OPERATIONAL PROTOCOL

PROTOCOL TITLE: **One Reportable Event Management System**
EFFECTIVE DATE: **September 1, 2024**

This protocol sets forth specific expectations regarding REM processes for people receiving services in CHOICES, Employment and Community First (ECF) CHOICES, Katie Beckett,[1] the 1915(c) waiver programs, and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID).

A. Background and Objectives

Reportable Event Management (REM) is one important component of an overall approach for ensuring the health, safety, individual freedom, and quality of life of people participating in home and community-based services (HCBS) and ICF/IID services. REM in CHOICES, ECF CHOICES, Katie Beckett, 1915(c) waiver, and ICF/IID programs involves a partnership between TennCare, the Department of Disability and Aging (DDA), Managed Care Organizations (MCOs), Fiscal Employer Agents (FEAs) and providers of HCBS and/or ICF/IID services who all have a role in making REM an effective tool for ensuring the highest possible quality of life by honoring the self-determination of people receiving HCBS and ICF/IID services.

This protocol aligns with the Dignity of Choice Protocol which sets forth expectations for TennCare, MCOs, FEA, contracted providers, and DDA regarding philosophies and practices specific to foreseeable risk identification, assessment, and mitigation in the 1915(c) waiver, ECF CHOICES, CHOICES, Katie Beckett, and ICF/IID programs and which identifies a process for addressing dignity of choice through comprehensive assessment, the Person-Centered Support Plan (PCSP) process, and ongoing Support/Care Coordination/Case Management. Dignity of Choice is the principle that an individual has a fundamental right to have autonomy and make well-informed choices that will allow them to grow and learn. This includes allowing them to engage in activities even when those activities involve potential risks. This concept also involves a commitment to help the individual recognize, assess, and address any potential negative outcomes.

In order to incorporate the philosophy of Dignity of Choice into the overall REM approach, involved family members, and/or natural supports, as appropriate, should be informed

[1] Events are only considered reportable through the REM system when the event occurs or is discovered during the provision of HCBS-funded services.

about supporting dignity of choice, including informed decision making, tolerable risks, risk mitigation, and how to safely report an event that compromises the health, safety, individual freedom, and/or quality of life of a person supported.

Consistent with expectations set forth in the federal Person-Centered Planning regulations, person-centered planning in CHOICES, ECF CHOICES, Katie Beckett, 1915(c) waiver, and ICF/IID programs is intended to identify and mitigate risk of harm, while not placing unnecessary restrictions on the freedom and choices of people supported; nor preventing opportunities for people to achieve increased independence and autonomy at home and as they participate fully in community life. This has important implications for REM.

Providers and individual staff persons who provide HCBS and/or ICF/IID services are accountable for ensuring the supports are provided in accordance with each individual's PCSP, including implementation of strategies identified to help mitigate risk, but should not be held responsible if, despite appropriate supports and implementation of appropriate and reasonable risk mitigation strategies, an untoward event occurs. The CHOICES, ECF CHOICES, Katie Beckett, 1915(c) waiver, and ICF/IID programs acknowledge and value Dignity of Choice and recognize that the normal taking of risks in life is essential for personal growth and development and maximizing quality of life.

People supported are encouraged (with, whenever possible, the support and involvement of their families and natural supports) to pursue and achieve their goals, which inevitably involves taking informed, reasonable risks.

Within CHOICES, ECF CHOICES, Katie Beckett, the 1915(c) waivers, and ICF/IID programs, the REM system is designed to:

1. Clarify Non-Reportable Events that providers must address internally through their own quality assurance and event management processes;
2. Define the Reportable Events that must be reported to DDA and the MCO and the timeframes for reporting;
3. Ensure that provider agencies, their staff, MCO Care/Support Coordinators, the FEA, and others are well informed of their responsibilities to identify events that are reportable;
4. Specify the types of Reportable Events that require investigation or review, by whom (DDA or provider), the timeframes for such investigations or reviews, and how the person (and/or family and legal representative as appropriate), providers, and others are informed of the results of an investigation or review;
5. Define the processes for requesting a file review of a completed Class 1 substantiation, who may request a review, and timelines applicable to the review process; and
6. Ensure a collaborative process between providers, MCOs, and DDA that identifies and defines trends in order to evaluate the nature, frequency, and circumstances of all Reportable

Events, in a manner that leads to actionable steps that are proactive in preventing or reducing similar occurrences.

B. Reportable Events and Requirements

In HCBS and ICF/IID programs, there are three (3) categories of Reportable Events: Tier 1, Tier 2, and Additional Reportable Events and Interventions. The type of Reportable Event dictates the reporting requirements and process that must be followed by the provider, MCO, FEA, and DDA, as applicable. DDA shall triage all allegations reported via the Abuse Hotline and/or via Reportable Event Form within two business days (unless pending results of medical assessment, laboratory test, expert opinion, etc.) to determine the need for an investigation. The Event Management Coordinator (EMC) or designee shall provide all requested documentation and information as soon as possible to ensure the disposition is reached within the required 2 business days. Once a disposition is reached by DDA, the responsible provider is notified of the outcome via email by the On-Call Investigator.

1. Tier 1 Reportable Events

a. Definition of Tier 1 Reportable Event

Tier 1 Reportable Event: The alleged wrongful conduct affecting the person by acts or omissions of abuse, neglect, exploitation, or misappropriation of money or property, that resulted in one or more of the following consequences to the person: death, serious injury, or physical harm; physical or sexual abuse; significant pain, intimidation or mental anguish that required medical intervention, loss of funds or property greater than $1,000 in value, or missing prescription controlled medication with a replacement value greater than $1,000.
Note: ***Deaths that occurred while the person supported was receiving hospice or palliative care or that occurred outside the provision of services with no allegations of abuse/neglect against a paid caregiver do not need to be reported to the hotline and are appropriately reported via REF. Allegations against non-paid caregivers (i.e., family member, spouse, significant other) are not reportable to DDA as DDA has no jurisdiction. These allegations are to be reported to Adult Protective Services and/or Law Enforcement.***

b. Reporting Requirements for Tier 1 Reportable Events

Tier 1 Reportable Events must be reported initially by calling the DDA's Abuse Hotline (1-888-633-1313) as soon as possible, but no later than four (4) hours after the occurrence of the event or the discovery thereof. The event shall also be reported to Adult Protective Services (APS), Child Protective Services (CPS), and/or law enforcement, as required by law. If a Tier 1 Reportable Event, or any other event that poses an immediate threat to the health and safety of a person, occurs while DDA, MCO, FEA, or provider staff are on-site with the person, in addition to reporting this event, such staff shall be required to remain with the person until the threat is removed or the person receives needed medical treatment, if appropriate. Additionally, the MCO shall maintain an internal system capable of providing DDA with the PCSP of the person involved in the alleged Tier 1 Reportable Event within two

(2) hours of request by the DDA On-Call Investigator. The MCO shall provide access to the requested information, if unable to obtain from the supported person's provider. When reporting unexplained or unexpected deaths, providers must inform the DDA On-Call Investigator (OCI) and MCO of the person's Do-Not- Resuscitate (DNR) Order (if applicable) and safety plan.

Subsequently, a corresponding Reportable Event Form (REF) must be submitted by the Event Management Coordinator (EMC) or designee to DDA within one (1) business day of the Hotline report by utilizing the reporting link (https://stateoftennessee-cvlyz.formstack.com/forms/ref). Providers are required to send a copy of the REF to the Independent Support Coordinator (ISC) or DDA Case Manager, as applicable to the person supported, for their records of any Reportable Events associated with that person, once the telephonic report to DDA is made. The provider and the MCO shall not move forward with their own "reviews" once a Tier 1 Reportable Event has been reported.

DDA's Reportable Event Management Triage is available 24/7 via the Statewide DDA Investigations (Abuse) Hotline. The On-Call Investigator shall obtain details of the allegation from the reporter and record the information in the DDA Reportable Event Management system. The On-Call Investigator shall seek additional information by speaking with the person and/or their legal representative (if applicable), the provider, or other appropriate parties where applicable, via telephone, without the presence of provider staff who may have been involved in or witnessed the event (unless otherwise requested by the person) to determine if a Tier 1 Reportable Event must be investigated by DDA.

When the On-Call Investigator identifies the event as a Tier 1 that has recently occurred and there is the potential for loss of evidence, the On-Call Investigator or Investigations Coordinator shall dispatch the Response Investigator in the respective region to immediately initiate triage, coordinate and assist any authorities present at the scene (law enforcement, medical examiner, etc.), interview witnesses and document the scene, and proceed with the collection of evidence when appropriate.

During preliminary review of the reported allegation, if it is determined that a face-to-face interview with the person is needed to determine Dignity of Choice and/or mitigating risks and this cannot be accomplished via telephone, the On-Call Investigator shall dispatch the Response Investigator to assist in facilitating the interview. The Response Investigator shall obtain a statement from the person, any accessible witnesses, and/or any additional evidence available. If a report of an unexpected/unexplained death warrants an in-person response from the Response Investigator, the provider shall secure the home/scene and ensure that staff remain on-site and available to be interviewed. The scene of any event requiring an in-person response shall not be altered or cleaned nor should anything be thrown away (i.e., the food or meal being eaten when a choking event occurred).

Should subsequent additional information be discovered by the event reporter, provider, MCO, or DDA, the allegation shall be reported to the DDA Abuse Hotline with the additional information for review and revision as warranted by the addition of new information. The

reporting entity shall submit a REF containing the updated information within one (1) business day of the discovery of the new information by utilizing the reporting link (https://stateoftennessee-cvlyz.formstack.com/forms/ref). Providers are required to send a copy of the REF to the Independent Support Coordinator (ISC), or DDA Case Manager, as applicable to the person supported, for their records of any Reportable Events associated with that person.

c. Process for Investigation of Tier 1 Reportable Events

For Tier 1 events, DDA shall notify the respective MCO(s), and provider(s) of the intent to investigate via an Initial Notification. DDA shall complete a thorough investigation within thirty (30) calendar days of the anchor date unless an approved extension is granted.

Providers are expected to send all information related to the investigation to DDA as soon as possible upon request. For ECF CHOICES, CHOICES, Katie Beckett, 1915c, and ICF-IID providers, the MCO will be notified and responsible for ensuring provider cooperation with the investigation if provider staff does not send the requested information to DDA within one (1) business day.

The provider shall instruct all staff that the facts and circumstances being investigated are not to be discussed with anyone except the DDA Investigator, law enforcement officers, or other state investigative entities (APS, CPS, Disability Rights TN, etc.).

If the investigation is not completed within thirty (30) calendar days due to uncontrollable circumstances, such as law enforcement involvement or difficulties obtaining documentation from external entities such as a hospital, DDA Investigators may request, and upon approval from the Director of Investigations or designee, utilize an extension period of up to an additional thirty (30) calendar days for completion of the investigation. Extensions shall not be utilized for staff convenience. DDA will notify the provider, MCO, and ISC provider, if applicable, and DDA Investigations Follow-Up personnel of the extension. When an investigation will exceed a thirty (30) calendar day extension pending criminal proceedings, an autopsy report, or law enforcement requests to remain open, etc., the DDA Investigator shall complete all field work and the investigative report shall be compiled with all available evidence. The DDA Investigator shall provide investigation status updates every thirty (30) to ninety (90) days based on the direction of the Director of Investigations or designee as dictated by the circumstances which result in the delay in concluding the investigation. DDA will notify the provider, MCO, ISC provider, if applicable, and DDA Investigations Follow-Up personnel of any subsequent extensions and the projected date of the investigation closure.

DDA shall provide the completed Final Investigation Report to the appropriate MCO, DDA Regional Office, and provider at the closure of the investigation. The Report shall include a statement of whether the allegation(s) is substantiated or unsubstantiated. In the case of a substantiation for abuse, neglect, or exploitation, the conclusion shall state if the evidence was clear and convincing (Class 1 substantiation) or based on a preponderance of the evidence (Class 2 Substantiation). Upon the closure of an investigation resulting in a Class 1

substantiation, the State Investigator shall be responsible for sending the perpetrator a letter notifying him or her of the substantiation(s) and an Election Form that initiates the due process system administered through DDA's Division of Administrative Appeals (DAA). The notification letter and Election Form shall be mailed to the substantiated perpetrator's address provided at the time of the interview by both regular mail and certified mail. Additionally, the State Investigator shall provide a copy of the notification letter and Election Form to the DAA for further follow-up and assist in the due process system as requested.

d. Tier 1 Reportable Event Policy on Administrative Leave or Non-Direct Contact

Excluding when an exception is granted by DDA (as specified below), providers are required to immediately remove an employee or volunteer named in a Tier 1 Reportable Event and alleged to have acted in a manner consistent with sexual abuse or physical abuse resulting in medical treatment from providing direct support to any person(s) supported until DDA has completed their investigation, either by placing the named employee or volunteer on administrative leave or in another position in which he or she does not have direct contact with or supervisory responsibility for a person(s).

Providers (i.e., the EMC or agency management, and not the employee or volunteer alleged to have committed physical or sexual abuse) may request an exception to this requirement if:

(1) The provider furnishes evidence of consent from the alleged victim (or legal representative of the alleged victim, if applicable);
(2) There are no identified risks to persons supported that the employee or volunteer might come into unsupervised contact with;
(3) The assigned investigator has interviewed the alleged victim and eyewitnesses to confirm that there are no identified risks to the person supported or others; and
(4) Safety measures, such as increased supervision and unannounced visits to the place of service by provider management, are undertaken. The provider is expected to ensure that adequate steps are taken for the protection and safety of all persons during the investigation process.

Such requests are reviewed and either approved or denied expeditiously by the DDA Director of Investigations or designee.

If a Tier 1 Event is alleged against both a provider/provider management and a provider staff person, and the allegation against the provider is found to be substantiated while the allegation against the staff person is not substantiated, the provider may ask for a review by the IRC (Investigation Review Committee). In this case, once the Final Investigation Report is released, the staff person is permitted to resume work and is not obligated to remain on administrative leave until the file review is finished.

2. Tier 2 Reportable Events

a. Definition of Tier 2 Reportable Events

Tier 2 Reportable Events: The alleged wrongful conduct affecting the person by acts or omissions of abuse, neglect, exploitation, or misappropriation of money or property, that resulted in one or more of the following consequences to the person: intimidation or mental anguish; probable risk of serious harm; loss of funds or property between $250 and $1,000 in value or prescription-controlled medications with a replacement value of less than $1,000; or, through supervision neglect harming a citizen in the community or engaging in criminal acts resulting in arrest and confinement. The person did not require medical treatment or intervention and is not at continued risk of serious harm.

b. Reporting Requirements for Tier 2 Reportable Events

Allegations that are reported to DDA and consistent with the Tier 2 Reportable Events categories/definition (with the exception of Physical Abuse allegations), will be referred as appropriate to the provider to perform the investigation (unless the specific provider is excluded from performing their own investigations for another reason further explained below). All Physical Abuse allegations opened for investigations will be conducted by a DDA State Investigator. Tier 2 Reportable Events and all allegations of abuse, neglect or exploitation shall also be reported to Adult Protective Services (APS), Child Protective Services (CPS), or law enforcement, as required by law.

The EMC or designee will submit a REF to DDA by utilizing the reporting link within (1) business day after the occurrence or discovery of occurrence of a Tier 2 Reportable Event. Providers are required to send a copy of the REF to the Independent Support Coordinator (ISC), or DDA Case Manager, for persons supported by a 1915(c) State funded waiver.

For Tier 2 Reportable Events, the DDA Investigations Specialist shall review the REF for the proper classification, Should the Investigations Specialist deem additional information is needed to ensure the proper category, the DDA REM Triage system shall be utilized. DDA shall provide any evidence collected during the Triage Process to the Provider Investigator for any Tier 2 investigation assigned.

DDA will be responsible for reviewing all Tier 2 REFs for completeness and for ensuring the Reportable Event has been appropriately identified as Tier 2. The MCO will provide DDA with any additional information for triage to ensure that the correct classification is reached. If DDA determines that the Reportable Event needs to be reclassified, the REF shall be appropriately reclassified and shared with the provider. As part of data collection and analysis, DDA will monitor and address the frequency of Tier 2 REFs incorrectly classified by the reporting provider (e.g., the event needed to be reclassified as Tier 1 or Non-Reportable Event, or the REF documented an occurrence that is not consistent with the definition of a Tier 1, Tier 2, or Non-Reportable Event).

c. Process for Investigation of Tier 2 Reportable Events

All providers are responsible for conducting investigations of Tier 2 Reportable Events, excluding allegations of Physical Abuse, and submitting an investigation report for each Tier 2 allegation[2].

The DDA Investigations Specialist will determine if the provider has met the required standards to conduct Tier 2 investigations and if there is a DDA-certified Provider Investigator. If the provider is eligible to investigate and has a Provider Investigator, the Investigations Specialist shall notify the provider of the allegation and assignment of a Tier 2 Investigation to the provider. Providers may have multiple DDA-certified Provider Investigators or may contract with a DDA certified Provider Investigator. The provider shall notify the Investigations Specialist of the identity of the Provider Investigator. After verifying the Provider Investigator's certification, the Investigations Specialist shall provide the investigative report template to the Provider Investigator.

A completed investigation report and supporting documentation shall be submitted within twenty-five (25) calendar days of the anchor date. Should the Provider Investigator need advice or assistance with the investigative process, a DDA Investigations Specialist will be available during normal business hours. The investigation report shall conclude when the investigation is substantiated or unsubstantiated based on the preponderance of evidence. The Provider Investigator shall consider whether the event was the result of a systemic issue or that of an individual. Additionally, the Provider Investigator shall consider dignity of choice and actions taken to mitigate risks.

Upon submission of the Tier 2 completed investigative report to DDA, an Investigations Specialist shall conduct a review to identify potential evidence that was excluded (such as a witness or documentation), if the analysis supports the definitions for abuse, neglect, and/or exploitation, and the allegations were supported by a preponderance of the evidence. The Investigative Specialist shall communicate any advice or assistance to the Provider Investigator within three (3) business days of receipt of the report. The Provider Investigator shall make any revisions to the report deemed appropriate and resubmit the final report to the Investigations Specialist. The provider shall be responsible for the content, conclusion, and findings within the investigation.

If the investigation is not completed within twenty-five (25) calendar days due to uncontrollable circumstances, such as law enforcement involvement, or difficulties obtaining documentation from external entities such as a hospital, Provider Investigators may request an extension via an Extension Request Form for up to thirty (30) additional calendar days to complete the investigation. All extension requests shall be submitted to the Director of Investigations or designee two (2) business days before the date due for closure. Extensions shall not be utilized for staff convenience. DDA will notify the provider, MCO, ISC provider, if

[2] There are some ancillary providers that are not required to investigate a Tier 2. A list of those providers can be found at the DDA website.

applicable, and DDA Investigations Follow-Up personnel of the extension and new date for closure.

When a provider investigation will exceed a thirty (30) calendar day extension (pending criminal proceedings, law enforcement requests to remain open, etc.) the Provider Investigator shall complete all the field work and the investigative report. However, the report and findings will not be released until such time as a lead investigative entity provides approval to release the information. The Provider Investigator shall provide investigation status updates every thirty (30) days via an Extension Request Form to the Director of Investigations or designee on the specific circumstances causing the investigation's delay. DDA will notify the provider, MCO, ISC, if applicable, and DDA Investigations Follow-Up personnel of any subsequent extended time periods and the projected date of the investigation closure. The Director of Investigations or designee shall provide TennCare a monthly report for Tier 2 Investigations exceeding dates for closure.

Should the Provider Investigator discover evidence that would result in the allegation rising from a Tier 2 to a Tier 1, the Provider Investigator shall stop the investigative process immediately and notify the Investigations Specialist (if during normal business hours) or the DDA Abuse Hotline. The provider must then forward the investigation immediately back to DDA to investigate. Only Tier 2 investigations for physical abuse that are conducted by state investigators can result in a Class 1 substantiation. No Provider Investigator can substantiate at a Class 1.

d. Tier 2 Reportable Event Policy on Administrative Leave or Non-Direct Contact

Providers, after seeking the victim/person's preference and/or that of the legal representative (if applicable), shall determine, at their discretion and in accordance with their policy, whether to remove an employee or volunteer named in a Tier 2 Reportable Event from any or all direct support until the provider has completed their investigation. If the allegation is substantiated as a Class 2 level, the employee or volunteer may be terminated, or removed until the completion of any action plan (e.g., training) deemed appropriate by the provider. In lieu of removing an employee or volunteer named in a Tier 2 Reportable Event from any or all direct support, the provider may opt to utilize a modified assignment or increased supervision. The provider is expected to ensure that adequate steps are taken for the protection and safety of all persons during the investigation process.

e. Investigation Review Committee (IRC)

All waiver program providers, persons supported, legal representatives, case managers/support coordinators, MCOs, DDA, or TennCare representatives may request a review of an investigative report within fifteen (15) days of an investigation closing (the Final Investigation Report is issued). Requests must be based on new or additional information, evidence not considered during the investigative process, raise matters that bring into question the integrity of an investigation, or provide basis for disputing the investigative

conclusion. All Investigation Review requests must be submitted in writing, express the reason for the disagreement, and include additional evidence if applicable. The IRC will not review any file requests that are incomplete or not submitted within the allotted timeframe.

The request for the review, additional information or evidence, and the investigative report is reviewed by the DDA Director of Investigations (or designee) to determine if there was a critical omission in the investigative process for the investigation. If there was an omission, the investigation may be reopened for the inclusion of the omitted evidence and the potential impact on the conclusion. If the investigation is not reopened, the request proceeds to the Director of Event Management (DEM) for review. If the DEM upholds the request, it will move forward to the IRC. If the DEM does not agree with the request, a summary of the decision will be sent to the General Counsel for final review and disposition of recommendation. The requestor is notified of DDA's decision within thirty (30) days of receipt of the request.

The IRC will be provided the investigation, additional information, and requestor's application for review and for the committee deliberation. The IRC may (1) uphold the investigative conclusion, (2) modify the investigative conclusion, or (3) overturn the investigative conclusion. The IRC's written decision will be provided to the requestor. The investigative report will be amended for all overturned or modified IRC decisions.

Provider Investigator Training

Providers shall ensure that all Tier 2 investigations are conducted by a certified Provider Investigator. As part of the certification, Provider Investigators must complete the required training as determined by TennCare in collaboration with DDA.

f. Provider Request for Exception to Investigate

The provider may request not to investigate an allegation, which shall result in a DDA Investigator conducting the investigation. The provider shall be responsible for submitting an Exception to Investigation form to the Director of Investigations or designee within two (2) business days of the anchor date with an explanation related to one or more of the following:

- Conflict of interest associated with the investigation;
- The complexity of the investigation impedes the provider's ability to investigate; or
- When the alleged staff has three (3) prior substantiations with that agency within a twenty-four (24) rolling month period, the provider can request the state to investigate any subsequent investigation.

The Director of Investigations or designee shall notify the Investigations Specialist for the provider's region when an exception is approved. The Investigations Specialist shall reassign the investigation to a DDA State Investigator. Additionally, the Investigations Specialist shall track all exception requests and dispositions by provider.

g. Parameters for determining when a provider is not permitted to conduct provider investigations or DDA-approved status is removed

- Providers who have an overall DDA Quality Assurance (QA) score lower than "Fair" on the annual survey.
- When the provider or a member of the executive staff are identified as the alleged staff (Program Director or equivalent and above).
- If the provider is less than a year old or until the agency has their first DDA QA/ECF CHOICES/CHOICES consultative survey.
- If the provider does not have a DDA certified Provider Investigator.
- If an ECF CHOICES or CHOICES provider has negative results from a DDA wellness review performed in the last twelve (12) months that resulted in significant findings related to health and safety. The provider would be eligible to conduct their own investigations after their next DDA QA survey that scores fair or above.
- If an ECF CHOICES or CHOICES provider is placed on a DDA moratorium. The provider would be eligible to conduct their own investigations after the moratorium was lifted and they scored fair or above on the following DDA QA survey.

Note: TennCare and DDA have the authority to conduct any investigation, at any time, for any reason.

The DDA Investigations Specialist monitors the provider's status based on information provided by DDA QA, DDA Regional Office moratorium notices and wellness reviews, and notification by MCOs.

h. Investigation Follow-Up and Action Plan

DDA and MCOs are responsible for reviewing investigation reports submitted by DDA Investigators and Provider Investigators. The DDA Investigations Follow-Up Unit and the MCO shall determine the necessity for any follow-up review needed. The provider will complete the Action Plan for all substantiated allegations, both Class I and Class II. Following the closure of the Final Investigative Report, the provider will have ten (10) business days to draft an Action Plan and submit it to the DDA Investigations Follow-Up Unit and the respective MCO. The Action Plan shall address each Informational Finding and late reporting discovered as a means of provider self- improvement. During this time, the provider will continue to discuss the outcome of the investigation with the person(s) supported and invite the person's legal representative and/or primary contact, if any, to participate in this discussion.

The Action Plan shall include the following information:

- The procedures that have been implemented to mitigate future risks to the person, including steps to prevent similar occurrences in the future;
- Verification that the substantiated perpetrator(s) was notified of the outcome of the investigation in writing;

- A statement of what, if any, disciplinary action, training, reassignment, or any other remediation occurred as a result of the findings of the investigation; and
- A response to any informational findings contained in the investigative report.

Once the DDA Investigations Follow-Up Unit and the respective MCO(s) receive the drafted Action Plan, which shall include any concerns or issues identified, DDA and the respective MCO will have five (5) calendar days to determine if the drafted Action Plan sufficiently addresses all the identified concerns from the Final Investigative Report. If, within those five (5) days, the DDA Investigations Follow-Up Unit and/or MCO(s) determine additional information is needed, the Provider will be notified and have ten (10) calendar days from that notification to provide the additional requested information. Action Plans must be performed to completion prior to the closure letter being sent, which is forty-five (45) calendar days from the Final Investigative Report being issued.

If allegations were not substantiated, an Action Plan is not required. For both substantiated and unsubstantiated investigations, providers must ensure that informational findings are acted upon in a timely manner. DDA can request follow-up action to unsubstantiated Informational Findings, including late reporting.

3. Final Investigation Report and Classification

To ensure a comprehensive approach to understanding and preventing future occurrences of Reportable Events, the Final Investigative Report is also expected to identify applicable system policies, rules, guidance or other system processes and procedures that may have contributed to the Reportable Event. Substantiated allegations are classified as Class 1 or Class 2 substantiations.

Class 1 Substantiations (i.e. the wrongful conduct affecting the person constituted abuse, neglect, exploitation, or misappropriation of money or property, **and resulted in one or more of the following consequences** to the person: death, serious injury, or physical harm; physical or sexual abuse; significant pain, intimidation or mental anguish; probable risk of serious harm; loss of funds or property greater than $1,000 in value or prescription controlled medications with a replacement value of greater than $1000; or, through supervision neglect harming a citizen in the community or engaging in criminal acts resulting in arrest and confinement. Wrongful conduct in this category is of a nature serious enough to call into question whether the offender should be entrusted with the care of a vulnerable person). A Final Investigative Report reflects that the evidence supports that the identified staff acted in accordance with this definition.

Class 2 Substantiations (i.e. the wrongful conduct affecting the person constituted abuse, neglect, exploitation, or misappropriation of money or property, **but resulted in minimal or no** physical harm or injury, pain, or mental anguish; minimal risk of serious harm; loss of funds or property of up to $1,000 in value; loss of prescription controlled medication with a replacement value less than $1,000; or violation of plans of care with minimal or no adverse

consequences. Wrongful conduct in this category is of a nature that disciplinary action and/or additional training may reasonably be deemed sufficient to address). A Final Investigative Report reflects that the evidence supports that the identified staff acted in accordance with this definition.

For Tier 1 Investigations only, the investigation's conclusion will denote the substantiation classification as:

- Class 1: clear and convincing evidence. Class 1 substantiations will be addressed by the provider and proceed to Due Process; or,
- Class 2: substantiated based on the preponderance of evidence. Class 2 substantiations will be addressed by the provider and will not proceed to Due Process. They will not be placed on the Substantiated Investigation Records Inquiry (SIRI) or the Abuse Registry (AR).

For Tier 2 Investigations only, the investigation's conclusion will denote substantiated or not substantiated based upon a preponderance of evidence. The provider shall address all substantiated Tier 2 Investigations accordingly. ECF CHOICES, CHOICES, Katie Beckett, 1915c, and ICF-IID providers will maintain their processes for imposing progressive disciplinary action. Tier 2 Physical Abuse Investigations conducted by a DDA State Investigator can be substantiated as Class I or Class II based on the evidence collected.

4. Additional Reportable Events and Interventions

Additional Reportable Events and Interventions, shall also be reported to the DDA Event Management Unit using the REF. The provider EMC or designee shall submit a REF to DDA by utilizing the reporting link within one (1) business day after the occurrence or discovery the reportable event or intervention. Providers are required to send a copy of the REF to the Independent Support Coordinator (ISC), or DDA Case Manager, as applicable to the person supported, for persons supported by a 1915(c)-state funded waiver. Providers shall be responsible for performing data collection and analysis for all reportable events and interventions.

The One Reportable Event Management System Definitions Document defines what are required Additional Reportable Events and Interventions.

5. Non-Reportable Events

Although non-reportable events are not reportable to DDA or the MCO, providers are expected to document, perform data collection, trend analysis, and address these events internally as part of strategic quality improvement processes that lead to improved outcomes. Provider oversight for non-reportable events will continue to be monitored by DDA during annual quality assurance surveys and/or recredentialing, as applicable.

C. Reportable Events Reported by a Person or a Person's Caregiver, Family Member, or Citizen/Friend

All Reportable Events reported to DDA, MCO, or provider by a: (1) Person supported, (2) Caregiver, (3) Family Member, or (4) Citizen/Friend, and having occurred during the provision of HCBS or ICF/IID services will be documented by DDA or the MCO, as applicable. DDA or the MCO receiving the report will generate a REF via the reporting link within one (1) business day if the reported occurrence is confirmed to be a Reportable Event. The entity receiving the report (either DDA or MCO) will be responsible for submitting the completed REF to the other entity.

The provider's EMC or designee will be notified of the Reportable Event within one (1) business day after the DDA or MCO received the report. These events will follow the same process for Tier 1 and Tier 2 as outlined above.

D. Fiscal Employer Agent (FEA) Responsibilities

FEA and provider staff must report all instances of suspected abuse, neglect, and exploitation of adults and children in accordance with Tenn. Code Ann. §§ 37-1-403, 605, or Tenn. Code Ann. § 71-6-103, as applicable, immediately after the occurrence or discovery of an occurrence.

All Reportable Events witnessed or discovered during the provision of HCBS services involving an FEA employee or Direct Service Worker must be reported to DDA as outlined in the Tier 1 and Tier 2 reporting processes above and copied to the Employer of Record within the required timeframes. DDA State Investigators will conduct all Tier 1 and Tier 2 investigations for the FEA.

In the event a representative of a person participating in Consumer or Self Direction is alleged to have committed abuse, neglect, or exploitation against the person, the representative shall immediately be removed from his or her representative capacity during the investigation. During such removal, the person's participation in Consumer Direction shall be suspended unless another representative can be identified within five (5) business days to serve either on an interim or permanent basis, or the person is determined by DDA or the MCO not to need a representative to continue with Consumer Direction. If the investigation concludes the allegations against the representative are unsubstantiated, the person's participation shall be reinstated if it had been suspended, and the representative's participation in Consumer Direction shall be reinstated if the person determines this reinstatement is appropriate. However, if the allegations against the representative are substantiated, the FEA, DDA, and/or the MCO shall work with the person to identify a replacement representative for Consumer Direction. If a replacement representative cannot be identified within ten (10) business days from completion of the investigation, the person shall be disenrolled from Consumer Direction. If disenrolled from Consumer Direction, the person may continue to receive services from a provider. The person may re-enroll in Consumer Direction upon appointing a new representative.

E. Due Process

All Class I substantiated staff will be eligible to utilize the due process system developed by DDA. DDA established the Division of Administrative Appeals (DAA) unit that provides due process opportunities for individuals with a Class 1 substantiation. Wrongful conduct of a Class 1 substantiation is generally serious enough to call into question whether the offender should be entrusted with the care of vulnerable persons. Substantiated individuals will have the right to request a file review, through which the substantiation could be upheld, modified, or overturned, and an opportunity to request a hearing before an Administrative Law Judge.

1. The DAA due process system is a bifurcated process which allows both an opportunity for a file review and the opportunity for a trial. Within ten (10) calendar days after an investigation is closed in which substantiated staff receives a Class 1 offense, a letter and Election Form are sent to the substantiated staff by the DDA Investigator or Administrative Secretary. The letter informs the individual that he/she has the right to request a file review within fifteen (15) calendar days of the date of the letter.

    a. If an Election Form requesting a file review is not timely received or if the individual returns the Election Form but waives the right to a file review, then prior to initiating litigation for placement on the Abuse Registry (AR) and/or the Substantiated Investigation Records Inquiry (SIRI), DAA shall conduct an informal preliminary trial and/or placement review to determine whether the substantiation should be upheld or modified and whether the individual should be referred for placement on the AR and/or SIRI. If the Class 1 substantiation is overturned or reduced to a Class 2, then the due process system concludes, and a letter is sent to the substantiated staff notifying him/her of the action taken and the conclusion of due process. If the substantiation(s) is/are upheld or revised so that he/she still qualifies for due process, then DAA sends a letter and Election Form to the substantiated staff notifying him/her of the opportunity to request a trial to contest the substantiation(s), placement on SIRI, and/or placement on the AR. The timeframe for requesting a hearing is sixty (60) calendar days from the date of the letter. The hearing is conducted pursuant to statute and the rules of DAA and the Administrative Procedures Division of the Secretary of State's office.

    b. If an Election Form is timely received by DAA, and the individual. requests a file review, then within three (3) business days of receipt, DAA notifies the DDA Director of Investigations (DOI) or designee of the request, including a copy of the Election Form and any supplemental information remitted by the substantiated staff. Within three (3) business days, the DOI notifies DAA whether the case will be reopened. If it is not reopened, DAA accesses the case file, and DAA commences with the file

review and renders a decision letter within thirty (30) days of the receipt of the Election Form, unless extended pursuant to the DAA rules. If the case is reopened, the individual is notified via written correspondence from DAA, and the DOI or designee provides an anticipated date of closure for the investigation. Once closed, if the Class 1 substantiation remains founded, then DAA has thirty (30) days from the date of notification of the closure by Investigations to complete a file review and draft a decision letter.

c. If a formal file review decision results in an upholding of the substantiation or a modified finding that includes a Class 1 as referenced above, then DAA drafts a decision letter to the substantiated staff notifying him/her of the decision and the opportunity to request a trial to contest the substantiation(s) and/or placement on the AR and SIRI. If the Class 1 is overturned or reduced to a Class 2, then the due process system concludes, and a letter is sent to the substantiated staff notifying him/her of the action taken and the conclusion of due process.

d. If an Election Form pertaining to a hearing is not timely received or the right to a hearing is waived, then the substantiated staff will be referred for placement on the AR and SIRI, without further right to appeal. DAA prepares a referral memorandum and submits it to the Department of Health for inclusion of the substantiated staff's name on the AR. DAA notifies the DDA SIRI Coordinator regarding inclusion of the substantiated staff's name on the SIRI. The DOI and provider agency are notified of the outcome of the matter.

e. If an Election Form pertaining to a hearing is timely received and a hearing requested, then DAA files a Notice of Charges and commences with litigation. The hearing is conducted pursuant to statute and the rules of DAA and the Administrative Procedures Division of the Secretary of State's office. At the conclusion of litigation, the DOI and provider agency are notified of the outcome. If substantiated staff is referred for placement on the AR, then DAA prepares a referral memorandum and submits it to the Department of Health for inclusion of the substantiated staff's name on the AR, and DAA notifies the DDA SIRI Coordinator regarding inclusion of the substantiated staff's name on the SIRI.

The Substantiated Investigation Records Inquiry (SIRI) will be accessible for all providers to utilize in reviewing potential employee's substantiation record to assist in hiring decisions. The provider will receive the category of substantiation; the conclusion statement from the Final Investigative Report; and if the offender exercised his/her right to due process, a copy of the DAA decision letter and court ruling, if applicable. Class 2 substantiations are not included in SIRI.

F. Reportable Event Data Review, Collection, & Analysis

It is especially vital to evaluate the nature, frequency, and circumstances of Reportable Events in order to determine how to prevent or reduce similar occurrences in the future, whenever possible. DDA will maintain a statewide system for data collection and analysis for all Tier 1, Tier 2, and Additional Reportable Events and Interventions. All Tier 1, Tier 2, and Additional Reportable Events and Interventions and data shall be tracked and trended by DDA on at least a quarterly basis. MCOs and DDA, in collaboration with their providers, will evaluate the trended data to achieve desired Reportable Event Management outcomes.

Further, DDA will provide TennCare with comprehensive reports for all programs pursuant to the TennCare-DDA Interagency Agreement and CRA, as applicable. TennCare receives a trend analysis from DDA and the MCOs on all reportable event data, including tracking and trending, on a quarterly basis and uses this information to undertake program level analysis, tracking and oversight for all Reportable Events.

Where a Tier 1 or Tier 2 Reportable Event is substantiated at a Class 1 or Class 2 level the findings shall also include identification of applicable, system policies, rules, guidance or other system processes and procedures that may have contributed to the Class 1 or 2 substantiation. The provider, MCO, and/or DDA, as applicable, shall be responsible for managing, tracking, and trending in order to prevent similar occurrences in the future.

Each contracted provider is responsible for the designation of an Event Management Coordinator. ECF CHOICES, CHOICES, Katie Beckett), 1915(c) waiver, and ICF/IID provider agencies that provide day, residential and personal assistance services will develop a Provider Reportable Event Review Team (PRERT). The purpose of the PRERT is to review and evaluate the provider's reportable events, investigations, and trends to inform internal prevention strategies. The PRERT shall meet regularly, but no less than monthly, and membership and representation are specific to each provider's Event Management policy. PRERT meetings will be documented and will reflect discussion and follow-up actions concerning reported events and investigations, their causes, actions taken, and recommendations made by the review team.

G. References

Contractor Risk Agreement (CRA) Reportable Event Reporting and Management
TennCare Select Contract Reportable Event Reporting and Management
TennCare- DDA Interagency Agreement
DDA-MCO Program Operations Agreement
One Reportable Event Management System Definitions Document
Provider Reportable Event Review Team (PRERT) Guidance Document

Tenn. Code Ann. References for Reporting Abuse, Neglect, and/or Exploitation

Tenn. Code Ann. § 71-6-103. Includes reporting requirements for abuse, neglect, and/or exploitation to Adult Protective Services and law enforcement for adults receiving HCBS or ICF/IID services.

Tenn. Code Ann. §§ 37-1-403 and 605. Includes reporting requirements for abuse, including sexual abuse, and neglect to Department of Children's Services and law enforcement for children receiving HCBS or ICF/IID services.

Tenn. Code Ann. References for Abuse, Neglect, and/or Exploitation definitions

Tenn.Code Ann. § 33-2-402