

**District of Columbia's
Protocol for Additional Enforcement Mechanisms
for Providers Whose Performance
Poses Potential Risk of Harm to *Evans* Class Members**

This protocol outlines the additional enforcement mechanisms and applicable time periods to be employed by the Department on Disability Services (“DDS”), and its Developmental Disabilities Administration (“DDA”), to address performance by a residential or day provider that is seriously deficient and/or poses an imminent risk of harm to *Evans* class members and other individuals served by the provider as further described below. DDS/DDA utilizes its ongoing quality management and quality assurance processes (*i.e.* Provider Certification Review, Provider Performance Review, Service Coordination Monitoring, Enhanced Monitoring, Watch List, Incident Management, *etc.*), and works with other District of Columbia agencies with oversight and monitoring responsibilities, to assess the quality of providers. However, when DDS/DDA has determined, in the discretion of the DDS Deputy Director for DDA or her designee, that there is a provider agency with performance issues that are seriously deficient or which pose a serious threat to the health, safety and well being of the individual(s) receiving services from the agency, then DDS/DDA will implement the protocols set forth herein.

I. Identification of Emergency/Urgent Conditions

A. Sources of Information and Types of Performance Issues

The types of seriously deficient performance issues and/or imminent threats to the health, safety and well being of the individuals receiving services that may invoke the use of this protocol include, but are not limited to, any provider, home or site

1. responsible for substantiated serious reportable incidents of abuse, neglect, or serious physical injury that would tend to demonstrate that the provider, home or site is experiencing continuing difficulties in providing competent services;
2. identified by the Department of Health’s Health Regulation and Licensing Administration (“DOH/HRLA”) as having outstanding enforcement actions, violations of conditions of participation, immediate jeopardy, or recommendations for termination of Medicaid provider agreement;
3. where there is an unusual serious reportable incident of death, abuse, neglect, or serious physical injury;
4. identified as ceasing its current operations or closing;
5. identified by DDS/DDA or DOH/HRLA as having a condition or practice that poses a serious, widespread danger, either immediate or recurring, to the health, safety or well being of the individuals;

6. identified by DDS/DDA, DOH/HRLA, the Department of Health Care Finance (“DHCF”), the Department of Consumer and Regulatory Affairs, or the Office of the Chief Financial Officer as having financial difficulties or experiencing insolvency such that continued operation of the provider, home or site is in serious jeopardy or would tend to place the individuals at serious risk of receiving deficient services; or

7. identified by DDS/DDA, DOH/HRLA or DHCF as having inadequate standard operating procedures, lacking organizational capacity/strength to provide adequate supports and services to individuals, or experiencing any other situation or circumstance identified through the oversight and monitoring process (including information received from the *Evans* Special Master, the *Evans* Court Monitor, the *Evans* Independent Compliance Administrator, the Quality Trust for Individuals with Disabilities, Inc., or the *Evans* parties) that DDS/DDA determines to be a seriously deficient performance issue or to pose an imminent threat to the health, safety or well being of the individuals receiving services and supports.

B. Referral to the DDS/DDA Quality Management Division

Upon identification of a situation that might rise to the level described above, the identifying DDS/DDA staff is required to contact the Quality Management Division (“QMD”) Administrator. In the event immediate contact cannot be made (*i.e.* within 15 minutes), the identifying DDS/DDA staff must contact another DDS/DDA Division manager, the Deputy Director, or other supervisory staff. The immediate priority is to ensure the health, safety, and well being of the people being supported at the provider.

C. Decision by DDS Deputy Director for DDA

Once health, safety, and well being is assured, a team of DDS/DDA staff and other inter-agency District of Columbia government officials is responsible for identifying the specific actions to be taken to address the seriously deficient performance issues or imminent risk of threat to the health, safety and well being of the individuals receiving services that invoke the use of this protocol. The team will be comprised of, at a minimum, the DDA managers from the Service Coordination, Operations, and Quality Management (“QMD”) Divisions; and the senior manager or designated representative from the DDS Office of the General Counsel (“OGC”), DOH/HRLA, and DHCF. The QMD Administrator (or other senior manager by designation) will be responsible for providing immediate email notification to the following: (1) Director of DDS; (2) OGC; (3) DHCF; and (4) DOH/HRLA (to the extent the provider, home or site is licensed by DOH/HRLA). For purposes of this notification, immediate email notification is intended to mean that the QMD Administrator (or other manager) will, as soon as is practical given the situation or circumstances, provide these officials with the name of the provider, a general description of the seriously deficient performance issue or potential threat, and the number of individuals affected by the issue or threat. The DDS Deputy Director for DDA will use the information gathered by this team to determine whether to fully invoke this protocol, at which point the time frames which follow begin.

II. Time Frames for Action

As soon as is practical given the situation or circumstance, but in any event not later than two business days following notification, the inter-agency team as described in the paragraphs immediately above will assemble in person or by telephone to assist in the development and implementation of the government's directed plan of correction which identifies the responsible staff to implement the plan. In addition, adhering to the following time frames, the following actions will be taken:

A. Within 8 hours or one business day

1. The government's directed plan of correction will be put in place to protect the affected individuals from harm and ensure their health, safety and well being. The DDS/DDA team is responsible for developing and ensuring that the provider implements the directed plan of correction to address the seriously deficient performance issues or potential threats to the health, safety and well being of the individuals. The primary focus of this directed plan of correction is to ensure that people served by the provider, home or site are protected from harm.

2. The initial steps contained in the government's directed plan of correction may include:

- a. Removal or transfer of some or all of the affected individuals;
- b. Increased monitoring and oversight by DDS/DDA or other District government staff or representatives; and/or
- c. Contracting with a third-party monitor to provide additional oversight.

3. DDS/DDA will complete notification to all individuals, families, guardians, and attorneys by telephone or email.

B. Within 24 hours or the next business day

1. DDS/DDA will assess the status of its implementation of the directed plan of correction and re-assess whether to remove or transfer some or all of the affected individuals, increase monitoring and oversight by DDS/DDA or other District government staff or representatives, and/or contract with a third-party monitor, using the criteria previously identified.

2. When a third-party monitor is not utilized, DDS/DDA monitoring will increase to 5-7 days per week. Each visit will be a minimum of 1 hour and up to 4 hours. If DDS/DDA determines that more frequent and lengthy monitoring must occur, a third-party monitor will be put in place.

3. DDS/DDA will notify the Duty Officer, apprise the Duty Officer of the situation, provide the Duty Officer with the management on-call list (which will include cellular phone numbers for each manager on the Team), and provide the Duty Officer with the contact information for the provider management team.

C. Within 48 hours or the second business day

DDS/DDA will re-assess the status of its implementation of the directed plan of correction and re-assess whether to remove or transfer some or all of the affected individuals, increase monitoring and oversight by DDS/DDA or other District government staff or representatives, and/or contract with a third-party monitor, using the criteria previously identified.

D. Within 72 hours or the third business day

Based on the information gathered, the government and provider will develop an agreement the purpose of which is to identify how a permanent resolution will be attained. The agreement may include alternative sanctions (*i.e.* directed in-service training, state monitoring, or non-renewal or automatic termination of licensure, certification and Medicaid provider agreement and human care agreement) for failure to achieve implementation of the plan of correction or other required outcomes outlined in the agreement. These action steps are in addition to the formalized substantive and procedural due process rights and responsibilities that may exist for the government and the provider under the Medicaid State Plan and the Home and Community-Based Services Waiver for Persons with Intellectual and Other Developmental Disabilities for the Medicaid provider agreement, or under local law for the human care agreement.

E. During Weekend Hours or Legal Holidays

During weekend hours beginning at 4:45 p.m. on Friday and ending at 8:15 a.m. on Monday, and on legal holidays, the Duty Officer may enact this protocol and take the immediate actions necessary to ensure the health, safety and the well being of individuals receiving services from the agency to the extent the Duty Officer determines, based on the criteria above, that there is a provider agency with performance issues that are seriously deficient or which pose a serious threat to the individuals. The Duty Officer will work directly with the provider agency management to immediately ensure health, safety and well being of the individuals and to communicate directly with DDS/DDA and Inter-Agency Teams to further implement this protocol.

III. Notification of Evans Parties and Others

A. Within 24 hours or the next business day, DDS/DDA will notify the *Evans* Special Master, Independent Compliance Administrator, Court Monitor, Plaintiffs and Plaintiff-Intervenor to the extent *Evans* class members are affected. DDS/DDA will notify the Quality Trust in all situations and circumstances. For purposes of this notification, DDS/DDA will identify the name of the provider, a general description of the seriously deficient performance issue or potential threat, and the number of individuals affected by the issue or threat.

B. Within 48 hours or the second business day, DDS/DDA will provide an update on the status of the directed plan of correction and its implementation to the *Evans* Special Master, Independent Compliance Administrator, Court Monitor, Plaintiffs and Plaintiff-Intervenor to the extent *Evans* class members are affected and to the Quality Trust in all situations and circumstances.

IV. Resources/Interventions

Contracting with a third-party monitor will be considered when the individuals themselves are unable to be relocated, and the provider is able to implement the directed plan of action, but is unable to ensure that people are safe from harm. The decision to contract with a third-party monitor will be based in part on whether DDS/DDA has the staffing resources to provide the necessary level of oversight. The role of the third-party monitor is to provide oversight on each shift to ensure the health, safety, and well being of the people in the home, assess the competency of the staff, to ensure the implementation of health and safety protocols (*i.e.* dining protocol, positioning protocol, nutrition protocol), and to ensure people are free from harm, abuse and neglect.

Any agreement developed between the government and the provider to identify a permanent resolution may consider the imposition of alternative sanctions (*i.e.* directed in-service training, state monitoring, or non-renewal or automatic termination of licensure, certification and Medicaid provider agreement and human care agreement) for failure to achieve implementation of the government's plan of correction or the agreement. In addition, government may consider working with another provider to take over the provider's operations or the voluntary or involuntary imposition of a receivership. As stated above, consideration of these interventions is in addition to the formalized substantive and procedural due process rights and responsibilities that may exist for the government and the provider.

DATED: 04/19/2011