (including an organization or group of people that use public funds and is paid, in part, to provide care and support to adults in a licensed or unlicensed setting) of the mandatory reporting requirements set forth in the Adult Protective Services (APS) Act. Forms and instructions are available on the Department’s website.

BACKGROUND

In 2010, the APS Act was implemented to provide for the protection of abused, neglected, exploited or abandoned adults. The APS Act protects residents of this Commonwealth between 18 and 59 years of age who have a physical or mental impairment that substantially limits one or more major life activities. This notice applies to individuals falling within this population only.

IMMEDIATE ACTION

An administrator or employee of a facility who observes suspected abuse, neglect, exploitation or abandonment or has reasonable cause to suspect that abuse or neglect has occurred will immediately assure the recipient’s health and safety. After assisting the recipient, an employee or administrator will follow the reporting requirements set forth in the APS Act.

REPORTING REQUIREMENTS

A. General Requirements

1. An administrator or employee who has reasonable cause to suspect that a recipient is a victim of abuse, neglect, exploitation or abandonment will immediately make an oral report to the statewide Protective Services Hotline by calling 1-800-490-8505. Once the report is made, it will be referred to the APS agency (Liberty Healthcare Corporation) for handling. Please note that this hotline should be for reporting abuse, neglect, exploitation and abandonment only. Any questions should go to RA-PWAPSQuestions@pa.gov or for those who do not have access to email, please call 717-736-7116.
2. Within 48 hours of making the oral report, the administrator or employee will make a written report to Liberty Healthcare using the form prescribed by the Department. A copy of the form is attached. The form, along with instructions for its completion, may also be found on the Department’s website at http://www.dhs.state.pa.us/, under the “Report Abuse” link on the left.

3. Send the written report to Liberty Healthcare at RA-PWAPSMandatoryRon@pa.gov or fax to 484-434-1590. The following written report forms may be used in lieu of the form prescribed by the Department:

   a. An administrator or employee of a nursing facility, licensed by Department of Health, may submit a PB-22 form, via email or fax, to Liberty Healthcare.
   b. An administrator or employee may submit a Home and Community Services Information System (HCSIS) incident report (Printable Summary) or an Enterprise Incident Management (EIM) report, via email or fax, to Liberty Healthcare.

4. An administrator or employee of a facility will continue to follow all required incident management regulations, policies and procedures.

B. Additional Reporting Requirements as required by the Adult Protective Services Law

In addition to the general reporting requirements in section A, an administrator or employee who has reasonable cause to suspect that a recipient is the victim of sexual abuse, serious injury, serious bodily injury or that a death is suspicious, will:

1. Immediately make an oral report to law enforcement officials. An employee will also immediately notify the facility administrator or a designee following a report to law enforcement officials, unless such notification would jeopardize the investigation or subject the recipient to further risk.

2. Immediately make an oral report to the Department by calling the mandatory abuse reporting line at 717-265-7887 and selecting option #3. Provide the following information:

   a. The caller’s name and telephone number
   b. The name and license number (if applicable) of the facility
   c. The alleged victim’s name
   d. The alleged victim’s date of birth
   e. The type(s) of alleged abuse or neglect

3. The administrator and employee shall make a joint written report within 48 hours of making the oral report, to law enforcement officials on the form prescribed by the Department. The following written report forms may be used in lieu of the form prescribed by the Department:
a. An administrator or employee of a nursing facility, licensed by Department of Health, may submit a PB-22 form.
b. An administrator or employee may submit a HCSIS incident report (Printable Summary) or an EIM report.

QUESTIONS AND ADDITIONAL INFORMATION

Questions or requests for additional information regarding the Adult Protective Services program can be sent to the following email address: RA-PWAPSQuestions@pa.gov, or for those who do not have access to email, please call 717-736-7116.

ADULT PROTECTIVE SERVICES ACT DEFINITIONS

Abandonment – The desertion of an adult by a caregiver.

Abuse – The occurrence of one or more of the following acts: (1) The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish. (2) The willful deprivation by a caregiver of goods or services which are necessary to maintain physical or mental health. (3) Sexual harassment, rape or abuse as the term is defined in 23 Pa.C.S. § 6102 (relating to definitions). The term does not include environmental factors which are beyond the control of an adult or a caregiver, including, but not limited to, inadequate housing, furnishings, income, clothing or medical care.

Administrator – The person responsible for the administration of a facility. The term also includes a person responsible for employment decisions or an independent contractor.

Adult – A resident of this Commonwealth between 18 and 59 years of age who has a physical or mental impairment that substantially limits one or more major life activities.

Agency – A local contracted provider of protective services.

Department – The Department of Human Services.

Employee – An individual who is employed by a facility. The term includes: (1) Contract employees who have direct contact with residents or unsupervised access to their personal living quarters. (2) Persons employed or contracted to provide care to an adult for monetary consideration in the adult’s place of residence.

Exploitation – An act or course of conduct by a caregiver or other person against an adult or an adult’s resources, without the informed consent of the adult or with consent obtained through misrepresentation, coercion or threats of force that results in monetary, personal or other benefit, gain or profit for the perpetrator or monetary or personal loss to the adult.

Updated April 8, 2015
Facility – The term includes, but is not limited to:

- Assisted Living Residence
- Domiciliary Care Home
- Home Health Care Agency or Home Care Agency
- Intermediate Care Facility for people with intellectual disability or with other related conditions
- Long-Term Care Nursing Facility
- Older Adult Daily Living Center
- Personal Care Home
- Residential Treatment Facility
- An organization or group of people that uses public funds and is paid, in part, to provide care and support to adults in a licensed or unlicensed setting

Neglect – The failure to provide for oneself or the failure of a caregiver to provide goods, care or services essential to avoid a clear and serious threat to the physical or mental health of an adult. The term does not include environmental factors that are beyond the control of an adult or the caregiver, including, but not limited to, inadequate housing, furnishings, income, clothing or medical care.

Recipient – An adult who receives care, services or treatment in or from a facility.

Serious Bodily Injury – Injury which creates a substantial risk of death or which cause serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ.

Serious Injury – An injury that causes a person severe pain; or significantly impairs a person’s physical functioning, either temporarily or permanently.

Sexual Abuse – Intentionally, knowingly or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault or incest.