ADDRESSING MAJOR UNUSUAL INCIDENTS (MUI) / UNUSUAL INCIDENTS (UI) TO ENSURE HEALTH, WELFARE AND CONTINUOUS QUALITY IMPROVEMENT POLICY

(A) Purpose

The purpose of this policy is to establish requirements for addressing major unusual incidents and unusual incidents and implement a continuous quality improvement process in order to prevent or reduce the risk of harm to individuals.

(B) Scope

The scope of this policy applies to the Paulding County Board of Developmental Disabilities and all 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 Ohio Department of Developmental Disabilities (Department) 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.

(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) “Common law employee” has the same meaning as in rule 5123:2-9-32 of the Administrative Code.

(5) "County board" means a county board of developmental disabilities or a regional council of governments (COG) as established under the Revised Code, when it includes at least one county board.

(6) "Department" means the Ohio Department of Developmental Disabilities.

(7) “Developmental Center” means an intermediate care facility for individuals with intellectual disabilities under the managing responsibility of the department

(8) "Developmental disabilities employee" means any of the following:

(a) An employee of the department;

(b) A superintendent, board member, or employee of a county board;

(c) An administrator, board member, or employee of a residential facility licensed under section 5123.19 of the Revised Code

(d) An administrator, board member, or employee of any other public or private provider of services to an individual with a developmental disability; or

(e) An independent provider.

(9) "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 and signature of person completing the incident report.

(10) "Incident tracking system" means the Department's web-based system for reporting major unusual incidents.

(11) "Independent provider" means a self-employed person or a common law employee who provides services for which he or she must be certified in accordance with rules promulgated by the department does not employ, either directly or through contract, anyone else to provide the services.

(12) "Individual" means a person with a developmental disability.

(13) "Individual served" means an individual who receives specialized services.

(14) “Intermediate care facility for individuals with intellectual disabilities” has the same meaning as in section 5124.01 of the Revised Code.

(15) "Investigative agent" means an employee of a county board or a person under contract with a county board who is certified by the department to conduct administrative investigations of major unusual incidents.

(16) "Major unusual incident" means the alleged, suspected, or actual occurrence of an incident when there is reason to believe the incident occurred. There are three categories of major unusual incidents that correspond to three administrative investigation procedures delineated in Appendix A, Appendix B, and Appendix C of rule 5123-17-02.

(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 the Ohio 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 or the PCBDD.

(iv) Misappropriation. "Misappropriation" means depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means prohibited by the Ohio Revised Code.

(v) Neglect. "Neglect" means when there is a duty to do so, failing to provide an individual with medical care, personal care, or other support that consequently results in serious injury or places an individual or another person at risk of serious injury. Serious injury means an injury that results in treatment by a physician, physician assistant, or nurse practitioner.

(vi) Physical abuse. "Physical abuse" means the use of physical force that can reasonably be expected to result in physical harm or serious physical harm to an individual. . Such force may include, but is not limited to, hitting, slapping, pushing, or throwing objects at an individual.

(vii) 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 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.

(viii) Rights code violation. "Rights code violation" means any violation of the rights of a person with a developmental disability that creates a likely risk of harm to the health or welfare of an individual.

(ix) Sexual abuse. "Sexual abuse" means unlawful sexual conduct or sexual contact as those terms are defined in the Ohio Revised Code and the commission of any act prohibited by the Ohio Revised Code (e.g., public indecency, importuning, and voyeurism).

(x) 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 result 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) 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, use of an automated external defibrillator, or use of an epinephrine auto injector usage.

(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.

(v) 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 which means a physical altercation that:

(i) Results in examination or treatment by a physician, physician assistant, or a nurse practitioner: or

(ii) Involves strangulation, a bloody nose, a bloody lip, a black eye, a concussion, or biting which causes breaking of the skin; or

(iii) Results in an individual being arrested, incarcerated, or the subject of criminal charges.

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

(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.

(f) Significant injury. "Significant injury" means an injury to an individual 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 cause.

(c) Category C

(i) Law enforcement. "Law enforcement" means any incident that results in the individual served being tased, arrested, charged, or incarcerated.

(ii) Unanticipated hospitalization. "Unanticipated hospitalization" means any hospital admission or hospital stay over 24 hours that is not pre-scheduled or planned. A hospital admission associated with a planned treatment or pre-exiting condition that is specified in the individual service plan indicating the specific symptoms and criteria that require quire hospitalization need not be reported.

(iii) Unapproved behavioral support. "Unapproved behavioral support" means the use of a a prohibited measure as defined in rule 5123:2-2-06 of the Administrative Code or the use of a restrictive measure implemented without approval of the human rights committee or without informed consent of the individual or the individual's guardian in accordance with rule 5123:2-2-06 of Administrative Code, when use of the prohibited measure or restrictive measure results in risk to the individual's health or wealth. When use of the prohibited measure or restrictive measure does not result in risk to the individual's health or welfare, the incident shall be investigated as an unusual incident.

(17) "Physical Harm" means any injury, illness, or other physiological impairment, regardless of the gravity or duration.

(18) "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.

(19) "Program implementation incident" means an unusual incident involving the failure to carry out a person-centered plan when such failure causes minimal risk or no risk. Examples include, but are not limited to, failing to provide supervision for short periods of time, automobile accidents without harm, and self-reported incidents with minimal risk.

(20) "Provider" means an agency provider or an independent provider.

(21) "Qualified intellectual disability professional" has the same meaning as in 42 C.F.R. 483.430 as in effect on the effective date of this rule.

(22) "Specialized services" means any program or service designed and operated to serve primarily individuals, including a program or service provided by an entity licensed or certified by the department.

(23) "System Issue" means a substantiated major unusual incident attributed to multiple variables.

(24) "Team" means as applicable:

(a) The group of persons chosen by an individual with the core responsibility to support the individual in directing development of his or her individual service plan. The team includes the individual's guardian or adult whom the individual has identified, as applicable, the service and support administrator, direct support staff, providers, licensed or certified professionals, and any other person chosen by the individual to help the individual consider possibilities and make decisions: or

(b) An interdisciplinary team as that term is used in 42 C.F.R. 483.440 as in effect on the effective date of this rule.

(25) "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; medications errors without the likely risk to health and welfare; overnight relocations of an individual due to a fire, natural disaster, or mechanical failure; an incident involving two served that is not a peer-to-peer act major unusual incident; rights code violations or unapproved behavioral without a likely risk to health and welfare; emergency room or urgent care treatment center visits; and program implementation incidents.

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

(D) Reporting requirements

(1) Reports regarding all major unusual incidents involving an individual who resides in an intermediate care facility for individuals with intellectual disabilities 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;

(g) Misappropriation;

(h) Missing individual;

(i) Neglect;

(j) Peer-to-peer act;

(k) Physical abuse;

(l) Prohibited sexual relations;

(m) Sexual abuse; and

(n) Verbal abuse.

(3) Reports regarding the following major unusual incidents shall be filed and the requirements of this rule followed only when the incident occurs in a program operated by a county board or when the individual is being served by a licensed or certified provider:

(a) Medical emergency;

(b) Rights code violation;

(c) Significant injury;

(d) Unanticipated hospitalization; and

(e) Unapproved behavior support.

(4) Immediately upon identification or notification of a major unusual incident, the provider shall take all reasonable measures to ensure the health and welfare of at-risk individuals. The provider and county board shall discuss any disagreements regarding reasonable measures in order to resolve them. If the provider and county board are unable to agree on reasonable measures to ensure the health and welfare of at-risk individuals, the Department shall make the determination. Such measures shall include:

(a) Immediate and ongoing medical attention, as appropriate;

(b) Removal of an employee from direct contact with any individual when the employee is alleged to have been involved in physical abuse or sexual abuse until such time as the provider has reasonably determined that such removal is no longer necessary; and

(c) Other necessary measures to protect the health and welfare of at-risk individuals.

(5) Immediately upon receipt of a report or notification of an allegation of a major unusual incident, the county board shall:

(a) Ensure that all reasonable measures necessary to protect the health and welfare of at-risk individuals have been taken;

(b) Determine if additional measures are needed; and

(c) Notify the department if the circumstances which require a department-directed administrative investigation are present. Such notification shall take place on the first working day the county board becomes aware of the incident.

(6) The provider shall immediately, but no later than four hours after discovery of the incident, notify the county board through means identified by the county board of the following incidents or allegations:

(a) Accidental or suspicious death;

(b) Exploitation;

(c) Misappropriation;

(d) Neglect;

(e) Peer-to-peer act;

(f) Physical abuse;

(g) Prohibited sexual relations;

(h) Sexual abuse;

(i) Verbal abuse; and

(j) When the provider has received an inquiry from the media regarding a major unusual incident.

(7) For all major unusual incidents, all providers shall submit a written incident report to the county board contact or designee no later than three p.m. the next working day following initial knowledge of a potential or determined major unusual incident. The report shall be submitted in a format prescribed by the department.

(8) The county board shall enter preliminary information regarding the incident in the incident tracking system and in the manner prescribed by the department by five p.m. on the first working day following the day the county board receives notification by the provider or otherwise becomes aware of the major unusual incident.

(9) When a provider has placed an employee on leave or otherwise taken protective action pending the outcome of the administrative investigation, the county board or department, as applicable, shall keep the provider apprised of the status of the administrative investigation so that the provider can resume normal operations as soon as possible, consistent with the health and welfare of at-risk individuals. The provider shall notify the county board or department, as applicable, of any changes regarding the protective action.

(10) If the provider is a developmental center, all reports required by this rule shall be made directly to the department.

(11) The county board shall have a system that is available twenty-four hours a day, seven days a week, to receive and respond to all reports required by this rule. The county board shall communicate this system in writing to all individuals receiving services in the county or their guardians as applicable, providers in the county and to the department.

(E) Reporting of alleged criminal acts

(1) The provider shall immediately report to the law enforcement entity having jurisdiction of the location where the incident occurred, any allegation of a criminal act. The provider shall document the time, date, and name of person notified of the alleged criminal act. The county board shall ensure that the notification has been made.

(2) The department shall immediately report to the Ohio State Highway patrol, any allegation of a criminal act occurring at a developmental center. The department shall document the time, date, and name of person notified of the alleged criminal act.

(F) Abused or neglected children

(1) All allegations of abuse or neglect as defined in sections of 2151.03 and 2151.031 of the Ohio Revised Code of an individual under the age of twenty-one years shall be immediately reported to the local public children's services agency. The notification may be made by the provider or the county board. The county board shall ensure that the notification has been made.

(G) Notification requirements for MUIs

(1) The provider shall make the following notifications, as applicable, when the major unusual incident or discovery of the major unusual incident occurs when such provider has responsibility for the individual. The notification shall be made on the same day the major unusual incident or discovery of the major unusual incident occurs and include immediate actions taken.

(a) Guardian or other person whom the individual has identified;

(b) Service and support administrator serving the individual;

(c) Other providers of services as necessary to ensure continuity of care and support for the individual.

(d) Staff or family living at the individual's residence who have responsibility for the individual's care; and

(2) All notifications or efforts to notify shall be documented. The county board shall ensure that all required notifications have been made.

(3) Notification shall not be made:

(a) If the person to be notified is the primary person involved, the spouse of the primary person involved, or the significant other of the primary person involved; or

(b) When such notifications could jeopardize the health and welfare of an individual involved.

(4) Notification to a person is not required when the report comes from such person or in the case of a death when the family is already aware of the death.

(5) In any case where law enforcement has been notified of an alleged criminal act, the department may provide notification of the MUI to any other provider, developmental center, or county board for whom the primary person involved works, for the purpose of ensuring the health and welfare of any at-risk individual. The notified provider or county board shall take such steps necessary to address the health and welfare needs of any at-risk individual and may consult the department in this regard. The department shall inform any notified entity as to whether the incident is substantiated. Providers, developmental centers, or county boards employing a primary person involved shall notify the department when they are aware that the primary person involved works for another provider.

(H) General administrative investigation requirements

(1) Each county board shall employ at least one investigative agent or contract with a person or governmental entity for the services of an investigative agent. An investigative agent shall be certified by the department in accordance with the Ohio Administrative Code.

(2) All major unusual incidents require an administrative investigation meeting the applicable administrative investigation procedure in Appendix A, Appendix B, or Appendix C to this rule unless it is not possible or relevant to the administrative investigation to meet a requirement under this rule, in which case the reason shall be documented. Administrative investigations shall be conducted and reviewed by investigative agents.

(a) The department or county board may elect to follow the administrative investigation procedure for Category A major unusual incidents for any major unusual incident.

(b) Based on the facts discovered during administrative investigation of the major unusual incident, the category may change or additional categories may be added to the record. If a major unusual incident changes category, the reason for the change shall be documented and the new applicable category administrative investigation procedure shall be followed to investigate the major unusual incident.

(c) Major unusual incidents that involve an active criminal investigation may be closed as soon as the county board ensures that the major unusual incident is properly coded, the history of the primary person involved has been reviewed, cause and contributing factors are determined, a finding is made, and prevention measures implemented. Information needed for closure of the major unusual incident may be obtained from the criminal investigation.

(3) County board staff may assist the investigative agent by gathering documents, entering information into the incident tracking system, fulfilling Category C administrative investigation requirements, or performing other administrative or clerical duties that are not specific to the investigative agent role.

(4) Except when law enforcement or the public children's services agency is conducting the investigation, the investigative agent (IA) shall conduct all interviews for major unusual incidents unless the investigative agent determines the need for assistance with interviewing an individual. For an MUI occurring at an intermediate care facility (ICF) for individuals with intellectual disabilities, the investigative agent may utilize interviews conducted by the ICF or conduct his or her own interviews. If the IA determines the information is reliable, the IA may utilize other information received from law enforcement, the public children's services agency, or providers in order to meet the requirements of this rule.

(5) Except when law enforcement or the public children's services agency has been notified and is considering conducting an investigation, the county board shall commence an administrative investigation. If law enforcement or the public children's services agency notifies the county board that it has declined to investigate, the county board shall commence the administrative investigation within a reasonable amount of time based on the initial information received or obtained and consistent with the health and welfare of all at-risk individuals, but no later than twenty-four hours for a major unusual incident in Category A or no later than three working days for a major unusual incident in Category B or Category C.

(6) An intermediate care facility for individuals with intellectual disabilities shall conduct an investigation that complies with applicable federal regulations, including 42 C.F.R. 483.420 as in effect on the effective date of rule 5123-17-02, for any unusual incident or major unusual incident involving a resident of the facility, regardless of where the unusual incident or major unusual incident occurs. The intermediate care facility for individuals with intellectual disabilities shall provide a copy of its full report of an administrative investigation of a major unusual incident to the county board. The Investigative Agent may utilize information from the administrative investigation conducted by the intermediate care facility to meet the requirements of this rule or conduct a separate administrative investigation. The county board shall provide a copy of its full report of the administrative investigation to the intermediate care facility. The department shall resolve any conflicts that arise.

(7) When an agency provider, excluding an intermediate care facility, conducts an internal review of an incident for which a major unusual incident has been filed, the agency provider shall submit the results of its internal review of the incident, including statements and documents, to the county board within fourteen calendar days of the agency provider becoming aware of the incident.

(8) All developmental disabilities employees shall cooperate with administrative investigations conducted by entities authorized to conduct investigations. Providers and county boards shall respond to requests for information within the time frame requested. The time frames identified shall be reasonable.

(9) Except when law enforcement or the public children's service agency is conducting an investigation, the investigative agent shall endeavor to reach a preliminary finding regarding allegations of physical abuse or sexual abuse and notify the individual or individual's guardian and provider of the preliminary finding within 14 working days. When it is not possible for the investigative agent to reach a preliminary finding within 14 working days, he or she shall instead notify the individual or the individual's guardian and provider of the status of the investigation.

(10) The investigative agent shall complete a report of the administrative investigation and submit it for closure in the incident tracking system within thirty working days unless the county board requests and the department grants an extension for good cause. If an extension is granted, the department may require submission of interim reports and may identify alternative actions to assist with the timely conclusion of the report.

(11) The report shall follow the format prescribed by the department. The investigative agent shall include the initial allegation, a list of persons interviewed and documents reviewed, a summary of each interview and document reviewed, and a findings and conclusions section which shall include the cause and contributing factors to the incident and the facts that support the findings and conclusions.

(I) Department directed administrative investigations of major unusual incidents

(1) The department shall conduct the administrative investigation when the major unusual incident includes an allegation against:

(a) The superintendent of a county board or developmental center;

(b) The executive director or equivalent of a regional council of governments;

(c) A management employee who reports directly to the superintendent of the county board, the superintendent of a developmental center, or executive director or equivalent of a regional council of governments;

(d) An investigative agent;

(e) A service and support administrator;

(f) A major unusual incident contact or designee employed by a county board;

(g) A current member of a county board;

(h) A person having any known relationship with any person specified in paragraphs (I)(1)(a) to (I)(1)(g) of this rule when such relationship may present a conflict of interest or the appearance of a conflict of interest; or

(i) An employee of a county board or developmental center when it is alleged that the employee is responsible for an individual's death, has committed sexual abuse, engaged in prohibited sexual activity, or committed physical abuse or neglect resulting in emergency room treatment or hospitalization.

(2) A department-directed administrative investigation or administrative investigation review may be conducted following the receipt of a request from a county board, provider, individual, or guardian if the department determines that there is a reasonable basis for the request.

(3) The department may conduct a review or administrative investigation of any major unusual incident or may request that a review or administrative investigation be conducted by another county board, a regional council of governments, or any other governmental entity authorized to conduct an investigation.

(J) Written summaries of major unusual incidents

(1) No later than five working days following the county board's, developmental center's, or department's recommendation for closure via the incident tracking system, the county board, developmental center or department shall provide a written summary of the administrative investigation of each Category A or Category B major unusual incident, including the allegations, the facts and findings, including as applicable, whether the case was substantiated or unsubstantiated, and preventive measures implemented in response to the major unusual incident to:

(a) The individual, individual's guardian, or other person whom the individual has identified, as applicable; in the case of a peer-to-peer act, both individuals, individuals' guardians, or other persons whom the individuals have identified, as applicable, shall receive the written summary;

(b) The licensed or certified provider and provider at the time of the major unusual incident; and

(c) The individual's service and support administrator and support broker, as applicable.

(2) In the case of an individual's death, the written summary shall be provided to the individual's family only upon request by the individual's family.

(3) The written summary shall not be provided to the primary person involved, the spouse of the primary person involved, or the significant other of the primary person involved.

(4) When the primary person involved is a developmental disabilities employee or a guardian, the county board shall, no later than 5 working days following the recommended closure of a case, make a

reasonable attempt to provide written notice to the primary person involved as to whether the major unusual incident has been substantiated, unsubstantiated/insufficient evidence, or unsubstantiated/unfounded.

(5) If a service and support administrator is not assigned, a county board designee shall be responsible for ensuring the preventive measures are implemented based upon the written summary.

(6) An individual, individual's guardian, other person whom the individual has identified, or provider may dispute the findings by submitting a letter of dispute and supporting documentation to the county board superintendent, or to the director of the department if the department conducted the administrative investigation, within fifteen calendar days following receipt of the findings. An individual may receive assistance from any person selected by the individual to prepare a letter of dispute and provide supporting documentation.

(7) The county board superintendent or his or her designee or the director of the department or his or her designee, as applicable, shall consider the letter of dispute, the supporting documentation, and any other relevant information and issue a determination within thirty calendar days of such submission and take action consistent with such determination, including confirming or modifying the findings or directing that more information be gathered and the findings be reconsidered.

(8) In cases where the letter of dispute has been filed with the county board, the disputant may dispute the final findings made by the county board by filing those findings and any documentation contesting such findings as are disputed with the director of the department within fifteen calendar days of the county board determination. The director shall issue a decision within thirty calendar days

(K) Review, prevention, and closure of MUIs

(1) Agency providers shall implement a written procedure for the internal review of all major unusual incidents and shall be responsible for taking all reasonable steps necessary to prevent the recurrence of major unusual incidents. The written procedure shall require senior management of the agency provider to be informed within two working days following the day staff become aware of a potential or determined major unusual incident involving misappropriation, neglect, physical abuse, or sexual abuse.

(2) Members of an individual's team shall ensure that risks associated with major unusual incidents are addressed in the individual service plan of each individual affected and collaborate on the development of preventive measures to address the causes and contributing factors to the major unusual incident. The team members shall jointly determine what constitutes reasonable steps necessary to prevent the recurrence of major unusual incidents. If there is no service and support administrator, team, qualified intellectual disability professional, or agency provider involved with the individual, a county board designee shall ensure that reasonably possible preventive measures are fully implemented.

(3) The department may review reports submitted by a county board or developmental 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) Death other than accidental or suspicious death

(c) Exploitation;

(d) Medical emergency;

(e) Misappropriation;

(f) Neglect;

(g) Peer-to-peer act;

(h) Physical abuse;

(i) Prohibited sexual relations;

(j) Sexual abuse;

(k)Significant injury when cause is unknown;

(l) Verbal abuse;

(m) Any major unusual incident that is the subject of a director's alert; and

(n) 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) Failure to report;

(c) Law enforcement;

(d) Missing individual;;

(e) Rights code violation;

(f) Significant injury when cause is known;

(g) Unanticipated hospitalization; and

(h) Unapproved behavioral support.

(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 MUI trends and patterns

(1) By January thirty-first of each year, a provider shall conduct an in-depth review and analysis of trends and patterns of major unusual incidents occurring during the preceding calendar year and compile an annual report which contains"

(a) Date of review;

(b) Name of person completing review;

(c) Time period of review;

(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.

(2) A provider other than a county board shall send the annual report to the county board for all programs operated in the county by February 28th of each year. The county board shall review the annual report to ensure that all issues have been reasonably addressed to prevent recurrence of major unusual incidents. The county board shall keep the annual report on file and make it available to the department upon request.

(3) A county boards that provides specialized services shall send the annual report to the department for all programs operated by the county board by February 28th of each year. The department shall review the annual report to ensure that all issues have been reasonably addressed to prevent recurrence of major unusual incidents.

(4) 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 government's 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 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 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.

(5) 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) The provider providing services when an unusual incident occurs shall notify other providers of services as necessary to ensure continuity of care and support for the individual.

(5) Independent providers shall complete an unusual incident report, notify the individual's guardian or other person whom the individual has identified, as applicable, and forward the unusual incident report to the service and support administrator or county board designee on the first working day following the 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 contain only unusual incidents as defined in paragraph (C) (25) of this rule and shall include, but is not limited to, the name of the individual, a brief description of the unusual incident, any injuries, time, date, location, cause and contributing factors, and preventive measures.

(9) Members of an individual’s team shall ensure that risks associated with unusual incidents are addressed in the individual service plan of each individual affected.

(10) A provider shall, upon request by the department or a county board, provide any and all information and documentation regarding an unusual incident and investigation of an unusual incident.

(N) Oversight

(1) The county board shall review, on at least a quarterly basis, a representative sample of provider unusual incident 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.

(4) The department shall review and take any action appropriate when a complaint is received about how an administrative investigation is conducted.

(O) Access to records

(1) Reports made under section 5123.61 of the Ohio Revised Code and this rule are not public records as defined in the Ohio Revised Code. Records may be provided to parties authorized to receive them in accordance with the Ohio 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 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. A provider shall provide confidential information, including the date of birth and social security number, when requested by the department as part of the abuser registry process in accordance with rule 5123:2-17-03 of the Administrative Code.

(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 Ohio 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.

APPENDIX A
ADMINISTRATIVE INVESTIGATION PROCEDURE FOR MAJOR UNUSUAL INCIDENTS IN CATEGORY A

(ACCIDENTAL OR SUSPICIOUS DEATH, EXPLOITATION, FAILURE TO REPORT, MISAPPROPRIATION, NEGLECT, PHYSICAL ABUSE, PROHIBITED SEXUAL RELATIONS, RIGHTS CODE VIOLATION, SEXUAL ABUSE, AND VERBAL ABUSE)

Findings in administrative investigations of major unusual incidents in category A shall be based upon a preponderance of evidence standard. "Preponderance of evidence" means that credible evidence indicates that it is more probable than not that the incident occurred.

There are three possible findings of a category A administrative investigation:

☐ "Substantiated" means there is a preponderance of evidence that the alleged incident occurred.

☐ "Unsubstantiated/insufficient evidence" means there is insufficient evidence to substantiate the allegation. "Insufficient evidence" means there is not a preponderance of evidence to support the allegation or there is conflicting evidence that is inconclusive.

☐ "Unsubstantiated/unfounded" means the allegation is unfounded. "Unfounded" means the evidence supports a finding that the alleged incident did not or could not have occurred.

Steps for Investigating Major Unusual Incidents in Category A:

1. Commence the administrative investigation immediately, or no later than twenty-four hours after discovery of the incident. "Commencing the administrative investigation" means any of the following:
    a. Interviewing the reporter of the incident.
    b. Gathering relevant documents such as nursing notes, progress notes, or incident report
    c. Notifying law enforcement or the public children's services agency and documenting the time, date, and name of the person notified. If law enforcement or the public children's services agency decides not to conduct an investigation, the investigative agent shall commence the administrative investigation.
    d. Initiating interviews with witnesses or victims.
2. Interview the victim no later than three working days following notification of the major unusual incident and document the results. Exceptions to this requirement are when the individual is unable to provide any information or the investigative agent determines that the circumstances warrant interviewing the individual later in the administrative investigation.
3. Visit the scene of the incident.
4. Secure physical evidence. Take photographs of injuries, as applicable. Secure and sketch and/or photograph the scene of the incident. Provide a detailed description of any injury that may have resulted from the incident, including the shape, color, and size.

Take a photograph of any injury that may have resulted from the incident; record the name of the person who took the photograph and the date and time the photograph was taken. Provide a written description of the physical evidence along with the date, time, and location of the gathering of evidence. Photograph and/or describe materials or objects that played a part in the incident. Provide a written description, sketch, or photograph of the area where the incident occurred. Note environmental factors that may have caused or contributed to any injury.

5. Follow-up with law enforcement. Include a copy of the police report, as applicable.
6. Review all relevant documents relating to the primary person involved that form the basis for the reported incident and the relevant documents relating to the individual who is the alleged victim.
7. Interview persons who have relevant information about the incident and document the interviews. Interviews may be documented and statements taken via videotape, audiotape, or other means as appropriate. Gather written statements from all relevant witnesses.
8. Interview medical professionals as to the possible cause/age of the injuries and document the interviews. Include a statement from a qualified medical professional as to whether or not the injury is consistent with the description of the incident, including the apparent age of the injury and probable force necessary to cause the injury. Include a description of treatment received or ordered. Qualified medical professionals include, but are not limited to, physicians, nurses, emergency medical technicians, and therapists.
9. Conduct follow-up interviews if needed.
10. Evaluate all witnesses and documentary evidence in a clear, complete, and non-ambiguous manner.
11. Evaluate the relative credibility of the witnesses. Factors to be considered in judging the credibility of a witness include:
    a. Whether the witness's statements are logical, internally consistent, and consistent with other credible statements and known facts (e.g., does the witness appear to leave out or not know about information that he or she should know about?);
    b. Whether the witness was in a position to hear or see what is claimed;
    c. Whether the witness has a history of being reliable and honest when reporting incidents or making statements regarding incidents;
    d. Whether the witness has a special interest or motive for making a false statement
    e. (e.g., is there a possible bias of the witness?);
    f. The relevant disciplinary history of the primary person involved, such as involvement in similar past allegations;
    g. The witness's demeanor during the interview (e.g., did the witness appear evasive or not forthcoming?); and
    h. Whether the witness did other things that might affect his or her credibility.
12. Complete a written report that:
    a. Includes a clear statement of the allegation;
    b. Includes a succinct and well-reasoned analysis of the evidence;
    c. Includes a clearly stated conclusion that identifies which allegations were and were not substantiated;

d. Identifies the causes and contributing factors to the incident; and
e. Addresses preventive measures that have been implemented.

Incident Specific Requirements – Accidental or Suspicious Death

1. Provide a statement explaining why the death is considered accidental or suspicious.
2. Document relevant medical interventions, treatment, or care received by the individual.
3. Include a copy of the police and/or coroner's investigation report.
4. Complete the required questions following deaths as specified by the department.

Incident Specific Requirements – Exploitation or Misappropriation

When five or more people had access to the individual's property and the value of the property is fifty dollars or less, detailed questionnaires may be substituted for initial interviews. Follow-up interviews shall be conducted as indicated based on information included or omitted in responses to the detailed questionnaires.

1. Document that there was an unlawful or improper act of using an individual or an individual's resources for monetary or personal benefit or gain of the primary person involved.
2. Document the depriving, defrauding, or otherwise obtaining the real or personal property of an individual by means prohibited by the Revised Code. Include any indication of the intent of the primary person involved.
3. Describe any items taken from the individual or anything received by the primary person involved as a result of the exploitation or misappropriation.
4. Gather copies of all financial records related to the incident, including cancelled checks.
5. Document the time, date, and officer's name for law enforcement agency notification.
6. Include an indication of whether or not the individual may have consented to the taking of his or her property or to the exploitation.
7. Verify that the property belonged to the individual.
8. Provide a description of how the improper act occurred.
9. Obtain the outcome of a criminal case, if resolved.

Incident Specific Requirements – Failure to Report

1. Provide a statement indicating the abuse, neglect, exploitation, or misappropriation the primary person involved did not report, including when and how it occurred.
2. Provide a statement indicating that the primary person involved was aware of the abuse, neglect, exploitation, or misappropriation, including when and how the primary person involved became aware of the abuse, neglect, exploitation, or misappropriation.
3. Provide a statement of how the failure to report the abuse, neglect, exploitation, or misappropriation by the primary person involved caused physical harm or a substantial risk of harm to the individual; be specific regarding any wound, injury, or increased risk of harm to which the individual was exposed as a result of the failure to report.
4. Explain why the primary person involved knew or should have known that the failure to report would result in a substantial risk of harm to the individual.
5. Provide a written description of any injury.
6. Provide an explanation from the primary person involved of why he or she failed to report.

7. Provide a statement of any reasons or circumstances explaining the failure to report by the primary person involved.

Incident Specific Requirements – Neglect

1. Verify and document the duty of the primary person involved to provide care to the individual.
2. Document the medical care, personal care, or other support required but not provided by the primary person involved that consequently resulted in serious injury or placed the individual or another person at risk of serious injury. Include the time period of the alleged neglect.
3. Verify and document the primary person involved had knowledge that the withheld medical care, personal care, or other support was needed by the individual. Such documentation might include the individual's plan of care, medical information available to the primary person involved, statements made by others to the primary person involved, statements made by the primary person involved, or training received by the primary person involved.
4. Verify that the action or inaction of the primary person involved resulted in serious injury or placed the individual or another person at risk of serious injury.
5. Specifically describe the serious injury or risk of serious injury caused by the action or inaction by the primary person involved.

Incident Specific Requirements – Physical Abuse

1. Provide written statements that include a description of the amount of physical force used which may include, but is not limited to, speed of the force, range of motion, open or closed hand (fist), the sound made by impact, texture of surface if the individual was dragged or pulled, and the distance the individual was dragged, pulled, or shoved.
2. Provide a description of the individual's reaction to the physical force used (e.g., the individual fell backward or the individual's head or other body part jerked backward) and any indication of pain or discomfort experienced by the individual which may include words, vocalizations, or body movements.
3. Include comments made during the incident by the primary person involved.
4. Document how the harm to the individual is linked to the physical force used by the primary person involved.

Incident Specific Requirements – Prohibited Sexual Relations

1. Describe and document the type of sexual conduct or contact.
2. Document whether or not the incident was consensual. (Note: Consent does not
3. Excuse sexual contact by a caregiver with an individual when the caregiver is paid to care for the individual.)
4. Verify and document that the primary person involved was providing paid care to the individual.
5. Verify and document that the primary person involved was not married to the individual.
6. Provide a statement of any known, long-term, personal relationship the primary person involved (PPI) has with the individual or other circumstances relevant to the sexual contact or conduct.

Incident Specific Requirements – Rights Code Violations

1. Indicate the specific right or rights of the individual violated by the primary person involved and describe how each right was violated, including any information or circumstances relevant to the incident.
2. Describe the harm or risk of harm caused to the individual as a result of the rights code violation by the primary person involved.

Incident Specific Requirements – Sexual Abuse

1. Document that the sexual activity was unwanted or the individual was unwilling.
2. Document that the primary person involved engaged in importuning, voyeurism, public indecency, pandering, or prostitution with regard to an individual.
3. Document the individual's capacity to consent.
4. Document any touching of an erogenous zone for the apparent sexual arousal or gratification of either person.
5. Describe the sexual conduct/contact, including any penetration of the individual.
6. Include the results of any physical assessment conducted by a medical professional.
7. Include the results of any human sexuality assessment.
8. Provide a copy of the police report.
9. Include all medical information related to the incident.
10. Document the date, time, and officer's name for law enforcement agency notification.

Incident Specific Requirements – Verbal Abuse

1. Provide a statement of the exact words or gestures used to threaten, coerce, intimidate, harass, or humiliate the individual and the context in which these were used.
2. Provide a description of the reaction of the individual to the words or gestures, including any words or vocalizations.
3. Describe the volume used, including such description as loud, soft, and tone of voice, and where the primary person involved was located in relation to the individual.
4. Describe the past history of verbal interactions between the primary person involved and the individual.

APPENDIX B

ADMINISTRATIVE INVESTIGATION PROCEDURE FOR MAJOR UNUSUAL INCIDENTS IN CATEGORY B

(ATTEMPTED SUICIDE, DEATH OTHER THAN ACCIDENTAL OR SUSPICIOUS DEATH, MEDICAL EMERGENCY, MISSING INDIVIDUAL, PEER-TO-PEER ACT, AND SIGNIFICANT INJURY)

Steps for Investigating Major Unusual Incidents in Category B:

1. Determine that the major unusual incident is properly coded.
2. Review relevant documents which may include recent medical history, individual service plan, progress notes, nursing notes, hospital records, police report, and behavior support documentation.

3. Interview witnesses as necessary to determine the cause or resolve conflicting information.
4. Interview others with relevant information as necessary.
5. Maintain a summary of each interview conducted.
6. Identify the causes and contributing factors to the incident.
7. Review past related incidents as appropriate, including but not limited to, prior immediate health and welfare measures taken and other preventive measures.
8. Verify that preventive measures have been implemented.

Incident Specific Requirements – Medical Emergency Involving Choking

1. Provide a detailed description of the choking incident including the type, texture, dimension, consistency, preparation, and amount of the item or items upon which the individual choked.
2. Determine the source of the item or items and how obtained by the individual.
3. Provide a detailed description of the individual's dietary requirements, supervision, and meal preparation supports.
4. Provide a detailed accounting of what happened before, during, and after the choking incident.
5. Describe any prior history of choking or prevention measures implemented.

Incident Specific Requirements – Peer-to-Peer Physical Act, Peer-to-Peer Sexual Act, or Peer-to-Peer Verbal Act

1. Interview the individuals within three calendar days.
2. Review the individuals' level of supervision and support.
3. Provide a detailed description of the incident.

Incident Specific Requirements – Significant Injury Involving a Fall

1. Provide a detailed description of the individual's requirements, if any, for supervision, supports, or aid at the time of the incident.
2. Document the individual's past history of falls.
3. Provide a detailed accounting of the time period before, during, and after the fall and include, if any, relevant environmental factors that may have contributed to the incident.

APPENDIX C

ADMINISTRATIVE INVESTIGATION PROCEDURE FOR MAJOR UNUSUAL INCIDENTS IN CATEGORY C

(LAW ENFORCEMENT, UNANTICIPATED HOSPITALIZATION, AND UNAPPROVED BEHAVIORAL SUPPORT)

The following information shall be collected for major unusual incidents in Category C: The investigative agent shall review the information to ensure that the information is complete and the major unusual incident is properly coded. Information collected does not take the place of an incident report.

Incident Specific Requirements – Law Enforcement

1. Provide name, title, and phone number of person reporting to the county board.
2. Provide prior history of law enforcement involvement.
3. Describe individual's activities prior to the incident (e.g., followed normal routine).
4. Record the individual's supervision level and whether the supervision level was met.
5. Describe immediate actions taken to ensure health and welfare (e.g., alerting jail of medical concerns and dietary restrictions or ensuring medications are available to individual).
6. Describe the incident in detail.
7. Describe injuries, if any, to the individual or to the individual's victim.
8. Include outcome of court hearing.
9. Identify cause and contributing factors.
10. Verify that preventive measures have been implemented.

Incident Specific Requirements – Unanticipated Hospitalization

1. Provide name, title, and phone number of person reporting to the county board.
2. Provide list of documents reviewed.
3. Address individual's medical history (e.g., recent similar illnesses or chronic/acute conditions).
4. Describe individual's health during prior seventy-two hours.
5. Document date and reason for most recent prior hospitalization.
6. Indicate if the symptoms were addressed in a timely manner, and if not, explain why.
7. Describe incident.
8. Include diagnosis, discharge summary, and follow-up appointment.
9. Identify cause and contributing factors.
10. If individual had the flu or pneumonia, indicate whether he or she received a flu shot or pneumonia vaccine.
11. Verify that preventive measures have been implemented.

Incident Specific Requirements – Unapproved Behavioral Support

1. Provide name, title, and phone number of person reporting to the county board.
2. Indicate whether the individual has a behavioral support strategy.
3. Describe what happened prior to the incident; develop a timeline.
4. Describe the intervention used.
5. Indicate whether the individual was injured and if excessive force was used.
6. Explain the health and welfare risk.
7. Document how long the unapproved behavioral support lasted.
8. Describe what, if any, other measures were taken first.
9. Identify cause and contributing factors.
10. Verify that preventive measures have been implemented.

_____ _____

Debra Guilford, PCBDD Superintendent Date Approved