

**Delaware Health and Social Services
Division of Developmental Disabilities Services
Dover, Delaware**

Title: Abuse, Assault, Attempted Suicide, Neglect, Mistreatment, Financial Exploitation and Significant Injury (Response to)

Written/Revised By: DDDS Policy and Records Review Committee

Approved By: 
Division Director

Date of Origin: January, 2006

Date of Revision: June, 2011

I. Purpose

To establish standardized procedures for the reporting, investigating and follow-up of incidents involving suspected abuse, assault, attempted suicide, neglect, mistreatment, financial exploitation and significant injury.

II. Policy

It is the policy of the Division of Developmental Disabilities Services (DDDS) to implement standardized procedures to respond to allegations of abuse, assault, attempted suicide, neglect, mistreatment, financial exploitation and significant injury. DDDS policies shall be in compliance with the Delaware Health and Social Services Policy Memorandum #46 (DHSS PM#46, revised 08/2009).

III. Application

All Division of Developmental Disabilities Services (DDDS) Staff and Volunteers
All DDDS Contractors and Providers

IV. Definitions

A. Abuse:

1. Physical Abuse - the unnecessary infliction of pain or injury to an individual receiving services. This includes but is not limited to hitting, kicking, punching, slapping or pulling hair. When any act constituting physical abuse has been proven, the infliction of pain shall be assumed.
2. Sexual Abuse- includes but is not limited to any sexual contact, sexual penetration, or sexual intercourse, as those terms are defined in 11 Del. C. §761. It shall be no defense that the sexual contact, sexual penetration or sexual intercourse was consensual.
3. Emotional Abuse – includes but is not limited to ridiculing, demeaning, humiliating or cursing at an individual receiving services, or threatening to inflict physical harm.

B. Assault- includes sexual assault as defined in 11 Del. C., , Ch. 5, §611-613 (refer to Exhibit A).

- C. Attempted Suicide- intentional attempt at the taking of one's own life.
- D. Comprehensive Investigation - a systematic collection of information for the purpose of describing and explaining an event(s) alleged to be abuse, assault, attempted suicide, neglect, mistreatment, financial exploitation or significant injury, as per the DHSS Policy Memorandum #46 or this DDDS policy.
- E. Director of Community Services/Adult Special Populations - the person authorized with administrative duties and responsibilities for the Community Services and Adult Special Populations Programs and his/her identified designee.
- F. Division Director's Designee- the person authorized on behalf of the Division Director to review reports of abuse, assault, attempted suicide, neglect, mistreatment, financial exploitation and significant injury investigations.
- G. Executive Director of Stockley Center - the person authorized with administrative duties and responsibilities and the assigned recipient of PM #46 allegations for Stockley Center and his/her identified designee.
- H. Financial Exploitation - the illegal or improper use of an individual's resources or financial rights by another person, whether for profit or other advantage.
- I. Immediately - With respect to reporting allegations of abuse, neglect, mistreatment, financial exploitation or significant injury, immediately shall mean as soon as the situation is stabilized (e.g., actions have been taken to provide treatment, comfort and safety to individuals involved).
- J. Individual Served to Individual Served Incidents- an incident that involves interactions/altercations between or among individuals receiving services. Such incidents do not involve staff.
- K. Internal Investigation - a systematic collection of information for the purpose of describing and explaining an event(s) not described in the PM #46 or in this DDDS policy but warranting investigation (i.e., non-significant injuries, etc.).
- L. IRCuser- Incident Referral Center which is a department of the Division of Long Term Care Residents Protection (DLTCRP).
- M. Mistreatment - the inappropriate use of medications, isolation or physical or chemical restraints on or of an individual receiving services.
- N. Neglect shall include the following:
 - 1. Lack of attention to the physical needs of an individual receiving services including but not limited to toileting, bathing, meals and safety (to include supervision).

2. Failure to report health problems or changes in health problems or changes in health condition, of an individual receiving services, that may have the potential to cause adverse effects, to an immediate supervisor or medical professional.
3. Failure to carry out a prescribed treatment plan for an individual receiving services.
4. A knowing failure to provide adequate staffing which results in a medical emergency to an individual receiving services.

- O. Outcome Memo- an internal memorandum that includes a brief description of the alleged incident, conclusions based on the investigation and recommendations for improvement.
- P. Preliminary Investigation - a systematic collection of information for the purpose of determining whether there is reason to suspect abuse, assault, attempted suicide, neglect, mistreatment, financial exploitation or significant injury, as defined in the PM #46 or in this DDDS policy.
- Q. Regional PM #46 Coordinator - the person(s) assigned in the Northern and Southern regions of Community Services/Adult Special Populations and the Stockley Center to receive allegations of abuse, assault, attempted suicide, neglect, mistreatment, financial exploitation and significant injuries, determine the required scope of the investigation, coordinate and/or initiate an investigation, notify all appropriate persons and track activity related to the investigation until its completion.
- R. Report of Findings- a standardized DHSS template used to document facts relative to an investigation.
- S. SANE- Sexual Assault Nurse Examiner
- T. Significant Injury - an injury which is life threatening or causes severe disfigurement or significant impairment of bodily organ(s) or function(s) which cannot be justified on the basis of medical diagnosis or through internal investigation. Also included are any injuries requiring medical treatment (beyond first aid).

V. Standards

- A. Individuals receiving services managed or funded by the DDDS (respite, community residential, Stockley Center, or day program/vocational) shall be protected from abuse, assault, attempted suicide, neglect, mistreatment and financial exploitation.
- B. All DDDS employees or contractors (agency or individual) who have reason to suspect abuse, assault, attempted suicide, neglect, mistreatment, financial exploitation or significant injury shall **immediately** complete the following in this order of priority:
1. Take action, as necessary to treat (medically if needed), comfort and protect the individual(s) involved;
 2. Ensure that alleged victims of sexual assault are examined by a SANE at the hospital;

Concurrently, if possible (#2 and #3)

3. Contact the police to report alleged crimes against individuals served. If there is a crime scene (i.e., location of crime or potential evidence), take caution to protect it from any sort of disruption.
 4. Notify the applicable PM #46 Coordinator (Community Services/ASP) or Executive Director (Stockley Center) to report allegations of abuse, assault, attempted suicide, mistreatment, neglect, financial exploitation and significant injury ;
 5. Notify the assigned DDDS on-call worker to report the allegation, during non-traditional working hours or if the PM #46 Coordinator cannot be contacted;
 6. Make a verbal report to the DLTCRP by telephoning the 24 hour toll free number @ 1-877-453-0012 (if the alleged victim resides at Stockley Center or in a DDDS funded licensed residential setting).
- C. The Division Director or designee shall notify the police, DLTCRP, Office of the Secretary, Office of the Attorney General/Medicaid Fraud Unit and Medical Examiner's Office if an individual dies as a result of alleged abuse, assault, suicide, neglect, mistreatment, or significant injury.
- D. The Executive Director or designee of Stockley Center shall notify the Community Legal Aid Society, Inc (CLASI), within seventy two (72) hours of an individual's death by any means, in accordance with 16 Del. Ch. 51, §5162.
- E. The standards for reporting allegations of abuse, assault, attempted suicide, neglect, mistreatment, financial exploitation or significant injury of an individual who receives DDDS funded services, to the respective PM #46 Coordinator, shall apply whether the alleged offender is a staff person of a residential arrangement or not. Furthermore, the standards shall apply whether or not the alleged offense occurred on or off the grounds of the residential arrangement or day program. Individuals served to individuals served incidents shall also be reported if there is reason to suspect that they occurred as a result of staff negligence.
- F. Individuals served to Individuals Served Incidents involving abuse and/or assault that are not the result of staff negligence shall be reported by the DDDS or residential contractor, as applicable, via the DLTCRP Incident Report form, within twenty four (24) hours of the incident. A General Event Report (GER) form or a Stockley Center Administrative Incident Report form may be used if all information requested on the DLTCRP Incident Report form is included. This standard shall only apply if at least one of the individuals involved in the reported incident live at Stockley Center or in a DDDS funded licensed residential setting.

- G. The telephone number to the DLTCRP, the name and telephone number for the applicable PM #46 Coordinator and the on-call number for use during non traditional working hours shall be conspicuously posted in each DDDS office building, residential area and day/work program area.
- H. **Stockley Center employees and their contractors** shall refer to the ICF/MR's internal procedures for further details relative to reporting and investigating allegations of abuse, assault, attempted suicide, neglect, mistreatment, financial exploitation, significant injuries or injuries of an unknown source.
- I. Only people who have successfully completed investigative training approved by DDDS shall be permitted to conduct investigations. Community Services/ASP contracted agencies shall notify the applicable PM #46 Coordinator of the names of their trained investigators and their credentials.
- J. The assigned agency investigator shall not have routine work assignments associated with the home/person under investigation so as to minimize a potential conflict of interest.
- K. All persons covered under the scope of this policy shall be required to cooperate with an investigation related to this policy.
- L. The investigation, the investigative process and written investigative reports shall be confidential and not subject to disclosure, pursuant to both 24 Del. C., §1768 and because it is privileged under the governmental privilege for investigative files.
- M. The decision to notify the police shall be made on an individual basis. The police shall minimally be contacted when there is an allegation of sexual abuse, physical abuse or neglect resulting in the need for medical treatment and/or theft/financial exploitation of resources. The applicable PM #46 Coordinator/Executive Director shall be contacted for consultation if there is any uncertainty relative to the need for police involvement.
- N. The decision to relocate/remove staff or individuals served from their working/living environment shall be made by the Executive Director of Stockley Center, the Director of Community Services/Adult Special Populations or the Director of the applicable contracted agency. Elements to be considered when deciding to remove or relocate staff or individual shall be made on an case by case basis and include the following:
1. propensity for intimidation of the alleged victim by the alleged offender;
 2. alleged victim's fear of the alleged offender;
 3. alleged victim's fear of staff retaliation;
 4. alleged victim's susceptibility to being victimized;
 5. request of the family or alleged victim;
 6. severity of the alleged offense;
 7. alleged offender's history of similar offenses;
 8. health and safety risk to alleged victim or other individuals;
 9. existing evidence strongly suggests that physical abuse did occur;

10. the protection of the accused (e.g., retaliation has been implied).
- O. Efforts shall be made not to disrupt the individual's home and or day/work setting, rather relocation shall be made by the involved staff person whenever possible and as needed.
- P. The individual served, guardian of person (or property if allegation involves financial exploitation) and primary family contact person shall be notified of a PM #46 allegation. Exception to this standard applies if the alleged offender is the guardian or primary family contact person, release of information has the potential to do harm or if the individual (victim) expressly communicates that he/she does not want the non-guardian family contact person to be contacted about the allegation.
- Q. Initial notification to the guardian and/or primary family contact person(s) shall only include that an allegation of abuse, assault, attempted suicide, neglect, mistreatment, financial exploitation or significant injury has been received, reassurance that the person is safe and protected and that an investigation has been initiated.
- R. Interim communications with the contact person(s) shall be made if the investigation exceeds ten (10) working days. Contact persons shall only be advised that the investigation is still pending and that the person continues to be protected.
- S. The guardian and/or primary family contact person shall be notified of the completion of the investigation (i.e. completed as agent of DLTCRP) and that actions have been taken to protect the individual and/or provide medical assistance. If the investigation was a PM #46, a further level review will occur by the Division of Long Term Care Resident Protection (DLTCRP) and/or the Office of the Attorney General/Medicaid Fraud Unit. Non-PM #46 investigations shall be reviewed by the Director or Assistant Director of Community Services/Adult Special Populations, Division Director/Designee and the DLTCRP and Office of the Attorney General/Medicaid Fraud Unit, dependant on the outcome of the investigation.
- T. Timeliness of investigations (Report of Findings) shall be as follows:
Stockley Center- 5 working days for completion of Report of Findings and submission to the Division Director Designee (who will submit it to the DLTCRP) per tag # W156 of the ICF/MR regulations. Refer to Stockley Center procedures for more detail. An extension of time may be granted by the DLTCRP for extenuating circumstances (PM #46 investigations) or the DDDS Director/Designee or Stockley Center Executive Director (non PM #46 investigations).
- U. Community Services/Adult Special Populations- 10 calendar days total for the completion of the Report of Findings, review by the Regional PM #46 Coordinator and Director of Community Services/Adult Special Populations and submission to the Division Director's Designee. Contracted provider investigators shall submit their investigative report, via the Report of Findings, and all documentary evidence within 5 calendar days of being contacted by the DDDS PM #46 Coordinator relative to initiating an investigation. An extension of time may be granted by the DLTCRP for extenuating circumstances.

- V. The Executive Director of Stockley Center and the Director of Community Services/Adult Special Populations shall contact the appropriate person(s) or agency to request completion of specific recommendations and/or plan of correction. Written verification shall also be requested from the appropriate person(s) or contractor relative to completion of the recommendations and/or plan of correction.
- W. The Executive Director of Stockley Center or designee and the Director of Community Services/Adult Special Populations or designee shall monitor that the requested recommendations and/or plan of correction have been completed. They shall also document individual and system changes that were made as a result of an investigation.
- X. The Regional PM #46 Coordinators and the Executive Director of Stockley Center or designee shall electronically track PM #46 allegations and related information to minimally include the victim's name, offender's name, date of required notifications, type of allegation(s), date allegation was reported to PM #46 Coordinator, place of reported incident, type of abuse investigation completed, outcome of the investigation, time entered onto the Adult Abuse Registry and results of criminal prosecution, if known.
- Y. Annual fiscal reports shall be prepared and submitted by Stockley Center and the Community Services PM #46 unit, to the Division Director's designee, on the approved format, relative to the frequency and trends of abuse, neglect, mistreatment, financial exploitation and significant injury allegations, as defined in this policy.
- Z. The Division Director's designee shall submit a statistical and trending report to the Risk Management Committee as requested by the RMC Chairperson.
- AA. The HIPAA Privacy Rule relative to disclosure of protected health information shall always be followed (45 CFR Part 164).
- BB. The investigative process shall be confidential and not subject to disclosure both pursuant to 24 Del. Ch. 17., section 1768 and because it is privileged under the governmental privilege for investigative files.
- CC. Contracted day and residential agencies, DDDS Community Services/Adult Special Populations and Stockley Center shall develop and maintain procedures for the implementation of this policy. Procedures shall minimally include those identified in Section VI of this policy and a process by which to operationalize the standards set forth in section V. All staff shall be trained to implement this policy and/or the procedures developed by their employer. The aforementioned shall be available to the DDDS Office of Quality Management, the PM #46 Coordinators and DDDS Director of Policy Development, upon request.

VI. Procedures

<u>Responsibility</u>	<u>Action</u>
<p>Eye witness/person with reason to suspect abuse, assault, attempted suicide, neglect, mistreatment, financial exploitation, significant injury.</p>	<p>1. Refer to standard B of this policy.</p>
<p>Regional PM #46 Coordinator S.C. Executive Director or Designee</p>	<p>2. Completes the following upon receiving a report of alleged abuse, assault, attempted suicide, neglect, mistreatment, financial exploitation or significant injury:</p> <ul style="list-style-type: none"> a. Determines the required scope of the investigation (i.e., internal, preliminary, comprehensive); b. Coordinates or personally initiates the completion of the required investigation. For allegations within the scope of the PM #46, minimally notifies via e-mail the Division Director and Director’s Designee, Director of Community Services/ASP or Assistant Director of Community Services/ASP, applicable Regional Program Director, DHSS Secretary’s Office and the Division of Long Term Care Resident Protection (DLTCRP) and the Office of the Attorney General, Medicaid Fraud Control Unit, if the alleged victim lives in a licensed facility/home. Notification shall be made within eight (8) hours of receiving the allegation. Stockley Center – refer to internal procedures for more details relative to required contacts.
<p>Provider agency or DDDS PM #46 Coordinator, as applicable Provider Agency or DDDS, as applicable</p>	<p>3. Notifications shall include the alleged victim’s name(s), brief description of the alleged incident, date of alleged incident and alleged victim’s place of residence.</p> <p>4. Submits DLTCRP Incident Report to DLTCRP IRCuser if allegation is within the scope of the PM #46 and the alleged victim lives in a licensed facility/home.</p> <p>5. Notifies the police when applicable.</p>

<p>Exec. Dir. of Stockley Center, Director of Community Services or Special Populations, Director of contracted agency or his/her designee</p>	<p>6. Makes decision relative to alleged offender's job duties while the investigation is ongoing and outcome is pending. Informs employee's supervisor of recommendation for suspension, re-assignment, changes in job assignment including work area, schedule, etc.</p>
<p>DDDS Social Worker/Case Manager or Provider Agency, as applicable</p>	<p>7. Notifies contact person(s)- refer to standards P, Q, R and S of this policy. 8. Documents in the T-Logs of Therap record that notification(s) was made.</p>
<p>PM #46 Coordinator S.C. Executive Director or Designee Provider Agency</p>	<p>9. Coordinates the completion of an investigation within the timeframe identified in standards T and U of this policy.</p>
<p>Community Services PM #46 Coordinator</p>	<p>10. Community Services/ASP only: Moves electronic copy of Report of Findings, exhibits and outcome memo to the designated secured folder, within 2 days of receipt of complete investigation. Notifies Division Director's Designee, Director of CS/ASP and/or Assistant Director of CS/ASP that the documents are electronically available for review.</p>
<p>Director of Community Services/Adult Special Populations or Assistant Director of CS/ASP</p>	<p>11. Reviews Report of Findings, applicable attachments and outcomes memo. 12. Documents comments, if applicable, and signature on the Report of Findings. 13. Delivers signed signature page of the ROF and plan of improvement/correction to the Director's Designee within two (2) days of receipt from PM #46 Coordinator.</p>
<p>Division Director's Designee</p>	<p>14. Reviews Report of Findings with attachments and the Director of CS/ASP's plan of correction/improvement. 15. Documents comments, if applicable, and signs the Report of Findings. 16. Requests modification of the plan of correction/improvement, to the Executive Director, Director of CS/ASP or Assistant Director of CS/ASP, if applicable. 17. Moves completed Report of Findings involving a person(s) who lives in a licensed facility/home or other substantiated investigation warranting review for entry on the Adult Abuse Registry, with attachments, to the designated DLTCRP secure folder and</p>

	<p>notifies the DLTCRP Investigative Section Chief of the available documents, within one (1) day of receipt.</p> <p>18. Notifies the Division Director of any investigation that warrants his/her attention.</p>
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Verification of Follow-up to Recommendations

<p>Stockley Center: Executive Director</p>	19. Assigns and monitors the completion of the plan of correction/improvement
S.C. Executive Staff Member	20. Assigns area supervisor to implement recommendations.
S.C. Executive Director/Designee	21. Tracks verification of implementation of recommendations and individual/system changes that were made as the result of the PM #46 investigation, in an electronic database.
<p>Community Services/Adult Special Populations: Director or Assistant Director of Community Services/Adult Special Populations</p>	<p>22. Sends request for follow-up to the appropriate agency Director and/or Regional Program Director.</p> <p>23. Requests written documentation describing in detail how and when the recommendations were implemented.</p>
Applicable Agency Director and/or Regional Program Director	24. Coordinates implementation of recommendations.
Regional Program Director	<p>25. Assigns ID Team member(s) to verify that response to plan of improvement/plan of action have been implemented.</p> <p>26. Sends written notification to the Director of CS/ASP and Regional Office of Quality Management re: the results of the verification observation.</p> <p>27. Forwards plan of action/improvement with date of verification to the assigned administrative assistant for entry onto the electronic database.</p>
Stockley Center and CS PM #46 Unit	28. Prepares and submits annual fiscal year reports to the Division Director's Designee, by September 30 th (refer to standard O).
Division Director's Designee	29. Submits statistical and trending report to the Risk Management Committee as requested by the RMC Chairperson.

VII. References

- A. Delaware Health and Social Services Policy Memorandum #46
- B. Delaware Code, Title 16, Ch. 11, § 1131-1132
- C. Stockley Center's Reporting and Investigation Procedure For: PM #46 and Sutures or Fractures not Considered as a PM #46
- D. Delaware Code, Title 16, Ch. 51, §5162
- E. Delaware Code, Title 11, Ch. 5, §761

VIII. Exhibits

- A. Delaware Code, Title 11, Ch. 5, Title 611-613 (Assault)
- B. DLTCRP Incident Report
- C. Report of Findings
- D. DHSS Policy Memorandum #46
- E. Protocol for Responding to Allegations of Sexual Assault
- F. Delaware Code, Title 11, Ch. 5, §761 (Definitions related to sexual offenses)

Assault- DE Code, Title 11, Ch. 5, §611-613

§ 611. Assault in the third degree; class A misdemeanor.

A person is guilty of assault in the third degree when:

- (1) The person intentionally or recklessly causes physical injury to another person; or
- (2) With criminal negligence the person causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

Assault in the third degree is a class A misdemeanor.

§ 612. Assault in the second degree; class D felony.

(a) A person is guilty of assault in the second degree when:

- (1) The person recklessly or intentionally causes serious physical injury to another person; or
- (2) The person recklessly or intentionally causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or
- (3) The person intentionally causes physical injury to a law-enforcement officer, a volunteer firefighter, a full-time firefighter, emergency medical technician, paramedic, fire police officer, fire marshal, correctional officer, a sheriff, a deputy sheriff, a code enforcement constable or a code enforcement officer who is acting in the lawful performance of duty. For purposes of this subsection, if a law-enforcement officer is off duty and the nature of the assault is related to that law-enforcement officer's official position, then it shall fall within the meaning of "official duties" of a law-enforcement officer; or
- (4) The person intentionally causes physical injury to the operator of an ambulance, a rescue squad member, licensed practical nurse, registered nurse, paramedic, licensed medical doctor or any other person while such person is rendering emergency care; or
- (5) The person recklessly or intentionally causes physical injury to another person who is 62 years of age or older; or
- (6) The person intentionally assaults a law-enforcement officer while in the performance of the officer's duties, with any disabling chemical spray, or with any aerosol or hand sprayed liquid or gas with the intent to incapacitate such officer and prevent the officer from performing such duties; or
- (7) The person intentionally, while engaged in commission of any crime enumerated in this chapter, assaults any other person with any disabling chemical spray, or with any aerosol or hand sprayed liquid or gas with the intent to incapacitate the victim; or
- (8) The person intentionally causes physical injury to any state employee or officer when that employee or officer is discharging or attempting to discharge a duty of employment or office; or

Assault- DE Code, Title 11, Ch. 5, §611-613

(9) The person recklessly or intentionally causes physical injury to a pregnant female. It is no defense to a prosecution under this subsection that the person was unaware that the victim was pregnant; or

(10) A person who is 18 years of age or older and who recklessly or intentionally causes physical injury to another person who has not yet reached the age of 6 years. In any prosecution of a parent, guardian, foster parent, legal custodian or other person similarly responsible for the general care and supervision of a child victim pursuant to this paragraph, the State shall be required to prove beyond a reasonable doubt the absence of any justification offered by § 468(1) of this title. In any prosecution of a teacher or school administrator pursuant to this paragraph, the State shall be required to prove beyond a reasonable doubt the absence of any justification offered by § 468(2) of this title; or

(11) The person recklessly or intentionally causes physical injury to a law enforcement officer, security officer, fire policeman, fire fighter, paramedic, or emergency medical technician in the lawful performance of their duties by means of an electronic control device shall be a class C felony.

(b) It is no defense, for an offense under paragraph (a)(5) of this section, that the accused did not know the person's age or that the accused reasonably believed the person to be under the age of 62.

(c) It is no defense, for an offense under paragraph (a)(10) of this section, that the accused did not know the person's age or that the accused reasonably believed the person to be 6 years of age or older.

(d) Assault in the second degree is a class D felony.

§ 613. Assault in the first degree; class B felony.

(a) A person is guilty of assault in the first degree when:

- (1) The person intentionally causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or
- (2) The person intentionally disfigures another person seriously and permanently, or intentionally destroys, amputates or disables permanently a member or organ of another person's body; or
- (3) The person recklessly engages in conduct which creates a substantial risk of death to another person, and thereby causes serious physical injury to another person; or
- (4) While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person intentionally or recklessly causes serious physical injury to another person; or
- (5) The person intentionally causes serious physical injury to a law-enforcement officer, a volunteer firefighter, a full-time firefighter, emergency medical technician, paramedic, fire police officer, fire marshal, a code enforcement constable or a code enforcement officer who is acting in the lawful performance of duty; or

Assault- DE Code, Title 11, Ch. 5, §611-613

(6) The person intentionally causes serious physical injury to the operator of an ambulance, a rescue squad member, licensed practical nurse, registered nurse, paramedic, licensed medical doctor or any other person while such person is rendering emergency care; or

(7) The person intentionally causes serious physical injury to another person who is 62 years of age or older.

(b) It is no defense, for an offense under paragraph (a)(7) of this section, that the accused did not know the person's age or that the accused reasonably believed the person to be under the age of 62.

(c) Assault in the first degree is a class B felony.



DELAWARE HEALTH & SOCIAL SERVICES
DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

1-877-453-0012 Fax: 1-877-264-8516

Incident Report

DDDS Case #

DLTCRP Use Only:			
Date:	Time:	Assigned:	Incident #

Reporting Date:	Time:	Initial Submission	<input checked="" type="checkbox"/>
		Five Day Follow-up	<input type="checkbox"/>

Reporting Person Name:			
Position/Relationship:	DDDS Regional PM46 Coordinator/Executive Director		
Street:		Phone:	
City:	State:	Zip:	

Incident Date:	Time:		
Type:	<input type="checkbox"/> Death <input type="checkbox"/> Abuse <input type="checkbox"/> Neglect	<input type="checkbox"/> Mistreatment <input type="checkbox"/> Fall <input type="checkbox"/> Theft/Missing Items	<input type="checkbox"/> Unknown Source
Facility:			
Street:			
City:	State:	Zip:	
Physician Notified:		Family Notified:	

Resident#1:	DOB:	MCI#:	
SSN:		Gender:	
Injury:	<input type="checkbox"/> severe <input type="checkbox"/> moderate <input type="checkbox"/> negligible <input type="checkbox"/> none	Alert? <input type="checkbox"/>	Oriented? <input type="checkbox"/>

Resident#2:	DOB:	MCI#:	
SSN:		Gender:	
Injury:	<input type="checkbox"/> severe <input type="checkbox"/> moderate <input type="checkbox"/> negligible <input type="checkbox"/> none	Alert? <input type="checkbox"/>	Oriented? <input type="checkbox"/>

Brief Description (Include witness information)

Accused Person #1 (if applicable)			
Name:		DOB:	
Position:		Gender:	
SSN:		Phone:	
Street:			
City:	State:	Zip Code:	

CONFIDENTIAL

DHSS POLICY MEMORANDUM #46 PRESCRIBES THE STANDARDIZED REPORTING AND INVESTIGATION OF SUSPECTED ABUSE, NEGLECT, MISTREATMENT, FINANCIAL EXPLOITATION AND SIGNIFICANT INJURY OF RESIDENTS/CLIENTS RECEIVING SERVICES IN RESIDENTIAL FACILITIES OPERATED BY OR FOR DHSS.

Information contained in the standardized PM-46 Report of Findings is CONFIDENTIAL AND PRIVILEGED under 24 Del.C. Section 1768 and the governmental executive privilege for investigative files.

Distribution of this Report of Findings, and the information it contains, must be restricted to only those persons who are authorized to see it.

INVESTIGATOR, please list all persons to whom you have distributed this Report of Findings:

Name

Agency

DELAWARE HEALTH AND SOCIAL SERVICES

ALLEGATION TYPE:

PM 46

REPORT OF FINDINGS

<u>DPH</u>	<u>DDSS</u>	<u>DSAMH</u>
<input type="checkbox"/> DHCI	<input type="checkbox"/> Stockley Ctr.	<input type="checkbox"/> DPC
<input type="checkbox"/> EPB	<input type="checkbox"/> CS/ASP.	<input type="checkbox"/> SUB.AB.
<input type="checkbox"/> GBHC		<input type="checkbox"/> CMH

<input type="checkbox"/> ABUSE	<input type="checkbox"/> NEGLECT
<input type="checkbox"/> Physical	
<input type="checkbox"/> Emotional	
<input type="checkbox"/> MISTREATMENT	
<input type="checkbox"/> FINANCIAL EXPLOITATION	
<input type="checkbox"/> SIGNIFICANT INJURY INVOLVED	

Victim Name:

Sex: DO.B.: Age:

Diagnosis:

Communication Style:

Facility Admission Date:

Contractor & Program Name:

IF victim information requested above is NOT known please provide:

Height: Weight: Race:

Other Identifying Marks:

ALLEGED INCIDENT

INITIATOR OF REPORT

Date:

Name:

Time:

Title:

Location:

Report Date:

Accused Name:

Date of Birth:

Sex: M F

Phone #:

Address:

Occupation:

License/Certificate #

IF accused information requested above is NOT known please provide:

Height: Weight: Race:

Other Identifying Marks:

INVESTIGATORY PROCESSES

Investigation Start Date: _____ **Time:** _____

Completion Date: _____

Investigator: _____

TO BE COMPLETED BY DIVISION:

Notifications:

	NAME	DATE	TIME	REPORTED BY
FACILITY DIRECTOR				
PM 46 MANAGER				
DOCTOR				
DIVISION DIRECTOR				
DHSS SECRETARY				
DLTCRP				
MEDICAID FRAUD UNIT				
OTHER				

ALLEGATION SUMMARY: (DESCRIPTION OF ORIGINAL REPORT RECEIVED BY INVESTIGATOR):

Nature of allegation (Who, What, When, Where, How):

Source of allegation (Name & Title):

Date and time of allegation: Reason for delay between time of incident and time reported, if any:

SUMMARY OF INVESTIGATION FINDINGS

Name of Investigator:

1. MANNER IN WHICH THE INVESTIGATOR BECAME INVOLVED IN THE INCIDENT:

Notified by:

When:

How:

Date and time the investigation began:

Date and time the investigation ended:

If investigation did not start immediately, explain:

2. SECURING THE SCENE OF THE ALLEGED INCIDENT:

Individual who secured scene (Name & Title):

Date and time scene was secured:

Manner in which scene was secured:

If scene was not secured, explain:

3. INTERVIEWS CONDUCTED DURING THE INVESTIGATION:

(Note Reasons for Delays)

Name & Title of Interviewee	Date of Interview	Time of Interview	Location of Interview	Interviewee's Role (i.e. Accuser, Subject, Witness, etc.)

4. INTERVIEWS WHICH COULD NOT BE CONDUCTED:

Name & Title of Individual	Individual's Role (i.e., Accuser, Subject, Witness, etc.)	Reason interview not conducted

5. MENTAL & PHYSICAL STATUS PRIOR TO INCIDENT:

6. ANY CHANGE IN MENTAL & PHYSICAL STATUS SINCE THIS INCIDENT TOOK PLACE:

Yes No

If yes, explain:

7. REPORT TO FAMILY/GUARDIAN: Yes No

Name & Relationship of Person Notified:

Date & Time of Notification:

Notified by Whom:

8. IF FAMILY/GUARDIAN NOT NOTIFIED, GIVE REASON:

9. WAS MEDICAL ATTENTION REQUIRED FOR THE INDIVIDUAL: Yes No

Name of Physician Evaluating Individual:

Date & time of treatment:

Describe treatment:

10. SUMMARY OF TESTIMONIAL EVIDENCE:

(Summarize the KEY points of all the interviews you conducted)

11. SUMMARY OF DOCUMENTARY EVIDENCE:

(Summarize the SIGNIFICANCE of all applicable patient records, medical reports, employee records)

12. SUMMARY OF PHYSICAL EVIDENCE & DEMONSTRATIVE EVIDENCE:

(Summarize the SIGNIFICANCE of any objects, arrangement of objects, substances, or conditions of a person's body. Also, review the significance of all applicable photographs, diagrams, etc.)

13. INVESTIGATION SUMMARY:

Signature: _____
Investigator

Date

Signature: _____
PM #46 Coordinator

Date

DDDS Director of Stockley Center or Community Services/Adult Special Populations

Reviewed/Approved: YES NO

Comments:

DDDS Director of S.C, CS, or ASP

Date

DDDS Division Director/Designee

Reviewed/Approved: YES NO

Comments:

Division Director/Designee

Date

EXHIBIT D

Department of Health and Social Services

DHSS Policy Memorandum 46

August 2009

Subject: Injury to Clients

I. PURPOSE

- a. To protect the right of residents/clients of Delaware Health and Social Services (DHSS) facilities to be free from abuse, neglect, mistreatment, financial exploitation or significant injury.
- b. To require that each Division that has, or contracts for the operation of, residential facilities establish standardized written procedures for the reporting, investigation and follow up of all incidents involving suspected resident/client abuse, neglect, mistreatment, financial exploitation, or significant injury.
- c. To require that all DHSS residential facilities comply with The Patient Abuse Law (Title 16, Chapter 11, section 1131, et seq.) and Title 29, Chapter 79, sections 7970 and 7971 (Attachments I and II); and that all Medicaid and/or Medicare certified long term care facilities and Intermediate Care Facilities for Mental Retardation (ICF/MR) comply with the federal regulations (42 CFR) and State Operations Manual for such facilities. In addition, all residential facilities and Medicaid and/or Medicare certified long term care facilities and Intermediate Care Facilities for Mental Retardation (ICF/MR) comply with Title 11, Chapter 94, Victims Bill of Rights, Subchapter I and Subchapter II. Compliance with Title 11, Chapter 5, Subchapter V Offenses Relating to Children and Incompetants, Subpart A Child Welfare; Sexual Offenses is required by all facilities that provide residential and/or inpatient services to children.
- d. To require that all DHSS residential facilities comply with all applicable state and federal statutes, rules and regulations pertaining to suspected abuse, neglect, mistreatment, financial exploitation, or significant injury. Applicable statutes include Title 11, Chapter 5, Subchapter II Offenses Against the Person, Subpart A Assaults and Related Offenses.

II. SCOPE

- a. This policy applies to anyone receiving services in any residential facility operated by or for any DHSS Division, excluding any facilities/programs in which the only DHSS contract is with the DHSS Division of Social Services Medicaid Program.
- b. This policy is not intended to replace additional obligations under federal and/or state laws, rules and regulations.

III. DEFINITIONS

a. Abuse shall mean:

1. Physical abuse the unnecessary infliction of pain or injury to a resident or client. This includes, but is not limited to, hitting, kicking, pinching, slapping, pulling hair or any sexual molestation. When any act constituting physical abuse has been proven, the infliction of pain shall be assumed.
2. Emotional abuse - This includes, but is not limited to, ridiculing or demeaning a resident or client, cursing or making derogatory remarks towards a resident or client, or threatening to inflict physical or emotional harm to a resident or client.

b. Neglect shall mean:

1. Lack of attention to the physical needs of the resident or client including, but not limited to, toileting, bathing, meals, and safety.
2. Failure to report client or resident health problems or changes in health problems or changes in health condition to an immediate supervisor or nurse.
3. Failure to carry out a prescribed treatment plan for a resident or client.
4. A knowing failure to provide adequate staffing (where required) which results in a medical emergency to any patient or resident where there has been documented history of at least 2 prior cited instances of such inadequate staffing within the past 2 years in violation of minimum maintenance of staffing levels as required by statute or regulations promulgated by the department, all so as to evidence a willful pattern of such neglect. (Reference 16 DE Code, §1161-1169)

- c. Mistreatment shall mean the inappropriate use of medications, isolation, or physical or chemical restraints on or of a resident or client.
- d. Financial exploitation shall mean the illegal or improper use or abuse of a client's or resident's resources or financial rights by another person, whether for profit or other advantage.
- e. Significant Injury is one which is life threatening or causes severe disfigurement or significant impairment of bodily organ(s) or functions which cannot be justified on the basis of medical diagnosis or through internal investigation.
- f. Assault (including sexual assault) as defined in Del.Code Title 11 § 611, § 612 and § 613.
- g. Attempted Suicide shall mean an intentional attempt at the taking of one's own life.
- h. SANE – Sexual Assault Nurse Examiner.
- i. Residential Facility shall include any facility operated by or for DHSS which provides supervised residential services, including Long Term Care licensed facilities, group homes, foster homes, and community living arrangements.

- j. Long Term Care Facility is any facility operated by or for DHSS which provides long term care residential services and the Delaware Psychiatric Center.
- k. High managerial agent is an officer of a facility or any other agent in a position of comparable authority with respect to the formulation of the policy of the facility or the supervision in a managerial capacity of subordinate employees.

IV. RESPONSIBILITIES

- a. The Director, or his/her designee of each Division within the scope of this policy, is hereby designated as an official DHSS designee under the State Mandatory Patient Abuse Reporting Law.
- b. Each Division will develop written procedures consistent with the standards contained in this policy and which will be activated immediately upon discovery of any suspected abuse, neglect, mistreatment, financial exploitation or significant injury of or to a client of a residential or long-term care facility. These procedures must clearly outline the reporting chain from the witness to the Division Director, and other appropriate parties, to require the expedient relay of information within the required time frames.
- c. These standardized procedures shall also apply when the preliminary inquiry suggests that the assault, significant injury, suspected abuse, neglect, suicide attempt, mistreatment or financial exploitation may have been caused by a staff member of the residential facility, whether on or off the grounds of the residential facility. Suspicion of facility/program negligence (including inadequate supervision resulting in client-client altercations) and incidents involving abuse by persons who are not staff members of the residential facility shall also be reported.
- d. The standardized procedures shall be approved by the appropriate Division Director prior to implementation. The Division Director or designee shall forward a copy of the approved procedures to the Chief Policy Advisor, Office of the Secretary, and other appropriate agencies.
- e. Each Division will require that the standards established in this policy are incorporated in all residential operational procedures and all residential contracts. Each Division shall require that all residents and providers of these programs be informed of their specific rights and responsibilities as defined in the Division's written procedures.
- f. Each Division shall require that all levels of management understand their responsibilities and obligations for taking and documenting appropriate corrective action.
- g. Each Division shall require appropriate training of all staff and contract providers in the PM 46 policy and procedures. Such training shall also include the laws prohibiting intimidation of witnesses and victims (11 Del. C., sections 3532 through 3534) and tampering with a witness or physical evidence (11 Del. C., sections 1261 through 1263 and section 1269).
- h. Each Division shall develop quality assurance/improvement mechanisms to monitor and oversee the implementation of the PM 46 policy and procedures.
- i. Each Division must ensure that all employees of, or contractors for, residential facilities shall fully cooperate with PM 46 investigations.

V. STANDARDS/PROCEDURES

Standard and consistent implementation of this Department policy is required. Each Division's written procedures shall include the following:

- a. Employee(s) of the residential facility, or anyone who provides services to residents/clients of the facility, who have reasonable cause to believe that a resident/client has been assaulted, abused, mistreated, neglected, subjected to financial exploitation, or has received a significant injury, or attempted suicide shall:
 1. Take actions to assure that the residents/client(s) will receive all necessary medical attention immediately, including calling '911' for transportation to the hospital, especially in the cases of assault, sexual assault, and serious physical injury. In the cases of sexual assault, a SANE examination should be completed at the hospital.
 2. Take action to report all crimes to the police through the '911' call system. All victims of crimes must be offered the ability to access victim advocate services, either through the police agency or other agencies. Victim advocates can be contacted by calling 1-800-VICTIM1 (1-800-842-8461). The Delaware Helpline can provide advocate information and Contactlifeline can provide confidential accompaniment to the hospital in cases of sexual assault.
 3. Take actions to protect the residents/client(s) from further harm.
 4. Report immediately to the Division of Long Term Care Residents Protection (if the incident occurred in a long term care facility or if the client was a resident of a long term care facility); and to the Department of Services for Children, Youth and Their Families/Division of Family Services (if the client is a minor, as required under 16 Del. C., section 903). It is essential that the reporting person ensure that the report be made to the appropriate division designee immediately.
 5. Report immediately to the facility/program director and the Division's designated recipient(s) of PM 46 reports.
 6. Follow up the verbal report with a written initial incident report to the persons/agencies named in (a) 3 and (a) 4 (above) within 48 hours.
- b. In addition to the above named persons, any other person may make a report to a staff person of the facility or to the Division director or his/her designee. Such a report shall trigger activities under V(a), items 1 through 5.
- c. Each written initial report of assault, suspected abuse, neglect, mistreatment, financial exploitation, attempted suicide, or significant injury (completed by the reporting employee) must include:
 1. The name and gender of the resident or client.
 2. The age of the resident or client, if known.
 3. Name and address of the reporter and where the reporter can be contacted.
 4. Any information relative to the nature and extent of the assault, abuse, neglect, mistreatment, financial exploitation, attempted suicide, or significant injury.
 5. The circumstances under which the reporter became aware of the assault, abuse, neglect, mistreatment, financial exploitation, attempted suicide, or significant injury.
 6. The action taken, if any, to treat or otherwise assist the resident or client.

7. Any other information that the reporter believes to be relevant in establishing the cause of such assault, abuse, neglect, mistreatment, financial exploitation, attempted suicide, or significant injury.
 8. A statement relative to the reporter's opinion of the perceived cause of the assault, abuse, neglect, mistreatment, financial exploitation, attempted suicide, or significant injury (whether a staff member or facility program negligence).
- d. The Division's designated recipient of PM 46 reports shall report all allegations of assault, abuse, neglect, mistreatment, financial exploitation, attempted suicide, and significant injury, to the Office of the Secretary; the Office of the Attorney General/Medicaid Fraud Control Unit (for Medicaid and/or Medicare certified long term care facilities); the appropriate state licensing agency for the program, if applicable; and the Division Director or designee, within 24 hours of receiving notification of such. In instances where a suspected crime has been committed, the police must be notified immediately and they will take the lead in the investigation of the suspected crime.
 - e. In instances where there is immediate danger to the health or safety of a resident/client from abuse, mistreatment or neglect; any sexual assault or alleged sexual assault; any physical abuse that leads to injury; any allegations of verbal abuse; any allegations of vandalism; any allegations of financial exploitation; any suicide; any assault or alleged assault, any suspected criminal action; or if a resident/client has died because of suspected assault, abuse, mistreatment, neglect, suicide, or significant injury, the Division Director or his/her designee shall immediately notify the appropriate police agency. The Division of Long Term Care Residents Protection, and the Office of the Secretary, shall be notified if the police were contacted. Further, the Division Director or his/her designee shall notify the Office of the Attorney General/Medicaid Fraud Control Unit, the Office of the Secretary, the Chief Medical Examiner, if a resident/client has died because of suspected assault, abuse, mistreatment, neglect, suicide, significant injury, or as a result of any cause identified by 29 Del. C., section 4706 and Title 11, Chapters 5 and 94. In accordance with Title 16 § 5162, the Division Director or his/her designee shall notify the Community Legal Aid Society, Inc within seventy-two hours of the date of any patient or resident death.
 - f. The Division Director or his/her designee shall review the initial incident report and initiate an investigation into the allegations contained in the report. The investigation, with a written report, shall be made within 24 hours, if the Division has reasonable cause to believe that the resident's/client's health or safety is in immediate danger from further assault, abuse, neglect, attempts of suicide, or mistreatment. Otherwise, the investigation and written Investigative Report, up to and including the Division Director's or designee's signed review of the report, shall be made to the Division of Long Term Care Residents Protection (DLTCRP) within 10 days. This timeframe may be extended by DLTCRP if extenuating facts warrant a longer time to complete the investigation. If the facility is a Medicaid-Medicare certified long-term care facility, or an ICF/MR facility, the report of suspected assault, abuse, neglect, mistreatment, financial exploitation, attempted suicide, or significant injury shall be sent to the appropriate authorities, as required in the respective regulations under 42 CFR, within 5 working days of the incident.
 - g. The investigative process shall be confidential and not subject to disclosure both pursuant to 24 Del. C., section 1768 and because it is privileged under the governmental privilege for investigative files. Each Investigative Report shall be

labeled as confidential and privileged, pursuant to 24 Del. C., section 1768. Each investigation shall include the following:

1. A visit to the facility or other site of incident.
 2. A private interview with the resident or client allegedly abused, neglected, mistreated, whose finances were exploited or whose injury was significant.
 3. Interviews with witnesses and other appropriate individuals.
 4. A determination of the nature, extent and cause of injuries, or in the case of exploited finances, the nature and value of the property.
 5. The identity of the person or persons responsible.
 6. All other pertinent facts.
 7. An evaluation of the potential risk of any physical or emotional injury to any other resident or client of that facility, if appropriate.
- h. A written report (Investigative Report) containing the information identified in V (g) shall be completed within the time frames identified in V (f) and shall include a summary of the facts resulting from the investigation. (Attachment 3)
- i. The Investigative Report shall be sent to the facility director and to the Division Director or designee. The Facility Director and the Division Director or designee shall review the report. If the incident is serious, the
Division Director must review the incident with the Department Secretary prior to the completion of the report. The Facility Director and the Division Director or designee shall indicate in writing their concurrence or non concurrence with the report. If the facts show that there is a reasonable cause to believe that a resident/client has died as a result of the abuse, neglect, mistreatment, or significant injury, the Division Director or designee shall immediately report the matter to the Office of the Attorney General/Medicaid Fraud Control Unit, the Division of Long Term Care Residents Protection, and the Office of the Secretary.
- j. All Investigative Reports shall be forwarded by the reporting division, forthwith, to the Division of Long Term Care Residents Protection. The Division of Long Term Care Residents Protection shall complete the investigation by making a determination of findings and documenting their conclusions.
- k. If a determination is made at the Division level (upon consultation with the Division of Management Services, Human Resources office) that discipline is appropriate, the Investigative Report shall be forwarded to the Human Resources office. Human Resources shall determine the appropriate level of discipline, forward their recommendations to the Office of the Secretary and to the originating division for implementation, and proceed as appropriate.
- l. The Office of the Secretary shall be informed by the Division of Long Term Care Residents Protection, in writing, of the results of the investigation, including the findings and recommendations, within 5 days following the completion of the investigation.
- m. The Division Director or designee shall notify the appropriate licensing or registration board, if the incident involved a licensed or registered professional, and the appropriate state or federal agency, including the appropriate state licensing agency of the program, if applicable, upon a finding of: 1) assault, abuse, mistreatment, neglect, financial exploitation, attempted suicide, or significant injury; 2) failure to report such instances by a licensed or registered professional; or 3) failure by a

member of a board of directors or high managerial agent to promptly take corrective action.

- n. The Division Director or designee shall notify the employee, resident/client, the guardian of the resident/client, if applicable, and the incident reporter of the results of the facility-based case resolution, unless otherwise prohibited by law. They shall also advise the parties of the fact that there is a further level of review that will occur through the Division of Long Term Care Residents Protection and/or the Office of the Attorney General/Medicaid Fraud Control Unit.
- o. The Division of Long Term Care Residents Protection shall, at the conclusion of their review of the case, notify the DHSS employee (or the agency director for contract providers), the resident/client, or the guardian of the resident/client, if applicable, and the originating Division Director or designee, of the substantiated or unsubstantiated status of the case, unless otherwise prohibited by law. The Division of Long Term Care Residents Protection shall also notify the Office of the Attorney General/Medicaid Fraud Control Unit of all substantiated cases.

VI. IMPLEMENTATION

- a. This policy shall be effective immediately (upon the completion of mandatory departmental training).
- b. In carrying out this policy, all parties must protect the confidentiality of records and persons involved in the case, and may not disclose any Investigative Report except in accordance with this policy.

VII. EXHIBITS

- a. Attachment 1 - Delaware Code, Title 16, Chapter 11, Sections 1131-1140.
- b. Attachment 2 - Delaware Code, Title 29, Chapter 79, Sections 7970-7971.
- c. Attachment t 3 - Investigative Report form
- d. Attachment 4 – Delaware Code, Title 11, Chapters 5 and 94.

Rita M. Landgraf August 2009 Rita M. Landgraf, Secretary



Protocol for Responding to Allegations of Sexual Assault Community Services/Adult Special Populations Program

I. When does an allegation of sexual assault require a medical or forensic evaluation?

When there are suspicious injuries of an unknown origin or when an individual receiving services alleges, either via verbal or non-verbal communication, that he/she was the victim of any of the following:

- a. Contact or penetration of the vagina with any body part or object (not used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment);
- b. Contact or penetration of the anus/rectum with any body part or object (not used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment);
- c. Oral contact with the male genitalia;
- d. Oral contact with the female genitalia;

II. What must be done immediately after receiving or understanding an allegation of sexual assault?

The following action steps must be taken without delay or exception:

Law Enforcement

The allegation of sexual assault must be reported to the law enforcement agency in the jurisdiction where the assault allegedly occurred **immediately** following receipt of the allegation. The police contact is to be made by an administrator/designee of the reporting provider agency or the DDDS Regional PM #46 Coordinator for Shared Living homes. If there is uncertainty relative to the need to contact police, call them and let them make the decision about involvement. The notification of the allegation may be in the form of either verbal or non-verbal communication depending on the reporter's mode of communication. If you do not know where the alleged crime occurred, report it to the local police. Make sure you document the date and time that you made the contact, who you spoke to, his/her badge number and the complaint number.

Important Action Steps:

- Make immediate report with law enforcement agency;
- Follow police instructions;

- Reporting person must remain available to speak with the responding police officer and/or meet him/her at the scene;
- Contact DDDS Regional PM #46 Coordinator.

Medical Evaluation

The alleged victim must be evaluated at a hospital emergency department (emergency room), by a Sexual Assault Nurse Examiner (SANE) or a medical professional who has received specialized education to perform medical forensic examinations, **as soon as the allegation is made or understood**. Staff should not delay a medical/forensic examination until he/she has collected evidence or proof that the allegation was true. The people we serve have a much higher ratio of being sexually assaulted, as they are perceived to be vulnerable and easily victimized. We must ensure that the people we serve are respected and treated just like people who do not have disabilities.

- Prior to arriving at the hospital, strongly encourage the person **NOT** to change clothing, brush teeth, clean under fingernails, wash off or brush/comb hair. **DO NOT** eat or void. All of the aforementioned may result in the loss of or damage to very important evidence that can be used to identify and prosecute the perpetrator of the crime and perhaps future crimes, as well.
- The staff person accompanying the alleged victim to the hospital for a SANE examination may be requested to serve as a liaison with the SANE examiner relative to interpreting communication. Be available to the SANE examiner, as requested.

DDDS PM #46 Coordinator

Report the allegation to the DDDS PM #46 Coordinator, via telephone, during normal working hours, or the DDDS on-call worker if it is after normal working hours/weekend/holiday, **immediately after the stabilization of the situation (i.e. treatment, safety and comfort have been coordinated)**.

- PM #46 Coordinator will identify in his/her Outcome Memo if the investigation included an allegation of sexual assault, sexual misconduct or offensive touching. It makes no difference if the allegation(s) was made at the onset of the investigation or it later developed during the course of the investigation.
- PM #46 Coordinator will describe in the Outcome Memo the nature of the allegation, action that has been taken and any action that requires follow-up, if applicable.

Created 02/23/09
Revised 09/03/10

Delaware Code, Title 11, Chapter 5, §761

761. Definitions generally applicable to sexual offenses.

(a) "Cognitive disability" means a developmental disability that substantially impairs an individual's cognitive abilities including, but not limited to, delirium, dementia and other organic brain disorders for which there is an identifiable pathologic condition, as well as nonorganic brain disorders commonly called functional disorders. "Cognitive disability" also includes conditions of mental retardation, severe cerebral palsy, and any other condition found to be closely related to mental retardation because such condition results in the impairment of general intellectual functioning or adaptive behavior similar to that of persons who have been diagnosed with mental retardation, or such condition requires treatment and services similar to those required for persons who have been diagnosed with mental retardation.

(b) "Cunnilingus" means any oral contact with the female genitalia.

(c) "Fellatio" means any oral contact with the male genitalia.

(d) "Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

(e) "Position of trust, authority or supervision over a child" includes, but is not limited to:

(1) Familial, guardianship or custodial authority or supervision; or

(2) A teacher, coach, counselor, advisor, mentor or any other person providing instruction or educational services to a child or children, whether such person is compensated or acting as a volunteer; or

(3) A babysitter, child care provider, or child care aide, whether such person is compensated or acting as a volunteer; or

(4) A health professional, meaning any person who is licensed or who holds himself or herself out to be licensed or who otherwise provides professional physical or mental health services, diagnosis, treatment or counseling which shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists, whether such person is compensated or acting as a volunteer; or

(5) Clergy, including but not limited to any minister, pastor, rabbi, lay religious leader, pastoral counselor or any other person having regular direct contact with children through affiliation with a church or religious institution, whether such person is compensated or acting as a volunteer; or

(6) Any law-enforcement officer, as that term is defined in § 222 of this title, and including any person acting as an officer or counselor at a correctional or counseling institution, facility or organization, whether such person is compensated or acting as a volunteer; or

(7) Any other person who because of that person's familial relationship, profession, employment, vocation, avocation or volunteer service has regular direct contact with a child or children and in the course thereof assumes responsibility, whether temporarily or permanently, for the care or supervision of a child or children.

(f) "Sexual contact" means:

(1) Any intentional touching by the defendant of the anus, breast, buttocks or genitalia of another person; or

(2) Any intentional touching of another person with the defendant's anus, breast, buttocks or genitalia; or

(3) Intentionally causing or allowing another person to touch the defendant's anus, breast, buttocks or genitalia

which touching, under the circumstances as viewed by a reasonable person, is intended to be sexual in nature. Sexual contact shall also include touching when covered by clothing.

(g) "Sexual intercourse" means:

(1) Any act of physical union of the genitalia or anus of 1 person with the mouth, anus or genitalia of another person. It occurs upon any penetration, however slight. Ejaculation is not required. This offense encompasses the crimes commonly known as rape and sodomy; or

(2) Any act of cunnilingus or fellatio regardless of whether penetration occurs. Ejaculation is not required.

(h) "Sexual offense" means any offense defined by §§ 763-780 and §§ 1108-1112A, 1352(2) and 1353(2) of this title.

(i) "Sexual penetration" means:

(1) The unlawful placement of an object, as defined in subsection (d) of this section, inside the anus or vagina of another person; or

(2) The unlawful placement of the genitalia or any sexual device inside the mouth of another person.

(j) "Without consent" means:

(1) The defendant compelled the victim to submit by any act of coercion as defined in §§ 791 and 792 of this title, or by force, by gesture, or by threat of death, physical injury, pain or kidnapping to be inflicted upon the victim or a third party, or by any other means which would compel a reasonable person under the circumstances to submit. It is not required that the victim resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy, but

the victim need resist only to the extent that it is reasonably necessary to make the victim's refusal to consent known to the defendant; or

(2) The defendant knew that the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed; or

(3) The defendant knew that the victim suffered from a cognitive disability, mental illness or mental defect which rendered the victim incapable of appraising the nature of the sexual conduct or incapable of consenting; or

(4) Where the defendant is a health professional, as defined herein, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested. For purposes of this paragraph, "health professional" includes all individuals who are licensed or who hold themselves out to be licensed or who otherwise provide professional physical or mental health services, diagnosis, treatment or counseling and shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists; or

(5) The defendant had substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing without the other person's knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance.

(k) A child who has not yet reached that child's sixteenth birthday is deemed unable to consent to a sexual act with a person more than 4 years older than said child. Children who have not yet reached their twelfth birthday are deemed unable to consent to a sexual act under any circumstances.