

1106.0 DHHS CLIENT INJURY OR DEATH REVIEW POLICY

1106.1.0 Purpose

This policy establishes a review procedure for DHHS unexpected DHHS client deaths that occur while the client is receiving direct personal services that are provided by DHHS, by a DHHS agent, or under a care plan subject to DHHS-approval. This policy supplements, is subordinate to, and does not supplant, any similar policy or rule adopted before November 1, 2006, and any more specific similar policy or rule adopted after November 1, 2006.

1106.2.0 Definitions

- 1106.2.1 DHHS agent means an entity that contracts with DHHS to provide care to a DHHS client that otherwise would be provided directly by DHHS. Examples of DHHS agents are foster parents and entities that operate the Alexander Youth Services Center.
- 1106.2.2 Care plan subject to DHHS approval means Developmental Disabilities Medicaid waiver and similar care plans but does not include any medical necessity or utilization control approvals required by the Division of Medical Services for Medicaid prior authorization.
- 1106.2.3 Client: For purposes of this policy, “client” is a person who is eligible for and receiving direct personal services from DHHS or a DHHS contractor.
- 1106.2.4 Direct personal services: For purposes of this policy, “direct personal services” means protective services, custodial services, child care, and medical assistance (as defined in the State Medicaid Plan and Medicaid waivers) provided by DHHS or a DHHS agent.
- 1106.2.5 Involved Division means a division listed in paragraph II (a) (4) that is not the primary division.
- 1106.2.6 Primary Division means, in order of rank, the division: (A) having custody; (B) with authority to approve or disapprove a care plan for direct personal services; (C) that licensed or certified the provider; and (D) that funded, in whole or in part, the direct personal services.
- 1106.2.7 Unexpected death means death that occurs accidentally, or as a result of an undiagnosed condition. Unexpected death does not include death that is medically determined to have resulted solely from a diagnosed degenerative condition or similar circumstance.
- 1106.2.8 “While the client is receiving services” means that the client is or should be under the control, supervision, or monitoring of a DHHS employee or agent.

1106.3.0 Division Contact

On or before December 1, 2006, the DHHS Divisions of Aging and Adult Services; Behavioral Health, Child Care and Early Childhood Education, Children and Family Services, Developmental Disabilities Services, Youth Services, and Medical Services shall designate a staff member who will be that division's point of contact under this policy (see Attachment A: Division Contact List). Each division named above shall identify its contact to the others and shall inform the other divisions of any contact changes. If the contact is unknown, communication under this policy shall be through the division director.

1106.4.0 Reporting

In addition to any other required reporting, all employees of primary and involved divisions must immediately notify their division contact of unexpected DHHS client deaths that occur while the client is receiving direct personal services as defined above. The primary division contact must assure that all involved division contacts are notified and that a copy of all relevant information that may be available from any division is compiled and maintained in the primary division's investigation file.

1106.5.0 Investigation:

1106.5.1 The primary division's contact shall, in cooperation with involved divisions through their division contacts, investigate, or supervise an investigation, of unexpected DHHS deaths that occur while the client is receiving direct personal services provided or funded by DHHS in whole or in part. Each investigation shall begin within 2 business days of the occurrence.

1106.5.2 Each investigation shall begin by requesting a written report of the facts and circumstances of the occurrence from the client's provider or providers, and with a review of all documents in the possession of the department relevant to the client's condition, including medical diagnoses and all prescriptions, treatment orders, and care plans;

1106.5.3 If documents in the possession of the department are not sufficient to ascertain the client's condition, medical diagnoses, prescriptions, treatment orders, and care plans on the date of the occurrence, additional documentation shall be obtained from the provider or providers who delivered direct personal services. If a provider asserts that it cannot obtain some or all of the needed documentation the primary division contact will ask the provider to state in writing the reasons that it could not obtain the documentation. Upon receiving the written statement the primary division contact will ask the Office of Chief Counsel:

A. how to obtain the needed information; and

- B. whether the provider is in violation of any law, policy, or contract provision.
- C. Within 5 business days of the occurrence the primary division contact shall ascertain the facts and circumstances of the occurrence.
- D. If in the course of investigating an unexpected client death, a law enforcement agency asks the primary division contact to delay interviewing a potential witness, the primary division shall comply with the request and ask the law enforcement agency to set a date that the agency investigation may resume.

1106.6.0 **Determination, Report, and Recommendation:**

1106.6.1 Acting in cooperation with all involved divisions the primary division contact shall prepare a report the investigation and furnish a copy of the report to the primary division director, contacts of involved divisions, the DHHS client advocate, and OCC. The report shall be provided within 30 days of the occurrence unless more time is required due to circumstances outside the department's control, for example, if an autopsy report is needed or law enforcement has asked that the investigation be delayed.

1106.6.2 To the extent possible the report shall state whether the quality, quantity, or both, of direct personal services may have contributed to or failed to prevent or ameliorate the occurrence. If direct personal services are implicated in the occurrence the report shall explain the implications and assess whether any applicable laws, policies, or professional standards were violated.

1106.6.3 The report shall recommend whether:

- A. adverse action should be taken against any DHHS employee or agent; and
- B. amendments to laws, policies, or agency practices would lessen the risk of a similar future occurrence.

A copy of the report shall be furnished to the directors of all involved divisions, the DHHS client advocate, and OCC. Nothing in this policy is intended to limit or alter supervisory responsibility and authority in connection with staff management and discipline.

1106.7.0 Follow-up

Within 60 days of the date of the Report and Recommendation the primary division contact, in coordination with other involved divisions, shall report the status of recommended actions to the directors of all involved divisions the DHHS client advocate, and OCC. If any involved division is dissatisfied with any part of

the Report and Recommendation it may file comments which shall be attached to the Report and Recommendation.

Originating Section/Division Contact:

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