

Child and Family Services Policy Manual: Investigation Investigations in Out-of-Home Care

Introduction

Mont. Code Ann. § 41-3-102 requires the Department to investigate complaints of child abuse and neglect alleged to have been perpetrated by a person responsible for a youth's welfare. (See definition below.)

The Division responsible for conducting abuse/neglect investigations in out-of-home care is CFSD. If the report of child abuse or neglect is determined to be a 'CPS,' the Division is mandated to investigate the report. **An investigation by law enforcement or a licensing entity regarding a case does not relieve the Division of its responsibility to investigate and assess the safety of youth in the out-of-home care setting.**

Out-of-home care settings are day care facilities, family foster homes, therapeutic family care, therapeutic foster homes, youth care facilities (youth group homes, shelter care facilities, and therapeutic youth group homes) child placing agencies, residential treatment facilities, youth detention facilities, and juvenile correctional facilities.

The appropriate forms for use in an investigation in out-of-home care can be found on OURS under Forms/CFS/SAMS Safety forms.

<http://ours.hhs.mt.gov/forms/forms.shtml#cfs>

Definitions

Child abuse or neglect (CA/N) means actual harm to a youth's health or welfare; substantial risk of harm to a youth's health or welfare, or abandonment. The term includes actual harm or substantial risk of harm to a youth's health or welfare by the acts or omissions of a person responsible for the youth's welfare. The term does not include self-defense, defense of others, or actions taken to prevent the youth from self-harm that does not constitute harm to a youth's health or welfare. (Mont. Code Ann. §41-3-102.)

A person responsible for a youth's welfare means the youth's parent, guardian, foster parent or an adult who resides in the same home in which the youth resides; a person providing care in a day care facility; an employee of a public or private residential institution, facility, home or agency; or any other person responsible for the youth's welfare in a residential setting. (Mont. Code Ann. § 41-3-102.)

**Child and Family Services Policy Manual: Investigation
Investigations in Out-of-Home Care**

NOTE: The Department does not have statutory authority to investigate all reports of abuse/neglect perpetrated against minors. Because public or private schools are not residential facilities and are not mentioned in the law, the Department is not responsible for investigating reports of abuse in schools. Likewise, the Department does not have authority to investigate child abuse reports alleged to have been committed by persons other than a person responsible for the youth's welfare.

This type of report should be referred to law enforcement and the County Attorney.

**Youth -on-Youth
Assault
Considerations**

An incident of abuse of one youth by another may be appropriately labeled as "assault" or "intimidation" and, because assault and intimidation are criminal offenses, the incident should be investigated by the local law enforcement agency.

Abuse of a youth by another youth does not fit the legal definition of child abuse under Mont. Code Ann. § 41-3-102, however, the Division does have the responsibility to determine if the abuse occurred as a result of the care giver's lack of supervision, exposure of the youth to an unreasonable risk, or the direct involvement by a care giver.

If, at the time of the report,

- there is no information reported which would lead one to believe that staff were not present;
- or, if there was no information reported which would lead one to believe that staff had the ability to protect or prevent the incident and failed to do so;
- and, if there is no information provided which would indicate that the abuse/neglect was perpetrated by a staff person;

then, the report will be entered as a licensing report.

If, at the time licensing staff review the situation and find that there was a concern as to whether or not the staff responded

Child and Family Services Policy Manual: Investigation Investigations in Out-of-Home Care

appropriately, they will contact Centralized Intake and provide that information so that the field can be notified of those concerns.

This report must be entered into CAPS by Centralized Intake as a “CPS,” giving the provider’s name and provider number on CID1, while leaving the identity of perpetrator as “Unknown” on CID2.

A youth should not be entered as the perpetrator on CAPS. A CPS report should not have the youth’s name listed as the name of the report unless there is no indentifying information about the caregiver available.

However, if a staff member or administrator of a youth care facility, a day care facility, or a foster parent condones or fails to intervene in incidents of youth-on–youth assault, the foster parent, staff member or administrator may be guilty of child abuse or, at least, of complicity in the assault. If the investigation indicates that the foster parent or staff member is culpable, the person’s name should be added to the report as the alleged perpetrator by the investigator.

Response

When a report of abuse or neglect in out-of-home care is received, Centralized Intake will send the report to the CPS Supervisor who is responsible for the county where the home or facility is located.

When a report of abuse or neglect in an out of state placement is received the reporter should be directed to report the abuse or neglect to the state in which the facility is located. Centralized Intake and most field offices have a copy of “**The National Directory of Children Youth and Family Services**” containing appropriate contact information for every state in the union.

For abuse occurring in Montana the CPS Supervisor is then responsible for notifying the Regional Administrator or designee of the referral, as well as the appropriate Licensing Supervisor. The Regional Administrator or designee and Licensing Supervisor will determine whether a joint investigation will be done, or if a CPS investigation will be completed initially.

The appropriate Licensing Supervisor for **regular or therapeutic foster care** is the Family Resource Specialist Supervisor for the area in which the foster home is located. If

Child and Family Services Policy Manual: Investigation Investigations in Out-of-Home Care

the licensing study for the foster family was completed by a child placing agency, the Director of the agency should be notified.

The Licensing Supervisor for **all youth care facilities, child placing agencies, and residential treatment facilities** is the Quality Assurance Division(QAD) Licensing Program Manager (406-563-3448 ext. 222).

The appropriate Licensing Supervisor for **day care facilities** is the QAD Day Care Supervisor (406-444-1510).

The appropriate Licensing Supervisor for **juvenile detention centers** is the Juvenile Detention Compliance Auditor who can be reached at 202-2482).

The appropriate person to notify for **juvenile correctional facilities** is the facility Superintendent. The Superintendent of Pine Hills in Miles City may be reached at 406--233-2290, and the Superintendent at Riverside may be reached at 406-225-4501. If the Facility Superintendent is the party of concern, please notify the Department of Corrections Youth Services Division Administrator at 406-444-0851.

The County Attorney, and if appropriate, law enforcement, should be notified of the report of child abuse and neglect to determine if a criminal investigation should be conducted either prior to or in conjunction with the investigation by the Department.

All reports of child abuse or neglect in out-of-home care facilities will be investigated promptly.

Other Agencies

Law enforcement and County Attorney involvement will be determined by the County Attorney based on his or her assessment of the need for a response. Advance planning with law enforcement agencies regarding abuse reports in out-of-home care is helpful. This may include a mutually agreed upon protocol regarding each agency's response.

Interagency Investigations

If there is any possibility that criminal charges could be filed, Child Protection Specialists should attempt, whenever feasible, to do a joint investigation with law enforcement.

Investigation

The Regional Administrator or designee determines which

Child and Family Services Policy Manual: Investigation Investigations in Out-of-Home Care

Division staff will investigate a report of abuse in out-of-home care. Best practice dictates that any investigation of a report of abuse in out-of-home care should not be conducted by the person who conducted the licensing study of the facility or by the person who placed the youth who is the subject of the report. An independent investigation, however, is not always feasible. The person who assigns the Child Protection Specialist(s) to conduct the investigation should be aware of the potential for claims of conflict of interest and should designate investigative staff accordingly.

Grants Contracts and Data Management Unit Information

If the allegations involve a youth group home, shelter care, child placing agency, therapeutic group home, or therapeutic foster care program, the assigned investigator(s) may obtain information from the Central Office Residential Specialist in the Grants Contracts and Data Management Unit as applicable to the investigation (e.g., most recent contact, areas of concern/strength, etc.). Once an investigation begins, it is the Grants Contracts and Data Management Unit's responsibility to forward any pertinent information to the CPS or licensing investigator(s) until the investigation is complete. The Grants Contracts and Data Management Unit Supervisor can be contacted at 841-2415.

If a contract monitoring review is in process when a CA/N referral is received, the review will cease until the investigation is complete or the monitors have been specifically authorized by the Regional Administrator and the appropriate Licensing Supervisor to continue the review. When a CFSD staff acts in the role of a contract monitor, s/he shall refrain from participating in a CA/N and/or licensing investigation. Refer to Policy 107-1, Contract Monitoring for further information.

Notification to Youth's Parent(s) and Child Protection Specialist(s)

When a report of alleged abuse or neglect is received on any youth in a licensed placement or unlicensed kinship home or a Youth Care Facility and an investigation is warranted, the investigating Child Protection Specialist will:

- Notify the parent(s) that a report has been received, that an investigation will be completed, and that the parent(s) will be notified of the determination at the conclusion of the investigation. If the victim has been injured to the extent that medical treatment is obtained, the parent(s) shall be notified immediately, except when parental rights

Child and Family Services Policy Manual: Investigation Investigations in Out-of-Home Care

have been terminated. Refer to Policy 402-5, Supervision of Out-of-Home Placements, for additional information regarding authorization for medical treatment.

- If the report is determined to be unfounded, inform the parents of this fact.
- If the report is determined to be unsubstantiated, inform the parents of this fact, and, upon their request, provide them with copies of the case file information (pursuant to 41-3-205 Mont. Code Ann.). However, any identifying information regarding the reporter and the alleged perpetrator must be redacted from the file, and must not be divulged to the parents.
- If the report is determined to be substantiated, inform the parents of this fact, and, upon their request, provide them with copies of the case file information. The case file information should include the identity of the perpetrator, **unless** the perpetrator has appealed the substantiation, in which case his or her identity should be withheld pending the outcome of the fair hearing process. Information identifying the reporter must be redacted from the file.
- If the parental rights have been terminated, the investigating Child Protection Specialist will not notify the parents of abuse/neglect allegations.

NOTE: The question of whether disclosure of information poses a threat to the youth should be considered at all times, and any such threat to the youth supersedes the parents' right to information or notification at any stage of the investigative process; however, the potential threat and decision should be documented thoroughly by the investigating Child Protection Specialist and approved by the supervisor.

Youth Care Facility When alleged victims are reported to have been abused in a Youth Care Facility and the abuse or neglect has been substantiated, the investigating Child Protection Specialist shall notify the placing Child Protection Specialist's of all victims. The placing Child Protection Specialists will also notify the parents of the victims, except when parental rights have been

Child and Family Services Policy Manual: Investigation Investigations in Out-of-Home Care

terminated.

Day Care

When the alleged victim is reported to have been abused in day care, the parents of the alleged victim(s) shall be notified of the interview with their youth. This does not imply that the parents must give their permission to have their youth interviewed, but the Child Protection Specialist must assess whether notification would compromise the investigation.

Parental Notification for Day Care

Prior to any adverse licensing action, if the investigating Child Protection Specialist believes it is important to notify the parents of other youth in care, s/he should seek to obtain a court order to notify those parents. Unless otherwise specified in the court order, the Child Protection Specialist cannot give the parents any detailed information regarding the investigation (i.e., name of victim or specific allegations). If the parents have questions, the Child Protection Specialist should suggest that the parents contact the facility Director.

Interviews Facility Director

When investigating at a youth care facility or with a child placing agency, an entrance interview may be conducted with the Director to discuss what s/he may know about the reported incident(s) and to inform the Director about the process of the investigation. The Director may be helpful in arranging interviews with staff and youth, and in providing space and other logistical support for the investigation.

An entrance interview is not required if the investigators have reason to believe the interview would interfere with the investigation.

Prior to leaving the facility, the investigator should discuss with the Director any assessed risk issues, any problems which require immediate attention, and the next steps in the investigation.

Alleged Victims

The alleged victim(s) should always be interviewed. A setting should be chosen which is both private and non-threatening.

The Child Protection Specialist should determine if there are other victims that were not named in the report and assess the safety of those victims. Interviews should be promptly conducted with those victims.

Child and Family Services Policy Manual: Investigation Investigations in Out-of-Home Care

If the facility refuses the Child Protection Specialist access to the youth, the Child Protection Specialist shall seek a court order to obtain access.

Witnesses

All witnesses should be interviewed. In youth care facilities it is important to locate and interview potential witnesses, particularly those staff whose shift may not be at the same time as the alleged incident(s), but who, nevertheless, work with the alleged victim(s) and may have some knowledge of the alleged perpetrator(s) that could be beneficial to the investigation.

Alleged Perpetrators

Interviews with the alleged perpetrator(s) should be conducted after the interviews with the youth and witnesses. The alleged perpetrator does not have the right and should not be allowed to be present during an interview with the youth.

Youth Care Facilities are required to have written policies and procedures for handling any suspected incident of child abuse or neglect involving facility staff, including but not limited to a procedure for ensuring that the staff member suspected of child abuse/neglect does not continue to provide direct care until an investigation is completed.

The transfer or suspension of the alleged perpetrator(s) should be assessed and discussed with the facility Director. However, no personnel recommendations should be made by the investigator (i.e., suspension or termination from employment). The facility Director must make any disciplinary decision. In most cases, it will be prudent to deny the perpetrator(s) access to youth during the course of the investigation. Should the facility Director decide against transfer or suspension of the alleged perpetrator(s) and the Child Protection Specialist believes the youth is in jeopardy, the youth should be removed from the facility.

Documentation

A review should be conducted of any documents that might have a bearing on the incident. Such documents might include: time cards, nursing notes, shift staff reports, facility policies/procedures, facility records on the youth, staffing patterns, personnel files, orientation and training documentation, incident reports and licensing studies.

Findings and Conclusions

Upon completing the investigation, the Child Protection Specialist shall present a written report to his or her immediate

Child and Family Services Policy Manual: Investigation Investigations in Out-of-Home Care

supervisor. The report should include a summary of the incident, the process used in the investigation, the interviews conducted, the documents located and reviewed, and the findings and conclusions of the investigating Child Protection Specialist.

The specialist who licenses the facility should be notified of the findings as soon as possible following the initial investigation. Any concerns regarding practice should be noted in the report to the licensing specialist, regardless of whether there is a finding of abuse and/or neglect.

Written follow up should be sent to the facility executive director by the investigating CPS **no sooner than 31 days after alleged perpetrator has been notified of a SUB determination** in order to allow time for a fair hearing request to be submitted. If the employee requests a fair hearing this notification should be delayed until the fair hearing process is complete.

NOTE: Upon completion of an investigation of any youth care facility, or therapeutic foster care program, the investigating Child Protection Specialist is responsible for notifying the Central Office the Residential Specialist in the Grants Contracts and Data Management Unit that the investigation is complete.

CAPS

Child abuse/neglect investigations should be documented by the investigating Child Protection Specialist on the Report/Request screens under the category 'CPS'. Licensing investigations should be documented by the licensing specialist on the Report/Request screens under the category of 'LIC.'

References

Mont. Code Ann. § § 41-3-102, 41-3-201, 41-3-202, and 41-3-205.