Andrew M. Cuomo
Governor

NYS Office For People With Developmental Disabilities
Putting People First

Kerry A. Delaney
Acting Commissioner

LEARNING ABOUT INCIDENTS

OPWDD'S COMMITMENT TO PROTECTION FROM HARM

OPWDD's mission is to help people with developmental disabilities live richer lives. OPWDD, in coordination with the Justice Center for the Protection of People with Special Needs, has established requirements and oversight procedures to protect people receiving services from harm.

In order to support this mission, OPWDD and its provider agencies adhere to Title 14 of New York Codes, Rules and Regulations Part 624 (14 NYCRR Part 624), a regulation designed to protect people receiving OPWDD services. This regulation identifies steps to be taken when a person receiving services experiences an incident, as described on page 2, Types of Incidents. This regulation requires all providers of services to do the following:

- Ensure that staff report untoward events, called "reportable incidents" and "notable occurrences," that affect the well-being of people receiving services;
- Provide immediate care and protect the health, safety, and dignity of people with developmental disabilities involved in, or affected by, an incident;
- Investigate why incidents, including abuse and injuries, happen and take steps to prevent similar incidents from happening again;
- Establish an Incident Review Committee to review specific incidents and examine trends; and
- Develop procedures and provide staff training and oversight, as needed, to prevent similar incidents in the future.

This brochure provides an overview of OPWDD's expectations regarding incidents and explains the roles of qualified persons and other involved parties in advocating on behalf of the people we serve. Please refer to 14 NYCRR Part 624 for complete requirements of this regulation.
http://www.opwdd.ny.gov/regulations_guidance/opwdd_regulations

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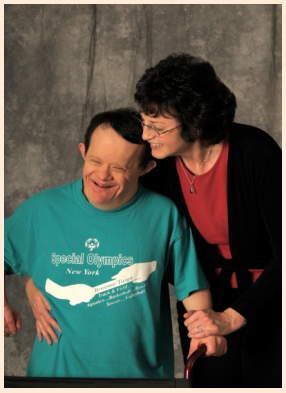

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WHO IS ABLE TO RECEIVE NOTICE AND ASK FOR INCIDENT IINFORMATION?

Jonathan's Law requires that qualified persons are to be notified of certain events involving persons receiving services. Part 624, which includes Jonathan's Law notifications, requires that qualified persons are notified of all incidents.

Qualified persons include an individual receiving services, his or her legal guardian, or an involved parent, spouse, or adult child who has authority to provide consent for care and treatment.

Part 624 also requires that a person who does not meet the definition of a qualified person but who serves as an advocate for a person receiving services is to be notified of incidents.

Qualified persons, advocates, and correspondents may request incident information.

There are additional OPWDD directives on notifications involving Willowbrook class members.

HOW DO AGENCIES HANDLE INCIDENTS?

Incidents must be reported, investigated, recorded, reviewed by an Incident Review Committee, and acted upon to safeguard the well being of people receiving services.

Every provider must have a process for reporting the following incidents to OPWDD:

- Reportable Incidents of Abuse and Neglect
- Reportable Significant Incidents
- Serious Notable Occurrences

Providers must also have systems to manage Minor Notable Occurrences and other potentially harmful situations that do not rise to the level of a reportable incident or notable occurrence.

In addition, some incidents must be reported to the New York State Justice Center for the Protection of People with Special Needs (Justice Center). The Justice Center was created for the protection of people receiving services from facilities and programs that are certified or run by some State agencies, including OPWDD. Reportable incidents that happen in programs and services certified or run by OPWDD are reported to the Justice Center as well as OPWDD.

TYPES OF INCIDENTS...

Reportable incidents of abuse and neglect include physical, sexual, and psychological abuse, as well other prohibited conduct such as deliberate inappropriate use of restraint, and neglect.

Reportable significant incidents include medication errors that result in adverse effects, use of seclusion and other mistreatment, and some missing person and choking events.

Serious notable occurrences include injuries that require hospitalization, theft or financial exploitation (involving funds above $100 and benefit, debit, or credit cards), and deaths of people receiving services.

Minor notable occurrences include injuries that require treatment beyond first aid and theft and financial exploitation (involving $15 to $100).

See14 NYCRR Part 624 for a full list of types of incidents and their definitions.

When sharing the OPWDD 147, OPWDD 148 and other records/documents pertaining to allegations of abuse, providers are required by law to "redact" or edit to delete the names and identifying information regarding other individuals receiving services and employees.

How is an investigation conducted?

- Every reportable incident must be thoroughly investigated.
- The investigator will gather information from a variety of sources and prepare a report that includes a summary of evidence, conclusions, and recommendations. In the case of a report of abuse or neglect, the report will also include a finding of "substantiated" or "unsubstantiated."
- The investigative report is submitted to the agency's Incident Review Committee for review. The committee is required to review and monitor investigatory procedures (except when the case is investigated by the Justice Center or the Central Office of OPWDD) and may in some cases, recommend further investigation.

How and when is this information available?

- Qualified persons, advocates, and correspondents will receive telephone notice as soon as reasonably possible following a report of an incident. They will also be provided with an offer to meet with the director of the agency (or his or her designee) to discuss the incident.
- Qualified persons and advocates who receive notice of an incident will automatically receive a report on actions taken (OPWDD Form 148) within 10 days of completion of the report.
- Qualified persons and advocates who receive notice of an incident may submit a written request for a copy of the incident report and should receive a redacted copy of the requested report within 10 days after the request is made.
- Qualified persons (called "eligible requestors" in Part 624) may also request additional information on reportable incidents, such as investigative reports. These reports, which must be redacted, are provided to requestors within 21 days after the closure of an incident or within 21 days following the request if an investigation is already completed.
- Written requests for records or documents from that investigation should be directed to the agency that reported the incident.
- Requests may be made for information on incidents that occurred in the past. Part 624 includes requirements regarding time frames applicable to these requests.
- By law, all requested records and documents pertaining to incidents must be redacted (edited) so names and identifying information about people involved in incidents are not available to those who request incident information.

Who Can an Advocate (including a "qualified person" or correspondent) Speak to For Follow Up?

An advocate should feel free to ask questions when he or she receives notice of an incident and may ask to speak with a supervisor for more information. The advocate may also accept the offer to meet with the agency director or designee.

If not satisfied, the advocate may direct questions or concerns to the director of the agency or other high level administrators.

For reports of abuse or neglect in a certified program, the Mental Hygiene Legal Services (MHLS) may also be a resource.

The OPWDD Incident Management Unit may also help resolve outstanding issues.

There is an administrative appeal process for advocates who have been denied incident records requested from an agency providing services.

Contact the OPWDD Incident Records Appeals Officer, 44 Holland Avenue, Albany, NY 12229 for more information.

Laurie A. Kelley, Acting Commissioner
New York State
Office for People With Developmental Disabilities
Standing Committee on Incident Review
44 Holland Avenue
Albany, NY 12229

For clarification on the information contained in this brochure, please contact:

OPWDD's

Standing Committee

on Incident Review.

opwdd.scir@opwdd.ny.gov

NYS Office For People With Developmental Disabilities
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If you are a member of the public who wants to report abuse of an individual who receives services in the OPWDD system, there are several ways to do so:

- If you are aware of the name of the agency providing services to the individual, you may contact the provider agency directly to report abuse.
- If information on the service provider of an individual is unknown, you may report abuse to the OPWDD. You can access contact information for your local Incident Compliance Officer on OPWDD's website on the Incident Management Unit webpage. The Incident Management Unit also has an off-hours contact number at 1-888-479-6763.
- The NYS Justice Center for the Protection of People with Special Needs operates a 24 hour hotline for the reporting of Abuse, Neglect and Significant incidents for facilities and programs certified or operated by OPWDD at 1-855-373-2122.

How to advocate and protect individuals from harm

The *qualified person or advocate* and service provider should work together to ensure that the person is well served and safe. The partnership can begin at a team meeting, where the person's individualized plan for services and supports is reviewed; at that time, the team, including the *qualified person or advocate*, can discuss safeguards or interventions that may be required. Such safeguards often need to be individualized and specific to the person.

Particularly when unexplained injuries recur, the *qualified person or advocate* might ask what steps are being taken to protect the person from being exposed to the same or similar circumstances. While it is not always possible to anticipate the steps required, as they may be specific to the incident, some possible areas for discussion include:

- changes in the person's behavior or demeanor;
- the rhythm of the person's day and week;
- use of, possible need for, or change in adaptive equipment;
- any physical care, health or hygiene problems needing attention;
- exploration of interventions or supports that may be helpful or needed;
- evaluation including health or clinical assessment;
- level of supervision;
- staff training and re-training efforts; and/or
- conditions in the living or service environment.

Team meetings provide an invaluable forum for the qualified person or advocate and other members to advocate for protection from injuries, especially those that are unexplained and recurrent.