



Policy & Procedure	Incident Reporting and Management under OPWDD and the Justice Center
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POLICY STATEMENT:

This policy sets forth the principles and the procedures for the reporting of specific types of incidents, including allegations of abuse, neglect, significant incidents, and notable occurrences in the lives of service recipients, under the funding of OPWDD and, where applicable, under the jurisdiction of the New York State Justice Center for the Protection of People with Special Needs.

POLICY PURPOSE:

The purposes for reporting, investigating, reviewing, correcting, and/or monitoring certain events or situations are to enhance the quality of care provided to service recipients (to the extent possible) from harm and to ensure that such persons are free from abuse and neglect. A primary function of the reporting of certain events or situations is to enable the agency to become aware of problems, to take corrective measures, and to minimize the potential for recurrence of the same or similar events or situations. The prompt reporting of these events and situations can ensure that immediate steps are taken to protect persons receiving services from being exposed to the same or similar risk.

OPWDD has established two regulations that apply to the reporting and addressing of incidents: Part 624, of the 14 NYCRR regulation, addresses reportable incidents and notable occurrences that happen under the auspices of facilities and programs that are operated, certified, sponsored, or funded by OPWDD. Part 625, of the 14 NYCRR regulation, addresses events and situations that are not under the auspices of facilities and programs that are operated, certified, sponsored, or funded by OPWDD.

In addition, the Justice Center for the Protection of People with Special Needs oversees the reporting of, and, at times, the investigation of, reportable incidents of abuse, neglect, and significant incidents that occur in certified programs, and that are the result of the care and treatment of a “custodian” (staff member).

OPWDD – Part 624 – Reportable Incidents and Notable Occurrences

The following definitions and procedures apply to incidents that happen under the auspices of the agency (see definition below), in an OPWDD certified, sponsored, or funded program.

I. Definitions:

- A. Auspices, under the: an event or situation in which the agency is providing services to a person. The event or situation can occur whether or not the person is physically at a site owned, leased, or operated by the agency; an event or situation in which agency personnel (staff, interns, contractors, consultants, and/or volunteers) are, or should have been, physically present and providing services at that point in time; any situation involving physical conditions at the site provided by the agency, even in the absence of agency personnel; the death of an individual that occurred while the individual was receiving services or that was caused by or resulted from a reportable incident or notable occurrence. The death of an individual receiving services who lives in a residential facility operated or certified by OPWDD, is always under the auspices of the agency. The death is also under the auspices of the agency if the death occurred up to 30 days after the discharge of the individual from the residential facility (unless the person was admitted to a different residential facility in the OPWDD system). (Note: this does not include free-standing respite facilities.)
- B. Custodian: A party that meets one of the following criteria: a director, operator, employee, volunteer, consultant, or contractor of an agency; and that person has regular and substantial contact with individuals receiving services
- C. Mandated reporter: Custodians of programs and facilities certified or operated by OPWDD
- D. VPCR (Vulnerable Persons Central Register): An entity established in the Justice Center by section 492 of the Social Services Law. The VPCR shall: receive reports of allegations of reportable incidents involving persons receiving services in programs operated or certified by OPWDD (and specified programs subject to the oversight of other state agencies); as warranted, refer reports alleging crimes to appropriate law enforcement authorities; notify appropriate parties and officials of received and accepted reports; and maintain an electronic database of each report and the finding associated with each report.

II. Reportable Incidents - Abuse & Neglect

- A. Physical abuse: conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury or serious or protracted impairment of the physical, mental, or emotional condition of the individual receiving services, or causing the likelihood of such injury or impairment. Such conduct may include, but shall not be limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting, or the use of corporal punishment. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any party.
- B. Sexual abuse: any conduct by a custodian that subjects a person receiving services to any offense defined in article 130 or section 255.25, 255.26, or 255.27 of the penal law, or any conduct or communication by such custodian that allows, permits, uses, or encourages a person receiving services to engage in any act described in

articles 230 or 263 of the penal law; and/or any sexual contact between an individual receiving services and a custodian of the program or facility which provides services to that individual whether or not the sexual contact would constitute a crime (see especially section 130.05(i) of the penal law). However, if the individual receiving services is married to the custodian the sexual contact shall not be considered sexual abuse. Further, for purposes of this subparagraph only, a person with a developmental disability who is or was receiving services and is also an employee or volunteer of an agency shall not be considered a custodian if he or she has sexual contact with another individual receiving services who is a consenting adult who has consented to such contact.

- C. Psychological abuse: includes any verbal or nonverbal conduct that may cause significant emotional distress to an individual receiving services. Examples include, but are not limited to, taunts, derogatory comments or ridicule, intimidation, threats, or the display of a weapon or other object that could reasonably be perceived by an individual receiving services as a means for infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury. In order for a case of psychological abuse to be substantiated after it has been reported, the conduct must be shown to intentionally or recklessly cause, or be likely to cause, a substantial diminution of the emotional, social or behavioral development or condition of the individual receiving services. Evidence of such an effect must be supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor.
- D. Deliberate inappropriate use of restraints: the use of a restraint when the technique that is used, the amount of force that is used, or the situation in which the restraint is used is deliberately inconsistent with an individual's plan of services (e.g. individualized service plan (ISP) or a habilitation plan), or behavior support plan, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, except when the restraint is used as a reasonable emergency intervention to prevent imminent risk of harm to a person receiving services or to any other party. For purposes of this paragraph, a restraint shall include the use of any manual, pharmacological, or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body.
- E. Use of aversive conditioning: the application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change the behavior of a person receiving services. Aversive conditioning may include, but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, blindfolds, and the withholding of meals and the provision of substitute foods in an unpalatable form. The use of aversive conditioning is prohibited by OPWDD.
- F. Obstruction of reports: conduct by a custodian that impedes the discovery, reporting, or investigation of the treatment of a service recipient by falsifying records related to the safety, treatment, or supervision of an individual receiving services; actively persuading a custodian or other mandated reporter (as defined in section 488 of the Social Services Law) from making a report of a reportable incident to the statewide vulnerable persons' central register (VPCR) or OPWDD

with the intent to suppress the reporting of the investigation of such incident; intentionally making a false statement, or intentionally withholding material information during an investigation into such a report; intentional failure of a supervisor or manager to act upon such a report in accordance with OPWDD regulations, policies or procedures; or, for a custodian, failing to report a reportable incident upon discovery.

- G. Unlawful use or administration of a controlled substance: any administration by a custodian to a service recipient of a controlled substance as defined by article 33 of the public health law, without a prescription, or other medication not approved for any use by the federal food and drug administration. It also shall include a custodian unlawfully using or distributing a controlled substance as defined by article 33 of the public health law, at the workplace or while on duty.
- H. Neglect: any action, inaction, or lack of attention that breaches a custodian's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental, or emotional condition of a service recipient. Neglect shall include, but is not limited to:
 - 1. Failure to provide proper supervision, including a lack of proper supervision that results in conduct between persons receiving services that would constitute abuse as described in paragraphs (1) through (7) of this subdivision if committed by a custodian;
 - 2. Failure to provide adequate food, clothing, shelter, or medical, dental, optometric or surgical care, consistent with Parts 633, 635, and 686, of this Title (and 42 CFR Part 483, applicable to Intermediate Care Facilities), and provided that the agency has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric, or surgical treatment have been sought and obtained from the appropriate parties; or
 - 3. Failure to provide access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction in accordance with the provisions of part one of article 65 of the education law and/or the individual's individualized education program.

III. Reportable Incidents - Significant Incidents

- A. Conduct between persons receiving services that would constitute abuse as described in paragraphs (1) through (7) of this subdivision if committed by a custodian (must be intentional and reckless), except sexual activity involving adults who are capable of consenting and consent to the activity; or Conduct on the part of a custodian, that is inconsistent with the individual's plan of services, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, and which impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare of an individual receiving services, including but not limited to:
 - 1. Seclusion: the placement of an individual receiving services in a room or area from which he or she cannot, or perceives that he or she cannot, leave at will. OPWDD prohibits the use of seclusion

2. Unauthorized use of time-out: the use of a procedure in which a person receiving services is removed from regular programming and isolated in a room or area for the convenience of a custodian, or as a substitute for programming;
 3. Medication Error w/adverse effect: Except as provided for in paragraph (7) of this subdivision, the administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription or order issued for a service recipient by a licensed, qualified health care practitioner, and which has an adverse effect on an individual receiving services. For purposes of this clause, "adverse effect" shall mean the unanticipated and undesirable side effect from the administration of a particular medication that unfavorably affects the wellbeing of a person receiving services;
 4. Inappropriate use of restraints: the use of a restraint when the technique that is used, the amount of force that is used, or the situation in which the restraint is used is inconsistent with an individual's plan of services (including a behavior support plan), generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies. For the purposes of this subdivision, a "restraint" shall include the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body;
 5. Mistreatment: other conduct on the part of a custodian that is inconsistent with the individual's plan of services, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, and that impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare of an individual
- B. Missing person at risk for injury: the unexpected absence of an individual receiving services that based on the person's history and current condition exposes him or her to risk of injury;
 - C. Unauthorized absence: the unexpected or unauthorized absence of a person after formal search procedures (see glossary, section 624.20) have been initiated by the agency. Reasoned judgments, taking into consideration the person's habits, deficits, capabilities, health problems, etc., shall determine when formal search procedures need to be implemented. It is required that formal search procedures must be initiated immediately upon discovery of an absence involving a person whose absence constitutes a recognized potential danger to the wellbeing of the person or others.
 - D. Choking, with known risk: partial or complete blockage of the upper airway by an inhaled or swallowed foreign body, including food, that leads to a partial or complete inability to breathe, involving an individual with a known risk for choking and a written directive addressing that risk;
 - E. Choking, with no known risk: partial or complete blockage of the upper airway by an inhaled or swallowed foreign body, including food, that leads to a partial or complete inability to breathe, other than a "reportable" choking, with known risk;
 - F. Self-abusive behavior, with injury: a self-inflicted injury to an individual receiving services that requires medical care beyond first aid;

- G. h) Injury with hospital admission: any injury that results in the admission of a person to a hospital for treatment or observation because of injury;
- H. Theft and financial exploitation: any suspected theft of a service recipient's personal property (including personal funds or belongings) or financial exploitation, involving a value of more than \$100.00; theft involving a service recipient's credit, debit, or public benefit card (regardless of the amount involved); or a pattern of theft or financial exploitation involving the property of one or more individuals receiving services;
- I. Other significant incident: an incident that occurs under the auspices of an agency, but that does not involve conduct on the part of a custodian, and does not meet the definition of any other incident described above, but that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety, or welfare of a person receiving services.

IV. Notable Occurrences

A. Serious Notable Occurrences:

1. Death: the death of any person receiving services, regardless of the cause of death. This includes all deaths of individuals who live in residential facilities operated or certified by OPWDD and other deaths that occur under the auspices of an agency.
2. Sensitive situation: those situations involving a person receiving services that do not meet the criteria of the definitions of other notable occurrences or the definitions of reportable incidents, which may be of a delicate nature to the agency, and which are reported to ensure awareness of the circumstances. Sensitive situations shall include, but not be limited to, possible criminal acts committed by an individual receiving services.

B. Minor Notable Occurrences:

1. Theft and financial exploitation: any suspected theft of a service recipient's personal property (including personal funds or belongings) or financial exploitation, involving values of more than \$15.00 and less than or equal to \$100.00, that does not involve a credit, debit, or public benefit card, and that is an isolated event.
2. Injury: any suspected or confirmed harm, hurt, or damage to an individual receiving services, caused by an act of that individual or another, whether or not by accident, and whether or not the cause can be identified, which results in an individual requiring medical or dental treatment (see glossary, section 624.20) by a physician, dentist, physician's assistant, or nurse practitioner, and such treatment is more than first aid. Illness in itself shall not be reported as an injury or any other type of incident or occurrence.

V. Procedures

A. Notification of policies and procedures:

1. Upon employment or initial volunteer, intern, or contract, and annually thereafter, all employees, volunteers, interns, consultants, and contractors

that provide services to individuals will receive training on the agency's incident management policies and procedures.

2. Upon commencement of service provision, and annually thereafter, we shall offer to make available written information developed by OPWDD in collaboration with the Justice Center and a copy of the agency's policies and procedures, to persons receiving services who have the capacity to understand the information and to their parents, guardians, correspondents or advocates, unless a person is a capable adult who objects to their notification. The agency shall also offer to make available a copy of OPWDD's Part 624 regulations. In order to satisfy this requirement, at intake an individual or representative will be given the "Learning About Incidents" brochure, as well as a notice as to how they can access the agency's policies and procedures and a copy of OPWDD's Part 624 regulations. Annually thereafter, a notice will be included on the Annual Satisfaction Survey, which goes to all individuals served and their representatives, as to how they can access the brochure and the regulations. The brochure, the agency policies and procedures, and the link to OPWDD's website will be posted on the Wildwood Program's web page.

B. Reporting Requirements and Immediate Protections

1. Internal and OPWDD:

- a. A service recipient's safety must always be the primary concern. Immediate steps should always be taken first to address any health or safety concerns for the service recipient(s). If possible, steps must be taken to stop any abuse, as appropriate.
- b. Any employee, volunteer, intern, consultant, or contractor that either observes directly, or discovers through other means (someone reports it to them), any above described reportable incident, including allegations of abuse, neglect, significant incidents, or any notable occurrences, that occur under the auspices of the agency, must report it immediately to their program supervisor or administrator. A direct contact must always be made.
- c. All reports of potential incidents as described above must be reported to the Program Director/Administrator of the program.
- d. Program Directors/Administrators have the authority and responsibility to determine the classification of an incident and to take immediate steps to address the situation, including implementing immediate protections.
- e. Immediate protections are actions taken to protect any service recipients. These could include, but are not limited to, obtaining medical care, providing emotional support to service recipients, contacting emergency services if needed, staff retraining, counseling, reassignment, or removing the alleged subject of a reportable incident from the workplace and/or from having any contact with individuals served until the completion of the investigation.
- f. For reports of Physical or Sexual Abuse, the alleged subject must be placed on investigatory leave.

- g. Law enforcement will be contacted immediately when an emergency response by law enforcement is required.
 - h. Law Enforcement will also be contacted any time a crime may have been committed against an individual by a custodian or for any Allegation of Physical or Sexual Abuse. This contact should occur as soon as possible but will be made, at minimum, within 24 hours of incident discovery/occurrence.
 - i. Other emergency services (911) will be contacted immediately when emergency response is required for the health and safety of service recipients
 - j. QA should be contacted as soon as possible using the QA Incident Reporting Line, to assist in the reporting process, establishing any additional protections if needed and making notifications.
 - k. In the event that QA cannot be reached, Program Directors/Administration should follow all reporting procedures, including all notifications.
 - l. If an allegation of physical abuse or sexual abuse is reported the service recipient will receive an evaluation by either a staff Registered Nurse, the recipient's medical provider, telehealth, an urgent care center or hospital emergency room based upon the specifics and severity of the report and staff nursing availability.
2. Vulnerable Persons' Central Register (VPCR) – Justice Center:
- a. In the event that a reportable incident occurs to service recipients in one of our certified programs, and involves the actions of a “custodian” (employees, volunteers, interns), the Justice Center needs to be notified.
 - b. Mandated reporters (employees, volunteers, interns) are required to report reportable incidents, upon discovery, to the VPCR unless:
 - i. he or she knows that the report has already been made by another mandated reporter, and
 - ii. he or she has been named in that report as a person with knowledge of the incident.
 - c. “Discovery” occurs when the mandated reporter witnesses a suspected reportable incident or when another party, including an individual receiving services, tells the mandated reporter and provides reasonable cause to suspect that the individual has been subjected to a reportable incident.
 - d. Mandated reporters may report directly to the Justice Center, but must also follow the internal reporting procedures outlined above. Mandated reporters may also report incidents to their supervisor/administrator, who will then assist in make the report to the Justice Center.
 - e. In the event that a mandated reporter is discovered to have witnessed and/or have knowledge of a reportable incident but was not named in the initial report to the Justice Center, that mandated reporter will need to make his/her own report to the Justice Center.

- f. Reports to the Justice Center are to be made by either calling the Vulnerable Persons Central Register (VPCR) “hotline” at 1-855-373-2122, or by using the online form on the Justice Center website (www.justicecenter.ny.gov).
 3. Duty to report incidents under the auspices of another agency
 - a. If a reportable incident or notable occurrence is alleged to have occurred while a service recipient was under the auspices of another agency the incident will be documented and reported to the agency under whose auspices the event or situation occurred.
 - b. Mandated reporters must report to the VPCR upon discovery of an allegation of a reportable incident that occurred in another program or facility that is certified or operated by OWPDD.
- C. Notifications-Once a Reportable Incident or Notable Occurrence has been reported, there are regulatory notifications that are required. The Quality Assurance Department typically makes these notifications, but in the event that Quality Assurance Staff are not available, Program Administrators should make the immediate notifications.
1. OPWDD Incident Management Unit (IMU) will be notified by phone immediately of all Reportable Incidents or Serious Notable Occurrences.
 - a. During OPWDD business hours contact should be made to the Incident Compliance Officer (ICO) assigned to the agency or to the General IMU reporting line at 518-473-7032.
 - b. If a Reportable Incident or Serious Notable Occurrence needs reporting to OPWDD during non-business hours, a call must be made to the OPWDD on-call number at 1-888-479-6763.
 2. The COO, as designee for the CEO, (or the CEO when the COO is unavailable) will be notified as soon as possible, but no later than 24 hours from discovery of incident for all Reportable Incidents and Serious Notable Occurrences and within 48 hours of discovery for all Minor Notable Occurrences.
 3. Telephone Notice to the Service Recipient’s Personal Representative for Jonathan’s Law Notification-(includes only parent, guardian, spouse, adult child, or adult sibling) will be made as soon as possible, but no later than 24 hours from report of incident in IRMA for all Reportable Incidents and Notable Occurrences. Notification may occur in person, or by other means at the request of the Personal Representative.
 - a. This notice must be made unless the personal representative objects to such contact, the service recipient is a capable adult who objects to such notification, or the personal representative is the alleged abuser.
 - b. This person making the notification will need to document all attempts at contact, who was contacted, that all of the required information was provided and whether the personal representative is requesting follow-up information, a meeting, or any documentation on the incident as outlined below.
 - i. Description of the incident and initial actions taken to address it
 - ii. Offer to meet with program administration to discuss incident

- iii. While we do not offer it, a qualified person may request a copy of the initial incident report. All requests for incident reports or investigations are to be referred to the Director of Quality Assurance for processing. Such request must be in writing and redacted.
 - iv. If the incident is an Allegation of Abuse or Neglect, the notification contact will include an offer to provide information on the status and/or finding of the allegation on a periodic basis, which could include access to investigative records. All requests for investigative records are to be referred to the Director of Quality Assurance for processing.
 - c. If person does not have a personal representative, the notice shall be given to the person themselves if they are a capable adult, or to an advocate/correspondent, if one exists.
 - d. A report on actions taken (10-day report) shall be sent within 10 days of the written initial report. Reports should not include names of anyone involved.
 - e. All documentation pertaining to compliance with this law must be maintained as part of the reportable incidents/occurrences records. This includes:
 - f. the telephone notice and responses received, including the identity and position of the party providing the notice, the name of the party receiving the notice, the time of the original call or attempted call, the time of subsequent attempted calls if the initial call was not successful and the time of follow up calls if the notice occurred in more than one call
 - g. Any requests for a meeting or the initial incident/occurrence report
 - h. Meetings held in response to the request, and those present
 - i. when the report on actions taken and any requested written initial incident/occurrence report was provided
 - j. a copy of the report on actions taken and any initial incident/occurrence report (with redaction) that was provided
 - k. advice that a particular party does not want to receive notifications or that the capable adult receiving services objects to notice or objects to the provision of documents/ information.
- 4. Care Manager Notification will be made as soon as possible, but no later than within 24 hours of the report in IRMA for all reportable incidents and notable occurrences Notification will include immediate protections.
 - a. Care Managers will be provided with subsequent information which may be needed to update an individual's plan of services and to monitor proper actions are taken as follows:
 - b. Care Managers will be provided with written information identifying investigative findings and conclusions and recommendations, within 10 days of completion of the investigation.
 - c. If the IRC makes additional findings, conclusions or recommendations, this must be provided to the Care Manager in writing within 3 weeks

following the IRC meeting. The Care manager may request additional information, which is at the discretion of the agency to provide.

- d. All information should be redacted to protect the identity of others.
 - e. If the Care Manager is the subject of the report, information may be provided to the supervisor or administrator.
5. The Mental Hygiene Legal Service (MHLS) will be sent the written initial incident/occurrence report within three business days of occurrence or discovery of an incident for any service recipient residing in a certified facility or a facility operated by OPWDD
 - a. The responsible agency or program will also inform MHLS of the results of the investigation.
 6. Coroner: for all suicides, homicides, accidental deaths, or deaths due to suspicious, unusual or unnatural circumstances, immediately by telephone, and later in writing.
 7. The Justice Center must be promptly notified when a subject of a report of an Allegation of Abuse or Neglect resigns or is terminated from the agency prior to completion of investigation.
 8. Notification to Other Service Providers
 9. When the report of a Reportable Incident or Notable Occurrence is made that resulted in visible evidence of injury to the service recipient, may be of concern to another agency/service Provider, or may have an impact upon programming or activities provided by another agency/service provider it is the responsibility of a designated staff member to notify the other agency/service provider. The designated staff person may be a QA staff member or a member of Program Administration depending on the nature and scope of the report.
 10. Notwithstanding any other provision in this Part, reports of Obstruction of reports of reportable incidents (see paragraph 624.3(b)(6)) that are reported to the Justice Center and/or OPWDD are not subject to the notification requirements in this section.

D. Reporting in IRMA

1. All Reportable Incidents and Serious Notable Occurrences must be further reported in OPWDD's Incident Report and Management Application (IRMA) within 24 hours or the close of the business day following the discovery or occurrence of the incident. This report shall include:
 - a. When a report to the VPCR is made for Reportable Incidents occurring in certified programs, the initial information is automatically entered in IRMA, however this information must be reviewed within 24 hours of occurrence or discovery of the incident or by close of the next working day, whichever is later, and missing or discrepant information must be reported to OPWDD.
 - b. When a report of a Reportable Incident or a Serious Notable Occurrence is not made to the VPCR, the agency must enter initial information into IRMA within 24 hours of occurrence or discovery or by close of the next working day, whichever is later.

E. Investigation Requirements:

1. Any report of a reportable incident or notable occurrence shall be thoroughly investigated by the agency investigators, as assigned by the CEO designee, unless OPWDD or the Justice Center makes notification that the incident will be investigated by OPWDD or the Justice Center.
 - a. The CEO designee is the Director of Quality Assurance.
2. Agency Investigators are staff members assigned by the Director of Quality Assurance to gather information to establish the facts relative to an event/situation, whether immediately following or subsequent to that event/situation. Investigators may be required to have training as specified by OPWDD or the Justice Center.
3. Agency Investigators will receive necessary training on the process of conducting a thorough investigation and on the requirements of completing an investigative report. Additionally, Agency Investigators will attend training on conducting investigations offered by one of the entities below:
 - a. OPWDD
 - b. The Justice Center
 - c. InterAgency Council of Developmental Disabilities Agencies
 - d. Labor Relations Alternatives.
 - e. Any entity that has received approval of their curriculum from OPWDD
 - f. Records will be kept documenting that Agency Investigators have attended one of the above trainings.
4. Investigations shall be initiated immediately.
 - a. In the event that it appears likely that OPWDD or the Justice Center will assume responsibility for the investigation, the agency should still take the following actions:
 - i. Secure and/or document the scene as appropriate
 - ii. Collect and secure physical evidence
 - iii. Take preliminary statements from witnesses and involved parties
 - iv. Perform other actions as specified by OPWDD or the Justice Center
 - b. If law enforcement is involved, the agency will abide by directions given as to investigatory steps.
5. QA staff will monitor IRMA for updates as to investigation assignments.
6. If the Justice Center or the Central Office of OPWDD is responsible for the investigation, the agency must fully cooperate with the assigned investigator but must not conduct an independent investigation.
7. Investigations conducted by Wildwood staff shall incorporate the following:
8. If a person is physically injured, an appropriate medical examination of the injured person shall be obtained. The name of the examiner shall be recorded and his or her written findings shall be retained.
9. The investigative report will be on the form and format specified by OPWDD and include all required elements.

10. The investigation will continue until completion, regardless of whether an employee directly involved leaves employment before the investigation is complete.
11. The agency will maintain confidentiality of information regarding the identities of reporters, witnesses, and subjects of Reportable Incidents and Notable Occurrences and limit access to the information to those parties who need to know, including, but not limited to Program Administrators and assigned investigators.
12. Investigators must identify any conflicts of interest and follow OPWDD guidelines regarding what constitutes a conflict. Conflicts include, but are not limited to:
 - a. Reportable Incidents or Serious Notable Occurrences in which the investigator is directly involved, incorporates, his/her testimony, or in which a spouse, domestic partner, or immediate family member is directly involved or provides supervision to the program in which the incident was reported to have occurred or provides supervision to directly involved parties.
13. Members of the Incident Review Committee (IRC) may not be routinely assigned the responsibility of investigating incidents.
14. OPWDD and the Justice Center have the right to investigate and/or review all records and documentation associated with an investigation and may choose to interview relevant parties.
15. If OPWDD makes recommendations, Wildwood must either implement each recommendation in a timely fashion, or submit written justification to OPWDD within one month of the recommendation being made, explaining why a recommendation is not implemented and/or identifying the alternate means that will be undertaken to address the issue.
16. If the Justice Center makes findings or recommendations, Wildwood will respond in writing to the Justice Center within 90 days of receiving their report.

F. Investigation Findings and Remediation

1. For every allegation of abuse or neglect, a finding of substantiated or unsubstantiated shall be made. A finding is based on a preponderance of the evidence.
2. Substantiated means that it is determined that the incident occurred and the subject of the report was responsible, or, if no subject can be identified and an incident occurred, that the agency was responsible.
3. Unsubstantiated means that it is determined that the incident did not occur, or the subject of the report was not responsible, or because it cannot be determined that the incident occurred or that the subject of the report was responsible.
4. Concurrent finding may be made when a systemic problem caused or contributed to the occurrence of the incident.
5. The Justice Center reviews findings for Allegations of Abuse and Neglect in certified programs. When the investigation is conducted by the agency or OPWDD, findings made by the agency or OPWDD are not considered final

until review by the Justice Center. The Justice Center may amend these findings and the Justice Center's findings are final. These findings will be updated in IRMA and the agency's internal incident database.

6. Plans for Prevention and Remediation for substantiated reports of abuse and neglect when the agency or OPWDD conducts the investigation
 - a. The agency will develop a plan of prevention and remediation addressing the health safety and welfare of the service recipient(s) for all substantiated allegations of abuse and/or neglect within 10 days of IRC review of the completed investigation.
 - b. The plan shall include written endorsement by the CEO or designee.
 - c. The plan will identify by title agency staff responsible for monitoring the implementation of all actions identified and for assessing the efficacy of the remedial actions.
 - d. The plan will be entered into IRMA by the close of the 5th working day after the development of the plan.
7. Corrections in response to findings and Recommendations made by the Justice Center
 - a. When the Justice Center makes findings concerning reports of abuse and neglect under its jurisdiction the agency will respond in writing identifying the action(s) taken in response to each correction in the report or recommendation made by the Justice Center and submit this response to OPWDD in the manner specified by OPWDD within 60 days from receipt of the report of findings and/or recommendations from the Justice Center.

G. Reporting Updates and Timeframes for Completion of Investigations

1. For reportable incidents and serious notable occurrences, the agency will enter updates into IRMA on at least a monthly basis.
2. The update will include a review of additions to the summary of evidence and any specific investigatory actions taken since the last update.
3. If there have been no new developments, an explanation as to why will be made.
4. Investigations of all incidents and notable occurrences shall be completed no later than 30 days after the incident/occurrence has been reported to OPWDD and/or the Justice Center. An investigation is complete upon completion of the investigative report.
5. If required, the agency can extend the timeframe for completion if there is adequate justification to do so. Examples of justified reasons for delay include, but are not limited to, when an outside entity is conducting an investigation which then delays the agency investigation or when there are delays obtaining necessary evidence.

H. Closure of an incident or occurrence:

1. For Reportable Allegations of Abuse and Neglect in programs that are not certified and all Significant Incidents and Notable Occurrences an incident is considered closed when:
 - a. If the agency conducts the investigation, when the IRC has ascertained that no further investigation is necessary

- b. If OPWDD conducts the investigation, when OPWDD notifies the agency of the results of the investigation
 - 2. For Reportable Allegations of Abuse or Neglect in certified programs:
 - a. If the agency or OPWDD conducts the investigation when the Justice Center provides written notification to the Agency of their review of the investigation
 - b. If the Justice Center Conducts the investigation, when the Justice Center provides written notice to the agency that the investigation is completed.
- I. Submission of Investigative Records to OPWDD and the Justice Center
 - 1. For reports of Abuse or Neglect or the death of a service recipient that occurred under the auspices of the agency, that are investigated by the agency, the agency must submit the entirety of the investigative record to the Justice Center and/or OPWDD within 50 days of the Justice Center or OPWDD accepting the report of the incident.
 - 2. For Reports of Abuse or Neglect that were reported to the Justice Center, the agency must submit the entirety of the investigative record in the Justice Center's Web Submission of Investigative Report (WISR)
 - 3. For reports of abuse and Neglect that are not required to be reported to the Justice Center and for the death of any service recipient that occurs under the auspices of the agency the agency will upload the entirety of the investigative record in IRMA.
 - 4. The agency may take additional time to submit the investigative record, ensuring that the reason is for good cause and documented.
- J. Incident Review Committee Process
 - 1. The Incident Review Committee will include the following roles at minimum in its membership:
 - a. A member of the governing body
 - b. At least two professional staff, including but not limited to licensed clinicians, such as occupational, physical, and speech therapists, social workers, psychologists, and nurses; a behavioral intervention specialist (BIS, see subdivision 633.16(b)); and others with primary responsibility for developing and/or monitoring individuals' plans of care, such as developmental and habilitation specialists or a QIDP. At least one of the professional staff must be a licensed health care practitioner (e.g. physician, physician's assistant, nurse practitioner, or registered nurse).
 - c. Other staff, including administrative staff, necessary to achieve the purposes of the committee
 - d. At least one direct support professional
 - e. At least one individual receiving services
 - f. At least one representative of advocacy organizations (e.g. self-advocacy, family, or other advocacy organizations)
 - g. A member who has knowledge of the of the program in which the incident was reported to have occurred or knowledge of the service recipient involved.
 - h. The participation of a psychologist on the committee is recommended.

2. Restrictions on Committee Members
 - a. The chief executive officer of the agency must not serve as a member of the committee, but may be consulted by the committee in its deliberations.
 - b. Any committee member who recognizes a potential conflict of interest in their role for a specific incident will report this to the Committee and recuse themselves from deliberations related to that incident
 - c. No committee member may participate in the review of any reportable incident or notable occurrence in which he or she was directly involved, is the immediate supervisor of staff directly involved in the event or situation, in which his or her testimony is incorporated, in which his or her spouse, domestic partner, or other immediate family member was directly involved or supervises the program, or which he or she investigated or participated in the investigation. Such members may, however, participate in committee deliberation regarding appropriate corrective, preventive, or remedial action.
3. All members of the IRC will be trained in confidentiality laws and regulations
4. The Incident Review Committee (IRC) will review all reportable incidents and notable occurrences for the following purposes:
 - a. Ascertain that reportable incidents and notable occurrences were reported, managed, investigated and documented properly and to make written recommendations to the appropriate staff and the CEO/COO to correct, improve or eliminate inconsistencies;
 - b. Ascertain that necessary and appropriate corrective, preventive, remedial and/or disciplinary action has been taken to protect persons receiving services from further harm and to safeguard against the recurrence of similar reportable incidents and notable occurrences and to make written recommendations to the CEO/COO and program to correct, improve or eliminate inconsistencies;
 - c. Ascertain if further investigation or if additional corrective, preventive, remedial and/or disciplinary action is necessary, and if so, to make appropriate written recommendations to the CEO/COO and program;
 - d. Identify trends in reportable incidents and notable occurrences and to recommend appropriate corrective, preventive, remedial and/or disciplinary action to the CEO/COO and program to safeguard against such recurring situations.
 - e. Ascertain and ensure the adequacy of the agency's reporting and review practices, including the monitoring of the implementation of approved recommendations for corrective, preventive, and remedial action.
5. The IRC shall:
 - a. Meet on at least a monthly basis to review all reportable incidents and notable occurrences and maintain a record of such incident/occurrence review, recommendations, and/or actions taken in such a manner as to provide for tracking, trending, and confidentiality;
 - b. Forward findings and recommendations to the CEO/COO within two weeks of meeting;

- c. Report periodically, but at least annually, to the chief executive officer, chief agency executives, the governing body, and OPWDD concerning the committee's general monitoring functions; general identified trends in reportable incidents and notable occurrences; and corrective, preventive, remedial and/or disciplinary action pertaining to identified trends.
 - d. Any committee member who recognizes a potential conflict of interest in his or her assignment shall report this information to the committee and recuse him or herself from participating in committee review of the incident or occurrence in question.
 6. When the investigation is completed by OPWDD or the Justice Center, the IRC role in reviewing and monitoring the particular incident or occurrence is limited to matters involving compliance with the reporting and notification requirements, protective and remedial actions taken, operational concerns, and the quality of services provided. The IRC shall monitor all actions taken to implement recommendations made by the Central Office of OPWDD or the Justice Center.
 7. Minutes will be taken at all IRC meetings and shall include the following information at minimum:
 - a. The MIN , or where not applicable, Agency Incident Number
 - b. The service recipient's full name
 - c. Brief summary of the situation, including date, location, and type
 - d. Committee findings
 - e. Recommendations and actions taken as the result of recommendations
 - f. Full names of all parties must be recorded
- K. Incident Reclassification
 1. When an agency becomes aware of additional information concerning an incident that may warrant its reclassification it will report that information to OPWDD and the Justice Center if applicable.
 2. If the incident was classified as a reportable incident by the VPCR, or the additional information may warrant its classification as a reportable incident, a program certified or operated by OPWDD must report the additional information to the VPCR. At its discretion, the VPCR may reclassify the incident based on the additional information.
 3. In other cases (e.g., incidents in non-certified programs that are not operated by OPWDD or in programs certified under paragraph 16.03(a)(4) of the Mental Hygiene Law that are not operated by OPWDD), the agency will determine whether the incident is to be reclassified and must report any reclassification in IRMA. (This reclassification is subject to review by OPWDD.)
 4. In the event that the incident is reclassified, the agency must make all additional reports and notifications required by the reclassification.
- L. Retaliation
 - a. When a staff member has reason to believe that they have cause to suspect that a service recipient has been subjected to a Reportable Incident or Notable Occurrence and makes report to the Justice Center or OPWDD and/or cooperates in an investigation of a Reportable Incident or Notable

Occurrence, the agency will not take retaliatory action against the staff member.

M. Justice Center Requirements:

The Justice Center for the Protection of People with Special Needs oversees the reporting and, at times, the investigation, of reportable incidents of abuse, neglect, and significant incidents that occur in our certified programs, and that are the result of the care and treatment of a custodian. In addition to the reporting, investigation, and follow-up procedures already discussed, the following requirements and processes apply:

1. Code of Conduct:
 - a. New custodians of the facility or program with regular and direct contact must read and sign the code of conduct at the time of employment or affiliation.
 - b. All custodians with regular and direct contact must read and sign the code of conduct adopted by the Justice Center on at least an annual basis.
2. Statewide Central Register of Child Abuse (SCR) Checks
 - a. For reports of abuse or neglect in facilities and programs certified or operated by OPWDD, the agency conducting the investigation must submit a request for a check of the Statewide Central Register of Child Abuse and Maltreatment (SCR) concerning each subject of the report.
 - b. Such request must be submitted to the Justice Center in the form and manner specified by the Justice Center as soon as the information required to make the request is known or discovered.
 - c. As a result of the check, the agency may receive information that one or more indicated reports exist concerning the subject of the report. If this occurs, the agency must take appropriate steps to gather information contained in the report as specified by the Justice Center.
 - d. Information obtained pursuant to this paragraph must be included in the investigation records submitted to OPWDD in accordance with subdivision (p) of this section.
3. Notification to Subject
 - a. For reports of abuse or neglect in facilities and programs certified or operated by OPWDD, the agency conducting the investigation must notify each subject of the report that an investigation is being conducted, unless notifying the subject of the report would impede the investigation.
 - b. Such notification must be made in the manner specified by the Justice Center.
 - c. Such notification or the reason a notification was not made must be reported to OPWDD in the manner specified by OPWDD.
4. Categories and consequences of substantiated findings of abuse or neglect
 - a. Category 1:
 - i. serious physical abuse, sexual abuse or other serious conduct by custodians, such as intentionally or recklessly causing serious physical injury; knowing, reckless or criminally negligent failure to perform a duty that results in serious physical injury; threats, taunts or ridicule that is likely to result in a substantial and

protracted diminution of a service recipient's psychological or intellectual functioning; engaging in or encouraging others to engage in cruel or degrading treatment; engaging in or encouraging others to engage in any unlawful sexual conduct; using or distributing a schedule I controlled substance at the workplace or while on duty; unlawfully administering a controlled substance to a service recipient; intentionally falsifying records related to the safety, treatment or supervision of a service recipient when the false statement is made with the intent to mislead a person investigating a reportable incident and it is reasonably foreseeable that such false statement may endanger the health, safety or welfare of a service recipient; knowingly and willfully failing to report; for supervisors, failing to act upon a report; intentionally making a materially false statement during an investigation with the intent to obstruct such investigation; intimidating a mandated reporter with the intention of preventing him or her from reporting or retaliating against any custodian making such a report in good faith.

- ii. Consequences of Category 1 abuse or neglect: permanent placement of the subject of the report on the vulnerable persons' central register Staff Exclusion List (SEL)

b. Category 2:

- i. conduct in which the custodian seriously endangers the health, safety or welfare of a service recipient by committing an act of abuse or neglect. Category two conduct under this paragraph shall be elevated to category one conduct when such conduct occurs within three years of a previous finding that such custodian engaged in category two conduct.
- ii. Consequence of Category 2 abuse or neglect: progressive discipline of the subject of the report, the facility or provider agency shall develop a plan for training and any other actions to reduce the risk of recurrence of such conduct. Such plan must be approved by and its implementation monitored by the Justice Center or the state oversight agency, as appropriate.

c. Category 3:

- i. abuse or neglect by custodians that is not otherwise described in categories one and two
- ii. Consequence of Category 3 abuse or neglect: progressive discipline of the subject of the report, the facility or provider agency shall develop a plan for training and any other actions to reduce the risk of recurrence of such conduct. Such plan must be approved by and its implementation monitored by the Justice Center or the state oversight agency, as appropriate.

d. Category 4:

- i. conditions at a facility or provider agency that expose service recipients to harm or risk of harm where staff culpability is

mitigated by systemic problems such as inadequate management, staffing, training or supervision; instances in which it has been substantiated that a service recipient has been abused or neglected, but the perpetrator of such abuse or neglect cannot be identified.

- e. Consequences of Category 4 abuse or neglect: develop and implement a plan of prevention and remediation of the deficient conditions. Such plan shall identify any systemic problem that led to the determination of a category four finding and include suggested corrective measures. Such plan must be approved by and its implementation monitored by the Justice Center or the state oversight agency, as appropriate.

N. Statistical Information, Data, and Trend Reporting

1. When there is a Reportable Incident or Notable Occurrence reported that affects more than one service recipient the incident is considered one event and will be recorded as such
2. The Director of Quality Assurance and the Incident Review Committee will collect and monitor trend data routinely, creating a full report at minimum, annually. This report will be shared with Executive Management, The Board and OPWDD.

OPWDD 625: Events and situations that are not under the auspices of an agency

The following definitions and procedures apply to incidents that DO NOT happen under our auspices (see definition below), but occur to individuals who receive services from an OPWDD certified, sponsored, or funded program.

I. Definitions:

- A. Auspices, NOT UNDER: Any event or situation that directly involves or may have involved agency personnel during the time that said employee was working for another employer; any event or situation that exclusively involves the family, friends, employers, or co-workers of an individual receiving services, whether or not in the presence of agency personnel or at a certified site; any event or situation that occurs in the context of the provision of services that are subject to the oversight of a State agency other than OPWDD (e.g. special education, article 28 clinic, hospital, physician's office), whether or not in the presence of agency personnel; any allegation of neglect that is based on conditions in a private home; the death of an individual who received OPWDD operated, certified, or funded services except deaths that occurred under the auspices of an agency

II. Events and Situations to be reported:

- A. Physical abuse: The non-accidental use of force that results in bodily injury, pain or impairment, including but not limited to, being slapped, burned, cut, bruised or improperly physically restrained.
- B. Sexual abuse: Non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.

- C. Emotional abuse: The willful infliction of mental or emotional anguish by threat, humiliation, intimidation, or other abusive conduct, including but not limited to, frightening or isolating an adult.
- D. Active neglect: The willful failure by the caregiver to fulfill the care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment, willful deprivation of food, water, heat, clean clothing and bedding, eyeglasses or dentures, or health related services.
- E. Passive neglect: The non-willful failure of a caregiver to fulfill care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment or denial of food or health related services because of inadequate caregiver knowledge, infirmity, or disputing the value of prescribed services.
- F. Self-neglect: An adult's inability, due to physical and/or mental impairments, to perform tasks essential to caring for oneself, including but not limited to, providing essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, mental health, emotional well-being, and general safety; or managing financial affairs.
- G. Financial exploitation: The use of an adult's funds, property, or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers, or denial of access to assets.
- H. Death: The end of life, expected or unexpected, regardless of cause.

III. Procedures:

- A. The agency shall intervene in an event or situation that meets the definition of physical, sexual, or emotional abuse; active, passive, or self-neglect; or financial exploitation noted above by taking actions to protect the involved individual. Such actions, as appropriate, may include but are not limited to the following:
 1. Notifying an appropriate party that may be in a position to address the event or situation (e.g. Statewide Central Register of Child Abuse and Maltreatment, Adult Protective Services, law enforcement officials, family members, school, hospital, or the Office of Professional Discipline);
 2. Offering to make referrals to appropriate service providers, clinicians, State agencies, or any other appropriate parties;
 3. Interviewing the involved individual and/or witnesses;
 4. Assessing and monitoring the individual
 5. Reviewing records and other relevant documentation; and
 6. Educating the individual about his or her choices and options regarding the matter.
 - a. For adults who reside in a certified residence, attend a certified day program, receive Care Management and/or receive an HCBS waiver service, the agency shall intervene in any event or situation defined above.
 - b. For adults who receives FSS, ISS, Article 16 clinic services, or is not available to the agency, and/or is in need of protective services, the agency shall notify Adult Protective Services in the event of an event or situation.

- B. All reports of suspected child abuse must be made to the State Central Register.
- C. If more than one agency provides services to an individual, the discovering provider must report it to the responsible provider, according to the hierarchy of which provider must intervene:
 - 1. Residential provider
 - 2. Certified day program provider
 - 3. Care Management provider
 - 4. HCBS waiver service provider
 - 5. FSS, ISS, or Article 16 clinic provider
 - 6. Any other service funded by OPWDD
- D. Events or situations must be reported to OPWDD, through form OPW 150 in IRMA, within 24 hours of discovery, or by the end of the following business day.
- E. The agency will supply updates on the event or situation at least monthly.
- F. OPWDD may choose to review or investigate any event or situation, and make recommendations.

Records

I. Retention

- A. All records pertaining to Reportable Incidents, Notable Occurrences, and Events/Situations reported through Part 625 will be retained for a minimum of seven years from the date of incident closure. Best Practice is to retain these records for 10 years.
- B. If records are identified as part of an audit or pending litigation, they will be retained through the period of audit or litigation.
- C. Records will be retrievable by the service recipient name and Master Incident Number (MIN), where applicable, at minimum.

II. Confidentiality of Records

- A. All records generated in response to the report of a Reportable Incident or Notable Occurrence will be kept confidential and will not be disclosed except as otherwise authorized by law or regulation. Records of reportable incidents that are reported to the Justice Center are to be kept confidential pursuant to section 496 of the Social Services Law.

III. Release of Records

- A. Request for release of records related to Reportable Incidents and Notable Occurrences should be made in writing and specify the records to be released.
- B. All requests for Release of Incident Records related to Reportable Incidents and Notable Occurrences will be sent to the Director of Quality Assurance. The Director of Quality Assurance will review the request and authorize the release of records where appropriate to eligible requestors.
- C. Eligible requestors are limited to:
 - 1. The service recipient who is a subject of the report
 - 2. A guardian, parent, spouse, adult child, adult sibling of the service recipient who is the subject of the report

3. If the service recipient is a capable adult as defined in Section 624.20(c) and objects to the release of such records, their wishes will be followed and their objection documented.
 4. If an otherwise eligible requestor is also an alleged abuser, such records will not be released regardless of the conclusion.
- D. Records will be released within 21 days of the closure of the incident, if the request is made prior to incident closure. Records will be released within 21 days of the written request, when the request is made after closure of the incident.
- E. All records for release will be redacted
- F. All records released will include a cover letter complying to Part 624.8(g).
- G. Wildwood Programs utilizes the following administrative appeals process for denial of records as outlined in OPWDD Part 624 regulation:
- H. A requestor denied access to the initial incident/occurrence report or report on actions taken may appeal in writing such denial to the incident records appeals officer designated by the commissioner of OPWDD.
1. Upon receipt of the appeal, the agency will be notified of the appeal and given an opportunity to submit relevant information to the incident records appeals officer, including the reasons for denial, within 10 business days of the receipt of such appeal. The incident records appeals officer may also request additional information from the requestor as may be necessary to resolve the appeal.
 2. Within 10 business days of the receipt of complete information, the incident records appeals officer will make a determination about whether the requested documents should be released. The incident records appeals officer will issue his or her determination with an explanation of the reasons for the determination to the requestor and the agency. If so directed by the incident records appeals officer, the agency must provide the requested records and/or documents to the requestor.

Dedicated Mailbox

The agency will maintain a dedicated electronic mailbox/email to communicate with OPWDD in a timely manner regarding incidents. This mailbox will be monitored by multiple Quality Assurance Staff routinely. The agency will ensure that the mailbox is functioning and notify the OPWDD ICO assigned if there are issues with the electronic mailbox or if the email address changes.