



agency for persons with disabilities
State of Florida

December 19, 2006

Jeb Bush,
Governor
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Dear Provider:

Shelly Brantley,
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National statistics reveal that nearly 90% of individuals with developmental disabilities will be the victims of abuse, neglect, or exploitation at some point during their lives. Since many of these individuals are non-verbal and often have significant physical impairments, this population is particularly vulnerable to these types of crimes.

As you know, the State of Florida launched the Zero Tolerance Initiative in September 2003 as a means by which to combat sexual violence committed against persons with developmental disabilities. Since that time, the Zero Tolerance Initiative has expanded to now serve as our Agency's aggressive and proactive multi-pronged approach to dealing with the national problem of **all** forms of abuse, neglect, and exploitation committed against individuals with developmental disabilities.

We recognize that in order to succeed in our efforts, we require the active involvement and support of a variety of stakeholders, particularly service providers. Therefore, I am writing this letter not only to announce the aforementioned expansion of our Zero Tolerance Initiative, but also to remind you of the following roles and responsibilities of service providers in our efforts to combat acts of maltreatment perpetrated against this population:

Sexual Misconduct

Even if an individual with a developmental disability has the capacity to consent to sexual activity, it is never appropriate for their current service provider to engage in these acts with them. Sexual activity between a direct service provider and a person with a developmental disability (to whom he or she is rendering services) is not only unethical but is now considered to be a crime. Prior to 2004, there had been no statutory provisions specifically addressing sexual misconduct (and the reporting of such misconduct) by direct service providers upon persons with developmental disabilities served by the Agency for Persons with Disabilities. House Bill 1823, signed into law by the Governor in May 2004 ([Section 1. F. S. 393.135](#)), addressed this problem via the following provisions:

- Creates a new crime called "sexual misconduct" which is defined as any sexual activity between a service provider and certain individuals with developmental disabilities
- Makes the crime of sexual misconduct punishable as a second degree felony
- Makes failure to report known or suspected cases of sexual misconduct a first degree misdemeanor

- Eliminates consent by the consumer as a valid defense against prosecution for this crime
- Expands Level 1 and 2 background screening requirements to include the newly-created crime of sexual misconduct as a disqualifying offense for employment

Confirmed cases of sexual misconduct by service providers will result in immediate termination of the waiver enrollment status of the perpetrator as well as the imposition of other legal penalties as described above. If it is determined that other administrators, owners, or operators of a provider agency are considered to be culpable for the abuse through the result of negligence and/or failure to report the incident(s), their waiver enrollment status will be terminated as well and other criminal and administrative penalties will be pursued.

Chapter 65G-2, Florida Administrative Code

As a condition of licensure, APD-licensed residential facilities are currently required to train their staff to detect and prevent sexual abuse of the residents of those homes. Such training shall also include reporting requirements and procedures.

A substantial revision of this particular administrative rule is currently underway and will include additional Zero Tolerance-related provisions which are intended to protect APD clients who choose to live in licensed facilities from acts of abuse, neglect, and exploitation.

Section 393.13(3)(a), Florida Statutes

Pursuant to the following excerpt from the Bill of Rights of Persons with Developmental Disabilities, individuals with developmental disabilities "...shall have a right to dignity, privacy, and humane care, including the right to be free from sexual abuse in residential facilities. "

Waiver Handbook Requirements

We have made the following changes to the Developmental Disabilities Home and Community-Based Services Coverage and Limitations Handbook to further outline the responsibilities of waiver providers in preventing and reporting abuse of those individuals with developmental disabilities to whom they render services:

- Confirmed cases of sexual abuse by service providers will result in immediate termination of the waiver enrollment status of the individual who committed the abuse as well as the imposition of legal penalties. If it is determined that administrators, owners, or operators of a provider agency are considered to be culpable for the abuse through negligence or failure to report the incident(s), their waiver enrollment status will be terminated. Criminal and administrative penalties will be pursued.

- Known or suspected sexual abuse between two individuals with developmental disabilities must also be reported immediately to the Central Abuse Hotline at 1-800-96-ABUSE (1-800-962-2873), so that an investigation will occur in order to determine whether or not the sexual abuse was the result of inadequate supervision or neglect on the part of a service provider or caregiver. The incident must also be reported immediately to the area APD office to ensure the continued health and safety of the individuals involved.
- The waiver provider and its employees will ensure they receive the specific training required to successfully serve each recipient including training on the recognition of abuse and neglect and required reporting procedures (to include domestic violence and sexual assault).

Mandatory Reporting Requirements

Any person who knows, or has reasonable cause to suspect, that a person with a developmental disability is being abused, neglected, or exploited by a relative, caregiver, or household member or, in the case of self-neglect, by themselves, is required to report such knowledge or suspicion to the Florida Abuse Hotline at 1-800-96-ABUSE (1-800-962-2873).

Failure to report known or suspected cases of abuse, neglect, or exploitation is a criminal offense. Keep in mind that, if you are a service provider, failure to report known or suspected abuse can result in losing your job and/or possible legal action. When in doubt, report it; it is always better to err on the side of caution.

Direct service providers should report knowledge or suspicion of abuse, neglect, or exploitation to their supervisors who may be required to report this information to the area APD office (in accordance with established APD reporting procedures). However, provider agencies may not require their employees to first report such information to them before permitting their employees to call the Florida Abuse Hotline or police. **In fact, any person who knowingly and willfully prevents another person from reporting known or suspected abuse is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.**

Keep in mind that failure to report known or suspected cases of abuse, neglect, or exploitation of individuals with developmental disabilities represents an offense that will be cause for termination of waiver enrollment status as well as the imposition of other criminal and administrative penalties as appropriate.

Client-on-Client Sexual Abuse

Known or suspected sexual abuse between two individuals with developmental disabilities must be reported immediately to the Florida Abuse Hotline at 1-800-96-ABUSE (1-800-962-2873) so that an investigation may occur in order to determine whether or not the sexual abuse which occurred was the result of inadequate supervision or neglect on the part of a service provider or caregiver.

In addition, the incident must also be reported immediately to the area APD office to ensure the continued health and safety of the individuals involved.

Confirmed allegations or acts of abuse, neglect, or exploitation committed by service providers against individuals with developmental disabilities will not be tolerated. I have directed APD staff to take immediate and substantive action in cases where abuse, neglect, and/or exploitation is indicated. Central Program Office staff will be working closely with area office staff members in order to identify the factors which led to specific incidents of abuse, neglect, and exploitation for the purposes of developing and implementing policies and procedures designed to prevent the recurrence of such events.

In January 2007, we plan to unveil the redesigned Zero Tolerance section of the APD Internet site. APD Operations staff have been working with the APD Web Team in designing substantial changes to this important portion of our website. Our ultimate goal is create a user-friendly website which will provide consumers, families, service providers, and the general public with comprehensive and practical information necessary to protect this population from abuse, neglect, and exploitation. We have posted a great deal of information regarding the Zero Tolerance Initiative on the website, including a detailed Zero Tolerance Action Plan, information on recognizing the signs and symptoms of abuse, neglect, and exploitation, reporting requirements and procedures, a list of resources and materials on the topic, and news about upcoming training events. This section of the APD website may be accessed via the following link: http://apd.myflorida.com/clients/zero_tolerance.htm. You may also use this link to e-mail any questions, concerns, or information you wish to share with our staff as we attempt to deal with this issue in an effective and proactive manner.

I sincerely value our program's partnership with service providers in ensuring the best possible outcomes for the population we are both devoted to serving and I look forward to our collaborative efforts in successfully dealing with this important issue. If you have any questions regarding the Agency's Zero Tolerance Initiative, please contact your area APD office or visit the Zero Tolerance section of the APD website.

Sincerely,

Shelly Brantley
Director

Cc: APD Area Administrators