

# **Part II - Approaches to Investigations in Institutions and the Community**

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Monday, June 8, 2020  
1:00 – 5:00 p.m. EST



**Disability  
Rights** OHIO

We have the  
legal right of way.

# Part II: Session Overview



- **Overview of Investigation Process**

- **Conducting Investigations**

Types of Investigations

Developing Investigation Plan

Interview Skills

# Monitoring

Broad, planned look at a facility and involves activities that evaluate:

- Rights education and protection
- Environmental conditions
- The quality of service provided by providers of services, supports and other assistance
- Compliance issues



# Investigations



- Narrower focus - targeting specific allegations
- Complaint or **probable cause** required
- Can access facility/people anytime
- Access to all relevant records

Can always switch direction  
from Monitoring to Investigation  
if P & A determines  
probable cause

# Investigations



- Can request to interview anyone about incident including staff
- Information we are able to share may be limited
- Outcome oriented, within the parameters of client direction
- Always important to define the initial scope/objective of the investigation

# Scope of Investigation



- Falls within P & A priorities
- Merits of the allegations upon initial review
- What has the facility already done to address or remedy the situation
- Funding available

# Investigation Priorities



- Systemic rights violations in facilities - denial of basic needs, excessive medication, cultures of abuse, etc.
- Sexual abuse
- Human trafficking
- Financial exploitation particularly in facilities or by paid providers





# Investigation Priorities



- Suspicious death
- Severe physical injury or death
- Restraint/seclusion for long periods of time and/or frequently recurring



# Investigation Activities



- Notify client/victim, if requested on behalf of individual
- Obtain client direction
- Confirming the scope of assistance
- Interview the victim/client

# Investigation Activities



- Make requests to preserve video as soon as possible
- Obtain relevant records including video (attempt to get guardian permission)
- Interview significant witnesses
- Visit the setting if needed

# Reminder: Access Authority



- Under federal and state law we have unique access to individuals, facilities and records that other advocacy organizations do not have
- Reasonable times (permitted anytime) without interference
- Meet privately and communicate with individual(s) – phone, mail, e-mail & in-person
- Honors a client's request to terminate

# Reminder: Access Authority



- **Monitoring** generally provides broader access to areas within facility & individuals
- **Investigations** generally provided broader access to records and video(s)
- Guardian's/Individual's Consent
- Requests for records (written & video) made in writing in consultation with P & A's Access Attorneys

# **Access Authority: Types of Records**



- Under investigation authority, P &A has right to access records not subject to discovery
- Videos, clinical records, peer review, incident reports, certification, licensure, accreditation reports, personnel, building and other safety reports
- P & A permitted to review and copy records

# Confidentiality of Records



- Consult with the P & A's designated staff member, or their designee, before releasing records
- Must maintain the confidentiality to the same extent as is required by the provider of such services
- PAIMI access authority provision

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# Conducting Investigations



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# Abuse Investigations



- Rape & sexual assault
- Use of excessive force when applying restraints
- Striking an individual with a disability
- Use of restraints and seclusion not in compliance with laws and regulations

# Neglect Investigations



- Failure to provide a safe environment
- Failure to establish or carry out an individualized plan
- Failure to provide adequate nutrition, clothing or healthcare
- Failure to provide adequate number or staff and/or lack of trained staff

# Primary Investigations



- Primary purpose is to conduct investigation of alleged incident or condition
- P & A is the first to investigate
- What happened?
- How or why did it occur?
- What happened immediately after incident?



# Secondary Investigations



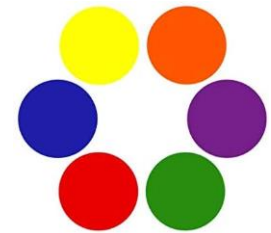
- Primarily a review of the quality of the primary investigation
- P & A conducts follow-up investigation & reviews the quality of primary investigation(s)
- Review of primary investigation
- What happened next?
- Could it occur again and impact others?



# Incident- Specific Investigations



- Primarily looking at a specific incident or condition which affects one or more people in a specific place(s) or times(s)
- Individual cases of abuse and neglect
- Was there abuse or neglect?
- How was it handled?
- What remedy or outcome occurred for the individual?



# Systemic Investigations



- Conducting an investigation of suspected patterns and practices of abuse or neglect
- Builds on work of individual cases to leverage system reform
- Cluster of similar cases
- Systemic reform improvements that reach beyond an individual



# **All Investigations blend Strategy, Creativity & Skill**





# Pre-Planning Research



- What type of facility?
- Who licenses/regulates, and what rules apply?
- What reports are available?
- Who are investigative partners (County DD Boards, DOH, State DD, State MH)

# Pre-Planning Questions



- What happened?
- How or why did it happen?
- What happened next?
- What did provider do?
- Was it investigated?

# Pre-Planning Questions



- If incident was already investigated by whom & what were the findings?
- Could it happen again?
- Did they fix the problem?
- Does something still need to change?

# Develop Strategic Goal of Investigation



- Initial goal for or purpose of the investigation needs to be clearly stated
- Provide the overall context for what the investigation is trying to accomplish
- Important for all team members to understand and be able to articulate goal

# Determine how the Results will be Used



- To demand provider-level changes (installing monitors, staff training)
- To call on appropriate governmental licensing & regulatory bodies to provide required oversight (complaint-based, special survey, special compliance review)
- To release a public report

# Determine how the Results will be Used



- To utilize the abuser registry for DD
- To refer to professional licensing boards
- To accelerate suspension of admissions or waiver certification
- To facilitate closure of facility

# Determine how the Results will be Used



- To revoke waiver certification
- To negotiate policy changes
- To initiate litigation
- To leverage systemic changes

# Investigation Plan

## A Place to Start



- Narrow focus
- Work from incident backwards
- What information is needed to answer investigation questions
- Sources to obtain the information



# Investigation Plan:

## Sources of Information



- Video (request preservation asap)
- Documents/Records
- Interviews
- Environmental Investigation

# Investigation Plan:

## Physical Evidence



- Environmental photographs (bring camera)
- Temperature gun recordings
- Video(s) of incident
- Calculator (if reviewing financials)

# Investigation Plan:

## People to Interview



- Client(s)/Victims
- Witnesses
- Abuser(s)
- Collateral – other staff, police

# Investigation Plan:

## Documents



- Charts - progress notes, clinical records
- Facility incident reports – current and prior
- Emergency room records
- Investigation reports
- Police reports
- Coroner reports

# Investigation Plan:

## Documents



- Review State MUIs regarding facility, provider and/or individual
- Review past surveys from State Department of Health
- Review past surveys Center for Medicaid and Medicare (CMS)

# Investigation Plan:

## How to Obtain Information



- Make a list while **on site** when meeting with facility and then follow-up with a written records request
- Time records
- Staff training records
- Policies & procedures

# **Investigation Plan:**

## **How to Obtain Information**



- Public Records Requests
- Client or Guardian Authorization
- Online Searches
- Access Authority
- Request Investigative Packet

# Visual Listening Exercises



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- <https://youtu.be/Ahg6qcgoay4>
- <https://youtu.be/U1saQoMRD8A>
- <https://youtu.be/MYEAQG62pYA>



# Communication with Facility Disability Rights OHIO

**NOTICE**

This is a **strategic** decision – not required  
for investigations

# On-Site Investigations



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# On-Site Activities



- May decide to meet with the staff upon arrival
- What is toured is limited to the scope of investigations
- Individual interviews
- On-site record reviews
- Recognize Immediate Jeopardy

# Client Interviews

- Always voluntary
- Make every effort not to interrupt groups, other treatment related activities or sleeping individuals
- Be comfortable with & confident in silence



# Client Interviews



- Private area
- Individual(s) may request to have another person present
- Assure on-site interview(s) does not jeopardize the health and safety of client(s)

# Interview Protocols



- Clarify with the individual that P & A is not agreeing to provide them with representation at any legal or administrative hearing or procedure
- Provide the individual with a P & A intake card or business card when finished and to those who express an interest

# Interview Process



- Introductions
- Establish and maintain rapport
- Be open to all types of communication:  
writing drawing, gesturing, anatomically  
detailed drawings/body maps
- Keep detailed notes



# Active Listening: Suspend all Judgment



- Demonstrate respect for cultural diversity and strive for cultural humility
- Use developmentally appropriate language
- Use a trauma-aware approach to help prevent re-traumatization \*
- Ask open ended questions

# Take Good Case Notes



- Areas visited
- Interviews with individuals
- Observations
- Concerns raised by individuals or staff
- Actions take on-site (if any)
- Plan for follow up (if any)



There is no thing as a single-issue struggle  
because we do not live single-issue lives.

~ Audre Lorde



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