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5123:2-17-02 Addressing major unusual incidents and unusual incidents to ensure health, welfare, and continuous quality improvement.

****Bolded information below notes a change, point of discussion, etc.**

(A) Purpose

This rule establishes the requirements for addressing major unusual incidents and unusual incidents and implements a continuous quality improvement process in order to prevent or reduce the risk of harm to individuals.

(B) Scope

This rule applies to county boards, developmental centers, and providers.

(C) Definitions

- (1) "Administrative investigation" means the gathering and analysis of information related to a major unusual incident so that appropriate action can be taken to address any harm or risk of harm and prevent recurrence. There are three administrative investigation procedures (category A, category B, and category C) that correspond to the three categories of major unusual incidents.
- (2) "Agency provider" means a provider, certified or licensed by the department or a provider approved by the Ohio department of medicaid to provide services under the transitions developmental disabilities waiver, that employs staff to deliver services to individuals and who may subcontract the delivery of services. "Agency provider" includes a county board while providing specialized services.
 - Do we need to specifically address Shared Living settings?
- (3) "At-risk individual" means an individual whose health or welfare is adversely affected or whose health or welfare may reasonably be considered to be in danger of being adversely affected.
- (4) "County board" means a county board of developmental disabilities as established under Chapter 5126. of the Revised Code or a regional council of governments as established under Chapter 167. of the Revised Code when it includes at least one county board.
- (5) "Department" means the Ohio department of developmental disabilities.
- (6) "Developmental center" means an intermediate care facility under the managing responsibility of the department.
- (7) "Developmental disabilities employee" means any of the following:
 - (a) An employee of the department;

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- (b) An employee of a county board;
 - (c) An employee of an agency provider in a position that includes providing specialized services to an individual; or
 - (d) An independent provider.
- (8) "Incident report" means documentation that contains details about a major unusual incident or an unusual incident and shall include, but is not limited to:
- (a) Individual's name;
 - (b) Individual's address;
 - (c) Date of incident;
 - (d) Location of incident;
 - (e) Description of incident;
 - (f) Type and location of injuries;
 - (g) Immediate actions taken to ensure health and welfare of individual involved and any at-risk individuals;
 - (h) Name of primary person involved and his or her relationship to the individual;
 - (i) Names of witnesses;
 - (j) Statements completed by persons who witnessed or have personal knowledge of the incident;
 - (k) Notifications with name, title, and time and date of notice;
 - (l) Further medical follow-up; and
 - (m) Name of signature of person completing the incident report.
- (9) "Incident tracking system" means the department's web-based system for reporting major unusual incidents.
- (10) "Independent provider" means a self-employed person who provides services for which he or she must be certified under rule 5123:2-2-01 of the Administrative Code or a self-employed person approved by the Ohio department of medicaid to provide services under the transitions developmental disabilities waiver and does not employ, either directly or through contract, anyone else to provide the services.
- (11) "Individual" means a person with a developmental disability.
- (12) "Individual served" means an individual who receives specialized services.
- (13) "Intermediate care facility" means an intermediate care facility for individuals with

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intellectual disabilities as defined in rule 5123:2-7-01 of the Administrative Code.

- (14) "Investigative agent" means an employee of a county board, a person under contract with a county board, **Developmental Center MUI Investigator or DODD investigator** who is certified by the department to conduct administrative investigations of major unusual incidents.
- (15) "Major unusual incident" means the alleged, suspected, or actual occurrence of an incident when there is reason to believe the health or welfare of an individual may be adversely affected or an individual may be placed at a likely risk of harm, if such individual is receiving services through the developmental disabilities service delivery system or will be receiving such services as a result of the incident. There are three categories of major unusual incidents that correspond to three administrative investigation procedures delineated in appendix A, appendix B, and appendix C to this rule:

(a) Category A

- (i) Accidental or suspicious death. "Accidental or suspicious death" means the death of an individual resulting from an accident or suspicious circumstances.
- (ii) ~~Exploitation. "Exploitation" means the unlawful or improper act of using an individual or an individual's resources for monetary or personal benefit, profit, or gain.~~
- (iii) ~~Failure to report. "Failure to report" means that a person, who is required to report pursuant to section 5123.61 of the Revised Code, has reason to believe that an individual has suffered or faces a substantial risk of suffering any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse, misappropriation, or exploitation that results in a risk to health and welfare or neglect of that individual, and such person does not immediately report such information to a law enforcement agency, a county board, or, in the case of an individual living in a developmental center, either to law enforcement or the department. Pursuant to division (C)(1) of section 5123.61 of the Revised Code, such report shall be made to the department and the county board when the incident involves an act or omission of an employee of a county board.~~
- (iv) Misappropriation. "Misappropriation" means depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means prohibited by the Revised Code, including Chapters 2911. and 2913. of the Revised Code.
- (v) ~~Neglect. "Neglect" means when there is a duty to do so, failing to provide an individual with any treatment, care, goods, supervision, or services necessary to maintain the health or welfare of the individual.~~
- (v) Neglect. "Neglect" means where there is a duty to do so, failing to

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provide an individual with medical care, personal care, or supports that consequently results in serious injury, or places the individual's health or safety at a significant risk of serious injury harm to individual or others or death.

Serious Injury means an injury that requires medical consultation or places an individual or other's health or safety at a significant risk of harm.

~~(vi) Peer to peer act. "Peer to peer act" means one of the following incidents involving two individuals served:~~

~~(a) Exploitation which means the unlawful or improper act of using an individual or an individual's resources for monetary or personal benefit, profit, or gain.~~

~~(b) Theft which means intentionally depriving another individual of real or personal property valued at twenty dollars or more or property of significant personal value to the individual.~~

~~(c) Physical act that occurs when an individual is targeting, or firmly fixed on another individual such that the act is not accidental or random and the act results in an injury that is treated by a physician, physician assistant, or nurse practitioner. Allegations of one individual choking another or any head or neck injuries such as a bloody nose, a bloody lip, a black eye, or other injury to the eye, shall be considered major unusual incidents. Minor injuries such as scratches or reddened areas not involving the head or neck shall be considered unusual incidents and shall require immediate action, a review to uncover possible cause/contributing factors, and prevention measures.~~

~~(d) Sexual act which means sexual conduct and/or contact for the purposes of sexual gratification without the consent of the other individual.~~

~~(e) Verbal act which means the use of words, gestures, or other communicative means to purposefully threaten, coerce, or intimidate the other individual when there is the opportunity and ability to carry out the threat.~~

(vii) Physical abuse. "Physical abuse" means the use of physical force that can reasonably be expected to result in physical harm or serious physical harm as those terms are defined in section 2901.01 of the Revised Code. Such force may include, but is not limited to, hitting, slapping, pushing, throwing objects at an individual, **prone restraint. A prone restraint invention is prohibited in Ohio and filed as a physical abuse, if implemented.**

(viii) Prohibited sexual relations. "Prohibited sexual relations" means a developmental disabilities employee engaging in consensual sexual conduct or having consensual sexual contact with an individual who is not the

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employee's spouse, and for whom the developmental disabilities employee was employed or under contract to provide care or supervise the provision of care at the time of the incident.

- (ix) ~~Rights code violation. "Rights code violation" means any violation of the rights enumerated in section 5123.62 of the Revised Code that creates a likely risk of harm to the health or welfare of an individual.~~
- (x) Sexual abuse. "Sexual abuse" means unlawful sexual conduct or sexual contact as those terms are defined in section 2907.01 of the Revised Code and the commission of any act prohibited by Chapter 2907. of the Revised Code (e.g., public indecency, importuning, and voyeurism).
- (xi) Verbal abuse. "Verbal abuse" means the use of words, gestures, or other communicative means to purposefully threaten, coerce, intimidate, harass, or humiliate an individual.

(b) Category B

- (i) Attempted suicide. "Attempted suicide" means a physical attempt by an individual that results in emergency room treatment, in-patient observation, or hospital admission.
- (ii) Death other than accidental or suspicious death. "Death other than accidental or suspicious death" means the death of an individual by natural cause without suspicious circumstances.
- (iii) Exploitation. "Exploitation" means the unlawful or improper act of using an individual or an individual's resources for monetary or personal benefit, profit, or gain.
- ~~(iii)~~ Failure to report. "Failure to report" means that a person, who is required to report pursuant to section 5123.61 of the Revised Code, has reason to believe that an individual has suffered or faces a substantial risk of suffering any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse, misappropriation, or exploitation that results in a risk to health and welfare or neglect of that individual, and such person does not immediately report such information to a law enforcement agency, a county board, or, in the case of an individual living in a developmental center, either to law enforcement or the department. Pursuant to division (C)(1) of section 5123.61 of the Revised Code, such report shall be made to the department and the county board when the incident involves an act or omission of an employee of a county board
- ~~(iii)~~ Medical emergency. "Medical emergency" means an incident where emergency medical intervention is required to save an individual's life (e.g., choking relief techniques such as back blows or cardiopulmonary resuscitation, **the use of an automated external defibrillators (AED)**, epinephrine auto injector usage, or intravenous for dehydration).

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- (iv) **Missing individual.** "Missing individual" means an incident that is not considered neglect and an individual's whereabouts, after immediate measures taken, are unknown and the individual is believed to be at or pose an imminent risk of harm to self or others. An incident when an individual's whereabouts are unknown for longer than the period of time specified in the individual service plan that does not result in imminent risk of harm to self or others shall be investigated as an unusual incident.
- (vi) **Peer-to-peer act.** "Peer-to-peer act" means one of the following incidents involving two individuals served:
- (a) **Exploitation which means the unlawful or improper act of using an individual or an individual's resources for monetary or personal benefit, profit, or gain.**
 - (b) **Theft which means intentionally depriving another individual of real or personal property valued at twenty dollars or more or property of significant personal value to the individual.**
 - (c) **Physical act that occurs when an individual is targeting, or firmly fixed on another individual such that the act is not accidental or random and the act results in an injury that is treated by a physician, physician assistant, or nurse practitioner. Allegations of one individual choking another or any head or neck injuries such as a bloody nose, a bloody lip, a black eye, or other injury to the eye, shall be considered major unusual incidents. Minor injuries such as scratches or reddened areas not involving the head or neck shall be considered unusual incidents and shall require immediate action, a review to uncover possible cause/contributing factors, and prevention measures.**
 - (d) **Sexual act which means sexual conduct and/or contact for the purposes of sexual gratification without the consent of the other individual.**
 - (e) **Verbal act which means the use of words, gestures, or other communicative means to purposefully threaten, ~~coerce,~~ or intimidate the other individual when there is the opportunity and ability to carry out the threat.**
- (ix) **Rights code violation.** "Rights code violation" means any violation of the rights enumerated in section 5123.62 of the Revised Code that creates a likely risk of harm to the health or welfare of an individual.
- (v) **Significant injury.** "Significant injury" means an injury of known or unknown cause that is not considered abuse or neglect and that results in concussion, broken bone, dislocation, second or third degree burns or that requires immobilization, casting, or five or more sutures. Significant injuries shall be designated in the incident tracking system as either known or unknown

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cause.

(c) Category C

- (i) Law enforcement. "Law enforcement" means any incident that results in the individual served being arrested, charged, or incarcerated.
- (ii) ~~Unapproved behavior support. "Unapproved behavior support" means the use of an aversive strategy or intervention prohibited by paragraph (J) of rule 5123:2-1-02 of the Administrative Code or an aversive strategy implemented without approval by the human rights committee or behavior support committee or without informed consent, that results in a likely risk to the individual's health and welfare. An aversive strategy or intervention prohibited by paragraph (J) of rule 5123:2-1-02 of the Administrative Code that does not pose a likely risk to health and welfare shall be investigated as an unusual incident.~~
- (ii) Unplanned behavior support. "Unplanned behavior support" means the use of a restrictive strategy or intervention prohibited by rule 5123:2-2-06 of the Administrative Code or a restrictive strategy implemented without approval by the human rights committee or behavior support committee or without informed consent, that results in a likely risk to the individual's health and welfare. An aversive strategy or intervention prohibited by 5123:2-2-06 of the Administrative Code that does not pose a likely risk to health and welfare shall be investigated as an unusual incident.**
- (iii) **Unscheduled hospitalization. "Unscheduled hospitalization" means any hospital admission, hospital stay over 24 hours or that is not scheduled. Hospital admission associated with a planned treatment or pre-existing condition that is specified in the individual service plan indicating the specific symptoms and criteria that require hospitalization are not required to be reported.**
- (16) "Primary person involved" means the person alleged to have committed or to have been responsible for the accidental or suspicious death, exploitation, failure to report, misappropriation, neglect, physical abuse, prohibited sexual relations, rights code violation, sexual abuse, or verbal abuse.
- (17) "Provider" means an agency provider or independent provider that provides specialized services.
- (18) "Qualified intellectual disability professional" has the same meaning as in 42 C.F.R. 483.430 (October 1, 2012).
- () "Significant risk" means risk more likely than not with a high probability to cause physical harm to the person.**
- (19) "Specialized services" means any program or service designed and operated to serve

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primarily individuals, including a program or service provided by an entity licensed or certified by the department.

() **“Systems neglect” means a neglect that has been substantiated but the investigation could not determine a specific PPI. Multiple variables account for the outcome and no one (1) person are responsible.**

(20) "Unusual incident" means an event or occurrence involving an individual that is not consistent with routine operations, policies and procedures, or the individual's care or individual service plan, but is not a major unusual incident. Unusual incident includes, but is not limited to, dental injuries; falls; an injury that is not a significant injury; medication errors without a likely risk to health and welfare; overnight relocation of an individual due to a fire, natural disaster, or mechanical failure; an incident involving two individuals served that is not a peer-to-peer act major unusual incident; and rights code violations or unapproved behavior supports without a likely risk to health and welfare.

“Program Implementation incident” Unusual Incident means the failure to carry out a person-centered plan the duty does not cause injury, or place the individual’s health and safety at significant risk. These incidents may include some level of risk but do not rise to the level of a reportable MUI for neglect. Examples include but would not be limited to: failing to provide supervision for short periods of time with minimal risk, auto accidents without harm, medication errors with minimal risk, self-reported incidents with minimal risk.

(21) "Working day" means Monday, Tuesday, Wednesday, Thursday, or Friday except when that day is a holiday as defined in section 1.14 of the Revised Code.

(D) Reporting requirements for major unusual incidents

(1) Reports regarding all major unusual incidents involving an individual who resides in an intermediate care facility or who receives round-the-clock waiver services shall be filed and the requirements of this rule followed regardless of where the incident occurred.

(2) Reports regarding the following major unusual incidents shall be filed and the requirements of this rule followed regardless of where the incident occurred:

- (a) Accidental or suspicious death;
- (b) Attempted suicide;
- (c) Death other than accidental or suspicious death;
- (d) Exploitation;
- (e) Failure to report;
- (f) Law enforcement;

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center. The department may obtain additional information necessary to consider the report, including copies of all administrative investigation reports that have been prepared. Such additional information shall be provided within the time period specified by the department.

- (4) The department shall review and close reports regarding the following major unusual incidents:
- (a) Accidental or suspicious death;
 - ~~(b) Exploitation;~~
 - (c) Failure to report;
 - (d) Misappropriation;
 - () Medical Emergency**
 - (e) Missing individual;
 - (f) Neglect;
 - (g) Peer-to-peer act;
 - (h) Physical abuse;
 - (i) Prohibited sexual relations;
 - (j) Rights code violation;
 - (k) Sexual abuse;
 - (l) Significant injury when cause is unknown;
 - (m) Unapproved behavior support;
 - (n) Verbal abuse;
 - (o) Any major unusual incident that is the subject of a director's alert; and
 - (p) Any major unusual incident investigated by the department.
- (5) The county board shall review and close reports regarding the following major unusual incidents:
- (a) Attempted suicide;
 - (b) Death other than accidental or suspicious death;
 - () Exploitation;**
 - (c) Law enforcement;

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~~(d) Medical emergency;~~

(e) Significant injury when cause is known; and

(f) Unscheduled hospitalization.

(6) The department may review any case to ensure it has been properly closed and shall conduct sample reviews to ensure proper closure by the county board. The department may reopen any administrative investigation that does not meet the requirements of this rule. The county board shall provide any information deemed necessary by the department to close the case.

(7) The department and the county board shall consider the following criteria when determining whether to close a case:

(a) Whether sufficient reasonable measures have been taken to ensure the health and welfare of any at-risk individual;

(b) Whether a thorough administrative investigation has been conducted consistent with the standards set forth in this rule;

(c) Whether the team, including the county board and provider, collaborated on developing preventive measures to address the causes and contributing factors;

(d) Whether the county board has ensured that preventive measures have been implemented to prevent recurrence;

(e) Whether the incident is part of a pattern or trend as flagged through the incident tracking system requiring some additional action; and

(f) Whether all requirements set forth in statute or rule have been satisfied.

(L) Analysis of major unusual incident trends and patterns

(1) Providers shall produce a ~~semi-annual and~~ annual report regarding major unusual incident trends and patterns which shall be sent to the county board. The county board shall ~~semi-annually~~ review providers' reports. ~~The semi-annual review shall be cumulative for January first through June thirtieth of each year and include an in-depth analysis.~~ The annual review shall be cumulative for January first through December thirty-first of each year and include an in-depth analysis.

(2) ~~All The annual review and analyses~~ shall be completed within thirty calendar days following the end of the review period. The ~~semi-annual and~~ annual reports shall contain the following elements:

(a) Date of review;

(b) Name of person completing review;

(c) Time period of review;

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- (d) Comparison of data for previous three years;
 - (e) Explanation of data;
 - (f) Data for review by major unusual incident category type;
 - (g) Specific individuals involved in established trends and patterns (i.e., five major unusual incidents of any kind within six months, ten major unusual incidents of any kind within a year, or other pattern identified by the individual's team);
 - (h) Specific trends by residence, region, or program;
 - (i) Previously identified trends and patterns; and
 - (j) Action plans and preventive measures to address noted trends and patterns.
- (3) County boards shall conduct the analysis and implement follow-up actions for all programs operated by county boards such as workshops, schools, and transportation. The county board shall send its analysis and follow-up actions to the department by ~~August thirty-first of each year for the semi-annual review and~~ by February twenty-eighth of each year for the annual review. The department shall review the analysis to ensure that all issues have been reasonably addressed to prevent recurrence.
- (4) Providers shall conduct the analysis, implement follow-up actions, and send the analysis and follow-up actions to the county board for all programs operated in the county by ~~August thirty-first of each year for the semi-annual review and by~~ February twenty-eighth of each year for the annual review. The county board shall review the analysis to ensure that all issues have been reasonably addressed to prevent recurrence. The county board shall keep the analyses and follow-up actions on file and make them available to the department upon request.
- (5) The county board shall ensure that trends and patterns of major unusual incidents are included and addressed in the individual service plan of each individual affected.
- (6) Each county board or as applicable, each council of governments to which county boards belong, shall have a committee that reviews trends and patterns of major unusual incidents. The committee shall be made up of a reasonable representation of the county board(s), providers, individuals who receive services and their families, and other stakeholders deemed appropriate by the committee.
- (a) The role of the committee shall be to review and share the county or council of governments aggregate data prepared by the county board or council of governments to identify trends, patterns, or areas for improving the quality of life for individuals served in the county or counties.
 - (b) The committee shall meet ~~each September to review and analyze data for the first six months of the calendar year and~~ each March to review and analyze data for the preceding calendar year. The county board or council of governments shall send the aggregate data prepared for the meeting to all

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participants at least ten calendar days in advance of the meeting.

- (c) The county board or council of governments shall record and maintain minutes of each meeting, distribute the minutes to members of the committee, and make the minutes available to any person upon request.
 - (d) The county board shall ensure follow-up actions identified by the committee have been implemented.
- (7) The department shall prepare a report on trends and patterns identified through the process of reviewing major unusual incidents. The department shall periodically, but at least semi-annually, review this report with a committee appointed by the director of the department which shall consist of at least six members who represent various stakeholder groups, including disability rights Ohio and the Ohio department of medicaid. The committee shall make recommendations to the department regarding whether appropriate actions to ensure the health and welfare of individuals served have been taken. The committee may request that the department obtain additional information as may be necessary to make recommendations.

(M) Requirements for unusual incidents

- (1) Unusual incidents shall be reported and investigated by the provider.
- (2) Each agency provider shall develop and implement a written unusual incident policy and procedure that:
 - (a) Identifies what is to be reported as an unusual incident which shall include unusual incidents as defined in this rule;
 - (b) Requires an employee who becomes aware of an unusual incident to report it to the person designated by the agency provider who can initiate proper action;
 - (c) Requires the report to be made no later than twenty-four hours after the occurrence of the unusual incident; and
 - (d) Requires the agency provider to investigate unusual incidents, identify the cause and contributing factors when applicable, and develop preventive measures to protect the health and welfare of any at-risk individuals.
- (3) The agency provider shall ensure that all staff are trained and knowledgeable regarding the unusual incident policy and procedure.
- (4) If the unusual incident occurs at a site operated by the county board or at a site operated by an entity with which the county board contracts, the county board or contract entity shall notify the licensed provider or staff, guardian, or other person whom the individual has identified, as applicable, at the individual's residence. The notification shall be made **by 3:00 p.m. the day following incident discovery. ~~on the same day the unusual incident is discovered.~~**
- (5) Independent providers shall complete an incident report, notify the individual's

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guardian or other person whom the individual has identified, as applicable, and forward the incident report to the service and support administrator or county board designee on the same day the unusual incident is discovered.

- (6) Each agency provider and independent provider shall review all unusual incidents as necessary, but no less than monthly, to ensure appropriate preventive measures have been implemented and trends and patterns identified and addressed as appropriate.
- (7) The unusual incident reports, documentation of identified trends and patterns, and corrective action shall be made available to the county board and department upon request.
- (8) Each agency provider and independent provider shall maintain a log of all unusual incidents. The log shall include, but is not limited to, the name of the individual, a brief description of the unusual incident, any injuries, time, date, location, and preventive measures.
- (9) The agency provider and the county board shall ensure that trends and patterns of unusual incidents are included and addressed in the individual service plan of each individual affected.

(N) Oversight

- (1) The county board shall review, on at least a quarterly basis, a representative sample of provider logs, including logs where the county board is a provider, to ensure that major unusual incidents have been reported, preventive measures have been implemented, and that trends and patterns have been identified and addressed in accordance with this rule. The sample shall be made available to the department for review upon request.
- (2) When the county board is a provider, the department shall review, on a monthly basis, a representative sample of county board logs to ensure that major unusual incidents have been reported, preventive measures have been implemented, and that trends and patterns have been identified and addressed in accordance with this rule. The county board shall submit the specified logs to the department upon request.
- (3) The department shall conduct reviews of county boards and providers as necessary to ensure the health and welfare of individuals and compliance with this rule. Failure to comply with this rule may be considered by the department in any regulatory capacity, including certification, licensure, and accreditation.

(O) Access to records

- (1) Reports made under section 5123.61 of the Revised Code and this rule are not public records as defined in section 149.43 of the Revised Code. Records may be provided to parties authorized to receive them in accordance with sections 5123.613 and 5126.044 of the Revised Code, to any governmental entity authorized to investigate the circumstances of the alleged abuse, neglect, misappropriation, or exploitation and to any party to the extent that release of a record is necessary for the health or

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welfare of an individual.

- (2) A county board or the department shall not review, copy, or include in any report required by this rule a provider's personnel records that are confidential under state or federal statutes or rules, including medical and insurance records, workers' compensation records, employment eligibility verification (I-9) forms, and social security numbers. The provider shall redact any confidential information contained in a record before copies are provided to the county board or the department. A provider shall make all other records available upon request by a county board or the department. **Confidential information, including the date of birth and social security number) shall be shared with DODD in implementing the Abuser Registry process (O.A.C. 5123:2-17-03).**
- (3) Any party entitled to receive a report required by this rule may waive receipt of the report. Any waiver of receipt of a report shall be made in writing.

(P) Training

- (1) Agency providers and county boards shall ensure staff employed in direct services positions are trained on the requirements of this rule prior to direct contact with any individual. Thereafter, staff employed in direct services positions shall receive annual training on the requirements of this rule including a review of health and welfare alerts issued by the department since the previous year's training.
- (2) Agency providers and county boards shall ensure staff employed in positions other than direct services positions are trained on the requirements of this rule no later than ninety days from date of hire. Thereafter, staff employed in positions other than direct services positions shall receive annual training on the requirements of this rule including a review of health and welfare alerts issued by the department since the previous year's training.
- (3) Independent providers shall be trained on the requirements of this rule prior to application for initial certification in accordance with rule 5123:2-2-01 of the Administrative Code and shall receive annual training on the requirements of this rule including a review of health and welfare alerts issued by the department since the previous year's training.