

§ 624.20 Glossary.

The glossary is arranged so that the last word in a title of phrase is the key word to look up, and those words are arranged alphabetically.

(a) *Abuse or neglect.* Those reportable incidents defined in section 624.3(b)(1)-(8) of this Part.

(b) *Administrator, program.* Someone designated by the governing body and/or the chief executive officer to be responsible and accountable for the daily operation of one or more types services provided by an agency (*e.g.*, ICF program, community residence program, residential habilitation program, respite program, family support program).

(c) *Adult, capable.* For purposes of this Part, a person 18 years of age or older who is able to understand the nature and implication of an issue. The assessment of capability in relation to each issue as it arises will be made by the person's program planning team (see glossary). Capability, as stipulated by this definition, does not mean legal competency; nor does it necessarily relate to a person's capability to independently handle his or her own financial affairs; nor does it relate to the person's capacity to understand appropriate disclosures regarding proposed professional medical treatment. Whenever there is doubt on the part of any other party interested in the welfare of the person as to that person's ability to make decisions, as ascertained by the program planning team or others called upon by and agency, a determination of capability for a specific issue or issues may be made by a Capability Review Board (see glossary) designated by the commissioner, except, prior to May 31, 2014, that in an ICF/DD facility the requirements of section 681.13 of this Title may apply. A capable adult person cannot override the authority granted a guardian pursuant to article 81 of the Mental Hygiene Law or of a conservator or a committee; or the authority granted a guardian in accordance with the Surrogate Court Procedure Act.

(d) *Advocate.* As used in this Part, someone who has volunteered to help a person apply for HCBS waiver services who gives advice and support, who helps the person make informed choices, and who acts on behalf of the person when that person is unable to do so by himself or herself. While an advocate plays an active role in promoting self-advocacy and in assisting with service planning, implementation, and monitoring, he or she has no legal authority over a person's affairs unless designated as the legal guardian.

(e) *Agency.* The operator of a facility, program or service operated, certified, authorized, or funded through contract by OPWDD. In the case of State-operated facilities, the Developmental Disabilities State Operations Office (DDSOO) is considered to be the agency. Family care providers are not considered to be an agency (also see *agency, sponsoring*). The term *agency* as used in this Part includes sponsoring agencies.

(f) *Agency, sponsoring.* An oversight entity of one or more OPWDD certified family care homes. In the case of family care homes operated under state sponsorship, the DDSOO is considered to be the sponsoring agency.

(g) *Agency, State.* A New York State governmental unit created for the management/delivery of services to the citizens of the State.

(h) *Allegation (of abuse or neglect)*. For purposes of this Part, the implication that abuse or neglect of a person may have occurred, based upon the report of a witness, upon a person's own account, or upon physical evidence of probable abuse or neglect.

(i) *Application, Incident Report and Management (IRMA)*. A secure web-based statewide database for incident reporting that is used by providers in the OPWDD system.

j) *Auspices, under the*. For the purposes of this Part and Part 625 of this Title, an event or situation in which the agency or family care provider 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 or family care provider.

(1) Events or situations that are under the auspices of the agency or family care provider include but are not limited to:

(i) An event or situation in which agency personnel (staff, interns, contractors, consultants, and/or volunteers) or a family care provider (or respite/substitute provider) are, or should have been, physically present and providing services at that point in time.

(ii) Any situation involving physical conditions at the site provided by the agency or family care home, even in the absence of agency personnel or the family care provider.

(iii) 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 defined in sections 624.3 and 624.4 of this Title.

(iv) Notwithstanding any other requirement in this subdivision, the death of an individual receiving services who lived in a residential facility operated or certified by OPWDD, including a family care home, 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.)

(v) Related to reportable incidents and notable occurrences as defined in sections 624.3 and 624.4 of this Title, any event that directly involves or may have involved agency personnel or a family care provider (or respite/substitute provider) or someone who lives in the home of the family care provider.

(2) Events or situations that are not under the auspices of an agency include:

(i) Any event or situation that directly involves or may have involved agency personnel or a family care provider (or respite/substitute provider) during the time he or she was acting under the supervision of a State agency other than OPWDD (*e.g.*, an agency employee has a second job at a hospital and an incident occurred while he or she was providing care to an individual receiving services during the individual's hospitalization).

(ii) Any event or situation that exclusively involves the family, friends, employers, or co-workers of an individual receiving services (other than a custodian or another individual receiving services), whether or not in the presence of agency personnel or a family care provider or at a certified site.

(iii) 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 or a family care provider.

(iv) Any report of neglect that is based on conditions in a private home (excluding a family care home).

(v) The death of an individual who received OPWDD operated, certified, or funded services, except deaths that occurred under the auspices of an agency as specified in paragraph (l) of this subdivision.

(k) *Board, capability review.* Those designated by OPWDD to review the ability of a person to consent to a particular situation when there is a dispute as to that person's ability.

(l) *Body, governing.* The over-all policy-making authority, whether an individual or a group, that exercises general direction over the affairs of an agency and establishes policies concerning its operation for the welfare of the persons it serves. In State-operated services, the governing body shall be the central office of OPWDD. For purposes of this Part, a family care home does not have a governing body.

(m) *Contact, sexual.* As specified in Penal Law section 130.00(3), the touching or fondling of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying the sexual desire of either party, whether directly or through clothing. It also includes causing a person to touch anyone else for the purpose of arousing or gratifying personal sexual desires.

(n) *Correspondent.* Someone (not on the staff of the facility) who may assist a person in obtaining necessary services and participate in the person's program planning process, and who receives notification of certain significant events in the life of the person. The fact that a correspondent is providing advocacy for a person as a correspondent does not endow that individual with any legal authority over a person's affairs.

(o) *Crime.* An act that is forbidden by law that makes the offender liable to punishment pursuant to that law. In New York State, the Penal Law defines a crime as a misdemeanor or a felony, but does not include a traffic infraction.

(p) *Custodian.* A party that meets one of the following criteria:

(1) a director, operator, employee or volunteer of an agency; or

(2) a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity that provides goods or services to an agency pursuant to contract or other arrangement that permits such party to have regular and substantial contact with individuals receiving services; or

(3) a family care provider; or

(4) a family care respite/substitute provider.

(q) *Disability, developmental.* A disability that:

(1) is attributable to:

(i) mental retardation, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism;

(ii) any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons; or

(iii) dyslexia resulting from a disability described in subparagraph (i) or (ii) of this paragraph;

(2) originates before an individual attains age 22;

(3) has continued or can be expected to continue indefinitely; and

(4) constitutes a substantial handicap to an individual's ability to function normally in society.

(r) *Facility.* Unless otherwise defined or *modified*, *facility* means a developmental center or any other site certified by OPWDD in which either residential or non-residential services are provided to persons with developmental disabilities (*e.g.*, community residence including an individualized residential alternative [IRA], intermediate care facility [ICF/DD], day treatment, workshop, clinic, family care home, or a day habilitation site).

(s) *Injury, physical and "impairment of physical condition."* Any confirmed harm, hurt or damage resulting in a significant worsening or diminution of an individual's-physical condition.

(t) *Intentionally.* For the purposes of this Part, this term is used in accordance with subdivision one of section 15.05 of the Penal Law which states: "A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct."

(u) *Investigate/investigation.* That systematic process whereby information about the circumstances surrounding an event/situation are examined and scrutinized, whether by a chief executive officer, designated staff, or a trained investigator (see glossary). The intensity of any investigation is decided by the event/situation under study.

(v) *Investigator.* That party or parties, designated by the chief executive officer (or designee), by the central office of OPWDD, or by the Justice Center, responsible for collecting 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.

(w) *Justice Center for the Protection of People with Special Needs (Justice Center)*. An entity established by article 20 of the Executive Law for the protection of people who are vulnerable because of their reliance on professional caregivers to help them overcome physical, cognitive and other challenges. The Justice Center contains the Vulnerable Persons' Central Register (VPCR) as established by article 11 of the Social Services Law and receives requests for criminal history record checks pursuant to section 16.33 of the Mental Hygiene Law.

(x) *Office, Developmental Disabilities State Operations (DDS00)*. The local administrative unit of OPWDD responsible for the provision of State-operated services within a particular geographic area.

(y) *Officer, chief executive*. Someone (by whatever name or title known) designated by the governing body (see glossary) with overall and ultimate responsibility for the operation of one or more classes of facility, for the delivery of other services to persons with developmental with developmental disabilities, and with control over any and all equipment used in the care and treatment of such persons, or a designee with specific responsibilities as specified in agency policy/procedure. In a DDS00, this party is referred to as the director.

(z) *Person/persons*. For purposes of this Part, a child or adult with a developmental disability, who has been or is receiving services that are operated, certified, sponsored, or funded by OPWDD.

(aa) *Procedures, formal search*. A systematic process involving employees with specific responsibilities (*e.g.*, security personnel), law enforcement agencies, and any others designated by agency policy and which is initiated for the purpose of locating a person who has not been found in response to an informal search.

(ab) *Provider, family care*. One or more adults age 21 or over to whom an operating certificate has been issued by OPWDD to operate a family care home. A family care provider is an independent contractor.

(ac) *Recklessly*. For the purposes of this Part, this term is used in accordance with subdivision three of section 15.05 of the Penal Law, which states: "A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto."

(ad) *Report, investigative*. A comprehensive record of a completed investigation of an event or situation. The purpose of this report is to formalize an investigator's methodology, findings, conclusions, and recommendations upon the completion of an investigation.

(ae) *Report, initial incident/occurrence.* The document that records initial information about a reportable incident or notable occurrence, in conformance with this Part.

(af) *Service, Mental Hygiene Legal (MHLS).* A service of the appellate division of the State Supreme Court established pursuant to article 47 of the Mental Hygiene Law. (Formerly, Mental Health Information Service - MHIS.)

(ag) *Services, plan of* An individualized record system, by whatever name known, which documents the process of developing, implementing, coordinating, reviewing, and modifying an neglect of a person receiving services.

(ah) *Subject (of a report).* A custodian who is reported to the VPCR for the alleged abuse or neglect of a person receiving services.

(ai) *Substantiated.* A finding concerning a report of abuse or neglect based on a preponderance of the evidence. The report of abuse or neglect is substantiated when 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 facility or provider agency was responsible.

(aj) *Team, program planning.* Those, by whatever name known, acting as a unit, responsible for identifying a person's needs for developing, implementing and evaluating the plan of services for that person; and ensuring that the current setting and/or services received are appropriate. Regulations for a specific class of facility are to be referenced for specific details. For those enrolled in the Home and Community-Based waiver (HCBS), the program planning team is defined as the person (consumer) and the waiver case manager, and the advocate (if appropriate) as well as any other party or parties considered, at any given time, as being appropriate for participation by that group.

(ak) *Treatment, requiring medical or dental.* For the purposes of this Part, a situation in which a person who, by virtue of his or her condition as a result of an injury, must see a physician, dentist, physician's assistant, or nurse practitioner to have the condition controlled and/or attended to with more than first-aid procedures. While an agency's policy and procedures may direct that a person who is in any way injured or has suffered any ill effects is to see a medical professional, even though first-aid has adequately addressed the injury, this does not always constitute requiring medical or dental treatment in terms of defining a notable occurrence. If a person is retained in a hospital overnight for observation, this would be considered a situation that required medical treatment, and be reported as a serious notable occurrence.

(al) *Unsubstantiated.* A finding concerning a report of abuse or neglect based on a preponderance of the evidence. The report of abuse or neglect is unsubstantiated because it is determined not to have occurred 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.

(am) *Vulnerable Persons ' Central Register (VPCR).* An entity established in the Justice Center by section 492 of the Social Services Law. The VPCR shall:

- (1) receive reports of reportable incidents involving persons receiving services in facilities and programs operated or certified by OPWDD (and specified programs subject to the oversight of other State agencies);
- (2) as warranted, refer reports alleging crimes to appropriate law enforcement authorities;
- (3) notify appropriate parties and officials of received and accepted reports; and
- (4) maintain an electronic database of each report and the finding associated with each report.

Historical Note

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