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**SAMPLE**

**THE COUNTY BOARD  
MEMORANDUM OF UNDERSTANDING**

**Sample language found in italicized print is offered as a starting point. It is not required but may assist in discussions on the development of the content.**

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## **MEMORANDUM OF UNDERSTANDING (MOU)**

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### **A. INTRODUCTION**

1. Discussion and decision of how long MOU will be in effect, how to amend the MOU if needed, if there will be any meetings after the MOU is in place to review outcomes.
2. Reference to ORC 5126.058.

### **B. PURPOSE AND GOALS (Refer to ORC 5126.058 (B) and (C))**

1. The elimination of unnecessary interviews of persons who are the subject of reports of abuse/neglect;
2. To provide protection, aid, and treatment to the victims of abuse, neglect, and theft;
3. To ensure the prompt and proper reporting of incidents of suspected or actual abuse, neglect and theft;
4. To bring about prosecution and/or treatment of the perpetrators of abuse, neglect, and theft;
5. To conduct timely and thorough investigations of abuse, neglect, and theft referrals in order to protect individuals with MR/DD;
6. To protect the individual and family from further abuse and trauma by elimination of duplication and gaps in efforts by all professionals involved (refer to #1);
7. To facilitate rapid and successful prosecution of offenders in all areas of abuse, neglect, and theft;
8. To establish the normal operating procedures to be employed by all concerned officials in the execution of their respective responsibilities under ORC Sections 313.12, 2151.421, 2903.16, 5126.058, 5126.31, and 5126.33;
9. To define the responsibilities and interrelationship among participating agencies for the handling and coordination of abuse, neglect, and theft, investigation, prosecution, and treatment; and
10. To define responsibilities in a criminal and an administrative investigation.

### **C. REQUIRED PARTIES TO MOU (Refer to ORC 5126.058 (A) (3) to (A) (8))**

1. The probate judge or representative;
2. County peace officer;
3. All chief municipal peace officers within the county;
4. Other law enforcement officers handling abuse, neglect, and theft of persons with developmental disabilities;
5. The prosecuting attorney of the county;
6. The public children services agency; and
7. The coroner of the county.

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### **D. OPTIONAL PARTIES TO MOU**

1. Victim advocates;
2. Municipal court judges;
3. Municipal prosecutors;
4. Adult protective services;
5. Developmental centers;
6. Ohio State Highway Patrol;
7. Family or Domestic Relations Courts; or
8. Any other person whose participation furthers the goals of the MOU.

### **E. FAILURE TO FOLLOW MOU**

ORC 5126.058(B) states:

"A failure to follow the procedure set forth in the memorandum by the concerned officials is not grounds for, and shall not result in, the dismissal of any charge or complaint arising from any reported case of abuse, neglect, or exploitation or the suppression of any evidence obtained as a result of any reported abuse, neglect, or exploitation and does not give any rights or grounds for appeal or post-conviction relief to any person." (O.R.C. 5126.058(B)).

### **F. CONFIDENTIALITY**

No person shall permit or encourage the unauthorized dissemination of the contents of any report made pursuant to this Memorandum of Understanding.

The identity of the referral source shall be considered a part of the report. The County Board shall not release or affirm the identity of any party without the referral source's consent, except for the purpose of judicial testimony, if court intervention is deemed necessary to protect the person.

Note: It is suggested that you review with your HIPPA officer the need for any language regarding HIPPA. It is important to have some language regarding the confidentiality of reports. It is also suggested that the parties review their respective statutes on confidentiality of records, such as ORC 5126.044. The parties need to determine what information to share and with whom. A discussion on why the information is needed would be helpful.

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- **Sample language:**

- *Each report of suspected abuse, neglect or theft is confidential. The information shared with the subscribers of this Memorandum of Understanding is made available only for the purposes of investigation, treatment or case management of suspected abuse, neglect or theft of an individual with DD.*
- *The information provided in a report and the name of the person who made the report shall not be released for use, and shall not be used as evidence in any civil action or proceeding brought against the person who made the report. In a criminal proceeding, the report is admissible as evidence in accordance with the Rules of Evidence and is subject to discovery in accordance with the Rules of Criminal Procedure.*

See Ohio Administrative Code section 5101:2-34-38 relating to confidentiality and reports of child abuse/neglect.

### **G. INITIAL REPORTING OF ALLEGATIONS OF ABUSE / NEGLECT**

1. The MOU should address the requirements for reporting and investigating under both OAC 5123: 2-17-02 (Addressing Major Unusual Incidents and Unusual Incidents to ensure, health, welfare and continuous quality improvement) and ORC 2151.421 (Child Abuse and Neglect). There are several issues to explore as part of the MOU process:
  - Discuss when the parties of the MOU will receive reports of abuse/neglect.
  - Discuss who needs to be notified.
  - Provide contact information for after-hours reporting.
  - Discuss what type of information needs to be in the report.
  - Be mindful of coroner notifications by law enforcement, EMTs and attending physicians for deaths of individuals with DD.
  - Be mindful of adult protective services for individuals over 59.

This section states the reporting requirements for all individuals with another developmental disability. It then states the specific requirements for reporting child abuse. Although many of the mandatory reporters of abuse or neglect are the same, there are differences in the definitions of abuse / neglect. All parties should be clear about what, where, and how allegations should be reported. It is important to share the differences in definitions and what actions all parties to the MOU are required to take.

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- **Sample language:**

- A. Child abuse reporting language**

- ORC 2151.421(A)(1)(a) states: “No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and who knows or suspects that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, shall fail to immediately report that knowledge or suspicion to the entity or persons specified in this division. Except as provided in section 5120.173 of the Revised Code, the person making the report shall make it to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred.” In the circumstances described in section 5120.173<sup>1</sup> of the ORC, the person making the report shall make it to the entity specified in that section.

#### 4. Reporting Procedures

*Those required to report suspected child abuse and neglect under ORC 5121.421(A)(1)(b) are:*

- Attorneys
- Physicians, including hospital interns and residents
- Podiatrists
- Audiologists
- Child day care center
- Licensed psychologists
- Professional administrator/employee counselor
- Children services agency (public or private) administrator/employee
- School authorities
- Practitioners in limited branch of medicine, per R. C. 4731.1
- Residential camp or child day camp administrator/employee
- Other health care professionals
- School employees
- Coroners
- School psychologists (licensed)
- Certified child care agency
- School teacher administrator/employee
- Dentists

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<sup>1</sup> If the child is in the custody of a state correction institution, the report is made to the State Highway Patrol.

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- *Social workers*
- *Nurse<sup>+</sup>*
- *Speech pathologists*
- *A superintendent of a county board of developmental disability*
- *A board member or an employee of a county board of DD*
- *An investigative agent under contract with a county board developmental disability or an employee of the Ohio Department of Developmental Disabilities*
- *Persons rendering spiritual treatment through prayer in accordance with the tenants of a well-recognized religion*
- *Agent of county humane society*
- *Marriage and family therapist including independent marriage and family therapists*

### 5. *Reporting Abuse, Neglect of Persons with DD:*

- *ORC 5123.61(C) (1) states: “Any persons listed in division (C)(2) of this section, having reason to believe that a person with a developmental disability has suffered or faces a substantial risk of suffering any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect of that person, shall immediately report or cause reports to be made of such information to the entity specified in this division. Except as provided in section 5120.173<sup>2</sup> of the Revised Code or as otherwise provided in this division, the person making the report shall make it to a law enforcement agency or to the county board of developmental disabilities. If the report concerns a resident of a facility operated by the department of developmental disabilities the report shall be made either to a law enforcement agency or to the department. If the report concerns any act or omission of an employee of a county board of developmental disabilities, the report immediately shall be made to the department and to the county board.”*

*The persons listed in ORC 5123.61(C)(2) are:*

1. *Attorney;*
2. *Physician (including a hospital intern or resident);*
3. *Hospital administrator or employee of a hospital;*
4. *Employee of an ambulatory health facility per ORC 5101.61*
5. *Employee of home health agency, adult care facility licensed under ORC Chapter 3722, or a community mental health facility;*
6. *Dentist;*
7. *Podiatrist, Chiropractor;*
8. *Practitioner of a limited branch of medicine, per ORC 4731.15;*
9. *Nurse licensed under ORC Chapter 4723;*
10. *Coroner;*
11. *Psychologist*
12. *Peace Officer;*

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<sup>+</sup> Includes Registered, Licensed Practical and Visiting Nurses.

<sup>2</sup> If a person with MR/DD is an inmate in the custody of a state correctional institution, reports of abuse and neglect are to be made to the State Highway Patrol.

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13. *Resident's right advocate per ORC 3721.10;*
14. *School teacher or school authority;*
15. *Social worker;*
16. *Clergymen employed in a position that includes providing specialized services to an individual with DD while acting in an official or professional capacity in that position or a person who is employed in a position that includes providing specialized services to an individual with DD and who while acting in an official or professional capacity, renders spiritual treatment through prayer in accordance with the tenets of an organized religion;*
17. *Superintendent, board member or employee of a county board of DD;*
18. *Administrator, board member or employee of residential facility licensed per ORC 5123.19;*
19. *Administrator, board members, or employee of public/private provider of services to a person with DD;*
20. *An DD employee as defined in ORC 5123.50*
  - *Employee of the Department of DD*
  - *Employee of a County Board of DD*
  - *Employee in a program or service designed and operated to primarily service persons with DD including programs and services provided by an entity licensed or certified by DD;*
- 21. *A member of the citizens' advisory council established at an institution of the department per ORC 5123.092.*

### 7. False Reports/Failure to Report

- **Sample language on Failure to Report:**

- *Failure to Report is a criminal act under ORC 5123.99(B). ORC 5123.99 states: "Whoever violates division (C), (E), or (G) of section 5123.61 of the Revised Code is guilty of a misdemeanor of the fourth degree, or if the abuse or neglect constitutes a felony, a misdemeanor of the second degree."*

*ORC 5123.61(E) states: "When a physician performing services as a member of the staff of a hospital or similar institution has reason to believe that a person with developmental disability has suffered injury, abuse, or physical neglect, the physician shall notify the person in charge of the institution or that person's designated delegate, who shall make the necessary reports."*

*ORC 5123.61(G)(3) states: "When a county board of developmental disabilities receives a report under this section that includes an allegation of action or inaction that may constitute a crime under federal law or the law of this state, the superintendent of the board or an individual the superintendent designates under division (H) of this section shall notify the law enforcement agency. The superintendent or individual shall notify*

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*the department of developmental disabilities when it receives any report under this section.”*

*ORC 5123.61(C)(4) states: “Any person who fails to make a report required under division (C) of this section and who is an DD employee, as defined in section 5123.50 of the Revised Code, shall be eligible to be included in the registry regarding misappropriation, abuse, neglect, or other specified misconduct by DD employees established under section 5123.52 of the Revised Code.”*

- **Example of Children’s Services language on false reports:**
  - *ORC 2151.421(H)(3) states: “A person who knowingly makes or causes another person to make a false report under Division B of this section that alleges that any person has committed an act or omission that resulted in a child being an abused child or neglected child is guilty of a violation of section 2921.14 of the Revised Code.”*

### H. IMMEDIATE HEALTH AND SAFETY EMERGENCY PROCEDURES

- Define what an emergency is; "see ORC 5123.61 (G) (4)." See Attachment 1 on the definition and concept of emergency.
  - **Sample language:**
    - *A situation should be considered an emergency when it has been determined that there is substantial risk of immediate physical harm or death to a person with MR/DD.*
- Define the roles of the parties in an emergency situation based upon whether the alleged victim is a child or an adult. (See ORC 5123.61(I).)
- Address the filing of a complaint in probate court for court ordered protective services. (See ORC 5126.30 to ORC 5126.332.)
  - **Sample language:**
    - *The board may file a complaint with the probate court for an adult if he/she is eligible to receive services and supports under ORC 5126.041 for an order authorizing the board to arrange for services for the prevention, correction or discontinuance of abuse or neglect or of any condition resulting from abuse or neglect when the board has been unable to secure the consent of the adult or the adult’s guardian.*
    - *The complaint shall include:*
      - 1). *name, age, and address of the adult;*

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- 2). *facts describing the nature of the abuse, neglect, or exploitation that supports the board's belief that services are needed;*
  - 3). *types of services proposed as set forth in the protective service plan;*
  - 4). *facts showing attempts to obtain the consent of the adult or the adult's guardian.*
- *The board shall give the adult notice of the filing of the complaint and inform the adult of the right to a hearing. The notice shall be personally served on all parties, the adult's attorney and Legal Rights Service.*
  - *The court shall hold a hearing at least 24 hours but no later than 72 hours after the notice.*
  - *The court shall issue an order authorizing the board to arrange for protective services if it finds clear and convincing evidence that:*
    - 1). *the adult has been abused, neglected, or exploited;*
    - 2). *the adult is incapacitated;*
    - 3). *there is a substantial risk to the adult of immediate physical harm or death;*
    - 4). *the adult is in need of services;*
    - 5). *no person authorized by law or court order to give consent is available or willing.*

### I. ADMINISTRATIVE AND CRIMINAL INVESTIGATION PROCESS

- Collaborative Efforts
  - **Sample language:**
    - *In compliance with ORC 5126.058 information sharing procedures are built into this Memorandum of Understanding. The signers of this document thereby express a commitment to share information to facilitate the investigation, treatment and/or case management of suspected abuse, neglect, or theft of individuals with DD.*
    - *ORC 5123.61(M) states information contained in reports of abuse and neglect under ORC 5123.61 shall be made available to the person who is the subject of the report, to the person's legal counsel, and to agencies authorized to receive information in the report by the department or by a county board of developmental disabilities.*

#### 1. Investigations

- Outline various types of situations and what the interactions between supporting agencies will be.
- State who has jurisdiction - role of other entities.

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- Outline administrative investigation vs. a criminal investigation, a situation with an adult vs. a child, an adult at home vs. other settings and how these may interface.
  - Outline circumstances where a joint investigation would be valuable. Define the roles of each entity involved in the joint investigation.
  - Be sure to include the county board's duty to notify law enforcement (on suspected criminal activity) as well as other situations where law enforcement should be contacted. (See ORC 5123.61(G), (H), (I) and (J).)
  - Consider having each entity complete an Addendum for roles and responsibilities in this section.
2. County Board Requirements on Administrative Investigations
- Include protocol requirement (see Attachment "B").
  - Goals of the administrative investigation.
    - **Sample language:**
      - *The administrative investigation is a detailed fact finding process with four primary goals:*
        1. *To determine whether the allegation is substantiated;*
        2. *To determine the degree of risk to the individual;*
        3. *To develop and implement a plan to protect the individual (immediate actions);*
        4. *To gather evidence to support criminal prosecution and other judicial proceedings (abuser registry), where indicated.*
  - Required interviews as outlined in Ohio Administrative Code 5123:2-17-02.
    - **Sample language:**
      - *Interview all direct witnesses including the victim and document the interviews.*
      - *Interview medical professionals as to the possible cause or age of the injuries and document the interviews.*
      - *Interview others who may have relevant information and document the interviews.*
3. Alleged Victim Interviews (see Attachment C)
- Discuss who will interview the victim so that unnecessary interviews of the victim are eliminated.
  - Discuss importance of environment for interviewing of a person with DD.
  - Considerations when interviewing a person with DD.
    - **Sample language:**

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- *The interview with the alleged victim should always take into consideration the strengths and limitations of the individual to be interviewed. Interviewers should acquire a working knowledge of the individual's chronological age, developmental age, level of functioning, communication style, and the ability to pair known information with verbal responses.*
- *When at all possible, limit the number of people in the interview. If possible only the investigator and alleged victim. This promotes confidentiality and increases the alleged victim's comfort level, thus the disclosure of needed information. We have often found that having the alleged victim's supervisor or others in the room leads to intimidation, confusion, distractions, and often, lack of an open dialogue.*
- *Make the setting as private as possible, which is conducive to gaining the most information from the alleged victim. Oftentimes the alleged victim's place of employment and work location (especially if you interview them while their working) is not a good place to interview due to possible distractions and fear of being overheard by others. Attempt to interview the person away from work (if it's the victim, definitely interview him/her away from the site of the alleged incident and/or where the alleged perpetrator would be). Sometimes a neutral setting like a restaurant works well. It's a more casual setting and helps put the alleged victim at ease.*
- *Be aware of physical discomfort. If the place is too cold or too hot, the alleged victim will want to leave as quickly as possible.*
- *Allow for no distractions including cell phones, pagers, and clock watching. If you allow the alleged victim to answer the phone, they'll interpret the interview as not important. If you answer your phone or watch the clock, the alleged victim may feel rushed or that his/her information is not important to the interviewer.*
- *Try not to have any physical barriers, (e.g. a desk) between you and the alleged victim so as to better interpret any nonverbal cues from the alleged victim.*
- *The interviewer should avoid making obvious their personal feelings or judgments during the interview. Keep the interview as relaxed and open a setting as possible.*
- *Discuss need to do both administrative and criminal interviews, how this might be handled, sharing of results, the purpose of each, etc.*

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- *Share the role of the Department of MR/DD in situations where it is a conflict for the county board to investigate.*

- **Sample language for 5123: 2-17-02:**

*The Department is required to conduct a separate investigation when the following circumstances are present:*

- *The allegation involves the superintendent of the county board or the executive director of a regional council of government.*
  - *The allegation involves a county board management employee.*
  - *The allegation involves a current member of the board for the county.*
  - *The allegation involves a person with a known relationship with the superintendent or director of the council of government.*
  - *The allegation is that a county board employee is responsible for the death of an individual or has committed sexual abuse against the individual or neglect that has resulted in an emergency room visit or hospitalization.*
  - *Others deemed appropriate by DD.*
- Discuss the process for filing charges.
  - Discuss the sharing of information when a person has been charged with a crime and the victim is an individual with DD (ORC Section 2930.061).
  - Discuss providing victim services to the individual with DD.
- **Sample language:**
    - *In cases where a person is charged with a crime or specified delinquent act or with any violation of law and the victim is a person with MR/DD the prosecutor in the case shall send written notice to the Department and shall specifically identify the person so charged.*

### Roles and Responsibilities of Mandated Subscribers

This area should address the statutory responsibilities of each agency/entity that is a party to the Memorandum of Understanding regarding investigations, notifications, and sharing of information for each of the following:

County board.

Department of should be listed so other entities will understand the Department's involvement locally.

Public Children Services Agency.

County and city law enforcement agencies.

County prosecutor's office.

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County prosecutor's office Victim/Witness Division.

Coroner.

Probate court.

Developmental centers (see attached sample for sample language).

\* It is recommended that each entity have a procedure on roles and responsibilities and make it available upon request regarding its roles and responsibilities.

## **MANDATED SUBSCRIBERS**

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County Peace Officer

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Chief Municipal Peace Officer

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Other Law Enforcement

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Prosecuting Attorney

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Public Children Services Agency

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Coroner

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County Board of MR/DD

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\*Others may sign based upon their involvement

Sample Language for institutions (developmental centers) under the jurisdiction of the department of developmental disabilities:

### V. Purpose

This Memorandum of Understanding addresses the role of the County Board and Developmental Center under the jurisdiction of the Department of Developmental Disabilities in situations where Developmental Center residents are receiving services from the County Board and the alleged incident occurs during a time when the resident is receiving County Board services.

#### Role of Developmental Center and County Board

##### Notifications:

2. The developmental center shall be notified regarding any incident involving the resident of a developmental center.
3. The county board shall be notified by the developmental center when incidents that occurred at the developmental center may impact an individual with DD attending a work setting, may require work adjustments or as deemed necessary in other cases.
4. The county board shall notify the appropriate law enforcement agency as applicable. The Ohio State Highway Patrol has jurisdiction for the investigation of alleged incidents of abuse, neglect or exploitation that occur at developmental centers.

##### Investigations:

1. The developmental center is required to adhere to Medicaid Regulations that require an investigation to be completed in five (5) working days. The developmental centers will be responsible for conducting the administrative investigation. The interviews of county board staff shall be done jointly with the county board investigative agent. In criminal cases, law enforcement shall have the lead role and will notify the developmental center when it is appropriate to proceed with the administrative investigation.

##### Investigation Reports:

1. Investigation reports involving developmental center residents while under county board responsibility shall be provided to the developmental center.