

Quality of Care and Departmental Oversight Testimony  
Presented to Mental Health Oversight Committee  
Stuart Schurr, Deputy Commissioner, DAIL  
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**What Does DAIL consider an “adverse” event?**

The definition of an “adverse” event depends upon the context. For example, the *Agency of Human Services Department of Mental Health (DMH) and Department of Disabilities, Aging and Independent Living (DAIL) Critical Incident Reporting Requirements* set forth the guidelines to be followed by designated agencies (DAs) and specialized service agencies (SSAs) concerning incidents involving individuals served by the agencies. The guidelines, which are provided to the DA/SSAs, describe the information that DAIL and DMH need to carry out their monitoring and oversight responsibilities. The reports submitted are methods of documenting, evaluating and monitoring certain serious occurrences and ensuring that the information is communicated.

Incidents to be reported to DAIL must be determined to be “serious” or “severe” by the DA/SSA and include the following incident types:

- Suspected abuse, neglect or exploitation and prohibitive practices (e.g., corporal punishment, seclusion, restriction of contact with others, unauthorized use of restraints)
- A current, serious, alleged or suspected illegal act
- A life threatening medical emergency for which death would likely result without evaluation and treatment
- Missing person
- Natural death
- Any incident likely to result in attracting negative public attention
- Any seclusion or restraint, even if part of a documented service plan, unless time-limited for medical purposes and done in a manner consistent with *DS Behavior Support Guidelines* and with proper documentation
- Suicide attempt
- Untimely or suspicious death
- Any of the above actions by a paid staff/provider or worker

In addition, the DA/SSA is a mandated reporter of alleged or suspected abuse, neglect or exploitation, pursuant to 33 V.S.A. § 6903. Written documentation must be submitted to DAIL within 48 hours. The DA/SSA must inform all guardians (public or private) within 24 hours of the incident, and the guidelines require DAIL and DMH to confirm mandated reporting with APS or DCF.

The federal and state licensing and certification regulations generally do not use the term “critical incident” or “adverse” event. The State of Vermont Residential Care Homes, Nursing Homes and Therapeutic Community Residences Regulations, however, require certain events to be reported to the Division of Licensing and Protection. For example,

- **Nursing Homes** are required to report fires, untimely deaths, unexplained absences of residents, and physical plant system breakdowns that last for more than 4 hours.
- **Residential Care Homes** are required to report fires, untimely deaths, unexplained absences of residents lasting longer than 12 hours, and resident injury or death following the use of mechanical restraint.
- **Therapeutic Community Residences** are required to report fires, reports or incidents of abuse, neglect or exploitation, and all deaths.

The Centers for Medicare and Medicaid Services (CMS) requires that:

- **Acute care hospitals** assure that any incidents of abuse, neglect or harassment are reported and analyzed, and the appropriate corrective, remedial or disciplinary action occurs, in accordance with applicable local, State, or federal law.
- **Critical Access Hospitals (CAHs)** report all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property involving Swing Bed patients to the State Survey Agency.
- **Nursing homes** ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency).

The Vermont Department of Health is the state authority over hospitals. DAIL's Division of Licensing and Protection (DLP) has no independent regulatory authority over hospitals. Pursuant to the terms of an Interagency Agreement between VDH and DAIL, events which give rise to special investigations include those involving death or serious resulting injury from accident; alleged abuse, neglect or exploitation; and medication error.

### **What Information Concerning "Adverse" Events May Be Disclosed?**

Federal and state law dictates what information may be disclosed. 42 C.F.R. Part 401, State Operations Manual (SOM) §§ 3300 through 3320, and SOM §§ 7900 through 7907 reference CMS guidance about what documents may be released by DLP.

- **SOM §3308A: Information *Disclosable* to Public Under CMS Rules That May Be Disclosed Directly by the State Agency (Rev. 1, 05-21-04)**
  - A facility does or does not participate in the Medicare/Medicaid/CLIA program;
  - The official Medicare/Medicaid/CLIA report of a survey, *except* to the extent that it contains:
    - The name of any patient;
    - Medical information about any identifiable patient
    - The identity of a complainant;
    - The address of anyone other than an owner of the facility; or
    - Information which could be defamatory toward any identifiable person.

- Citations of deficiencies that have been conveyed to the provider following a survey, except to the extent the report contains any of the identifiable information listed above. The State Agency (SA) redacts this information prior to release of the statement of deficiencies;
  - Plan of Correction (PoC) and pertinent comments submitted by the provider relating to Medicare/Medicaid/CLIA deficiencies cited following a survey, except to the extent the PoC or comments contain any of the identifiable information listed above. The SA redacts this information prior to release of the PoC;
  - Official notices of involuntary provider termination;
  - Reports and information about a laboratory's performance in proficiency testing programs;
  - The CMS manuals distributed to the SAs, intermediaries, carriers, providers, or suppliers; and
  - Statistical data on provider characteristics that do not identify any specific provider or individual.
- Section 1106 of the Social Security Act (the Act) prohibits disclosure of any file, record, report, or other writing, or any information obtained at any time by or from the Secretary or an office or employee of DHHS in the course of discharging his duties under the Act, except as prescribed by regulations.

Procedurally, pursuant to its federal authority, DLP conducts the required survey process depending on the provider type and whether or not the activity is a full survey or a complaint investigation. A statement of deficiencies is prepared and sent to the provider. If deficiencies are cited, a plan of correction is requested. Once the plan of correction is accepted, the deficiency statement and plan of correction are placed on the DLP website.

State law provides additional guidance to DAIL concerning what information may and may not be disclosed. For example:

- *Abuse, Neglect and Exploitation*- Information obtained through reports and investigations shall remain confidential and shall not be disclosed absent a court order. The investigative report and relevant information may be disclosed to certain individuals and entities under limited circumstances. 33 V.S.A. § 6911.
- *Regulation of Long-Term Care Facilities*-Information received by the licensing agency through filed reports, inspection, or as otherwise authorized by this chapter, except information that pertains to unsubstantiated complaints or the identity of residents and complainants, shall be made available to the public. 33 V.S.A. § 7112.
- *Licensing of Hospitals*-Information received by the licensing agency through filed reports, inspection or as otherwise authorized under this law, shall not be disclosed publicly in such a manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure. 18 V.S.A. § 1910.
- *Developmental Disabilities Act*-Every person with a developmental disability who receives services has the right to confidentiality. 18 V.S.A. § 8728.

- *Mental Health*-All reports directly or indirectly identifying an individual whose hospitalization or care is provided shall be kept confidential and shall not be disclosed without written consent or court order; however, nothing precludes disclosure of information concerning medical condition to the individual's family, clergy, physician, attorney, health care agent, or one authorized by a durable power of attorney for health care. 18 V.S.A. § 7103.

### **Describe DAIL's Oversight Role in Assuring Quality and Consistency of Care**

- Oversight role with respect to facilities licensed by DLP (e.g., nursing homes, residential care homes, therapeutic community residences)

In addition to licensing facilities, DLP ensures that the facilities adhere to the quality of care standards set forth in the Department's regulations. For example, the *Licensing and Operating Rules for Nursing Homes* require that facilities maintain a quality assessment and assurance committee to meet and develop appropriate plans of action to correct identified quality deficiencies. DLP conducts surveys and responds to complaints and if, as a result of an inspection or investigation, DLP determines that a condition in a facility violates a rule or statutory provision, it will issue a notice of violation, may require corrective action, and may impose penalties (e.g., suspension of admissions, receivership, modification, suspension, nonrenewal or revocation of license, and civil money penalties).

- Oversight role with respect to Vermont hospitals

DLP has no independent regulatory authority over hospitals. CMS is the federal authority. The Vermont Department of Health (VDH) is the state authority.

*Surveys*-Pursuant to the terms of an interagency agreement between the VDH and DAIL, DAIL ensures that all Vermont hospitals receive a comprehensive on-site survey, and, where quality issues are identified, staff re-visits the facility to determine if regulatory violations have been corrected. CMS Interpretive Guidelines and Survey Procedures are used for all Condition of Participation (COP)-related surveys/investigations. AHS Survey Guidelines are used for Vermont-specific regulations not covered, or with a higher standard of performance than CMS. These guidelines are distributed to all hospitals. All survey reports, PoCs and related correspondence are provided to VDH.

*Complaints and investigations*-DLP investigates complaints. A log consisting of all complaints received, action taken and resolution is maintained and is accessible by VDH. Hospitals receive reports of all investigations done on site, as well as all complaints received and action taken. Results of surveys and substantiated complaint investigations authorized by CMS are public information; information received

through surveys, complaints and investigations under the Vermont hospital licensing statute, 18 V.S.A. § 1910, are exempt from public disclosure.

Failure to substantially meet one or more Conditions (i.e., the provider is limited in its capacity to furnish services at an adequate level or quality) is a cause for termination of participation. CMS Regional Office sends an official termination notice to the provider, the public, and the State Medicaid Agency. Notices must be made at least 15 calendar days before the effective date of termination.

Thank you for the opportunity to provide this testimony. Please do not hesitate to communicate with me if you require additional information or if you have any questions, comments or concerns.