Reporting and Investigating Allegations of Abuse and Neglect in Regulated Child Care Settings

A Protocol for Licensees, Child Care Staff and Care Providers

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INTRODUCTION

Child care staff and family home day care providers (care providers) are in a unique position to identify and report suspicions of child abuse. It is critical that child care staff and care providers have a solid understanding of the elements related to child abuse. The elements include the definition; the legal and professional responsibilities; the possible indicators of abuse; and the reporting procedures.

This protocol is intended to provide licensees, child care staff and care providers with the information they need in order to respond when there is a suspicion or allegation of child abuse. This protocol is intended for use by all licensed child care facilities, family home day care agencies, and approved family day care homes. The information contained in this document may also be of interest to others who work with families and young children in their community (e.g., family resource centres, Early Childhood Education training institutions).

The primary purpose of the protocol is to establish a set of standardized practices and procedures to be used by child welfare agencies, Department of Community Services’ staff, child care staff, care providers, and licensees when reporting and investigating allegations, when there are reasonable grounds to suspect a child may have been, or is being, abused or neglected.

The second purpose of this protocol is to help licensees, child care staff and care providers understand what to report, when to report, the reporting process (e.g., who reports), and the steps to take once a report is made.

The third purpose of this protocol is to help licensees, child care staff and care providers understand the roles and responsibilities of child welfare, and the police, when an allegation that a child is in need of protective services, or has been abused, is made.

Training on this protocol is offered across the province on a regular basis. Protocols are only effective if they are understood and followed. Contact your Early Childhood Development Consultant for more information on regional training sessions.
GENERAL PRINCIPLES

1. Children have a right to be protected from abuse and neglect.

2. Children are cared for, as nearly as possible, as if they were under the care and protection of loving, wise and conscientious parents.

3. Children have a right to be heard, supported and informed.

4. As a society, we have a collective responsibility for the safety and well-being of all children.

5. Child care staff and care providers, as professionals who are dedicated to the well-being of children, play a very important role in young children’s lives. Their responsibility is to protect children in their care from abuse and neglect.

6. Everyone working with children should have a general knowledge of protocols and procedures related to reporting abuse. It is the professional’s responsibility to be informed about child abuse, to be able to recognize the behavioural as well as the physical indicators of abuse, to know how to recognize children’s attempts to disclose and to know how to identify children at risk and to provide them with appropriate support.

7. The child protection investigative team should have experience and training in handling allegations of abuse in the context of child development.

8. If it is determined that an investigation is warranted, it should occur as quickly as possible, keeping in mind the priority level of the risk management response times.

9. The confidential nature of abuse investigations will be respected and upheld at all times.
DEFINITIONS

For the purposes of this protocol:

**Agency** means a person licensed to manage a family home day care program (Day Care Regulations).

**Child** means a person under sixteen (16) years of age (Children and Family Services Act).

**Child Abuse** means a child is in need of protective services pursuant to Section 22(2)(a), (c), (e), (f), (h), (i), (j), (ja) or (k) of the Children and Family Services Act OR has been physically, sexually or emotionally abused pursuant to Section 25(1)(a), (b), (c). Please refer to Page 8-9 for the definition of a child in need of protective services and Page 7 for the definition of reportable abuse, physical, sexual or emotional, pursuant to Section 25(2) of the Children and Family Services Act.

**Child Care Director** is the person, or his/her designate, who coordinates the administration and service delivery of a child care facility, including a licensee, and in the case of a family day care agency, may be a family home day care consultant.

**Care Provider** means a person who is approved by an agency to provide a family home day care program in the person’s home.

**Child Care Staff** means a paid employee of a licensee and does not include care providers.

**Child Care Facility** refers to a licensed day care facility that includes centre-based child care and, for the purpose of this protocol, family home day care agencies.

**Child welfare agency means** a child protection authority mandated under the Children and Family Services Act to accept and investigate allegations of child abuse and neglect. This refers to Family & Community Supports, Department of Community Services, child welfare offices.

**Child Welfare and Residential Services** is a branch of Family and Community Supports, Department of Community Services overseeing matters related to child protection and residential child caring facilities.

**Consult** is a discussion between an individual and the intake worker of a child welfare agency for the purpose of determining whether or not the information received is reportable under Section 22(2) of the Children and Family Services Act.

**Early Childhood Development Services** is the branch of Family and Community Supports, Department of Community Services overseeing matters related to regulated child care in the Province of Nova Scotia.

**Intake worker** means a social worker employed by a child welfare agency who receives report of suspected abuse.
Licensee means the person in whose name a license has been issued under the Day Care Act.

Licensing Services is the branch of the Department of Community Services that oversees matters related to licensed child care facilities and family home day care agencies in Nova Scotia.

Reporting means reporting possible cases of child abuse or neglect to a mandated child welfare agency pursuant to Section 23(1), 24(2) and 25(2) of the Children and Family Services Act.
WHAT IS REPORTABLE ABUSE AND NEGLECT

Abuse of a child can be classified into four categories. In each of these categories, the abuse or neglect has happened, or there is a substantial risk that it may occur.

a. Physical Abuse
Physical abuse is a deliberate, non-accidental physical assault on a child that results in physical harm. Physical abuse may also result from excessive inappropriate discipline. The injuries sustained by the child may vary in severity and range from minor bruising, burns, welts or bite marks or major fractures of the long bones or skull, and in its most extreme form, the death of a child.

b. Sexual Abuse
Sexual abuse is a generic term used to describe a range of sexual activity and behaviour perpetrated towards a child (under 16 years of age), with or without the child's consent, for the sexual gratification of the other person. The abuse can occur within the family (intra familial) or outside the family (extra familial) and can be homosexual or heterosexual in nature. Examples may include instances where a child is encouraged, coerced, forced or even enticed into acts such as sexual molestation, fondling, sexual intercourse, fellatio, cunnilingus, exhibitionism, or any sexual exploitation including pornography.

c. Emotional Abuse
Emotional abuse is the most difficult type of abuse to define and identify. It may range from habitual humiliation of the child to withholding life-sustaining nurturing. If a child is told often enough that he or she is “no good” and “will not amount to much”, he or she may come to believe it and act accordingly. Similarly, lack of nurturing (holding, cuddling, and warm verbal communication) in the early years can be very damaging. Combined with verbal abuse, it can cause a child great suffering.

The abuse is persistent or chronic on the part of the caregiver and results in some degree of emotional damage to the child, evidenced by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour. This form of abuse may occur separate from, or along with, other forms of abuse or neglect. Children with emotionally abusive parents may exhibit or react with behaviours similar to children who have been physically or sexually abused.

d. Child Neglect
Child neglect is a chronic and serious omission on the part of the parent or guardian that results in physical harm to the child. It does not include emotional harm. The term “chronic” demands that the neglect constitutes a pattern of conduct over a period of time. The term “serious” conveys a marked and substantial departure from the standard of care expected of a reasonable parent.
LEGISLATIVE FRAMEWORK FOR INTERVENTION

In Nova Scotia, the Children and Family Services Act provides the mandate for intervention by child welfare agencies. It outlines the grounds under which a child may be found to be in need of protective services, or a victim of physical, sexual or emotional abuse. It also dictates the grounds under which a child may be taken into care.

Under the Children and Family Services Act, a “child” is defined as a person less than sixteen (16) years of age.

For the purpose of this Protocol, Section 22(2), Section 23, Section 24, Section 25(1), Section 25(2), Section 33(1) and Section 33(2) provide the legal framework for agency intervention into allegations of abuse or neglect within or outside of child care settings.

WHEN TO REPORT

Section 22 of the Children and Family Services Act states that:

2) A child is in need of protective services where

(a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

(b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);

(c) the child has been sexually abused by a parent or guardian of the child, or by another person where a parent or guardian of the child knows or should know of the possibility of sexual abuse and fails to protect the child;

(d) there is a substantial risk that the child will be sexually abused as described in clause (c);

(e) a child requires medical treatment to cure, prevent or alleviate physical harm or suffering, and the child’s parent or guardian does not provide, or refuses or is unavailable or is unable to consent to, the treatment;

(f) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour and the child’s parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child’s development and the child’s parent or
guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the condition;

(i) the child has suffered physical or emotional harm caused by being exposed to repeated domestic violence by or towards a parent or guardian of the child, and the child's parent or guardian fails or refuses to obtain services or treatment to remedy or alleviate the violence;

(j) the child has suffered physical harm caused by chronic and serious neglect by a parent or guardian of the child, and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(ja) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (j);

(k) the child has been abandoned, the child's only parent or guardian has died or is unavailable to exercise custodial rights over the child and has not made adequate provisions for the child's care and custody, or the child is in the care of an agency or another person and the parent or guardian of the child refuses or is unable or unwilling to resume the child's care and custody;

(l) the child is under twelve years of age and has killed or seriously injured another person or caused serious damage to another person's property, and services or treatment are necessary to prevent a recurrence and a parent or guardian of the child does not provide, or refuses or is unavailable or unable to consent to, the necessary services or treatment;

(m) the child is under twelve years of age and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of a parent or guardian of the child or because of the parent or guardian's failure or inability to supervise the child adequately. 1990, c. 5, s. 22; 1996, c. 10, s. 1.

LEGAL RESPONSIBILITY TO REPORT

Section 23 of the Children and Family Services Act states in part:

(1) Every person who has information, whether or not it is confidential or privileged, indicating that a child is in need of protective services shall forthwith report that information to an agency.

(2) No action lies against a person by reason of that person reporting information pursuant to subsection (1), unless the reporting of that information is done falsely and maliciously.

(3) Every person who contravenes subsection (1) commits an offense.

Section 24 of the same Act states in part:

(2) Notwithstanding any other Act, every person who performs professional or official duties with respect to a child, including

(b) a teacher, school principal, social worker, family counsellor, member of the clergy, operator or employee of a day care facility;
(d) operator or employee of a child-caring facility or child-care service; who in the course of that person’s professional or official duties, has reasonable grounds to suspect that a child is or may be suffering or may have suffered abuse shall forthwith report the suspicion and the information upon which it is based to an agency.

Under this Act, any licensee, child care staff, or care provider who has reasonable grounds to suspect a child may be abused or neglected has to report the matter to the local child welfare agency. Failure to do so may constitute an offense punishable by no more than $5000 and/or imprisonment for a period not exceeding one year.

Abuse or neglect need not have already occurred for a child to be in need of protection. It is not necessary to wait until a child has been harmed to make a report. When abuse or neglect is suspected and there are reasonable grounds to believe a child is in need of protective services, the legal obligation to report applies.

Where the alleged abuse is “third party”, that is, the alleged perpetrator is someone other than the child’s parent or guardian, it must be reported to a child welfare agency.

It is the child care staff and care provider’s responsibility to report suspicions of abuse and to disclose knowledge of abuse. It is not the child care staff and care provider’s responsibility to investigate or “prove” that abuse is taking place before a report is made. A report is not an accusation; it raises the concern and is a request for an investigation.

Child care staff and care providers must exercise their responsibility to report, prior to informing the child care director. Where a child care staff and care provider makes a report in opposition to the child care director’s view, the child care staff and care provider shall not be subjected to any negative consequences. There will be no sanctions against him/her for reporting an allegation in good faith, including compensation, tenure, promotion, discipline, alienation, etc. It is important to be aware that the duty to report is only fulfilled when a report is made to a child welfare agency.

The child care director ensures that all child care staff and care providers know who is the designate for the director. If the child care director is absent, her/his designate is responsible for executing the roles and the responsibilities of the child care director in the event that an allegation is made. The designate is also responsible for executing roles and responsibilities related to reporting abuse in cases where the allegations are against the child care director.

The Child Abuse Report Form (Appendix I) of this document shall be made readily available to all child care staff and care providers.

Section 25(1) of the Children and Family Services Act states that Abuse by a person other than a parent or guardian “means that a child

(a) has suffered physical harm, inflicted by a person other than a parent or guardian of the child or caused by the failure of a person other than a parent or guardian of the child to supervise and protect the child adequately;
(b) has been sexually abused by a person other than a parent or guardian or by another person where the person, not being a parent or guardian, with the care of the child knows or should know of the possibility of sexual abuse and fails to protect the child;

(c) has suffered serious emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour, caused by the intentional conduct of a person other than a parent or guardian.

Section 25(2), Duty to report third-party abuse, states that
Every person who has information, whether or not it is confidential or privileged, indicating that a child is or may be suffering or may have suffered abuse by a person other than a parent or guardian shall forthwith report the information to an agency.

Section 33(1), states that
Where child protection staff have reasonable and probable grounds to believe that a child is in need of protective services and the child’s health or safety cannot be protected adequately otherwise than by taking the child into care, the agent may, at any time before or after an application to determine whether a child is in need of protective services has been commenced, without warrant or court order, take a child into care.

Section 33(2), states that
A “Notice of Taking” will be served upon a parent or guardian upon taking a child into care.

REGULATED CHILD CARE SETTINGS

Section 30(4) of the Day Care Regulations states that licensees must follow the Department’s child abuse protocol when carrying out their professional obligation to report as per the Children and Family Services Act.

A Consult

If a child care staff or care provider is unsure whether their concern is reportable under the Children and Family Services Act they may request a consult directly with an intake worker at a child welfare agency. If the concern is not deemed to be reportable by the intake worker, the child care staff and care provider will not complete the Child Abuse Report Form. Care providers and child care staff should follow any of the facility’s or agency’s procedures for documenting concerns. If the intake worker deems that the concern is reportable, the following steps should be followed.
REPORTING ALLEGED ABUSE WHEN A PARENT OR GUARDIAN IS SUSPECTED

Immediate Steps for Child Care Staff and Care Providers:

1. First and foremost, ensure the health and safety of the identified child.

2. The child care staff or care provider who suspects the abuse or who has received the disclosure, will fill out the Child Abuse Report Form (Appendix I) as soon as possible, accurately documenting the disclosure and allegation. Where a child has disclosed, use the child’s own words. Record any other information that has led to the concerns for the child, such as the child’s behaviour, the child’s response to parent(s) or guardian, the child’s response to child care staff or care provider, the child’s interaction with other children, observations of the child at play, etc. The information provided must be relevant, objective (e.g. facts without personal feeling, biases or interpretations) and accurate.

3. Telephone the child welfare agency (Appendix II) closest to where the child resides to report to the intake worker. Inform the intake worker that you are a child care staff or care provider associated with a child care facility. Provide the intake worker with the information as per the Child Abuse Report Form. Record on the form the action the intake worker said would occur.

   **Note:** Mi’Kmaw Family and Children’s Services of Nova Scotia provide services for children with Aboriginal status. If it is known that a child has Aboriginal status, Mi’Kmaw Family and Children’s Services of Nova Scotia should be called.

4. Immediately inform the child care director that a report to the child welfare agency has been made.

5. Forward a copy of the Child Abuse Report Form to the intake worker (e.g., fax, mail). The original form, and any other related notes, should be kept in a confidential, separate and secure file.

6. It is not the responsibility of the child care staff or care provider who made the report or the child care director to prove the allegations. Do not interview the child victim.

7. It is not the responsibility of the child care staff, care provider or the centre director to notify parents or guardians that a report has been made. If required, this will be done by the child welfare agency.

8. The child welfare agency will assess the allegations to determine if there are grounds under the Children and Family Services Act to investigate. For reasons of confidentiality, the referral source will not be informed of the assessment outcome.

9. In rare cases, it may be necessary to take a child directly into care from the child care facility or family home day care. In this event, child welfare agency staff must serve
official notice called “A Notice of Taking” and will present this official document to the child care director or care provider. Child welfare agency staff will present identification when taking a child into care.

10. If the child’s attendance at the centre or family home day care will be affected, notification will be made to the child care director. If the child returns to the centre or family home day care, under the care of another individual, the child care director will be informed of the guardian’s name.
REPORTING ALLEGED ABUSE WHEN A CHILD CARE STAFF OR A CARE PROVIDER IS SUSPECTED

Immediate Steps for Child Care Staff and Care Providers:

1. First and foremost, ensure the health and safety of the identified child.

2. If the allegations are made by a parent or guardian, other child care staff or care provider, inform the person of his/her duty to report the allegation directly to the child welfare agency. Advise the person that you are also obligated to make a report immediately.

3. If the allegation is against another child, the child care director shall take immediate and appropriate action to ensure that:
   - both children are kept separate from each other; and
   - each has appropriate support and supervision.

4. The child care staff and care provider who suspects the abuse or who has received the disclosure, shall fill out the Child Abuse Report Form, accurately documenting the disclosure and allegation as soon as possible. Where a child has disclosed, use the child’s own words. Record any other information that has led to the concerns for the child, such as the child’s behaviour, the child’s response to staff and care provider, the child’s interaction with other children, observations of the child at play, etc. The information provided must be relevant, objective (e.g. facts without personal feeling, biases or interpretations) and accurate.

5. Contact the child welfare agency (Appendix II) closest to the child’s home, file a report with an intake worker. Inform the intake worker that you are a child care staff or care provider associated with a child care facility. Provide the intake worker with the information as per the Child Abuse Report Form. Record any information provided by the intake worker which may include recommended actions to ensure the safety and protection of the alleged victim, other children and/or the alleged perpetrator (this may include separating the identified child and the alleged perpetrator).

   Note: Mi’Kmaw Family and Children’s Services of Nova Scotia provide services for children with Aboriginal status. If it is known that a child has Aboriginal status Mi’Kmaw Family and Children’s Services of Nova Scotia should be called.

6. Immediately inform the child care director that a report to the child welfare agency has been made and of any immediate actions required.

   When the allegation is against the child care director, notify the chair of the board of directors, or the licensee that a report has been made and of any immediate actions required.

   Where the child care director is the Licensee (e.g. operator/owner), contact the facility’s or agency’s Early Childhood Development Consultant (Appendix III) for further direction.

7. Forward a copy of the Child Abuse Report Form to the intake worker (e.g. fax, mail, etc.).
The original form and any other notes should be kept in a separate, confidential and secure file at the child care facility or approved family day care home.

8. As a professional courtesy, the child welfare agency may provide a written acknowledgement that a report has been made. The child welfare agency will assess the allegations to determine if there are grounds under the Children and Family Services Act to investigate. The child welfare agency will contact the child care director to inform of the status of the report.

9. If the nature of the report is not considered to fall under the criminal code or Section 25 of the Children and Family Services Act; therefore, not resulting in an investigation, the centre director will be informed by the investigating team that there are insufficient grounds to proceed. The investigating team will then notify, in writing, Early Childhood Development Services and Licensing Services (See Appendix III for contact information) of the outcome.

10. The child care director will contact the Early Childhood Development Consultant to inform that a report has been made and that it did not meet the mandate for investigation by the child welfare agency.

11. If the nature of the concern is considered to fall under the Children and Family Services Act, and there will be an investigation proceed to page 16 of this protocol.

Response times to conduct an investigation are based on the level of risk and the nature of the alleged abuse and will range from one hour to 21 days of the report being received. It is not the responsibility of the facility to notify the parents or guardian that a report has been made. The child welfare agency will notify the parents or guardian.

When an Investigation is Required
Immediate Steps to be taken by the Child Care Director:

1. The child care director will consult with the child welfare agency to ensure that the most appropriate steps and/or precautions are taken to ensure the safety of the children and/or the alleged perpetrator, which may include separating the alleged perpetrator from the children.

2. Advise the child care staff or care provider that:
   - An allegation of abuse has been made against him/her.
   - A report has been made to a child welfare agency and an investigation will take place.
   - They have the right to remain silent and not make a statement. Reassure them that not making a statement will not be interpreted as an indication of guilt.
   - They have the right to contact a lawyer and/or their union representative, if the facility is unionized.

3. Advise the child care staff or care provider of what action the child care facility is taking in accordance with those options outlined in the facility employee or care provider handbook concerning the treatment of child care staff or care providers accused of child abuse.

4. Do not reveal details about the alleged incident to the alleged perpetrator. Do not disclose the identity of the child. The investigative team or police will provide this information at the appropriate time.

5. Advise the person that all reasonable steps will be taken to keep them informed.

6. The child care director shall cooperate with child welfare agency and/or the police in the investigation of the matter. This may include the provision of all relevant information or documentation, access to the alleged child victim or other staff, where necessary, and the provision of interview space, if required.

7. The child care director should record every contact and conversation pertaining to the investigation. Include in the notes: the time, date and details of all exchanges with investigators, board members and other employees. Be specific, objective and accurate in these records. This information will be beneficial should legal proceedings take place.

8. The child care director shall maintain the Child Abuse Report Form and all other documentation related to the investigation in a secure records file separate from other program files and accessible only to the person who made the report and to the director (providing he/she is not the alleged perpetrator). Based on the outcome of the investigation, the Department of Community Services will advise as to how long this information must be kept.

9. The investigating child welfare agency will ensure that the child's parent(s) or guardians, alleged perpetrator, child care centre director, and Early Childhood Development Services are informed of the outcome of the investigation.
In all cases, confidentiality must be maintained. Allegations must not be discussed with any individuals other than the licensee, child care director or those involved in the investigative process.