

## **Attachment B**

### **Complaint and Incident Requirements for Clients Discharged from Fairview Developmental Center**

Throughout the term of this agreement, the California Department of Developmental Services (CDDS) will ensure that oversight of complaints and incidents involving Fairview Developmental Center (FDC) clients (hereinafter referred to as “clients”) transitioned into Home and Community-Based Services (HCBS) Waiver programs is implemented in accordance with this Attachment and to verify; (1) that special incidents (complaints and incidents) have been reported and investigated within the appropriate timeframes and in accordance with the section B of this Attachment; and (2) that appropriate action is taken to prevent or reduce similar occurrences in the future.

The requirements in this Attachment B are in addition to, and do not supersede, any obligations under applicable laws, regulations, and requirements, including without limitation obligations under the Medicaid Waiver programs.

The requirements set forth in Welfare and Institutions Code, California Code of Regulations and the stipulations in this settlement agreement ensure that comprehensive oversight is maintained throughout the entire transition process, from the moment a client is identified for transition to the date the client is placed in a community living arrangement, and thereafter.

Prior to transition, an Individual Program Plan (IPP) is developed through a person-centered planning approach that includes participation from developmental center staff knowledgeable about the services and support needs of the client, regional resource development project (RRDP) staff, regional center staff, the client and his/her parents, conservator, legal guardian, or authorized representatives.

Community service oversight is multi-faceted to ensure quality of life goals and outcomes are achieved and the client’s health and safety is protected. Once a client has transitioned to a community living arrangement, the developmental center, regional center, California Department of Developmental Services (CDDS), and California Department of Social Services (CDSS), if applicable, conduct monitoring and evaluation visits to the residential setting in which the client resides. Beginning with transition, the RRDP conducts monitoring visits at residential settings after five days, 30 days, 90 days, 180 days, and 360 days. Visits may be scheduled or unannounced, and depending on the residence type, occur, at a minimum, monthly, quarterly, or as needed or as specified in the client’s IPP.

Throughout the entire transition process, and ongoing, the client’s parents, conservator, legal guardian, or authorized representative are encouraged to work jointly with the developmental center, RRDP and regional center on all transition activities to ensure satisfaction with the community living arrangement.

In addition, the success of placements is assessed through several processes, including:

- Regional center service coordinators review client IPPs to determine if personal objectives and health and medical needs are being met.

- The California State Council on Developmental Disabilities utilizes National Core Indicators (NCI) assessment surveys to gather data on client and family satisfaction, quality of services, and personal results for every client who has transitioned into the community.
- CDDS uses a contractor to provide analytical support and semi-annual “Risk Management” reports on adverse events for clients who have transitioned into the community by looking at changes in residential settings, changes in skills of daily living, challenging behaviors and personal outcomes, and the number and rate of reportable incidents.
- A Quality Management Advisory Group (QMAG), represented by clients from the developmental center, parents and family members, regional centers, CSCDD staff and Disability Rights California staff, is assembled for each developmental center closure to guide CDDS and regional centers in monitoring the quality of services based upon findings from data collected by NCI surveys and risk management reports.

The combination of transition planning and review meetings using a person-centered focus prior to community placement, and the post-move monitoring activities involving multiple parties after community placement, ensure that a dynamic process is in place for monitoring client goals and outcomes in accordance with applicable laws and regulations.

## **A. Definitions and Overview**

A ‘*special incident*’ as referred to in this Attachment is defined as an adverse event or an incident defined in Title 17, California Code of Regulations (CCR), Section 54327(b), as:

- An incident occurring during the time a regional center client receives services and supports from any regional center vendor or long-term health care facility, in which:
  - A client is missing and the vendor or long-term health care facility has filed a missing persons report with a law enforcement agency;
  - Abuse/exploitation is reasonably suspected, including:
    - Physical abuse;
    - Sexual abuse;
    - Fiduciary abuse;
    - Emotional/mental abuse; or
    - Physical and/or chemical restraint.
  - Neglect is reasonably suspected, including failure to:
    - Provide medical care for physical and mental health needs;
    - Prevent malnutrition or dehydration;
    - Protect from health and safety hazards;
    - Assist in personal hygiene or the provision of food, clothing or shelter; or
    - Exercise the degree of care that a reasonable person would exercise in the position of having the care and custody of an elder or a dependent adult.
  - There is a serious injury/accident, including:
    - Lacerations requiring sutures or staples;

- Puncture wounds requiring medical treatment beyond first aid;
- Fractures;
- Dislocations;
- Bites that break the skin and require medical treatment beyond first aid;
- Internal bleeding requiring medical treatment beyond first aid;
- Any medication errors;
- Medication reactions that require medical treatment beyond first aid; or
- Burns that require medical treatment beyond first aid.
- There is an unplanned or unscheduled hospitalization due to the following conditions:
  - Respiratory illness, including but not limited to, asthma; tuberculosis; and chronic obstructive pulmonary disease;
  - Seizure-related;
  - Cardiac-related, including but not limited to, congestive heart failure; hypertension; and angina;
  - Internal infections, including but not limited to, ear, nose and throat; gastrointestinal; kidney; dental; pelvic; or urinary tract;
  - Diabetes, including diabetes-related complications;
  - Wound/skin care, including but not limited to, cellulitis and decubitus;
  - Nutritional deficiencies, including but not limited to, anemia and dehydration; or
  - Involuntary psychiatric admission.
- The following incidents regardless of when or where they occurred:
  - The death of any client, regardless of cause;
  - A client is the victim of a crime, including the following:
    - Robbery, including theft using a firearm, knife, or cutting instrument or other dangerous weapons or methods which force or threaten a victim;
    - Aggravated assault, including a physical attack on a victim using hands, fist, feet or a firearm, knife or cutting instrument or other dangerous weapon;
    - Larceny, including the unlawful taking, carrying, leading, or riding away of property, except for motor vehicles, from the possession or constructive possession of another person;
    - Burglary, including forcible entry; unlawful non-forcible entry; and, attempted forcible entry of a structure to commit a felony or theft therein;
    - Rape, including rape and attempts to commit rape.

An 'adverse event' as referred to in this Attachment is defined as an untoward, undesirable, or unanticipated event that causes death or serious injury, or the risk thereof as defined above.

***Overview of Current Vendor and Regional Center Special Incident Reporting Requirements and Monitoring Procedures:*** In accordance with Title 17, CCR, Section 54327, all vendors and long-term health care providers are required to: notify the regional center having case management responsibility for the client of the special incident immediately, but not more than 24 hours after learning of the occurrence of the special incident; submit a written report to the regional center within 48 hours after the occurrence of the special incident, unless the initial report contained required information; and, concurrently submit to the regional center a copy of

any subsequent written reports submitted to a licensing agency. The special incident report shall include the information specified in Title 17, CCR, Section 54327(e).

Title 17, CCR, Section 54327.1 requires regional centers to: submit an initial report to the CDDS within two working days following notification of the special incident; submit follow-up information to the CDDS within 30 calendar days following receipt of the special incident; and, comply with CDDS requests for initial and follow-up information pertaining to a special incident. The report is considered complete when all information required by Title 17, CCR, Section 54327.1 is submitted.

CDDS staff reviews special incident reports daily to monitor compliance and follow-up by regional centers. The purpose of daily reviews is to determine if:

- Appropriate regional center action has occurred, including:
  - The client's health and safety are ensured;
  - Appropriate agencies have been notified; and,
  - Safeguards have been implemented or preventative actions taken to mitigate/avoid a recurrence.
- A regional center is in need of CDDS assistance due to a pending facility closure;
- Media attention is likely and additional information is needed;
- Regional center special incident reporting/follow-up dates are identified; and,
- The preventative actions and/or outcomes completed by the regional center and/or other agencies in response to the incident are appropriately identified and reported.

If issues are identified after review of a special incident report, CDDS staff contacts the appropriate regional center to discuss the issues, which may include:

- Abuse/neglect incidents where it appears from the special incident report narrative that client safety has not been ensured;
- Abuse/neglect incidents where no protective/outside agency has been notified;
- Closed special incidents where outside agencies were notified and no outcomes were reported, or there are no regional center or vendor outcomes identified in the special incident report;
- Special incident reports that indicate media attention; and,
- Special incident reports that raise concerns for other issues (timeliness, non-reportable incidents, incorrect categorization of incidents).

Additionally, Title 17, CCR, Section 54327.2 requires regional centers to establish a Risk Management, Assessment and Planning Committee to develop, monitor, and ensure the Risk Management and Mitigation Plan is implemented. The Risk Management and Mitigation Plan addresses the following:

- The process and procedures for ensuring accurate and timely handling and reporting of special incidents;
- The provision of training and technical assistance to regional center staff, vendors, long-term health care facility staff and others on the legal obligations of abuse reporting, special incident reporting, risk assessment, developing and implementing an incident prevention

plan and proactive accident/safety planning through the individualized program planning process;

- Coordination and communication with local licensing, protective service and law enforcement agencies relative to investigative actions and findings;
- A process for reviewing individual and aggregate special incident data to identify trends and unusual patterns which may require regional center action; and,
- A process for reviewing medical records and coroner reports to ensure appropriate medical attention was sought and/or given.

The Risk Management, Assessment and Planning Committee reviews the regional center's internal special incident reporting and risk management systems, updates the Risk Management and Mitigation Plan as necessary; and, meets at least semi-annually.

## **B. Special Incident and Complaint Investigation Requirements**

The CDDS will maintain an effective system of protective oversight for FDC clients being relocated to waiver programs for the duration of this Agreement, including:

- 1) ***Access to Reporting and Complaint Processes:*** The CDDS will ensure the following:
  - a) ***Regional Center Emergency Response System is Active and Non-emergency Systems are in Place:*** Ensure that the regional center emergency response system established pursuant to Welfare and Institutions Code section 4640.6(b), and required to be operational 24 hours per day, 365 days per year, is active, allowing regional center staff to respond to a client, or individual acting on behalf of a client, within two hours of the time an emergency call is placed; and ensure the regional center has an established system, whether it is the emergency response system or another means, to receive complaints or reports of special incidents that are non-emergency in nature and answer questions related to the processes for investigation of and response to special incidents or to public findings from investigations, and
  - b) ***Advertise Information to Clients Transitioning to Community Settings:*** Ensure that regional center emergency response system information, the CDDS hotline and non-emergency contact information is advertised to the clients, and the families and legal guardians of FDC clients that are being relocated to community settings,
  - c) ***Require Service Vendors to Publicize Information:*** Require service vendors to communicate the regional center emergency response system information, the CDDS hotline and non-emergency contact information to such parties at least annually, and require services vendors that provide residential care to post the number and complaint access information within their facilities in a manner visually accessible to clients and visitors.
- 2) ***Reporting of Special Incidents and Complaints for Triage and Investigation:*** The CDDS will ensure that:
  - a) All complaints and special incidents involving FDC clients that have been relocated to community settings are reported by the regional center to the appropriate authority that

has responsibility to triage and investigate complaint or incident allegations, and to CDDS. Some investigative agencies/entities that regional centers and CDDS collaborate with and report special incidents to include:

- Department of Social Services' Community Care Licensing Division for incidents described in Title 22, CCR, Sections 72541, 75339, 76551 or 76923 and 80061(b);
- Adult Protective Services, local long-term care ombudsmen programs, local law enforcement for incidents described under the Elder and Dependent Adult Abuse Reporting Act commencing with Welfare and Institutions Code Section 15600; Child Protective Services and local law enforcement Child Abuse and Neglect Reporting Act commencing with California Penal Code Section 11164;
- Department of Public Health, Licensing and Certification.
- Local Law Enforcement

- b) The process and timelines associated with reporting incidents and complaints includes:
- Vendor or Long-term Health Care Facility reports to the appropriate regional center within 24 hours;
  - Vendor or Long-term-Health Care Facility submits a written report to the regional center within two business days;
  - The regional center reports electronically to the CDDS within two working days;
  - The CDDS reviews reports daily as received;
  - The CDDS contacts the regional center to require additional agencies notified or actions the same day as the incident is received and reviewed; and
  - The CDDS requires ongoing follow-up and communications from the regional center until resolution of the incident or all necessary actions have been taken.

3) **Triaging, Tracking and Analyzing Special Incidents and Complaints:** The CDDS shall ensure that special incident reports and complaints are:

- a) **Triaged** and given priority based on the individual circumstances and/or severity of the incident or complaint. Incidents or complaints in which the allegation indicates there was and continues to be an immediate risk of serious injury, harm, impairment or death of a client, or the likelihood for such unless immediate corrective action is taken will be given the highest priority. Such incidents will result in follow-up by the regional center and the CDDS within two business days of learning of the incident.
- b) **Tracked** in a database that contains key information regarding each complaint or special incident, including dates of each complaint or special incident, nature of the allegations or incidents, dates of any investigation, the type of investigation (desk audit or onsite), the findings of any investigation, and any action taken pursuant to the findings.
- c) **Analyzed** to determine the sufficiency of any actions taken to remove the risk to the client, patterns in complaints and special incidents, patterns in investigatory findings, and patterns in actions taken or not taken.
- d) **Reported** in an analytical report to the California Health and Human Services Agency Secretary at least quarterly.

4) **Special Incident and Complaint Investigations:** The California Health and Human Services Agency Secretary will ensure that all special incidents and adverse events are investigated

using proper investigatory techniques by individuals trained and qualified to conduct investigations in human services. The CDDS will ensure the following:

- a) **Investigations:** Regional centers and CDDS refer complaints and special incidents to the appropriate authorities for investigation according to established procedures, local and state laws, and regulations;
- b) **Client Protections:** Actions are taken to remove any immediate risk to the client(s) and incident reporters during the investigation of special incidents, immediately upon receipt of the report by the regional center or CDDS;
- c) **Investigators:** All investigations shall be conducted by the appropriate authorities based on the nature of the incident and local and state laws;
- d) **Ongoing analyses:** Routine analysis of special incidents and complaints are performed to implement changes that may prevent or reduce similar occurrences in the future.

### C. Quality Improvement Actions based on the Results of Each Investigation

The CDDS will ensure the following:

**Improvement Actions:** Based on surveys, monitoring actions, program reports, and the analyses of incidents, complaints, and trends, evaluate program policies and procedures at least every six months to identify actions that are advisable to prevent recurrence of adverse events and ensure the safety of the client. For special incident investigations, DDS will also review the adequacy of the investigations, timeliness of reporting of the adverse event to the Regional Center and other authorities designated by CHHS; sufficiency of any actions taken to remove the risk to the client; antecedents to the special incidents (such as low staffing levels or training levels of staff at the service vendor responsible for the care of involved individuals), adequacy of staff statements and documentation/reports supplied by service vendor, client outcome (including post-event health status changes of the individual), and identification of changes or actions that could prevent or reduce similar occurrences of this adverse event in the future.

### D. CDDS Reporting to the Centers for Medicare & Medicaid Services (CMS)

The CDDS will send reports to CMS on a semi-annual basis (by February 28<sup>th</sup> and August 28 of each year) that covers activities from the preceding six month calendar time periods (from January 1 through June 30, and July 1 through December 31 of each year, respectively). Each report will include the following data and quality metrics regarding special incidents and client outcomes for each reporting period:

1. In a Microsoft Excel workbook, for each complaint and special incident covered by the time period of the report:
  - The date of the initial report of the complaint or special incident,
  - The date(s) an investigation was completed,

- The type or category of the allegation or incident (abuse, neglect, unplanned hospitalization),
  - The investigatory outcome of each reported special incident and allegation (substantiated or non-substantiated),
  - A short description of each allegation and each substantiated finding, and
  - Any policy or protective action taken as a result of a finding that the complaint or incident was substantiated;
2. The total number of special incidents received during the reporting period, the average amount of time taken to complete follow-up and investigation of special incidents received during the reporting period;
  3. The number of clients that have suffered serious injuries requiring unplanned hospitalization;
  4. The number of individuals who have died since transfer to a community setting, broken out by six month calendar time periods and general cause of death and the trends on mortality rates (i.e. the death rates of clients recently discharged from the institution into a community setting compared to the overall institution death rate);
  5. An analysis of any trends that may be present in the special incidents that have been reported, in the special incidents that should have been reported but were later found to have been omitted, and in the findings from substantiated complaints or incidents;
  6. The number of clients transitioned to the community who are then readmitted to the crisis unit of the facility, and the reason for the readmission;
  7. The number of clients transitioned into the community who were subsequently incarcerated, and the reason for incarceration; and
  8. The number of procedural changes implemented to protect the clients based on the results of the investigations.