

Responsibility Centre: Quality Services	POLICY SECTION Service Delivery	Sub-section: Safeguards
Subject: INVESTIGATIONS OF ABUSE AND NEGLECT		
Effective: May 2007	Scope: Quality Service Analysts and Facilitators	Approval by: _____ Chief Executive Officer

PURPOSE

To provide guidance for preventing, reporting and investigating alleged abuse or neglect in facilities and programs under contract with CLBC.

To clarify the roles and responsibilities of the various professionals involved with respect to allegations of abuse or neglect of adults with developmental disabilities; including the responsibilities of medical health officers under the Community Care and Assisted Living Act (CCALA), Section 9(b) and the Adult Care Regulation.

To support the fulfilment of CLBC's responsibilities as a designated agency under Part 3 of the Adult Guardianship Act, and Section 2 of the Designated Agencies Regulation.

DEFINITIONS

Abuse

The deliberate mistreatment of an adult that causes the adult physical, mental, or emotional harm; or damage to or loss of assets. Specific types of abuse include:

Physical Abuse

Any excessive or inappropriate physical force directed at an individual by any person.

Physical Assault

Includes but not limited to slapping, hitting, punching, kicking, stuffing a foreign object such as a cloth in a person's mouth, or the use of unauthorized physical restraint.

Rough Treatment

Includes but not limited to unnecessary force applied during lifts, transfers, personal care routines, or physical interaction that appears painful or uncomfortable for the individual.

Psychosocial or Emotional Abuse

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Any act or treatment that diminishes a person's sense of identity, dignity, or self worth. This includes retaliation.

Verbal or Emotional Abuse

Includes but not limited to yelling, swearing, demeaning or derogatory remarks, name-calling, humiliation, intimidation, taunting/teasing, or excessive and repeated demands.

Sexual Abuse

Any sexual behaviour directed at an individual by a staff member, volunteer or any other person in a position of trust or authority. May also include inappropriate, unsolicited or forced sexual attention from persons connected to an individual but not responsible for their services or supports. Includes but is not limited to sexual exploitation, harassment, use of pornography, or indulging in any form of sexual stimulation without physical contact.

Sexual Assault

Includes but not limited to non-consensual, inappropriate or forced sexual touching, sexual intercourse, or any form of sexual activity that includes physical contact.

Financial Abuse or Exploitation

The misuse of an individual's funds or assets or obtaining the person's property or funds without prior knowledge or consent of the person or his or her legal representative.

Theft

Stealing money or personal property.

Fraud

Deceitful manipulation of finances or assets.

Misuse of Funds

Use of funds or assets in a way that does not honour the best interest of the person served.

Medication Abuse

The misuse of an individual's medication or prescriptions through over-medication (including sedation), withholding medication, or non-compliance with medication refills.

Failure to Respect Personal Dignity and Self-expression

Failing to provide an individual with support for self-expression, intentionally or otherwise. Includes but is not limited to serious emotional and/or physical damage that can occur as a result of a person not having a communication system or his/her communication being ignored in areas such as expressions of illness, pain, or fear.

Personal Humiliation and Privacy

Includes but not limited to leaving a person unclothed in view of others, leaving a person too long after incontinence, or an undue delay in taking a person to the bathroom that can create extreme embarrassment, pain, or anxiety.

Neglect

Any deprivation of an individual's requirements for food, shelter, medical attention or supervision that endangers the safety of the individual. Includes any failure to provide necessary care, assistance, guidance, basic necessities or attention to an adult that causes, or is reasonably likely to cause within a short period of time, the adult serious physical, mental or emotional harm or substantial damage to or loss of assets.

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- Basic necessities include proper nutrition, shelter, or appropriate clothing for weather conditions.
- Care includes personal hygiene, repositioning, and changes of incontinent pads or linen.

Types of Neglect:

Gross Physical Neglect

Includes but not limited to withholding food, personal care, shelter and protection, or medical care.

Gross Psychosocial Neglect

Includes but not limited to lack of attention, isolation, confinement, or the use of unauthorized seclusion or time-outs.

Criminal Negligence

Defined in law and requires legal consultation.

POLICY

Individuals supported by service providers under contract with CLBC have the right to live, work, play, learn and participate in everyday activities in a safe and secure environment, free from abuse or neglect of any kind. To that end, CLBC does not tolerate any form of abuse or neglect, as defined in this policy, of a person receiving supports by any other person. This applies to both licensed and unlicensed homes and services.

CLBC promptly documents and investigates allegations of abuse or neglect in unlicensed resources and cooperates fully with investigations by medical health officers of such allegations in licensed facilities. In both types of situations, CLBC acts promptly on the findings of such investigations, including making changes to contracts with affected service providers or changes to the placement of affected individuals. CLBC works with service providers to prevent abuse or neglect and to ensure any corrective actions recommended by investigations are put into place. Any person who, upon investigation, is found to have inflicted abuse or neglect upon a person served will be subject to consequences up to and including legal action.

The roles and responsibilities of the various parties involved in situations of alleged abuse or neglect of adults with developmental disabilities are as follows:

Police

Physical or sexual assault is a criminal matter and is to be reported to the police. Responsibility for investigating assault whether in a licensed or unlicensed home or community inclusion activity rests with the police who may proceed under the Criminal Code. The police will conduct a criminal investigation and keep both the licensing officer and CLBC informed of the progress of the investigation, including any charges to be laid.

Medical Health Officer (MHO)

In all facilities licensed under the Community Care and Assisted Living Act it is a contravention of Section 10(2) of the Adult Care Regulation to "physically, verbally, or

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mentally abuse a resident." Complaints that a licensed facility is not complying with the regulations are to be referred to the Medical Health Officer. The MHO or, by delegation, a local licensing officer, investigates any complaints that a licensed facility is not complying with the regulations.

The Medical Health Officer manages the investigation, arranges for necessary support services, and ensures the safety and protection of the individual. The Medical Health Officer coordinates the process with all the involved parties, including CLBC, and ensures communication and debriefing as required. The Medical Health Officer may request (in writing) that a CLBC staff member assist in the investigation interview. CLBC can provide this assistance if the designated staff has the necessary skills. Under the Health Act and the CCALA, anyone who is designated to assist in the investigation reports directly to the Medical Health Officer. The MHO may proceed to cancel or suspend a facility's license, make recommendations for change or determine no further action is required.

Service Providers

Service providers who are under contract with CLBC to deliver services to individuals with a developmental disability are required as one of the conditions of their contract to notify CLBC of any critical, serious or unusual incidents involving the individuals served. (See Critical Incidents Policy)

Service providers are responsible for the conduct of the staff of their resources, programs and services.

The Public Guardian and Trustee

In certain circumstances, the Public Trustee may become involved to protect the interests of an 'incapable adult' (legal term) who is subjected to abuse or neglect. For the Public Trustee to become involved, the following criteria need to exist:

- The response to the situation requires a decision about the personal or health care, or placement of the individual, and the person is unable to understand the nature and consequences of the decision, or will not accept the proposed response; and
- The individual has not already appointed a 'Representative', there is no Court appointed 'Committee of Person' for the individual and there is no family member or friend who can apply to be appointed.

If these criteria exist, then the Public Trustee may apply to the court to be appointed Committee of Person for the individual. As Committee of Person, a private individual or the Public Trustee is able to make decisions required on behalf of the adult about personal and health care and placement. Refer to 'Public Guardian and Trustee' and 'Adult Guardianship' policies for guidance relating to referrals to the Public Trustee.

Investigations of Abuse and Neglect (continued)

CLBC

Quality Service Analysts should confirm that any allegations of abuse or neglect in a licensed facility have been reported to the local Medical Health Officer and provide background information and assistance as required. (Refer to Abuse Investigations Protocol, Ministry of Health Services Licensing Branch.) Staff should also confirm that the local police have been advised of any allegations of abuse or neglect, and if requested by the police, assist with investigative interviews whether in licensed or unlicensed homes or community inclusion activities.

It is critical that CLBC staff and agencies defer to the Medical Health Officer and Licensing staff as they have the legal responsibility and authority to structure the investigation and arrange interviews. Any intervention is done at the request of the Licensing officer.

In an unlicensed homes, programs or services, CLBC is responsible for ensuring that the service provider is complying with the terms of the contract. In cases where there are allegations of abuse or neglect, CLBC determines the need to investigate. Investigations require a full inquiry into the allegations of abuse or neglect in order to ensure the safety and well being of the persons being served. A review may result in the modification or cancellation of the contract. CLBC is also responsible for notifying the Public Trustee, if appropriate.

CLBC is responsible for setting performance standards for all contracted supports and services and monitoring the contractual agreement to ensure the quality of service. (See CLBC Monitoring Policy and related program Standards.)

CLBC staff may become aware of abuse or neglect taking place in situations where there is no funding organization or contract (e.g., a person's own home). In these situations, the local Community Planning and Development Centre should be contacted so that a Facilitator may determine need to intervene as a 'designated agency' under the Adult Guardianship Act.

All CLBC Staff

Promptly report any allegation of abuse or neglect in any CLBC-contracted facility or program to the appropriate Quality Service Office.

Are aware of the definitions and signs of abuse and neglect, and of reporting requirements for staff and service providers.

PRACTICE GUIDELINES

Investigations Involving the Police

- CLBC or Licensing investigations use different criteria from a criminal investigation. Criminal charges are based on the balance of probability that criminal conduct has taken place. CLBC's and Licensing's investigations do not depend on whether criminal charges are laid; they proceed according to the criteria of whether the facility has complied with the terms of the contract or licensing requirements (i.e., ensuring the safety and well being of an individual).
- If the police are conducting a criminal investigation, they prefer to make the initial contact with the alleged offender. CLBC staff who are involved in a situation of alleged abuse must not contact the alleged offender without the knowledge and consent of the police. The only exception would be where staff must act on an emergency basis to ensure the safety of an individual.
- Safety of individuals is paramount. If there is a conflict between a police criminal investigation and CLBC's responsibility for an individual's safety, an Analyst should contact the police to develop a strategy to address it.

Investigation of a Licensed Resource

- When an Analyst is made aware of an allegation of abuse or neglect in a licensed facility, they must notify the local Medical Health Officer.
- Analysts may be requested to assist local licensing staff in coordinating an investigation and conducting interviews with individuals. These requests are appropriate but need to be approved by the Quality Service Manager.
- Analysts should ensure that they are familiar with the "Abuse Investigations Protocol" – Ministry of Health Licensing Branch".
- Analysts should also make a determination of whether assistance is required from the Office of the Public Guardian and Trustee where it appears an individual requires specialized support with decision-making.

Investigation of an Unlicensed Resource or Funded Service

- Analysts are responsible for notifying the police if that has not been done and coordinating with a police investigation if one is underway.
- Analysts must advise service providers and families that they are proceeding with an investigation and what it may entail. Families should be supported and kept informed through this process but must not be directly involved with the service provider, staff or in the formal interviews and reviews with individuals and staff.
- Analysts are also responsible for assessing whether a contract should be modified or terminated and reviewing this with the Quality Service Manager.

Investigations of Abuse and Neglect (continued)

- Analysts should review the circumstances of the individuals to determine whether the Office of the Public Guardian and Trustee should be notified with respect to supporting an individual with decision-making.
- In situations involving community programs or community inclusion activities, an Analyst may consider consulting with a Facilitator if there appears to be a need to respond as a ‘designated agency’ under the Adult Guardianship Act.

Timelines

- Although CLBC does not manage either Licensing or Police investigations, every effort should be made to provide timely support to move the process forward. Where Police or Licensing are not conducting or have completed their investigations and CLBC has sole responsibility, an Analyst’s investigation should be completed and the outcome shared with relevant parties within 30 days of receiving the allegation.

Interviewing Persons Served

- Before interviewing persons served, and in conjunction with licensing staff in a licensed facility, a Quality Service Analyst must assess the complexity of the situation and the communication abilities of the individuals involved.
- In difficult or complex cases, in situations of multi- victim complaints, or when individuals have limited capabilities, additional expertise may be required to communicate effectively. Other community professionals may be able to help with the interviews of individuals.
- Facilitators may, in situations where they know an individual, be able to assist with interviewing. They should certainly be contacted where it is clear that the individual’s plan, housing arrangement or daily activities may require significant changes.
- Interviews should always be conducted in an objective and non-accusatory manner. It is generally best practice to have an Analyst who is not directly involved with the resource or the impacted individuals conduct the interviews.

Confidentiality

- In situations where there are overlapping responsibilities among the police, Medical Health Officer, the Public Trustee and CLBC, it is still important to meet confidentiality requirements. However, it is also permissible to provide sufficient information to involved professionals to enable them to take action in the interest of the person supported.
- Staff, who are working under the direction of the Medical Health Officer, are obliged under the Health Act to share information regarding the investigative interviews with the MHO or his delegate.
- Before sharing information about an individual with other involved parties, obtain consent from the person or the person's Representative or Committee.
- Prior to sharing any other information pertinent to the file, case records, etc., Quality Service Analysts are to obtain the consent of the individual or the Representative or Committee of Person for that individual. Information gained from interviews with the alleged victim, the alleged offender, other persons served and other professionals involved in providing services to the alleged victim can be shared with appropriate agencies or professionals to the extent that it was gained exclusively by a CLBC staff person in his or her capacity as an investigator for the Medical Health Officer within the context of the FOIPP Act provisions.
- Ensure the privacy of Third Parties is protected when sharing information with consent.

Investigations of Abuse and Neglect (continued)

Medical Examinations

- In situations of alleged physical or sexual abuse, individuals may require a medical examination. In these cases, seek the consent of the individual and encourage him or her to see a physician. Involve the family or caregiver in arranging for a medical examination of the individual where appropriate.

Shared Children and Adult Resources

- Where a service provider is operating as both a foster home for children and a 'Home Sharing' resource for adults, the Protocol for investigations developed jointly by MCFD and CLBC must be followed in conjunction with whatever processes are initiated under the Home Sharing contract and Standards.

PROCEDURES

Response

- A Quality Service Office must respond immediately to any allegation of abuse or neglect in a licensed or unlicensed home or community inclusion activity funded by CLBC.
- An Analyst should also make a preliminary assessment of whether a Facilitator should respond on behalf of CLBC as a ‘designated agency’. In some situations involving community services, it may be helpful to conduct a joint review of the circumstances leading to the allegation.

Required Action

- Detailed notes must be documented on an individual’s PARIS file.
- Create *a new* ‘General Note’ using a heading of ‘Investigations’. The Analyst should record the following information: details of the original allegation; current health and safety status of the individuals alleged to have been abused or neglected; other individuals/professionals involved such as police and licensing staff; type and location of service or home including whether it is licensed or unlicensed, microboard, etc..
- ‘Notification’ is sent to the Quality Service Manager on PARIS but the manager must also be immediately alerted either by phone or in person.
- The Quality Service Manager assigns an ‘Investigation Work Assignment’ to a Quality Service Analyst but the process should begin immediately.
- The Analyst proceeds with contacting the police and licensing staff as required and proceeds with the investigation as outlined in the ‘Practice Guidelines’.
- The Analyst documents the following in the PARIS Investigation Note:
 - The investigative process followed;
 - The individuals contacted;
 - Details of the interviews;
 - Other agencies involved;
 - Action taken/intervention; and
 - The outcome of the investigation/conclusion.

Analysts ensure that the Critical Incident report is scanned into the individual’s Sharepoint file on PARIS with hard copy on the Resource (RE) or Contract (CT) file.

DOCUMENTATION

- Critical Incident Report (Form)