

October 2012

Developmental Services Quality Assurance Measures (QAM) Regulation 299.10

Introduction

The QAM Regulation 299/10 came into effect on January 1, 2011 for all Developmental Services agencies in Ontario. The Regulation is part of the Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008. The intent of the Regulation is to ensure that service agencies and staff respond appropriately to alleged, suspected or witnessed abuse of supported individuals. Note that Regulation 299/10 deals with a number of issues as it affects persons with developmental disabilities, such as the development of individual supports plans, health promotion and, confidentiality and privacy concerns. However, for the purpose of this fact sheet our focus will be on the reporting of abuse.

It is vitally important that the proper authorities are notified when an act(s) of abuse is directed at supported individuals. The abuse of a supported individual is a serious issue and we would not want witnesses to hesitate to report such incidents.

However, in the practical experience of working with *Regulation 299/10* across the sector, the process for reporting abuse seems to vary depending on the policies and procedures of each agency. Further, there is a lack of clarity about who is ultimately responsible for reporting abuse to the police. Whereas the Regulation as written instructs the service agency to report abuse to the police, policies and

procedures often instruct staff to report abuse to the police directly.

In reviewing the policies and procedures of a number of service agencies it has become clear that some employers are not necessarily in compliance with the Regulation. It has also become clear that in some cases the training received by CUPE members on the Regulation is not as comprehensive as it could be. Therefore, CUPE will be writing the ministry to outline our concerns about the Regulation and to seek clarity where needed.

The purpose of this fact sheet is to provide CUPE members with the best practical information and advice on what to do if they suspect and/or witness the abuse of a supported individual. Again, some of the issues we discuss here may need to be taken up with the Ministry in order to be further clarified for the sector.

What does the Regulation say?

Section 8(4) of Regulation 299/10 states the following:

Where a service agency suspects any alleged, suspected or witnessed incidents of abuse of a person with a developmental disability may constitute a criminal offence,

- (a) the service agency shall immediately report to the police the alleged, suspected or witnessed incident of abuse; and*

(b) the service agency shall not initiate an internal investigation before the police have completed their investigation.

According to the Regulation as written, the *service agency* is responsible for reporting to police any alleged, suspected or witnessed incidents of criminal abuse directed at supported individuals. This would suggest that staff should report alleged, suspected or witnessed abuse to the service agency – to the employer – who is responsible for reporting abuse to the police. However, we know that some agencies instruct staff to call the police first.

What does the ministry say I should do if I suspect or witness an act(s) of abuse directed at a supported individual?

Although not clearly spelled out as such, we know according to the ministry that the intent of the Regulation is for *first-hand witnesses* to immediately report to police any and all alleged, suspected or witnessed incidents of abuse directed at supported individuals. According to the ministry, first-hand witnesses are obligated to *immediately* inform the police to avoid second- or third-party evidence or hearsay, all of which could contaminate the evidence in a police investigation.

My employer has given me direction that conflicts with the Regulation. What should I do?

Some service agencies have instructed CUPE members to first notify management *prior* to contacting police. Some agencies have instructed CUPE members to report witnessed abuse to the police before contacting management. Other agencies have directed CUPE members to have the supported individual contact police

him/herself to file a complaint if she/he is able and/or willing; failing that, the responsibility for contacting police is the responsibility of the front-line worker.

At this point you may be asking “what should I do?” Immediately contact the police myself if I witness or suspect abuse, or should I immediately contact my employer first and only?

Well, we believe that the “obey now, grieve later” rule should likely be followed here. Therefore, if you suspect or witness abuse, follow the direction set out in the agency’s policies and procedures. If you are concerned that the employer’s policies and procedures may not be in compliance with the Regulation, contact your local union representatives and assigned National Representative.

Can the local union and/or employer conduct internal investigations during the police investigation?

Apparently not, given Section 8(4)b of the Regulation:

(b) the service agency shall not initiate an internal investigation before the police have completed their investigation.

It is our expectation that in light of this wording most employers would resist commencing an internal investigation until the police investigation is complete, or until after it is learned that no police investigation will take place. However, there does not appear to be any expressed prohibition in the Regulation regarding local union investigations during the police investigation, but we would expect the police might not be all that happy with that scenario.

My employer doesn't have a policy on reporting abuse and neglect. What should I do?

Your local may want to consider grieving the absence of a policy on abuse and neglect. However, the *Act* and *Regulations* remain in effect and must be complied with.

What can the local do if the service agency's policies and procedures on reporting abuse do not comply and/or conflicts with the QAM?

The local union can choose to file a policy grievance and/or discuss the matter at Labour-Management meetings.

What obligations do locals have to a member who has been accused of abuse and how can locals provide support?

CUPE represents all members while they're in the employ of the employer and the local union has a legal obligation to represent members in good faith. The local can file a grievance if the member has been disciplined. But, CUPE does not normally provide legal or other advice with respect to criminal matters, nor will it provide or pay for criminal defence lawyers to defend members if formal charges are laid.

What follow-up can locals provide following a police investigation and/or an internal agency investigation?

At some point following the investigation and/or grievance all parties may want to debrief to identify what worked and what didn't and raise those concerns with the employer. Identified solutions could be included in the local's bargaining proposals and/or included in the employer's policies and procedures.

What are the timelines for investigations for members accused of abuse?

Our collective agreements set out timelines within which discipline can be imposed. However, given the Regulation the employer may argue that the timelines for discipline don't have to be met. We disagree and would expect the employer to comply with the timelines set out in the collective agreement.

Police investigations can take days, weeks, or even months to conclude. Consider asking your employer representative to contact the police for an update if the investigation is taking an inordinate amount of time.

What rights does a CUPE member accused of abuse have during the (i) police investigation and (ii) internal agency investigation?

CUPE members are entitled to all the rights, privileges and entitlements under their collective agreement, including the right to union representation and access to the grievance process. However, CUPE does not have any automatic right to be present at police interviews of witnesses or those accused of a criminal offence. This would be something we would expect to be left to the discretion of the police, or even the willingness of the accused member.

What are my employer's obligations under the Regulation?

The employer is obligated to comply with Section 8(4) which states that service agencies are responsible for reporting to police any and all incidents of alleged, witnessed or suspected incidents of abuse and to forgo any internal investigation while the police investigation is underway.

Service agencies are also obligated to comply with Section 8(2) of the Regulation, which obligates service agencies:

(a) To provide

- (i) *mandatory training on abuse prevention, identification and reporting to all of its staff members and volunteers who have direct contact with persons with developmental disabilities who are receiving services and supports, and*
- (ii) *a refresher course on the matters referred to in subclause (i) every year thereafter;*

(b) mandatory orientation to all new members of the board of directors on the agency's policies and procedures on abuse prevention, identification and reporting and a refresher on the policies and procedures every year thereafter;

(c) mandatory education and awareness-building on abuse prevention and reporting to persons with a developmental disability receiving services and supports from the service agency in a language and manner that is appropriate to the capacity of the person with a developmental disability when the person begins to receive services and supports from the service agency and every year thereafter; and

(d) mandatory review of its policies and procedures on the prevention, identification and reporting of abuse annually and update the policies and procedures as determined by the review.