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### General Policy

The Arc of Delaware County is responsible to report, record, investigate, review and monitor reportable incidents and notable occurrences.

A person's safety is always the primary concern of the Chief Executive Officer (or designee). He or she shall take necessary and reasonable steps to ensure that a person receiving services who has been harmed receives any necessary treatment or care and, to the extent possible, take reasonable and prudent measures to immediately protect individuals receiving services from harm and abuse. If a person is physically injured, an appropriate medical examination of the injured person must be obtained. The name of the examiner must be recorded and his or her written findings must be retained.

When appropriate, an employee, intern, volunteer, consultant, or contractor alleged to have abused or neglected a person shall be removed from direct contact with, or responsibility for, all persons receiving services from the agency.

When appropriate, an individual receiving services shall be removed from a facility when it is determined that there is a risk to such individual if he or she continues to remain in the facility.

Upon **commencement** of service provision, and **annually** thereafter, an agency 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 (see glossary, section 624.20) or advocates (see glossary, section 624.20), unless a person is a capable adult who objects to their notification. The agency shall offer to make available a copy of OPWDD's Part 624 regulations. In order to satisfy this requirement the agency shall:

- a) Provide instructions on how to access such information in electronic format and;
- b) Upon written request, provide paper copies of such information.

Upon **employment** or initial volunteer, contract, or sponsorship arrangements, and **annually** thereafter, an agency shall make the agency's policies and procedures on incident management known to agency employees, interns, volunteers, consultants, and contractors. For parties who are required to be trained, this information must be provided in conjunction with training conducted in accordance with section 633.8 of this Title.

Custodians including employees, interns, volunteers, consultants, and contractors with regular and substantial contact with people supported will be apprised of their reporting responsibilities. Employees will be provided notice that:

- a) All reportable incidents, including reports of abuse and neglect, shall be investigated; and
- b) If an employee leaves employment prior to the conclusion of a pending investigation, the investigation shall continue until it is completed and (for reports of abuse and neglect) a finding is made of substantiated or unsubstantiated.

Custodians with regular and direct contact in facilities and programs certified by OPWDD shall be provided with and sign the code of conduct adopted by the Justice Center.

All agency employees, interns, volunteers, consultants, and contractors are required to report any event or situation that meets the criteria of a **reportable incident** or **notable occurrence**. Please refer to Definitions tab.

The Arc of Delaware County has a dedicated electronic mailbox to receive notifications from OPWDD in order to act on issues in a timely manner.

Agency policies and procedures, whether newly developed or representing change from previously approved policies, will be subject to approval by the agency's Board of Directors.

The Arc of Delaware County goes above and beyond in reporting, reviewing, investigating, and monitoring incidents that are not required by OPWDD 624 regulations. These incidents are listed below and include the process and notifications. They are typically known as internal agency incidents. The categories of injury and vehicle accidents pertain to staff.

**OTHER AGENCY INCIDENTS (Agency Incident Report ONLY):**

1. Involve injuries to employees or visitors which are severe enough (more than first aid needed), to require the intervention of a nurse or physician.
2. Medication errors, where the health and safety of a participant was not at risk and no adverse effects were present.
3. Serious drug reactions requiring examination by either a physician or a nurse.
4. Significant inappropriate participant behavior.
5. Termination of program by participant or his/her parent, guardian, or correspondent against the advice of staff.
6. Vehicular accidents whether they result in physical injury or not.
7. Theft of \$15.00 or less from participant.
8. Events of equivalent magnitude of those listed above.

**RESPONSIBILITY**

**PROCEDURE**

All Staff Present When Incident Occurs

1. As appropriate, render assistance or intervene to stop the incident.
2. As necessary, call for assistance from other staff.
3. Report incident immediately to Program Director.

Program Director

4. Immediately responds, observes, provides or designates staff to provide necessary services and protection to participant.

Program Director or Designee

5. **Within 24 hours** of the incident, also notifies the following:
  - a. Parent or guardian.
  - b. Residential service provider.
  - c. Care Coordination Manager.
  - d. Other program providers, if the incident may be of concern to other program, or may impact upon programming or activities at another program.

6. Immediately initiates follow up to verify the facts and circumstances surrounding the incident.
    - a. Who was responsible?
    - b. Whether the event could have been avoided.
    - c. Whether disciplinary action should be taken.
    - d. Whether there is need for a change in the participant's program plan.
  7. Within one week, completes or assures completion of the agency incident report, including the findings of the follow up. Forwards the original report and copies of related attachments/log notes to the 624 Coordinator.
  8. Reviews all incidents and the facts and circumstances of all incidents.
  9. Within two weeks after initiation of review of an incident, forwards any additional findings and recommendations to the Chief Executive Officer and the President by submitting a copy of the incident report and any other pertinent data, forms or statements.
  10. Utilizes findings of staff, including Special Review Committee, to take appropriate corrective action, if required.
  11. Insures that an accurate summary of the incident and any corrective action taken that affects the participant is placed in the participant's case record. The incident report is maintained in the agency files, but is not included in the participant's record.
  12. Distributes minutes of the committee meetings to the Special Review file, the President of the Board of Directors, the Chief Executive Officer and the committee members.
- Special Review Committee
- Chief Executive Officer
- Program Director
- 624 Coordinator

Reportable incidents are events or situations that meet the definitions in this section and occur under the auspices of an agency.

1. **Physical abuse** shall mean:

- a) 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 is not limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting, or the use of corporal punishment. Physical abuse does not include reasonable emergency interventions necessary to protect the safety of any party.

2. **Sexual abuse** shall mean:

- a) 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. For purposes of this paragraph 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.

3. **Psychological Abuse** includes any verbal or nonverbal conduct that may cause significant emotional distress to an individual receiving services.

- a) 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.
- b) 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.

4. **Deliberate inappropriate use of restraints** shall mean 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 includes 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. **Use of aversive conditioning** shall mean 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.

6. **Obstruction of reports of reportable incidents** shall mean 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 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.

7. **Unlawful use or administration of a controlled substance** shall mean 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.
8. **Neglect** shall mean 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:
- a) Failure to provide proper supervision, including a lack of proper supervision that results in conduct between person receiving services that would constitute abuse as described in paragraphs (1) through (7) of this subdivision if committed by a custodian;
  - b) Failure to provide adequate food, clothing, shelter, or medical, dental, optometric or surgical care, consistent with Part 633, 635, and 686 of the regulations 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.
9. **Significant incident** shall mean an incident, other than an incident of abuse or neglect, 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, and shall include but shall not be limited to:
- 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 except sexual activity involving adults who are capable of consenting and consent to the activity; or
  - b) 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 any individual receiving services, including:
    - (i) Seclusion, which shall mean 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 except when such placement is specifically permitted by 633.16. Unless permitted by section 633.16. Unless permitted by section 633.16, the use of seclusion is prohibited.
    - (ii) Unauthorized use of time-out, which (for the purposes of this clause only) shall mean 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, for disciplinary purposes, or as a substitute for programming.

**Note:** Section 633.16 of this Title (Person-Centered Behavioral Intervention) identifies a form of "exclusionary Time out," which prevents egress from a time out room by a custodian's direct and continuous action, and requires constant visual and auditory monitoring. Use of exclusionary time out may be included in a formal behavior support plan and implemented in accordance with the conditions and limits set forth in paragraph 633.16(j)(3). The use of exclusionary time out in the absence of an approved behavior support plan that incorporates the use of exclusionary time-out, or a failure to implement such a plan as designed, is considered to be "seclusion" and is prohibited.

**Note:** For the purposes of this provision "unauthorized use of time out" includes any use of time out that is inconsistent with an individual's plan of services except as noted in sub clause (i) of this clause.

- (iii) The administration of a prescribed or over-the-counter medication which is inconsistent with a prescription, or order except as provided for in paragraph (7) of this subdivision issued for a service recipient by a licensed qualified health care practitioner, and that 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 which unfavorably affects the wellbeing of a person receiving services;
- (iv) Inappropriate use of restraints, which shall mean 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; and
- (v) Mistreatment, which shall mean 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 receiving services, except as described in any other provision of this subdivision.
- c) Missing person at risk for injury which shall mean the unexpected absence of an individual receiving services that based on the person's history and current condition exposes him or her to risk or injury;
- d) Unauthorized absences which shall mean the unexpected or unauthorized absence of a person after formal search procedures have been initiated by the agency (see glossary, section 624.20, procedures for formal search). 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 well-being of the person or others.
- e) Choking, with known risk which shall mean 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.
- f) Choking, with no known risk: For the purposes of this paragraph, 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 choking, with known risk, incident involving an individual with a known risk for choking and a written directive addressing that risk.
- g) Self-abusive behavior, with injury, which shall mean a self-inflicted injury to individual receiving services that, requires medical care beyond first aid.
- h) Injury, with hospital admission which shall mean an injury that results in the admission of a service recipient to a hospital for treatment or observation because of injury.
- i) Theft and financial exploitation which shall mean 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.
- j) Other significant incident which shall mean an incident that occurs under the auspices of the agency, but that does not involve conduct on the part of a custodian, and does not meet the definition of any other incident described in this subdivision, 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.

Notable Occurrences

**Definitions of Serious Notable Occurrences which occur under the auspices of the agency:**

1. **Death** shall mean the death of any person receiving services, regardless of the cause of death, is a **serious** notable occurrence. 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. Known deaths of individuals who had received services from such a facility in the 30 day period preceding death must also be reported.
2. **Sensitive situations**: Those situations involving a person receiving services that do not meet the definitions of other incidents in section 624.3 of this Part or in this subdivision, but that may be of a delicate nature to the agency, and are reported to ensure awareness of the circumstances. Sensitive situations shall be defined in agency policies and procedures, and shall include, but not be limited to, possible criminal acts committed by an individual receiving services.

**Definitions of Minor Notable Occurrences which occur under the auspices of the agency:**

1. **Theft and financial exploitation**: Any suspected theft or 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, that 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.

**Note**: An injury due to self-injurious behavior that requires medical care beyond first aid is a "reportable incident."

[624 Contact List](#)

**Delarc's 624 Coordinator - Valarie Moore**

**Work - 607-865-7646**

**Cell - 607-287-3869**

**IRMA entry is required for all Reportable incidents, Abuse, Neglect, and Significant Incidents. Entry into IRMA is required within 24 hours of discovery of incidents or, by the close of the next business day if discovery occurs in "off" hours.**

**Custodians – Employees, volunteers, consultants who have regular and substantial contact with people supported.**

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**For all reportable incidents - Abuse, Neglect and Significant Incidents.**

**1. VPCR (Vulnerable Persons' Central Register) Justice Center - Number 855-373-2122**

**2. OPWDD - Phone notification during working hours to:**

Kendall Dubuc

Incident Management Unit

518-388-4098 Office

Kendall.E.dubuc@opwdd.ny.gov

**Off Hours** and if Kendall Dubuc is not available OPWDD

Incident Management Unit (IMU)

888-479-6763

**3. Care Coordination Manager** within 24 hours of completion of initial reportable incident report or initial IRMA entry whichever is earlier.

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**For allegations of abuse and neglect involving person residing in facility certified by OPWDD, and occurring under our auspices, email 147 within 3 working days to:**

**Mental Hygiene Legal Services**

Attention: Nikole Terry

NTERRY@NYCourts.gov

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**Possible crimes committed by custodians**

Phone notification to:

Delaware County Sheriff's Office

280 Phoebe Lane, Suite 1

Delhi, NY 13753

Christopher Erwin, Senior Investigator

(607) 832-5633 (direct line)

Joe Mauro, Investigator

607-832-5599 (direct line)

Or

David Barnes, Investigator

607-832-5629

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**What type of information should a mandated reporter be prepared to provide to the Justice Center?**

- Details regarding the victim(s), suspect(s) and witnesses(s).
- Details of the incident, including the date and time, location, description of incident and injury/impact to the victim.
- State agency responsible for oversight of the agency, facility and/or program.
- Confirmation that immediate protections are in place for the victim(s), if applicable.
- Any other information that may assist with the investigation or review of the incident.

**Note:** Mandated Reporters are required to report to the VPCR even if they may not have all the information that may assist with the VPCR.

**For Deaths**

**1. VPCR (Vulnerable Persons' Central Register) Justice Center - Number 855-373-2124**

**2. OPWDD - Phone notification during working hours to:**

Rhonda Irving

Incident Management Unit

518-388-3715 Office

rhonda.m.irving@opwdd.ny.gov

**Off Hours** and if Rhonda Irving is not available OPWDD

Incident Management Unit (IMU)

888-479-6763

**For Reportable Incidents of Willowbrook Class member:**

FAX 147 to

Opwdd.sm.cab.incidents@opwdd.ny.gov

Ms. Tawnie Ferguson

CAB, Willowbrook Class

1050 Forest Hill Road

Staten Island, New York 10314-6316

Phone: 718-477-8800

Fax: 718-477-8805

AND

Beth Haroules, Willowbrook Attorney

NY Civil Liberties Union

125 Broad Street, 17<sup>th</sup> Floor

New York, NY 10004

Phone: 212-607-3300

Fax: 212-607-3318

### **General**

1. All agency employees, interns, volunteers, consultants, and contractors are required to report any event or situation that meets the criteria of a **reportable incident** or **notable occurrence**. **Please refer to Definitions tab**. Custodians of programs and facilities certified by OPWDD are mandated reporters.
2. All reportable incidents and serious notable occurrences shall be reported to the agency's Chief Executive Officer (or designee) immediately upon occurrence or discovery.
3. All minor notable occurrences shall be reported to the agency's Chief Executive Officer (or designee) within 48 hours upon occurrence or discovery.
4. All reportable incidents and serious notable occurrences shall be reported immediately to OPWDD. Immediate entry of initial information into the OPWDD Incident Report and Management Application (IRMA) shall not be sufficient to satisfy this requirement.
5. For the Willowbrook class, agencies shall comply with the incident reporting requirements of the Willowbrook Permanent Injunction, dated March 11, 1993.
6. An OPWDD Incident Report Form (147) will be completed by the person observing or discovering the reportable occurrence within 24 hours. This is forwarded to a supervisor for review and approval. The 147 will be submitted to an individual authorized to enter the information into IRMA.
7. It is the responsibility of a designated staff member of the agency where a report on a reportable incident or notable occurrence is received or made out, to notify any other agency where the person receives services of that reportable incident or notable occurrence if the incident or occurrence resulted in visible evidence of injury to the person, may be of concern to another agency, or may have an impact upon programming or activities provided by another agency.

**Note: For reporting of deaths, please refer to Deaths tab.**

### **Reporting to VPCR (Justice Center):**

1. Facilities and programs that are certified by OPWDD shall report all **reportable incidents** to the VPCR. (not notable occurrences). NOTE: Non-certified programs are not required to report to the VPCR.
2. All custodians in programs or facilities certified by OPWDD are "mandated reporters" and are required to report reportable incidents to the VPCR. Mandated reporters shall have the rights and responsibilities established by section 491 of the social services law.
3. Non-certified programs that are not state operated are not required to report to the VPCR.
4. All custodians shall submit reports of reportable incidents to the VPCR immediately upon discovery of the reportable incident.
5. Discovery" occurs when the mandated reporter witnesses a suspected reportable incident or when another party, including an individual receiving services, comes before the mandated reporter in the mandated reporter's professional or official capacity and provides the mandated reporter with reasonable cause to suspect that the individual has been subjected to a reportable incident.
6. Reports shall be submitted by a statewide, toll-free telephone number (**855-373-2122**) or by electronic transmission, in a manner and on forms prescribed by the Justice Center.
7. A report to the VPCR shall include the name, title, and contact information of every person known to the mandated reporter to have the same information as the mandated reporter concerning the reportable incident.

8. The obligation of mandated reporters to report reportable incidents to the VPCR is not limited to reportable incidents occurring at the agency with which the mandated reporter is associated. If the mandated reporter becomes aware that an individual has been subjected to a reportable incident at a different facility or program subject to the requirements of Article 11 of the social services law, the mandated reporter is also required to report the incident to the VPCR. Facilities and programs subject to Article 11 include but are not limited to facilities and programs certified by OPWDD, facilities under the oversight of the Office of Mental Health (OMH), specified residential schools, and summer camp.
9. In a case where a subject of a report of alleged abuse or neglect resigns from his or her position or is terminated while under investigation, the agency shall promptly report such resignation or termination to the Justice Center. The subject of a report means a custodian who is reported to the VPCR for the alleged abuse or neglect of a person receiving services.

**Reporting Requirements for IRMA For Reportable and serious notable occurrences:**

1. When a report of a reportable incident or serious notable occurrence is made to the VPCR, initial information is automatically entered into IRMA. The agency is required to review the information within 24 hours of occurrence or discovery of the incident or by close of the next working day, whichever is later, and to report missing or discrepant information to OPWDD.
2. **For all reportable incidents and serious notable occurrences** initial information shall be entered into IRMA within 24 hours of occurrence or discovery, or by close of the next working day whichever is later. Initial information is information about the incident or occurrence that is required to create a new incident report in IRMA and any other information available at the time when the information is first entered into IRMA.
3. 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 the close of the next working day, whichever is later.
4. **For minor notable occurrences**, initial information must be entered into IRMA within 48 hours of occurrence or discovery or by the close of the next working day, whichever is later.
5. **Subsequent information** is information concerning the incident or occurrence that is not included in the initial information entered into IRMA. This includes but is not limited to information about required notifications that was not reported as part of the initial information and any updates to information related to deaths (e.g. autopsy reports). **Subsequent information shall be entered by the close of the fifth working day after the action is taken or the information becomes available.**
  - a) Subsequent information about immediate protections shall be entered into IRMA within 24 hours after the action is taken or by the close of the next working day, whichever is later.
  - b) Information about the report to the appropriate law enforcement official shall be entered into IRMA within 24 hours of the report being made.
  - c) Subsequent information about a death shall be entered in IRMA within five working days of the discovery of the death.
6. If another provision of this Part identifies a different timeframe for the entry of specific information, agencies must comply with that timeframe requirement instead. Specific timeframes are identified in provisions concerning:
  - (i) reporting updates;
  - (ii) notification of law enforcement officials; and
  - (iii) minutes of incident review committee (IRC) meetings.
7. Agencies are **not** required to enter information about investigatory activities into IRMA until the investigative report is completed.

8. For reports of abuse and neglect in facilities and programs that are certified by OPWDD, subsequent information shall include findings and recommendations made by the Justice Center.
9. Agencies shall comply with all requests for OPWDD for the entry of specific subsequent information.
10. For **reportable incidents and serious notable occurrences**, agencies shall enter reporting updates into IRMA on at least a **monthly** basis or more frequently as requested by OPWDD, until closure of the incident or occurrence. The reporting updates shall include:
  - a) All required fields in IRMA.
  - b) A brief review of additions to the summary of evidence and specific investigatory actions taken since the last update was entered into IRMA, if any; and
  - c) If there have been no additions to the summary of evidence or investigatory actions taken since the last report, an explanation of why no progress has been made.
11. If the agency is not responsible for conducting the investigation, the agency shall complete the required fields in IRMA to the extent possible given information provided to the agency.
12. If the agency is responsible for conducting the investigation and if the investigation has not been completed within the timeframe, the agency shall inform OPWDD of the reason for extending the timeframe of the investigation and shall continue to keep OPWDD informed on at least a monthly basis of the progress of the investigation and other actions taken.
13. For reportable incidents of abuse and neglect in facilities and programs that are certified by OPWDD, an agency may enter reporting updates into IRMA less frequently than on a monthly basis, if closure of the incident is exclusively pending receipt of written notice for the Justice Center and:
  - a) an initial update is entered into IRMA to document that closure of the incident is pending receipt of such written notice from the justice center;
  - b) an update is entered into IRMA by the close of the fifth working day after the agency receives the written notice; and
  - c) no additional updates are requested by OPWDD.
14. If the allegation of abuse or neglect has been **substantiated**, the plan for prevention and remediation will be entered into IRMA by the close of the **fifth** working day after the development of the plan. (Note: In the event that the Central Office of OPWDD conducts an investigation of an incident or notable occurrence, the Central Office of OPWDD will make The Investigative report available through IRMA)
15. For reporting serious notable occurrences, the full text of the investigative report shall be entered into IRMA.
16. For reportable incidents and serious notable occurrences, the portion of the minutes that discuss matters concerning the specific event or situation shall be entered into IRMA within three weeks of the meeting.

**Final Reports to the Justice Center for Reportable Incidents Accepted by the VPCR:**

1. The agency shall submit a final report to OPWDD for all reportable incidents that were accepted by the VPCR.
2. Final reports must be submitted in the manner, form, and format specified by OPWDD.
3. Final reports must be submitted within 50 days of the VPCR accepting a report of abuse or neglect.
4. The agency may take additional time to submit its final report provided, however, the reasons for any delay must be for good cause and must be documented. The report must be submitted as soon thereafter as practicably possible.
5. In the event that the Justice Center or OPWDD conducts the investigation instead of the agency, the agency is not required to submit the final report to the Justice Center. In the event that OPWDD conducts the investigation, OPWDD will submit the final report to the Justice Center. However, agencies shall provide information as requested by the Justice Center or OPWDD as may be necessary for the completion of the final report.

Note: Final information on significant incidents is automatically available to the Justice Center when the incident is closed in IRMA.

6. If an agency conducts the investigation of a report of abuse or neglect that was reported to the Justice Center, the agency shall submit the entirety of the investigation records to OPWDD in the manner and within the timeframe specified by OPWDD.

**Events or situation under auspices of another agency**

**Duty to report events or situations under the auspices of another agency:**

1. If a reportable or notable occurrence is alleged to have occurred while a person was under the auspices of another agency (e.g., day habilitation staff allege that a situation occurred at a residence), the discovering agency shall document the situation and shall report the situation to the agency under whose auspices the event or situation occurred.
2. Mandated reporters at the discovering agency must report to the VPCR upon discovery of an allegation of a reportable incident that occurred in another program or facility which is certified or operated by OPWDD.
3. It shall be the responsibility of the agency under whose auspices the situation is alleged to have occurred to report, investigate, review, correct, and monitor the situation.

**Note:** Similarly, when a person receives two or more services from the same provider agency, and one program or service environment discovers an incident that is alleged to have occurred under the supervision of another program or service environment operated by the same agency, the discovering program/service environment must document the situation and report it to the program/service environment where the situation or event is alleged to have occurred. The program or service environment where the incident is alleged to have occurred is responsible for reporting and managing the incident, in accordance with this Part and agency policy.

4. If the agency suspecting or alleging the incident or occurrence is not satisfied that the situation will be or is being investigated or handled appropriately, it shall bring the situation to the attention of OPWDD.

## Notifications

### Additional Notifications

#### Care Coordination Manager

**Must be notified by the agency for all reportable incidents and notable occurrences** involving any individual receiving services that are certified or funded by OPWDD within 24 hours of the completion of the written initial incident/occurrence report or entry of initial information in IRMA, whichever is earlier. The notification must include a description of immediate protections.

#### Children

For children under 18 years of age, notification of alleged abuse must immediately be made to the Statewide Central Register of Child Abuse and Maltreatment (1-800-342-3720).

#### MHLS

For a report of abuse or neglect involving a person who resides in a certified facility, the agency under whose auspices the event occurred and/or that is responsible for the person shall send the written initial incident/occurrence report to the Mental Hygiene Legal Service (MHLS) within three working days of occurrence or discovery. The responsible agency or program shall inform MHLS of the results of the investigation.

#### Coroner/Medical Examiner

All suicides, homicides, accidental deaths, or deaths due to suspicious, unusual, or unnatural circumstances must be reported immediately by telephone, and later in writing, to the coroner/medical examiner.

#### Law Enforcement

An appropriate law enforcement official must be contacted immediately in the event that an emergency response by law enforcement is needed.

Agencies shall report to an appropriate law enforcement official anytime a crime may have been committed against an individual by a custodian. This is in addition to reporting to the Justice Center when the event or situation is a reportable incident (if the services are certified by OPWDD).

The report to the appropriate law enforcement official shall be made as soon as practicable, but in no event later than 24 hours after occurrence or discovery.

Information about the report to the appropriate law enforcement official shall be entered into IMRA within 24 hours of the report being made.

In a case where a subject of a report of alleged abuse or neglect resigns from his or her position or is terminated while under investigation, the agency shall promptly report such resignation or termination to the Justice Center.

#### Other Agencies

If the incident or occurrence resulted in visible evidence of injury to the person, may be a concern to another agency, or may have an impact upon programming or activities provided by another agency, contact with the other agency shall be made.

### For all reportable incidents and notable occurrences:

1. The agency shall provide **telephone** notice to one of the following: a person's guardian, parent, spouse, adult child, or adult sibling. (Please use Delarc Reportable Incident Checklist)
2. However, the agency shall **not** provide such notice to a party in the following situations:
  - a) If the guardian, parent, spouse, adult child, or adult sibling is the alleged abuser;
  - b) If there is written advice from the guardian, parent, spouse, adult child, or adult sibling that he or she objects to receiving such notification. The notice shall then be provided to another party who is a guardian, spouse, adult child, or adult sibling, if one exists; or

- c) If the person receiving services is a capable adult who objects to such notification being made. If the capable adult objects to notification of all parties (guardian, parent, spouse, adult child, or adult sibling), the capable adult shall be provided the notice described in this subdivision.
3. The **telephone** notice shall be provided as soon as reasonably possible, but no later than 24 hours after completion of the written initial incident/occurrence report or entry of initial information in IRMA.
4. The **telephone** notice shall include:
- a) A description of the event or situation and a description of initial actions taken to address the incident or alleged abuse, if any;
  - b) An offer for a copy of the initial incident/occurrence report (refer to page 27)
  - c) An offer to meet with the Chief Executive Officer (or designee) to further discuss the incident or occurrence; and
  - d) For reports of abuse and neglect, an offer to provide information on the status and/or finding of the report. Requested information shall be provided verbally or in writing, unless the person is a capable adult and objects to the provision of this information. In providing such information, the agency shall protect the privacy rights of other parties.
5. Methods of notification:
- a) The complete telephone notice may be comprised of more than one call, so long as the initial call includes a description of the event or situation and is within the required period of time or is attempted within the required period of time. Follow-up calls with the additional required information shall be made within a reasonable timeframe after the initial call.
  - b) Notice may be made in person instead of by telephone.
  - c) Notice may be provided by other methods at the request of the party receiving the notice.
6. If the person does not have a guardian, parent, spouse, adult child, or adult sibling, or if such parties are not reasonably available, or if there is written advice that such parties do not want to be notified; the agency shall provide notice to the following parties in the manner (and subject to the same limitations) specified in this subdivision:
- a) the person receiving services, if the person is a capable adult; and
  - b) the person's advocate or correspondent (if one exists).

#### **Report on Actions Taken (Form 148):**

1. The agency shall provide a report on initial actions taken to address the incident or notable occurrence. This report shall include:
- a) Any immediate steps taken in response to the incident or notable occurrence to safeguard the health or safety of the person receiving services; and
  - b) A general description of any initial medical or dental treatment or counseling provided to the person in response to the incident or occurrence.
2. The agency shall provide the report on actions taken to any party who received the initial incident/occurrence notification within 10 days of the completion of the written initial incident/occurrence report (for minor notable occurrences) or entry of initial information in IRMA by the agency.
3. The report that is provided shall be in the form and format specified by OPWDD or in a similar format developed by the agency.
4. The report that is provided shall **not** include names of anyone who is involved in the incident or occurrence or the investigation, or who is interviewed as a part of the investigation, or any information tending to identify such parties. Names of any such parties as well as any information tending to identify those parties shall be excluded or redacted.

## Investigation

### Investigation Requirements:

1. Any report of a reportable incident or notable occurrence (both serious and minor) shall be thoroughly investigated by the Chief Executive Officer or an investigator designated by the Chief Executive Officer, unless OPWDD or the Justice Center advises the Chief Executive Officer that the incident or occurrence will be investigated by OPWDD or the Justice Center and specifically relieves the agency of the obligation to investigate.
2. Investigations shall be initiated immediately, with further investigation undertaken commensurate with the seriousness and circumstances of the situation.
3. The agency shall commence an investigation immediately even when it anticipates that the Justice Center or Central Office of OPWDD will assume the responsibility for the investigation. However, if the agency can reasonably anticipate that the Justice Center or the Central Office of OPWDD are likely to investigate the incident, the actions taken by the agency are restricted to:
  - a) Securing and/or documenting (e.g. photographing) the scene as appropriate;
  - b) Collecting and securing physical evidence;
  - c) Taking preliminary statements from witnesses and involved parties to the extent necessary to ensure immediate protective measures can be implemented; and
  - d) Performing such other actions as specified by the Justice Center or OPWDD.
4. In the event that law enforcement directs that the agency forgo any of the actions specified, in this section, the agency shall comply with such direction.
5. The agency is responsible for monitoring IRMA to ascertain whether the Justice Center, the Central Office of OPWDD or the agency is responsible for the investigation.
6. If the Justice Center or the Central Office of OPWDD is responsible for the investigation, the agency shall fully cooperate with the assigned investigator but shall not conduct an independent investigation.

In the event that OPWDD or the Justice Center conducts an investigation, the agency may be responsible to conduct some investigatory activities. In these instances, the agency must comply with pertinent requirements in this subdivision. Note that when the Justice Center conducts the investigation, the Justice Center is not required to adhere to the requirements of such subdivision.

In the event that the Justice Center requests additional information from the agency, in accordance with law or regulation, the agency must provide such requested information in a timely manner.

7. For reports of abuse and neglect in programs certified by OPWDD, the agency conducting the investigation shall notify each subject of the report that an investigation is being conducted, unless notifying the subject of the report would impede the investigation. Such notification shall be made in the manner specified by the Justice Center. Such notification or the reason a notification was not made shall be reported to OPWDD in the manner specified by OPWDD. This notification should be sent at the beginning of the investigation or as soon as the subject(s) contact information is known. The notification should **NOT** include the reporter's name, any personally identifying information or preliminary conclusions regarding the investigation. If the investigator, in conjunction with his or her supervision, determines that a notification should not be sent, a note should be added to the Notes tab of the VPCR record indicating why notification will not be sent.

**Note:** Template of letter "Investigations Notice to Subject of Abuse or Neglect that an Investigation has been initiated" is included in the Forms tab.

8. For reports of abuse or neglect in programs certified by OPWDD, the agency conducting the investigation shall submit a request for a check of the Statewide Central Register of Child Abuse and Maltreatment (SCR) concerning each subject of the report.
  - (i) Such request shall 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.
  - (ii) 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 shall take appropriate steps to gather information contained in the report as specified by the Justice Center.
  - (iii) Information contained pursuant to this paragraph shall be included in the investigation records submitted to OPWDD.
  
9. Investigations conducted by agencies shall incorporate the following:
  - a) 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.
  - b) Witnesses to the incident or occurrence shall be identified and shall be interviewed in as private an environment as possible.
  - c) Interviews should be conducted separately by qualified, objective parties. Interviews of individuals receiving services should be conducted by parties with an understanding of the persons' unique needs and/or capabilities.
  - d) Pertinent information shall be reviewed (e.g., records, photos, observations of incident scene, expert assessments).
  - e) physical evidence, if any, shall be identified and appropriate steps shall be taken to safeguard and preserve physical evidence.
  
10. An agency may become aware of additional information concerning an incident that may warrant its reclassification.
  - a) 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 by OPWDD shall report the additional information to the VPCR. At its discretion, the VPCR may reclassify the incident based on the additional information.
  - b) In other cases (i.e. incidents in non-certified programs), the agency shall determine whether the incident is to be reclassified and shall report any reclassification in IRMA.
  - c) In the event that the incident is reclassified, the agency shall make all additional reports and notifications that may be warranted by the reclassification.
  - d) Incident or occurrence may be reclassified based on additional information obtained during the course of the investigation (e.g., a minor notable occurrence injury may be reclassified as an allegation of physical abuse). In this event, the agency shall report the reclassification in IRMA and (if appropriate) to the Justice Center and make all additional notifications that may be warranted by the reclassification.
  
11. When an agency is responsible for the investigation, the investigation shall be documented. Such documentation shall include an investigative report (OPWDD Form 149).
  
12. **For reportable incidents and serious notable occurrences**, the full text of the investigative report shall be entered/uploaded into IRMA (Note: In the event that the Central Office of OPWDD conducts an investigation of an accident or notable occurrence, the Central Office of OPWDD will enter the investigative report into IRMA).

13. The investigation shall continue through completion regardless of whether an employee or other custodian who is directly involved leaves employment (or contact with individuals receiving services) before the investigation is complete.
14. The agency shall maintain the confidentiality of information regarding the identities of reporters, witnesses and subjects of reportable incidents and notable occurrences, and limit access to such information to parties who need to know, including but not limited to personnel administrators and assigned investigators.
15. For reportable incidents and serious notable occurrences:
  - a) The agency shall assign an investigator whose work function is at arm's length from staff who are directly involved in the reportable incident or serious notable occurrence.
  - b) No party in the direct line of supervision of staff who are directly involved in the reportable incident or serious notable occurrence may conduct the investigation of such an incident or occurrence, except the Chief Executive Officer.
  - c) Although the Chief Executive Officer is in the direct line of supervision of all staff, the Chief Executive Officer (not a designee) may conduct the investigation of a reportable incident or serious notable occurrences unless he or she is the immediate supervisor of any staff who are directly involved in the reportable incident or serious notable occurrence.
16. Restrictions on situations that may compromise the independence of investigators:
  - a) Any party who has been assigned to investigate a reportable incident, or notable occurrence in which he or she recognizes a potential conflict of interest in the assignment, shall report this information to the agency. The agency shall relieve the assigned investigator of the duty to investigate, if it is determined that there is a conflict of interest in the assignment.
  - b) No one may conduct an investigation of any reportable incident or serious notable occurrence in which he or she was directly involved, in which his or her testimony is incorporated, or in which a spouse, domestic partner, or immediate family member was directly involved.
  - c) No one may conduct an investigation in which his or her spouse, domestic partner, or immediate family member provides supervision to the program where the incident took place or provides supervision to directly involved parties.
  - d) Members of Special Review Committee shall not routinely be assigned the responsibility of investigating incidents or occurrences.
17. When the agency is responsible for the investigation, the investigation shall be completed no later than 30 days after the incident or notable occurrence is reported to the Justice Center and/or OPWDD, or, in the case of a minor notable occurrence, no later than **30 days** after completion of the written initial occurrence report or entry of initial information in IRMA. An investigation shall be considered complete upon completion of the investigative report.
18. The agency may extend the timeframe for completion of a specific investigation beyond 30 days, if there is adequate justification to do so. The agency shall document its justification for the extension. Circumstances which may justify an extension include (but are not limited to):
  - a) Whether a related investigation is being conducted by an outside entity (e.g., law enforcement) which has requested that the agency delay necessary investigatory actions; and
  - b) Whether there are delays in obtaining necessary evidence which are beyond the control of the agency (e.g. an essential witness is temporarily unavailable to be interviewed and/or provide a written statement).

19. For every report of abuse or neglect, a **finding** shall be made. The agency shall make the finding or, in the event that the Central Office of OPWDD or the Justice Center conducted the investigation, the Central Office of OPWDD or the Justice Center shall make the finding. A finding shall be based on a preponderance of the evidence and shall indicate whether:
- a) The report of abuse or neglect is **substantiated** because 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; or
  - b) 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.
  - c) A concurrent finding may be made that a systemic problem caused or contributed to the occurrence of the incident.
  - d) When the investigation is conducted by an agency or by OPWDD, findings made by the agency or OPWDD are not considered final until they are reviewed by the Justice Center. The Justice Center may amend findings made by an agency or OPWDD. Findings made by the Justice Center are considered final.
20. OPWDD and the Justice Center have the right to investigate and/or review any reportable incident. OPWDD also has the right to investigate and/or review any notable occurrence. All relevant records, reports and/or minutes of meetings at which the incident or occurrence was discussed shall be made available to reviewers or investigators. Persons receiving services, staff, and any other relevant parties may be interviewed in pursuit of any such investigation or review.
21. When an incident or occurrence is investigated or reviewed by OPWDD and OPWDD makes recommendations to the agency concerning any matter related to the incident or occurrence (except during survey activities), the agency shall either:
- a) Implement each recommendation in a timely fashion and submit documentation of the implementation to OPWDD; or
  - b) In the event that the agency does not implement a particular recommendation, submit written justification to OPWDD, within a month after the recommendation is made, and identify the alternative means that will be undertaken to address the issue, or explain why no action is needed.

**Submission of investigative records:** If an agency conducts the investigation of a report of abuse or neglect or the death of an individual that occurred under the auspices of an agency, the agency must submit the entirety of the investigative record to the Justice Center and/or OPWDD, within 50 days of the VPCR and/or OPWDD accepting such report as follows:

- 1) For reports of abuse or neglect that were reported to the Justice Center, the agency must enter the entirety of the investigative record in the Justice Center's Web submission of Investigation Report (WISR) application; or
- 2) Effective January 1, 2016, for reports of abuse and neglect that are not required to be reported to the Justice Center and for the death of any individual that occurs under the auspices of an agency, the agency must enter/upload the entirety of the investigative record in IRMA.
- 3) Notwithstanding the timeframe specified in this subdivision, the agency may take additional time to submit the investigative record provided, however, that the reasons for any delay must be for a good cause and must be documented. The record must be submitted as soon thereafter as practicable possible.
- 4) Notwithstanding the requirements in paragraphs (1) – (3) of this subdivision, in the event that the Justice Center or OPWDD conducts the investigation instead of the agency, the agency is not required to submit the investigative record to the Justice Center and/or OPWDD. In the event that OPWDD conducts the investigation, OPWDD will submit the investigative record to the Justice Center. However, agencies must provide information as requested by the Justice Center and/or OPWDD that may be deemed necessary to complete the record.

**Results of the Investigation:**

1. The agency shall inform MHLS of the results of the investigation.
  
2. The Care Coordination Manager must be provided with subsequent information that may be needed to update an individual's plan of services and to monitor protective, corrective, and other actions taken following a reportable incident or occurrence. The Care Coordination Manager must be provided with written identifying investigative conclusions (including the findings of a report of abuse or neglect) and recommendations pertaining to the individual's care, protection, and treatment. The information provided must exclude information that directly or indirectly identifies agency employees, consultants, contractors, volunteers, or other individuals receiving services. This information must be provided to the Care Coordination Manager within 10 days following completion of the investigation if the investigation was completed by the agency or 10 days after the agency receives notice of the results of an investigation conducted by the Central Office of OPWDD or the Justice Center.
  - a) If the Special Review Committee's review results in additional findings, conclusions, or recommendations regarding the individual's care, protection, and/or treatment, this information must be provided to the Care Coordination Manager, in written form within 3 weeks following committee review.
  
  - b) If the Justice Center's review of an investigation conducted by the agency or by the Central Office of OPWDD results in additional findings, conclusions, or recommendations regarding the individual's care, protection, and/or treatment, this information must be provided to the Care Coordination Manager, in written form, within 10 days after the agency's receipt of the information.
  
  - c) The Care Coordination Manager may request additional information concerning the incident or occurrence in order to monitor protective, corrective, and/or other actions taken. In the event that an agency receives a request for this information from a Care Coordination Manager, the agency shall provide information that it deems appropriate. In providing this information, the agency must exclude information that directly or indirectly identified agency employees, consultants, contractors, volunteers, and other individuals receiving services. If an agency determines that it would be inappropriate to disclose specific information requested, the agency must advise the Care Coordination Manager of this determination and its justification, in writing, within 10 days after the request. If the agency does not have specific information requested by the Care Coordination Manager (e.g. if the Justice Center conducted the investigation and it has not provided that information to the agency), the agency shall advise the Care Coordination Manager that it does not have the requested information.

**Note:** A Care Coordination Manager may be permitted to access information related to substantiated reports in accordance with section 496(2)(n) of the Social Services Law.

- d) If the Care Coordination Manager is identified as the subject of the report of a report of abuse or neglect or as a witness to a reportable incident or occurrence, the agency shall **not** provide information to that party. In such a case, notifications and written information identified in paragraphs (1) and (2) must be provided to the Care Coordination Manager's supervisor or the administrator of the agency providing Coordinated Care Management in lieu of the Care Coordination Manager.

General

**Special Review Committee**

Mistreatment, abuse or neglect of any participant shall be prohibited. Corporal punishment, degradation, humiliation, isolation, seclusion, withholding programming or food, excessive medication, electroshock therapy, use of restraint (both physical and pharmacological), and dehumanization are considered mistreatment, abuse or neglect and are forbidden. Aversive conditioning is prohibited.

All incidents shall be documented on the OPWDD form 147 or the agency's standard incident report form, (forms tab) thoroughly investigated by agency staff and reviewed by the Special Review Committee, and prevented, where possible, from recurring.

**There shall be a Special Review Committee which shall review and monitor reportable incidents and notable occurrences that occur to people receiving services from the agency to:**

1. Ascertain that reportable incidents and notable occurrences were reported, managed, investigated and documented consistent with the provisions of this Part and with agency policies and procedures and to make written recommendations to the appropriate staff and/or the Chief Executive Officer to correct, improve or eliminate inconsistencies;
2. Ascertain that necessary and appropriate corrective, preventative, 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 Chief Executive Officer to correct, improve or eliminate inconsistencies;
3. Ascertain if further investigation or if additional corrective, preventative, remedial and/or disciplinary action is necessary, and if so, to make appropriate written recommendations to the Chief Executive Officer relative to the reportable incident or notable occurrence;
4. Identify trends in reportable incidents and notable occurrences (e.g., by type, person, site, employee involvement, time, date, circumstances, etc.), and to recommend appropriate corrective, preventive, remedial and/or disciplinary action to the Chief Executive Officer to safeguard against such recurring situations or reportable incidents and notable occurrences; and
5. Ascertain and ensure the adequacy of the agency's reporting and review practices, including the monitoring of the implementation of approved recommendations for corrective, preventative, and remedial action.

**The Special Review Committee will:**

1. Meet no less frequently than on a quarterly basis and always within one month of the report of a reportable incident or serious notable occurrence or sooner should the circumstances so warrant. The Special Review Committee shall meet as necessary to meet the timeframes established of submission of a final report to the Justice Center for reportable incidents, if required;
2. Review and monitor all minor notable occurrences that are reported and maintain a record of such incident/occurrence review, recommendations, and/or actions taken in such a manner as to provide for tracking and trending;
3. Review and monitor all reportable incidents and/or serious notable occurrences that are reported;
4. Review and monitor investigatory procedures, but shall not perform the routine investigation of reportable incidents or notable occurrences;
5. Make written recommendations to appropriate staff to eliminate or minimize similar reportable incidents and/or notable occurrences in the future; and/or to improve investigatory or other procedures;
6. Make written recommendations to the Chief Executive Officer on changes in agency policy or procedures and to improve conditions contributing to the reportable incidents and/or notable occurrences reviewed;

7. Forward findings and recommendations to the Chief Executive Officer and the President of the Board of Directors within two weeks of meeting;
8. Provide documentation that all reports of reportable incidents and serious notable occurrences have been reviewed by the committee and that results and recommendations have been conveyed to appropriate agency executives and others with a need to know;
9. Monitor actions taken on any and all recommendations made and advise the Chief Executive Officer when there is a problem;
10. Monitor trends of other events or situations attributable to a person receiving services which may be potentially harmful, but do not meet the definition of being a reportable incident or notable occurrence. This may be done by the full committee or a member of subcommittee reporting to the full committee;
11. 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; and
12. Interact with the governing body and comply with the policies in relation to the review and monitoring of all reportable incident and notable occurrences.

**Role of the Special Review Committee when investigations are conducted by OPWDD or the Justice Center:**

1. The Special Review Committee's role in reviewing and monitoring the particular incident or occurrence is limited to matters involving compliance with the reporting and notification requirements of this Part, protective and remedial actions taken, operational concerns, and the quality of services provided.
2. The finding (of the report of abuse or neglect) of substantiated or unsubstantiated shall be made by the Central Office of OPWDD or the Justice Center.
3. The Special Review Committee shall monitor all actions taken to implement recommendations made by the Central Office of OPWDD or the Justice Center.

**Membership** Committee members shall be appointed by the Chief Executive Officer. This shall include: (a) a parent, (b) member of the governing body, (c) Chief Operating Officer/Chief Services Officer (Chairperson), (d) Chief Financial Officer, (e) at least two professional staff, including but not limited to licensed clinicians or others with primary responsibility for developing and/or monitoring individuals' plan of care (f) at least one licensed health care practitioner, (g) at least one direct support professional, (h) at least one individual receiving services, (i) at least one representative of advocacy organizations (e.g. self-advocacy, family or other advocacy organizations). The participation of a psychologist on the committee is recommended. In the event that an agency is unable to obtain the required members, the agency shall document its periodic efforts to obtain the specified members.

The Chief Executive Officer of the agency shall not serve as a member of the committee, but may be consulted by the committee in its deliberations.

There shall be representation by someone from or with knowledge of the agency's own organizational entity where the event which is under discussion occurred; or by someone who is familiar with the person(s) involved.

New members will receive training on the roles and responsibilities of the Special Review Committee. New members will be given a book containing: the 624 and 625 regulations, the agency's policies and procedures regarding 624 and 625 and the Special Review Committee training publication, prepared by the Central Office-Standing Committee on Incidents and Abuse. Training will be documented and a record kept in the Special Review file. Members of the committee shall be trained in confidentiality laws and regulations.

Restrictions on Review:

1. 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 on question.
2. No committee member may participate in the review of any reportable incident or notable occurrence in which he or she was directly involved, 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 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. For reportable incidents and serious notable occurrences, no committee member may participate in the review of an investigation in which his or her spouse, domestic partner, or immediate family member provides supervision to the program where the incident took place or supervised directly involved parties.
4. No committee member may participate in the review of a reportable incident or serious notable occurrence, if such committee member is the immediate supervisor of staff directly involved in the event or situation. Such member may, however, participate in committee deliberation regarding appropriate corrective, preventive or remedial action.

Minutes:

The chairperson of the Special Review Committee shall ensure that minutes are kept for all meetings.

For reportable incidents and serious notable occurrences, the portion of the minutes that discuss matters concerning the specific event or situation shall be entered into IRMA within three weeks of the meeting.

Minutes addressing the review of specific reportable incidents and/or serious notable occurrences shall clearly state the filing number, the person's full name and provide a brief summary of the situation (including date, location and type), that caused the report to be generated, committee findings (including reclassification of event, if applicable) and recommendations and actions taken on the part of the agency as a result of such recommendations. Full names of all parties involved are to be recorded (not initials).

Closure of an incident or occurrence:

**An incident or occurrence shall be considered closed for reportable incidents of abuse and neglect in facilities and programs that are certified by OPWDD.**

- a) If the agency conducts the investigation, when the Justice Center provides written notice to the agency of the Justice Center's review of the investigation; or
- b) If the investigation was conducted by the Central Office of OPWDD, when the Justice Center provides written notice to the agency of the Justice Center's review of the investigation; or
- c) If the Justice Center conducts the investigation, when the Justice Center provides written notice to the agency that the investigation is completed.

**An incident or occurrence shall be considered closed for reportable incidents of abuse and neglect in programs that are not certified by OPWDD:**

- a) if the agency conducts the investigation, when the Special Review Committee has ascertained that no further investigation is necessary; or
- b) if the investigation is conducted by the Central Office of OPWDD, when the Central Office of OPWDD notifies the agency of the results of the investigation.

Note: The Justice Center may amend findings made by the agency or OPWDD. Findings made by the Justice Center are considered final.

### Corrective Action Plans

#### **Plans for Prevention and Remediation for Substantiated Reports of Abuse and Neglect when the investigation is conducted by the agency or OPWDD:**

1. Within 10 days of the completion of the Special Review Committee's review of a completed investigation, the agency shall develop a plan of prevention and remediation to be taken to assure the continued health, safety, and welfare of individuals receiving services and to provide for the prevention of future acts of abuse and neglect.
2. The plan shall include written endorsement by the Chief Executive Officer or designee.
3. The plan shall identify projected implementation dates and specify by title, agency staff, who are responsible for monitoring the implementation of each remedial action identified and for assessing the efficacy of the remedial action.
4. Such plan shall be entered into IRMA by the close of the fifth working day after the development of the plan.
5. OPWDD will inform the Justice Center about plans developed.
6. Implement CAP within 50 days on the COD Agency Best Practice. Implement CAP within 7 days whenever possible.
7. Submit documentation of CAP completion within 65 days of the LOD.

#### **Corrections in response to findings and recommendations made by the Justice Center.**

When the Justice Center makes findings concerning reports of abuse and neglect under its jurisdiction and issues a report and/or recommendations to the agency regarding such matters, the agency shall:

- a) Make a written response that identifies action taken in response to each correction requested in the report and/or each recommendation made by the Justice Center; and
- b) Submit the written response to OPWDD in the manner specified by OPWDD, within sixty (60) days after the agency receives a report of findings and/or recommendations from the Justice Center.

### Deaths:

In accordance with New York State Law and guidance issued by the Justice Center, the death of any individual who had received services certified by OPWDD, within thirty days preceding his or her death, shall be reported to the Justice Center. **This reporting is required regardless of whether the death did or did not occur under the auspices of an agency.**

The initial report shall be submitted by the agency's Chief Executive Officer (or designee) through a statewide, toll-free telephone number (855-373-2124), in a manner specified by the Justice Center immediately upon discovery and in no case more than 24 hours after discovery.

Subsequent information shall be submitted to the Justice Center, by submission of the Report of Death in IRMA within five working days of discovery of the death.

The results of an autopsy, if performed and if available to the agency, shall be submitted to the Justice Center and OPWDD, in a manner specified by the Justice Center, within sixty working days of discovery of the death (the Justice Center may extend the timeframe for good cause).

All deaths that are reported to the Justice Center must also be reported to OPWDD.

A death that occurred **under** the auspices of an agency shall be reported as a **serious notable** occurrence.

A death that did **not occur** under the auspices of an agency (e.g., the death of a person who received certified day habilitation services, but died at his or her private home of causes not associated with the day services) shall be reported in accordance with Part 625 of this Title.

The death of any individual who had received services certified or funded by OPWDD and the death occurred under the auspices of the agency must be classified as a serious notable occurrence, and reported and managed as such, in accordance with the requirements of this Part.

A death is considered to have occurred **under** the auspices of an agency if:

- a) The individual was living in a residential facility certified by OPWDD, at the time of his or her death, or
- b) If the death occurred up to thirty days after the individual was discharged from the residential facility (unless the person was admitted to a different residential facility in the OPWDD system in the meantime);
- c) The individual's death occurred during a stay at an OPWDD certified or operated free standing respite facility or was caused by a reportable incident or notable occurrence, that occurred at the facility within thirty days of discovery of the death; or
- d) The individual had received non-residential services, certified or funded by OPWDD, and
  - (i) The death occurred while the individual was receiving services; or
  - (ii) The death was caused by a reportable incident or notable occurrence that occurred within thirty days of discovery of the death.

If more than one agency provided services to the individual, there shall be one responsible agency that is designated to report the death of the individual to the Justice Center and/or OPWDD. The agency responsible for reporting shall be the provider of the services to the individual (or sponsoring agency) in the order stated:

- OPWDD certified or operated residential facility, including a family care home
- OPWDD certified or operated free standing respite facility, if the death occurred during the individual's stay at the facility, or was caused by a reportable incident or notable occurrence defined in sections 624.3 and 624.4 of this Part, that occurred during a stay at the facility within thirty days of discovery of the death;
- OPWDD certified or operated day program (if the individual received services from more than one certified day program, the responsible agency shall be the agency that provided the greater duration of service on a regular basis.

- CCO or PCSS (only OPWDD operated services report to the Justice Center);
- HCBS Waiver services (only OPWDD operated services report to the Justice Center);
- Care at Home Waiver Services (only OPWDD operated services report to the Justice Center);
- Article 16 Clinic Services
- FSS or ISS (only OPWDD operated services report to the Justice Center);
- Any other service operated by OPWDD

There may be circumstances in which the death of an individual who resided at a certified residential facility, or was staying at a certified free-standing respite facility or attended a certified day program, was caused by a reportable incident or notable occurrence that occurred under the auspices of another OPWDD certified operated or funded day program within thirty days of discovery of the death. Under these circumstances the provider of services where the incident or occurrence happened shall be responsible for reporting the death to the Justice Center and/or OPWDD.

**Note:** This requirement does not apply to the death of an individual who received only OPWDD funded services (such as community habilitation or supported employment services provided by a voluntary-operated agency), rather than services that are operated or certified by OPWDD.

As a serious notable incident, initial information about a death will be entered into IRMA within 24 hours of occurrence or discovery, or by close of the next working day, whichever is later.

Subsequent information about a death shall be entered in IRMA within five working days of the discovery of the death, in the manner and form specified by OPWDD.

#### **Reporting to OPWDD:**

The death of any individual who had received services certified, operated, or funded by OPWDD within thirty days of his or her death, and the death did **not** occur under the auspices of the agency, shall be reported immediately upon discovery to OPWDD as follows:

- a) All deaths shall be reported by telephone or other appropriate methods. Immediate entry of initial information into the OPWDD Incident Report and Management Application (IRMA) shall not be sufficient to satisfy this requirement;
- b) The agency shall submit an initial report about the death in IRMA within twenty-four hours of discovery of the death, or by close of the next working day, whichever is late, in the form and format specified by OPWDD;
- c) The agency shall submit subsequent information about the death in IRMA within five working days following discovery of the death, in the form and format specified by OPWDD;

If more than one agency provided services to an individual, there shall be one responsible agency that is designated to report the death of the individual. The agency responsible for reporting the death to OPWDD shall be the provider of the services to the individual (or sponsoring agency) in the order stated:

- (i) OPWDD certified day program (if the individual received services from more than one certified day program the responsible agency shall be the agency that provided the greater duration of service on a regular basis);
- (ii) OPWDD funded CCO or PCSS; (only OPWDD operated services report to the Justice Center)
- (iii) OPWDD funded HCBS Waiver services; (only OPWDD operated services report to the Justice Center)
- (iv) OPWDD funded Care at Home Waiver services; (only OPWDD operated services report to the Justice Center)
- (v) Article 16 clinic services
- (vi) OPWDD funded FSS or ISS services; (only OPWDD operated services report to the Justice Center)
- (vii) Any other service operated or funded by OPWDD.

Investigation into deaths that did not occur under the auspices of an agency:

1. The Justice Center has the right to investigate or review the death of any individual who had received services operated or certified by OPWDD, even if the death did not occur under the auspices of the agency. The agency shall provide Justice Center reviewers or investigators with all relevant records, reports, and other information pertaining to the event or situation. Individuals receiving services, staff, and any other relevant parties may be interviewed in pursuit of any such review or investigation.
2. OPWDD has the right to investigate or review, or to request a provider agency to investigate, the death of any individual, even if the death did not occur under the auspices of the agency. The agency shall provide OPWDD reviewers or investigators with all relevant records, reports, and other information pertaining to the event or situation. Individuals receiving services, staff, and any other relevant parties may be interviewed in pursuit of any review or investigation.
3. If the Justice Center or OPWDD is responsible for the investigation, the agency shall fully cooperate with the assigned investigator.

**Process for Requests of Written Initial Incident/Occurrence Report:**

1. Requests may be made for a copy of the written initial incident/occurrence report (Form 147) by the person receiving services (or who formerly received services), guardian, parent(s), or correspondent/advocate.
2. Such request shall be in writing. However, at the discretion of the agency, documented verbal request may be accepted in lieu of a written request.
3. If the person is a capable adult and objects to the provision of the written initial incident/occurrence report, such report shall **not** be provided to otherwise eligible requestors.
4. If an otherwise eligible requestor is the alleged abuser, the written initial incident/occurrence report shall **not** be provided to the requestor.
5. The agency must send a copy of the written initial incident/occurrence report completed by the agency or an initial/occurrence report printed from IRMA, with redaction if required.

**Redaction:**

Note: For the purpose of redaction, the term employee means any party who is, or formerly was:

- (i) Directly employed by an agency; or
  - (ii) Used by an agency to provide services substantially similar to those that are or could be provided by someone who is directly employed by an agency. Such parties shall include, but limited to: those who are employed by other entities on behalf of an agency and/or for the care and treatment of the person receiving services; consultants; contractors; or volunteers.
- 1) The copy of the report shall incorporate redaction of the names of employees who are involved in the incident or occurrence or in the investigation or who are interviewed as a part of the investigation, persons receiving services (or who formerly received services), and any information tending to identify such employees or persons. Redaction shall be waived if the employee or person authorizes disclosure unless redaction of the specific information is necessary because it tends to identify another employee or person who has not authorized disclosure or for another reason.
  - 2) If the report identifies a particular party as having made a child abuse or maltreatment report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse, maltreatment investigation, those names as well as any information tending to identify the party shall be redacted.
  - 3) The copy of the written initial incident/occurrence report shall be provided to an eligible requestor as soon as reasonable, but in no event more than 10 days after the request is made.
  - 4) The copy of the written initial incident/occurrence shall be accompanied by a statement that all contents are preliminary and have not been substantiated.

**Process for requesting the release of records:**

The Arc of Delaware County authorizes the 624 Coordinator, CEO, COO, CSO, and Director of Residential Services to receive requests and release records.

1. **Eligible requestors:** Persons receiving services or who formerly received services; and guardians, parents, spouses, and adult children of such persons are eligible to request the release of records as established by this section, subject to the following restrictions:
  - a) In the event that an otherwise eligible requestor is an alleged abuser, such requestor is **not** eligible to receive any records or documents pertaining to the specific allegation or investigation of the event or situation in which he or she was the targeted alleged abuser, regardless of the conclusion.

- b) If the person receiving services or who formerly received services is a capable adult and objects to the provision of records and/or document to an otherwise eligible requester, such requestor is not eligible to receive those records or documents.
2. Records subject to release concerning allegations of abuse that occurred prior to June 30, 2013:
- a) Agencies are required to release all records and documents pertaining to allegations and investigations into abuse as defined in applicable OPWDD regulations in effect at the time the allegation occurred under the auspices (see glossary) of the agency or sponsoring agency to eligible requestors who make a request in accordance with the provisions of this section.
  - b) Agencies are required to release records and documents pertaining to all allegations of abuse which occurred or were discovered on or after May 5, 2007, regardless of the date of the submission of the written request.
3. Records subject to release concerning reportable incidents which occurred on or after June 30, 2013. Agencies are required to release all records and documents pertaining to reportable incidents to eligible requestors who make a request in accordance with the provisions of this section.

Eligible requestors shall submit a written request to authorized staff designated by agency policy/procedures. If the request is made prior to the closure of an alleged abuse case, the parties specified by agency policy/procedures shall provide the requested records no later than 21 days after the closure of the incident. If the request is made at or subsequent to the closure of the incident, the agency shall provide the requested records no later than 21 days after the request is made. The written request shall specify the records that are requested.

4. **Redaction of records:**

**Note:**

- a) Prior to the release of the report, agencies shall redact the names of employees who are involved in the incident or the investigation or who are interviewed as a part of the investigation, persons receiving services (or who formerly received services), and any information tending to identify such employees or persons. Redaction shall be waived, if the employee or person authorizes disclosure, unless redaction of the specific information is necessary because it tends to identify another employee or person who has not authorized disclosure or for another reason specified in this subdivision.
  - b) In addition, if the report identifies a particular party as having made a child abuse or maltreatment report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation, those names as well as any information tending to identify the party shall be redacted.
5. **Cover letter and dissemination restrictions:**
- a) The release of records shall be accompanied by a cover letter to the recipient which includes the following statement: "Pursuant to section 33.25 of the Mental Hygiene Law, the enclosed records and reports shall not be further disseminated, EXCEPT that you may share the report with a health care provider; a behavioral health care provider; law enforcement, if you believe a crime has been committed; or your attorney."
  - b) Pursuant to New York State law, the recipient, parties with whom the recipient shared records, or the individual receiving services may use records and documents released in accordance with this section in any legal action or proceeding brought by or on behalf of the individual receiving services.
6. **Documentation:**
- a) The written request for the release of records shall be maintained and the time the request was received shall be documented.

- b) A copy of the redacted records that were released shall be maintained and the time the records were provided shall be documented.

7. Administrative appeal process-denial of requested records/documents:

- a) A requestor denied access to the initial incident/occurrence report or report on action taken may appeal in writing such denial to the incident records appeals officer designated by the commissioner of OPWDD.
- b) Upon receipt of the appeal, the agency issuing the denial will be notified of the appeal and given an opportunity to submit relevant information to the incident records appeals officer, including the reason for denial, within, to notify any n 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.
- c) Within 10 business days of the receipt of complete information, the incident records appeals officer will make a determination about whether the requested records and/or 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 shall provide the requested records and/or documents to the requestor.

Note: Records maintained by the agency may also be available under section 496 of the social services law to “other persons named in the report” as defined in section 488 of the social services law.

- d) 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.

Document Retention:

The following documents shall be maintained:

1. 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 the 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;
2. Any requests for a meeting or the written initial incident/occurrence report;
3. Meetings held in response to the request, and those present;
4. When the report on actions taken and any requested written initial incident/occurrence report was provided;
5. A copy of the report on actions taken and any written initial incident/occurrence report (with redaction) that was provided; and
6. 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.

### Record Retention:

1. Agencies shall retain records pertaining to incidents and occurrences as follows:
  - a) Records include but are not limited to evidence and materials obtained or accessed during the investigative process, copies of all documents generated in accordance with requirements of this Part, and documentation regarding compliance with the requirements of this Part.
  - b) Records shall be retained for a minimum period of seven years from the date that the incident or occurrence is closed. However, when there is a pending audit or litigation concerning an incident or occurrence, agencies shall retain the pertinent records during the pendency of the audit or litigation.
2. Records, reports, and documentation shall be retrievable by the person's name and filing number or identification code assigned by the agency. For incidents and occurrences, which are reported in IRMA, such information shall be retrievable by the master incident number in IRMA.
3. When there is an incident or occurrence reported involving more than one person receiving services:
  - a) The situation shall be considered as one event and shall be recorded as such.
  - b) The agency shall establish whatever procedures it deems necessary to ensure that overall statistics reflect single events and that, when an event involves more than one person, records are retrievable by event in addition to being retrievable by a person's name.

### Confidentiality of records

All records generated in accordance with the requirements of this Part shall be kept confidential and shall 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.

### Retaliation

1. An agency shall not take any retaliatory action against an employee or agent who believes that he or she has reasonable cause to suspect that a person receiving services has been subjected to a reportable incident or notable occurrence, and the employee or agent makes a report to the VPCR and/or OPWDD in accordance with this section and/or if the employee or agent cooperates with the investigation of a report make to the VPCR or OPWDD.
2. Effective January 1, 2014, when an agency enters into a new contract or renews a contract for the provision of services that are provided by one or more employees or agents who have regular and substantial physical contact with persons receiving services, the contract shall include a provision concerning retaliation by the contractor. The provision shall require the contractor not to take any retaliatory action against an employee or agent of the contractor when:
  - (i) the employee or agent believes that he or she has reasonable cause to suspect a person receiving services has been subjected to a reportable incident or notable occurrence, and the employee or agent makes a report to the VPCR and/or OPWDD in accordance with this section; and/or
  - (ii) if the employee or agent of the contractor cooperates with the investigation of a report to the VPCR and/or OPWDD.

### Notice of findings involving employees or agents of contractors

When an agency receives a written notice of findings from the Justice Center regarding a report of abuse or neglect, and the subject of such notice is an employee or agent of a contractor, the agency shall notify OPWDD of these circumstances within two weeks of such notice in the manner specified by OPWDD.

### **Background**

Effective June 30, 2013, OPWDD instituted new 625 regulations to augment 624 regulations. The new 625 regulations apply to all facilities and programs that are certified or funded by OPWDD for the provision of services to individuals with developmental disabilities.

Requirements concerning events and situations that are not under the auspices of an agency are covered by 625 regulations.

### **625 Definitions:**

1. **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.
  - a) **Events or situations that are under the auspices of the agency include but are not limited to:**
    - (i) an event or situation in which agency personnel (staff, interns, contractors, consultant, and/or volunteers) (or a 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 even in the absence of agency personnel.
    - (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.
    - (iv) 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 someone who lives in the home of the family care provider.
  - b) **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 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, friend, employers, or co-workers of an individual receiving services, whether or not in the presence of agency personnel 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.
    - (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.
2. **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.
3. **Sexual abuse** Non-consensual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.
4. **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.

5. **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.
6. **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.
7. **Self-neglect** An adult's ability, 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.
8. **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, coerces property transfers, or denial of access to assets.
9. **Death** The end of life, expected or unexpected, regardless of cause.

**Agency involvement in events or situations that are not under the auspices of an agency:**

If an agency becomes aware of an event or situation involving an individual receiving services from the agency in which the event or situation is not under the auspices of the agency, the agency shall respond to the event or situation as follows:

1. If the event or situation meets one of the definitions of reportable incidents or notable occurrences and occurred under the auspices of another agency subject to the requirements of Part 624:
  - a) The agency shall comply with the requirements of subdivision 624.5(q) of the regulations. This includes the requirement to document the event or situation and report the situation to the agency under whose auspices the event or situation occurred.
  - b) Mandated reporters (e.g. custodians) are required to make reports to the Vulnerable Person's Central Register (VPCR). This means that mandated reporters at the discovering agency must report to the VPCR upon discovery of an allegation of a reportable incident that occurred in another program or facility, which is certified or operated by OPWDD.
2. If the event or situation meets one of the definitions as a reportable incident or notable occurrence and occurred in a facility or service setting subject to the regulatory oversight of another State agency (e.g. school, hospital), the agency shall document the event or situation and shall report the situation to the management of the facility or service setting.
3. The agency shall intervene, if it has reason to believe (e.g. a report or complaint is made to the agency, etc.) that the event or situation meets the definition of physical, sexual, or emotional abuse; active, passive, or self-neglect; or financial exploitation.
4. 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 by taking actions to protect the involved individual with developmental disabilities. Such actions, as appropriate, may include but are not limited to the following:
  - a) 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);
  - b) Offering to make referrals to appropriate service providers, clinicians, State agencies, or any other appropriate parties;
  - c) Interviewing the involved and/or witnesses;
  - d) Assessing and monitoring the individual;
  - e) Reviewing records and other relevant documentation; and
  - f) Educating the individual about his or her choices and options regarding the matter.

5. The agency shall intervene, as it deems necessary and appropriate when the event or situation meets the definition of physical, sexual, or emotional abuse active, passive, self-neglect; or financial exploitation, and involves an adult who meets the following criteria:
  - a) The individual resides in a residence certified or operated by OPWDD (or a family care home);
  - b) The individual receives day program services certified or operated by OPWDD;
  - c) The individual receives Coordinated Care Management or Plan of Care Support Services (PCSS) authorized by OPWDD; and/or
  - d) The individual receives Home and Community Based Services (HCBS) Waiver services authorized by OPWDD.
  
6. The agency shall intervene by notifying Adult Protective Services of any event or situation that meets the definition of physical, sexual, or emotional abuse; active, passive, or self-neglect; or financial exploitation, when it involves an adult receiving services who meets the following criteria:
  - a) The individual is only receiving family support services (FSS), individual support services (ISS), or Article 16 clinic services; and/or
  - b) The individual is not available to the agency or sponsoring agency; and/or
  - c) The individual is in need of protective services that the agency cannot provide.
  
7. Mandated reporters who are required to report cases of suspected child abuse or maltreatment shall report to the Statewide Central Register of Child Abuse and Maltreatment.
  
8. If more than one agency is providing services to the individual, there shall be a responsible agency that is designated to intervene in events or situations that meet the definition of physical, sexual, or emotional abuse; active, passive, or self-neglect; or financial exploitation. The agency responsible for intervening shall be the provider of the services to the individual (or sponsoring agency) in the order stated:
  - a) Residential facility (note: this does not include freestanding respite facilities);
  - b) Certified day program (if the individual is receiving services from more than one certified day program, the responsible agency shall be the agency that provides the greater duration of service on a regular basis);
  - c) CCO or PCSS;
  - d) HCBS Waiver services including respite services provided at a free standing respite facility or services under the Care at Home Waiver;
  - e) FSS, ISS and/or Article 16 clinic services;
  - f) Any other service certified, operated, or funded by OPWDD;

**Note:** If the discovering agency is not the responsible agency, the discovering agency shall notify the responsible agency of the event or situation (unless it is sure that the responsible agency is already aware).

**Reporting to OPWDD:**

1. The agency shall submit an initial report about the event or situation in the OPWDD Incident Report and Management Application (IRMA) within 24 hours of occurrence or discovery or by close of the next working day whichever is later. Such initial information shall identify all actions taken by the agency, including any initial actions taken to protect the involved individual.
2. The agency shall report updates on the event or situation in IRMA on a monthly basis or more frequently upon the request of OPWDD until the event or situation is resolved. Such updates shall include information about subsequent interventions and shall include information about the resolution of the event or situation.

**Review/investigation by OPWDD:**

1. OPWDD has the right to investigate or review any event or situation regardless of the source of the information. The agency shall provide OPWDD reviewers or investigators with all relevant records, reports, and other information pertaining to the event or situation. Individuals receiving services, staff, and any other relevant parties may be interviewed in pursuit of any such review or investigation.
2. When an event or situation is investigated or reviewed by OPWDD, OPWDD may make recommendations to the agency or concerning any matter related to the event or situation. This may include recommendation that the agency conduct an investigation and/or take specific actions to intervene. In the event that OPWDD makes recommendations, the agency or sponsoring agency shall either:
  - a) Implement each recommendation in a timely fashion and submit documentation of the implementation to OPWDD; or
  - b) In the event that the agency does not implement a particular recommendation, submit written justification to OPWDD within a month after the recommendation is made, and identify the alternative means that will be undertaken to address the issue, or explain why no action is needed.

**Agency and OPWDD involvement in deaths that are not under the auspices of the agency:**

1. In accordance with New York State Law and guidance issued by the Justice Center, the death of any individual who had received services operated or certified by OPWDD, within thirty days preceding his or her death, and the death did not occur under the auspices of any agency, must be reported to the Justice Center for the Protection of People with Special Needs (Justice Center), as follows:
  - a) The initial report must be submitted, by the agency's Chief Executive Officer or designee, to the Justice Center death reporting line, in a manner specified by the Justice Center.
  - b) The death must be reported immediately upon discovery and in no case more than twenty-four hours after discovery.
  - c) Subsequent information must be submitted to the Justice Center, by submission of the Report of Death in IRMA within five working days of discovery of the death.
  - d) The results of an autopsy, if performed and if available to the provider agency, must be submitted to the Justice Center within sixty working days of discovery of the death. (The Justice Center may extend the timeframe for good cause)

**Note:** The requirements in this subdivision do not apply to the death of an individual who received only OPWDD funded services (such as community habilitation or supported employment services) provided by a voluntary-operated agency, rather than services that are operated or certified by OPWDD, to the death of an individual who resided in an OPWDD certified or operated residential program (see paragraph 625.2(a)(1) of this Part), or when the death occurred under the auspices of any agency.

2. The death of any individual who had received services certified, operated, or funded by OPWDD, within thirty days of his or her death, and the death did not occur under the auspices of any agency, must be reported to OPWDD as follows:
  - a) All deaths must be reported immediately upon discovery to OPWDD by telephone or other appropriate methods. Immediate entry of initial information into the OPWDD Incident Report and Management Application (IRMA) is not sufficient to satisfy this requirement.
  - b) The agency must submit an initial report about the death in IRMA within twenty-four hours of discovery of the death, or by close of the next working day, whichever is later, in the form and format specified by OPWDD.
  - c) The agency shall submit subsequent information about the death by submission of the *Report of Death* in IRMA within five working days following discovery of the death.
3. If more than one agency provided services to the individual, there must be one responsible agency that is designated to report the death of the individual to the Justice Center and/or OPWDD. The agency responsible for reporting in accordance with this paragraph shall be the provider of the services to the individual in the order stated:
  - a) OPWDD certified or operated day program (if the individual received services from more than one certified day program, the responsible agency shall be the agency that provided the greater duration of service on a regular basis);
  - b) CCO or PCSS (only OPWDD operated services report to the Justice Center);
  - c) HCBS Waiver services (only OPWDD operated services report to the Justice Center);
  - d) Care at Home Waiver services (only OPWDD operated services report to the Justice Center);
  - e) Article 16 clinic services;
  - f) FSS or ISS services (only OPWDD operated services report to the Justice Center);
  - g) Any other service operated or funded by OPWDD.
4. Investigations into deaths that did not occur under the auspices of an agency.
  - a) The Justice Center has the right to investigate or review the death of any individual who had received services operated or certified by OPWDD, even if the death did not occur under the auspices of the agency. The agency must provide Justice Center reviewers or investigators with all relevant records, reports, and other information pertaining to the event or situation. Individuals receiving services, staff, and any other relevant parties may be interviewed in pursuit of any such review or investigation.
  - b) OPWDD has the right to investigate or review, or to request a provider agency to investigate, the death of any individual, even if the death did not occur under the auspices of the agency. The agency must provide OPWDD reviewers or investigators with all relevant records, reports, and other information pertaining to the event or situation. Individuals receiving services, staff, and any other relevant parties may be interviewed in pursuit of any such review or investigation.
  - c) If the Justice Center or OPWDD is responsible for the investigation, the agency must fully cooperate with the assigned investigator.