



## Early Alert Process

Early Alert is a process by which OPWDD assesses and identifies providers that require additional monitoring and supervision as a result of, but not limited to, continuing non-compliance with regulations, negative fiscal and governance issues, and/or serious systemic issues resulting in poor performance and negative outcomes. By informing agencies of such issues, the goal of Early Alert is to assist in guiding such agencies back to quality and compliance.

### **Members of the Early Alert Committee:**

The following are permanent members of the committee:

- Deputy Commissioner for Quality Improvement (Chair)
- Deputy Director for Quality Improvement
- Deputy Commissioner for Service Delivery
- Regional Associate Commissioners for Service Delivery
- OPWDD Counsel's representative
- Regional Directors from the Bureau of Program Certification (BPC)
- Director of Compliance Management
- Director of Incident Management
- Director of Quality Improvement Strategies Unit
- Director of Rate Setting
- Director of Central Operations
- Director Technical Assistance and Consultation Team
- Directors of the respective DDSOs whose agencies will be discussed at the meeting.

Area Directors from the Bureau of Program Certification and Audit Managers from Compliance Management (BCM) are asked to participate as needed.

If a state operated program is being discussed at Early Alert, any and all members who are responsible for the supervision of that program will not be present during the discussion of that program.

### **Early Alert Committee Meetings:**

The Early Alert Committee is the mechanism through which the Early Alert process is driven. The committee meets monthly with additional meetings as needed. The meetings are chaired by the Deputy Commissioner of the Division of Quality Improvement or his or her designee. Membership includes multi-divisional OPWDD participants including the OPWDD Leadership Team and senior managers who have a wealth of knowledge and offer varying points of view. At each meeting, there is a presentation and discussion about specific agencies and the concerns about the quality and provision of services, adequate governance, as well as fiscal viability of the agency. The committee then makes recommendations regarding an agency's placement, continued placement, or removal from Early Alert and/or other potential remediation or sanction activity.

## **Early Alert Trigger Points**

The following are some common examples that could lead to an agency being presented for discussion at an Early Alert Committee meeting, and which may result in the agency being placed on Early Alert. The following issues may not all present a serious concern in isolation, however in aggregate, or in close sequence, may indicate systemic deficiencies.

### **1. Program Deficiencies:**

- A failure to report, investigate or provide needed individual protections in situations that warrant reporting as allegations of abuse or neglect
- Deficiency trends based upon OPWDD analysis. For example:
  - Substantiated allegations of abuse, neglect, significant injuries of unknown origin or unexpected deaths among program participants
  - Repeated and/or significant lack of regulatory compliance resulting in 45 or 60 day letters, especially in the areas related to individual health and safety
  - Repeated failure to develop and/or implement acceptable Plans of Corrective Action, especially in the areas related to individual health and safety
  - Systemic ongoing deficiencies in critical operational areas such as nursing, health care, medication administration, incident reporting, fire safety, etc.
  - Chronic staffing issues including high staff turnover, frequent use of temporary or per diem staff, failure to replace needed clinical staff in a timely manner
  - Patterns of significant complaints

### **2. Fiscal Deficiencies:**

- Receipt of Medicaid payment suspension letter from the Medicaid Fraud Control Unit (MFCU) of the Attorney General's office
- Poor financial position as represented by key ratios, (Current ratio, Quick ratio, Days Cash) and significant negative working capital resulting in foreseeable fiscal crisis
- Inability to meet payroll or pay payroll tax withholdings
- Incidents of bounced checks, especially payroll checks
- Tax delinquencies resulting in receipt of notice of liens
- Outstanding liabilities as the result of an audit
- Chronic failure to submit fiscal reports such as Consolidated Fiscal Report and financial statements
- Diversion of funds to other entities
- Loan of agency funds to members of the Board of Directors (BOD), agency employees or other entities
- Serious lapse of fiscal record keeping resulting in OPWDD's inability to measure the Agency's fiscal condition
- Breakdown of internal controls as identified by a review or audit, leading to misuse of agency funds

### **3. Governance Deficiencies:**

- There is no evidence of regular board meetings in accordance with the agency's By-Laws
- There is no evidence (written minutes of the BOD meetings) to indicate that issues such as incidents, health and safety violations, major physical plant issues, the Agency's budget and any fiscal concerns are discussed routinely at board meetings
- No evidence of BOD discussion of audit findings from external agencies
- BOD lack of oversight of agency personnel including Executive staff
- Lack of awareness on the part of the BOD regarding the fiscal or programmatic issues facing the agency
- Lack of BOD participation in the policy setting activities of the agency
- Lack of independence and objectivity between the BOD and the Executive Director, leading to poor decisions/actions by the Executive Director and the Executive Director not being held responsible for the outcomes
- Conflicts of interest between BOD members and the agency and /or Executive Director

### **Early Alert Notification**

The Deputy Commissioner of Quality Improvement will provide written notification to the Agency's Board of Directors (Board of Visitors for State Operated Facilities) and Executive Director that the agency has been placed on Early Alert. The notice will include the rationale for OPWDD's decision. A subsequent meeting will be conducted with agency Executive staff, the BOD (or governing body), and representation from the Division of Quality Improvement to discuss the specific concerns identified, OPWDD's monitoring process and any further requested actions. Early Alert does not affect the certification or funding of an agency or its current programs. However, while an agency is on Early Alert, OPWDD will not consider any requests for expansion of services. The list of agencies on Early Alert will be posted on the OPWDD's website.

### **Potential Course of Action by the Early Alert Committee:**

#### **1. Monitoring**

The Early Alert committee will conduct enhanced monitoring of an agency on Early Alert for a period of time to be determined by OPWDD.

- The agency's development and implementation of a management plan, with measurable benchmarks, that has been reviewed and approved by OPWDD staff, to address governance, fiscal and/or programmatic issues. OPWDD may require the agency BOD to report to OPWDD regularly on the implementation of the plan.
- As a rule of thumb, a demonstration of sustained compliance will take six months from the time an agency begins to implement corrective actions.
- In addition to correcting deficiencies and problems that have been discussed with the agency as part of the Early Alert process, the agency must be able to demonstrate sustained compliance.

OPWDD will consider additional remedial and/or adverse actions at any time.

## **2. Remedial Actions**

Remedial actions may be recommended by the Early Alert committee based on a variety of factors including the size of the agency, the nature and extent of the problems identified and the agency's history as an OPWDD provider. Such actions may include:

- Prescribing a directed Plan of Corrective Action and requiring the agency to engage in certain prescribed remedial activities such as hiring a QA consultant. .
- Requiring training of the Board of Directors
- Requiring technical assistance from an entity approved by OPWDD Early Alert Committee.
- OPWDD review of the agency's accounts receivable to determine if the agency is maximizing cash flow

## **3. Adverse Actions**

Notwithstanding steps to enhance monitoring and promote remedial actions, the Early Alert committee may recommend adverse actions in response to an agency's failure to comply with program requirements. These actions may include:

- Recommendations to fine providers as stipulated in the 6/1/11 Financial Accountability Initiative memo from the OPWDD Acting Executive Deputy Commissioner. Fines are based upon circumstances encountered during survey and certification activities or review of agency incident management that are of such a significant nature or severity related to health and safety that the implementation of a fine is warranted.
- Change of Auspice
- Surrender, limitation, termination or nonrenewal of, operating certificates of one or more sites, surrendering, limitation of, or termination of, the Agency's provider agreement or cancellation of OPWDD contracts. During this time the agency's programs will be monitored by OPWDD staff including DQI/BPC and DDSO staff. This may require an agency to submit closure plans in accordance with OPWDD regulations and continue to implement plans of corrective action.

### **Removal of an Agency from Early Alert Status**

An agency that has been placed on Early Alert will be removed from the list when it:

- Demonstrates that both site specific and systemic issues of concern have been corrected, and corrections have been sustained

- Has implemented processes to prevent recurrence
- Transitions service(s) to another agency, and/or
- No longer provides OPWDD services