



To: Superintendents of County Board of MRDD
Superintendents of Developmental Centers
Investigative Agents and DC Investigators
All Providers

From: Christine M. Oliver, Deputy Director
Division of Legal and MUI Services

Date: September 14, 2004

Re: Failure to Report - Questions and Answers

The purpose of this information notice is to explain *Failure to Report* definitions, how they are to be reported, how they are to be investigated and when notifications are needed to law enforcement.

1. What is the definition of Failure to Report?

Answer: The general definition of failure to report is included in *ORC 5123.61*. Any person considered a required reporter having reason to believe that a person with MRDD has suffered or faces a substantial risk of suffering any wound, injury, disability or condition of such a nature as to reasonably indicate abuse or neglect of that person, shall immediately report to the entity specified.

The criminal aspect of a failure to report the above is included in *ORC 5123.99(B)*. It includes three categories of failure to report:

- A) When the required reporter fails to report under the standard above (see *ORC 5123.61(C)*).
- B) When a physician performing services fails to report (see *ORC 5123.51(E)*).
- C) When the county board superintendent or designee of the county board fails to notify law enforcement of an incident that may constitute a crime (see *ORC 5123.51(G)(3)*).

The failure to report is a 4th degree misdemeanor, unless the abuse or neglect not reported is a felony, then the charge would be a 2nd degree misdemeanor.

The Registry standard for failure to report is included in *ORC 5123.51(C)(3)(a)(vii)*. It is when the MR/DD employee unreasonably failed to make a report pursuant to *ORC 5123.61* when the employee knew or should have known that the failure would result in a substantial risk of harm to an individual with MR/DD.

2. How do I file a Failure to Report case on ITS?

Answer: Failure to report is a separate category on ITS. It must be linked to an MUI of abuse or neglect. A field is provided on ITS for the failure to report category that requires you to add the abuse or neglect incident number.

A failure to report is filed when one of the following elements has been met:

- A) An individual has suffered any wound, injury or disability or condition of such a nature as to reasonably indicate abuse or neglect of that person.

Or

- B) An individual faces a substantial risk of suffering any wound, injury or disability or condition of such a nature as to reasonably indicate abuse or neglect of that person.

3. When do I report?

Answer: A failure to report is to be reported when there is *knowledge* or *suspicion* that the elements listed in # 2 above exist. The discovery date for failure to report is when you have knowledge or suspicion. You should list the same incident date as the abuse or neglect MUI. A failure to report is filed on each PPI separately.

4. How do I investigate the Failure to Report MUI?

Answer: Failure to report is a protocol category case, and needs to follow the protocol attached to the MUI Rule. It will likely fit the separate (conflict) investigation category where the department is called to investigate. Failure to report requires a finding of substantiation or unsubstantiation.

5. When do I notify law enforcement?

Answer: A) When any person considered a required reporter, having reason to believe that a person with MRDD has suffered or faces a substantial risk of suffering any wound, injury, disability or condition of such a nature as to reasonably indicate abuse or neglect of that person, **does not** immediately report to the entity specified.

B) When a ***physician performing services*** as a member of the staff of a hospital or similar institution has reason to believe that a person with mental retardation or developmental disability has suffered injury, abuse or physical neglect, the physician shall notify the person in charge of the investigation or that person's designated delegate, who shall make the necessary reports.

C) When a county board of mental retardation and developmental disabilities receives a report under this section that includes an allegation of action or inaction that may constitute a crime under federal law or the law of this state. ***The superintendent of a county board*** or an individual the superintendent designates under division (H) of this section shall notify the law enforcement agency. The superintendent or individual shall notify the department of mental retardation and developmental disabilities when it receives any report under this section.

6. Is there an order in which the MUIs have to be closed?

Answer: No, there may be times in which the failure to report MUI will be open for a shorter or longer time than the abuse/neglect MUI to which it is linked.

7. Is it possible to substantiate the failure to report an MUI for Registry purposes when the Abuse/Neglect MUI is unsubstantiated?

Answer: It would be highly unlikely for a report of abuse/neglect to be unsubstantiated and the failure to report be substantiated.

The standard for failure to report includes unreasonably failing to report , which would result in a substantiated risk of harm.

The investigation would need to show a substantial risk of harm, which most likely would be a substantiated case of abuse/neglect.

This information notice is provided to raise awareness of SB 178 requirements and should not be considered legal advice. Readers are encouraged to contact your legal counsel for specific advice.

c: Distribution List