Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management

Effective: Thursday, September 26, 2013

THE ADDITION OF A NEW 14 NYCRR PART 625 AND AMENDMENTS TO 14 NYCRR PARTS 624, 633 AND 687

- **The title of Part 624 is amended as follows:**

PART 624. [REPORTABLE INCIDENTS, SERIOUS REPORTABLE INCIDENTS AND ABUSE IN FACILITIES OPERATED OR CERTIFIED BY OMRDD]
REPORTABLE INCIDENTS AND NOTABLE OCCURRENCES

- **Existing section 624.1 is deleted and a new section 624.1 is added as follows:**

624.1 Applicability.

(a) This Part is applicable to all facilities and programs that are operated, certified, sponsored, or funded by OPWDD for the provision of services to persons with developmental disabilities.

Note: Use of the term "agency" throughout the regulation refers to OPWDD Developmental Disabilities State Operations Offices (DDSOOs, see glossary, section 624.20) as well as other non-state agencies (see glossary, section 624.20) and sponsoring agencies (see glossary, section 624.20) that sponsor family care homes.

(b) Intermediate Care Facilities (see Part 681 of this Title), including state operated developmental centers, must also comply with the requirements of 42 CFR 483. In some instances, these federal requirements are more stringent than the requirements of this Part.

(c) The requirements of this Part apply to events and situations that are under the auspices (see glossary, section 624.20) of an agency. Note that requirements concerning events and situations that are not under the auspices of an agency are set forth in Part 625 of this Title.

(d) The requirements of Part 624 as revised effective June 30, 2013 are applicable to incidents that occur on and after June 30, 2013. Incidents that occurred prior to June 30, 2013 are subject to the requirements of Part 624 that were in effect at the time the incidents occurred. Exceptions are the timeframe for completion of the investigation established by subparagraph 624.5(l) and the requirement for release of records in section 624.8.

- **Subdivision 624.2(a) is amended as follows:**

(a) The purposes for reporting, investigating, reviewing, correcting, and/or monitoring certain events or situations are to enhance the quality of care provided to persons with developmental disabilities [who are in facilities], to protect them (to the extent possible) from harm, and to ensure that such persons are free from [mental and physical] abuse and neglect.

- **Subdivision 624.2(b) is amended as follows:**

(b) [The] A primary function of the reporting of certain events or situations is to enable a governing body (see glossary, section 624.20), executives, administrators, and supervisors to become aware of problems, to take corrective measures, and to minimize the potential for recurrence of the same or similar events or situations. The prompt reporting of [alleged abuse] these events and situations can ensure that immediate steps are taken to protect persons receiving services from being exposed to the same or similar risk.

- **Subdivision 624.2(d) is amended as follows:**

(d) It is the intent of this Part to require a process whereby those [significant] events or situations [which] that endanger a person's [well-being] wellbeing while [in or] under the auspices of [a certified facility] an agency, which are defined in section [624.4] 624.3 of this Part as "reportable incidents," and in section 624.4 as "notable occurrences," [or "serious reportable incidents,"] are reported, investigated[,] and reviewed, and protective, corrective, and remedial actions are taken as necessary.

- **Existing subdivision 624.2(e) is deleted, and subdivisions (f) and (g) are re-lettered to be (e) and (f)**

[(e) It is the intent of this Part to require a process whereby an allegation (see glossary) of abuse, as defined in section 624.4 of this Part, while a person is in or under the auspices of a certified site, is reported, investigated, reviewed and corrective actions taken as necessary.]

- **Re-lettered subdivision 624.2(e) is amended as follows:**

(e) It is not the intent of this Part to mandate that every potentially harmful event [, occurrence], or situation attributable to or involving a person receiving services while under the auspices of an agency [in certified facilities] such as an aggressive behavior problem (including the need for psychiatric services elsewhere), illness, [medication problem,] inappropriate living arrangements or conditions, or inappropriate social behavior, be recorded as a reportable incident [or serious reportable incident] or notable occurrence in accordance with this Part. It shall be the responsibility of the agency [(see glossary)] to determine [if and] how events or situations involving persons receiving services that are under the auspices of the agency or sponsoring

agency, other than reportable incidents and notable occurrences [, serious reportable incidents, and allegations of abuse] (as defined in sections 624.3 and 624.4 of this Part), are to be documented, processed, corrected [(including corrective actions to be taken for the protection and/or safety of all those exposed to potential harm)], monitored, and analyzed for trends. [through the development of policies and procedures that are in compliance with 14 NYCRR; and to develop a mechanism for review to ensure compliance with such policies and procedures.] Note that custodians (see glossary) with regular and direct contact with persons receiving services are required to adhere to a code of conduct developed by the Justice Center in accordance with section 633.7 of this Title. Violations of the code of conduct do not necessarily meet the criteria in the definitions of reportable incidents and notable occurrences in sections 624.3 and 624.4 of this Part.

- **Re-lettered subdivision 624.2(f) is deleted and subdivisions (h) through (k) are re-lettered to be (f) through (i).**

[(f) It is the intent of this Part to require a process whereby all serious behavior problems are recorded, reviewed by appropriate parties, and a record maintained of actions taken. However, reporting through the incident/abuse process shall only occur when the behavior problem results in an incident or an allegation of abuse as defined in this Part.]

- **Re-lettered subdivision 624.2(f) is amended as follows:**

(f) It is the intent of this Part to require a process whereby the governing body ensures the effectiveness of the identification, recording, investigation, review, and corrective actions with regard to events or situations involving persons receiving services referenced within this Part. This shall be achieved through the establishment of the governing body's own protocol, which may include, but shall not be limited to,[:] regular review of the minutes of the [standing] incident review committee [which reviews and monitors reportable incidents, serious reportable incidents, and allegations of abuse,] and periodic attendance at that committee's meetings.

- **Re-lettered subdivision 624.2(g) is amended as follows:**

(g) It is the intent of this Part to hold the governing body and the chief executive officer (see glossary, section 624.20) responsible for the management of incidents [and alleged abuses]. However, the chief executive officer may designate [a senior staff member (see glossary) or members (such as a program administrator-see glossary)] staff members to assume specified responsibilities to facilitate the day to day process, and these designations shall be set forth in writing in agency policies and [y/] procedures and made known to all staff and others with a need to know.

- **Re-lettered subdivision 624.2(h) is amended as follows:**

(h) Though failure on the part of an agency [or facility] to provide [humane care and treatment] appropriate services may not meet the definition of an [reportable] incident or notable occurrence as defined in sections 624.3 or 624.4 of this Part, [serious reportable incident, or abuse,] [as defined herein], [OMRDD] OPWDD has, pursuant to statute, the authority to investigate or cause the investigation of conduct, performance, and/or alleged neglect of duty. Whether such situations reflect the philosophical ideology or orientation of an agency or reflect a lack of sensitivity to the issues at hand does not minimize the responsibility and prerogative of [OMRDD] OPWDD to investigate and/or promote recommendations for changes when seen as being in the best interest of persons receiving services.

- **A new subdivision 624.2(j) is added as follows:**

(j) Programs that are certified or operated by OPWDD are required to comply with relevant provisions of Article 20 of the Executive Law (Protection of People with Special Needs) and Article 11 of the Social Services Law (Protection of People with Special Needs), and to implement regulations promulgated by the Justice Center for the Protection of People with Special Needs (Justice Center).

- **Existing section 624.3 (Statutory authority) is deleted and a new section 624.3 is added as follows:**

Section 624.3. Reportable incidents, defined.

(a) Reportable incidents are events or situations that meet the definitions in subdivision (b) of this section and occur under the auspices (see glossary, section 624.20) of an agency.

(b) Definitions of reportable incidents.

(1) *Physical abuse* shall mean conduct by a custodian (see glossary, section 624.20) intentionally (see glossary, section 624.20) or recklessly (see glossary, section 624.20) causing, by physical contact, physical injury (see glossary, section 624.20) or serious or protracted impairment of the physical, mental, or emotional condition of the individual receiving services, or causing the likelihood of such injury or impairment. Such conduct may include, but shall not be limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting, or the use of corporal punishment. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any party.

(2) *Sexual abuse* shall mean:

(i) any conduct by a custodian that subjects a person receiving services to any offense defined in article 130 or section 255.25, 255.26, or 255.27 of the penal law, or any conduct or communication by such custodian that allows, permits, uses, or encourages a person receiving services to engage in any act described in articles 230 or 263 of the penal law; and/or

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

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

(i) 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.

(ii) 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 shall include the use of any manual, pharmacological, or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body.

(5) *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 (as defined in section 488 of the Social Services Law) from making a report of a reportable incident to the statewide vulnerable persons' central register (VPCR) or OPWDD with the intent to suppress the reporting of the investigation of such incident; intentionally making a false statement, or intentionally withholding material information during an investigation into such a report; intentional failure of a supervisor or manager to act upon such a report in accordance with OPWDD regulations, policies or procedures; or, for a custodian, failing to report a reportable incident upon discovery.

(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:

(i) failure to provide proper supervision, including a lack of proper supervision that results in conduct between persons receiving services that would constitute abuse as described in paragraphs (1) through (7) of this subdivision if committed by a custodian;

(ii) failure to provide adequate food, clothing, shelter, or medical, dental, optometric or surgical care, consistent with Parts 633, 635, and 686, of this Title (and 42 CFR Part 483, applicable to Intermediate Care Facilities), and provided that the agency has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric, or surgical treatment have been sought and obtained from the appropriate parties; or

(iii) failure to provide access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction in accordance with the provisions of part one of article 65 of the education law and/or the individual's individualized education program.

(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:

(i) *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

(ii) *conduct on the part of a custodian, that is inconsistent with the individual's plan of services*, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, and which impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare of an individual receiving services, including but not limited to:

(*a*) *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. OPWDD prohibits the use of seclusion;

(*b*) *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, or as a substitute for programming;

(*c*) except as provided for in paragraph (7) of this subdivision, the *administration of a prescribed or over-the-counter medication, which is*

inconsistent with a prescription or order issued for a service recipient by a licensed, qualified health care practitioner, and which has an adverse effect on an individual receiving services. For purposes of this clause, "adverse effect" shall mean the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the wellbeing of a person receiving services; and

(*d*) *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; or

(iii) *missing person* 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 of injury; or

(iv) *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; or

(v) *self-abusive behavior, with injury*, which shall mean a self inflicted injury to an individual receiving services that requires medical care beyond first aid.

- **Existing section 624.4 is deleted and a new section 624.4 is added as follows:**

Section 624.4 Notable occurrences, defined.

(a) Notable occurrences are events or situations that meet the definitions in subdivision (c) of this section and occur under the auspices of an agency.

(b) Notable occurrences shall not include events and situations that meet the definition of a reportable incident in section 624.3 of this Part even if the event or situation otherwise meets the definitions of one of the categories in subdivision (c) of this section. An exception is that deaths that also

meet the definition of a reportable incident shall be reported both as the reportable incident and as a notable occurrence.

(c) Minor and serious notable occurrences are defined and categorized as follows:

(1) *Injury.*

(i) *Minor notable occurrence*. 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.

(ii) *Serious notable occurrence.* Any injury that results in the admission of a person to a hospital for treatment or observation because of injury.

Note: In accordance with subparagraph 624.3(b)(9)(v) of this Part, an injury due to self-injurious behavior that requires medical care beyond first aid is a "reportable incident."

(2) *Unauthorized absence*. The unexpected or unauthorized absence of a person after formal search procedures (see glossary, section 624.20) have been initiated by the agency. Reasoned judgments, taking into consideration the person's habits, deficits, capabilities, health problems, etc., shall determine when formal search procedures need to be implemented. It is required that formal search procedures must be initiated immediately upon discovery of an absence involving a person whose absence constitutes a recognized potential danger to the wellbeing of the person or others. Any unauthorized absence event is considered a serious notable occurrence.

Note: In accordance with subparagraph 624.3(b)(9)(iii) of this Part, an unauthorized absence that results in exposure to risk of injury to the person receiving services is a "reportable" missing person incident.

(3) *Death.* 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.

(4) *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 *"reportable" choking, with known risk*, incident (see subparagraph 624.3(b)(9)(iv) of this Part), involving an individual with a known risk for choking and a written directive addressing that risk. Any choking with no known risk event is considered a serious notable occurrence.

(5) *Theft and financial exploitation.*

(i) *Minor notable occurrence*. Any suspected theft of a service recipient's personal property (including personal funds or belongings) or financial exploitation, involving values of more than $15.00 and less than or equal to $100.00, that does not involve a credit, debit, or public benefit card, and that is an isolated event.

(ii) *Serious notable occurrence*. 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.

(6) *Sensitive situations*. Those situations involving a person receiving services that do not meet the criteria of the definitions in paragraphs (1) – (5) of this subdivision or the definitions of reportable incidents as defined in section 624.3 of this Part, 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. Sensitive situations are serious notable occurrences.

(7) *ICF Violations*. Events and situations concerning residents of Intermediate Care Facilities (ICFs) that are identified as violations in federal regulation applicable to ICFs and do not meet the definitions of reportable incidents as specified in section 624.3 of this Part or other notable occurrences as specified in this section. ICF violations are serious notable occurrences.

- **Existing section 624.5 is deleted and a new section 624.5 is added as follows:**

(a) *Policies and Procedures*.

(1) Every agency shall develop policies and procedures that are in conformance with this Part to address:

(i) reporting, recording, investigation, review, and monitoring of reportable incidents and notable occurrences;

(ii) identification of reporting responsibilities of employees, interns, volunteers, consultants, contractors, and family care providers; and

(iii) providing notice to all employees which states 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.

(2) Agency policies and procedures, whether newly developed or representing change from previously approved policies, shall be subject to approval by the agency's governing body.

(3) *Notification of policies and procedures.*

(i) 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 for the Protection of People with Special Needs (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 also 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.

(ii) 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, contractors, and family care providers. For parties who are required to be trained, this information shall be provided in conjunction with training conducted in accordance with section 633.8 of this Title.

(iii) In accordance with section 633.7 of this Title, custodians with regular and direct contact in facilities and programs operated or certified by OPWDD shall be provided with the code of conduct adopted by the Justice Center.

(b) *General reporting requirements*.

(1) All agency employees, interns, volunteers, consultants, contractors, and family care providers are required to report any event or situation that meets the criteria of a reportable incident or notable occurrence as defined in this Part. Custodians of programs and facilities certified or operated by OPWDD are mandated reporters and are also required to report reportable incidents pursuant to section 491 of the Social Services Law. Reports shall be made in accordance with agency policies/procedures.

(2) Internal agency reporting.

(i) All minor notable occurrences, as defined in section 624.4 of this Part, shall be reported to the agency's chief executive officer (or designee) within 48 hours upon occurrence or discovery.

(ii) All reportable incidents, as defined in section 624.3 of this Part, and serious notable occurrences, as defined in section 624.4 of this Part, shall be reported to the agency's chief executive officer (or designee) immediately upon occurrence or discovery.

(3) Immediate reporting to OPWDD. All reportable incidents and serious notable occurrences shall be reported immediately to OPWDD in the manner specified by OPWDD. Immediate entry of initial information into the OPWDD Incident Report and Management Application (IRMA) shall not be sufficient to satisfy this requirement.

(c) *Reporting of reportable incidents to the Vulnerable Persons' Central Register (VPCR).*

(1) Facilities and programs that are operated or certified by OPWDD shall report all reportable incidents to the VPCR.

(i) Non-certified programs that are not state operated are not required to report to the VPCR.

(ii) Only reportable incidents are required to be reported to the VPCR (not notable occurrences).

(2) All custodians (see glossary, section 624.20) in programs or facilities operated or certified by OPWDD are “mandated reporters” and are required to report reportable incidents to the VPCR.

(3) All custodians in programs or facilities operated or certified by OPWDD shall submit reports of reportable incidents to the VPCR immediately upon discovery of the reportable incident.

(i) For purposes of this Part, "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.

(ii) Reports shall be submitted by a statewide, toll-free telephone number (a "hotline") or by electronic transmission, in a manner and on forms prescribed by the Justice Center.

(iii) 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.

(iv) Mandated reporters shall have the rights and responsibilities established by section 491 of the social services law.

(v) Pursuant to section 491 of the social services law, 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 or operated by

OPWDD, facilities under the oversight of the Office of Mental Health (OMH), specified residential schools (e.g. "853 schools" and "4201" schools), and summer camps for children with developmental disabilities.

(d) *Reporting deaths.*

(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, 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. Specifics of the reporting requirement are as follows:

(i) The initial report shall be submitted, by the agency's chief executive officer or designee, through a statewide, toll-free telephone number, in a manner specified by the Justice Center.

(ii) The initial report shall be submitted immediately upon discovery and in no case more than twenty-four hours after discovery.

(iii) Subsequent information shall be submitted to the Justice Center, in a manner and on forms specified by the Justice Center, within five working days of discovery of the death.

(iv) The results of an autopsy, if performed and if available to the agency, shall be submitted to the Justice Center, 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.)

(v) 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. The agency responsible for reporting in accordance with this paragraph shall be the provider of the services to the individual (or sponsoring agency) in the order stated:

(*a*) OPWDD certified or operated residential facility, including a family care home, but not a free-standing respite facility;

(*b*) 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;

(*c*) 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);

(*d*) MSC or PCSS (OPWDD operated services only);

(*e*) HCBS Waiver services (OPWDD operated services only);

(*f*) Care at Home Waiver services (OPWDD operated services only);

(*g*) Article 16 clinic services;

(*h*) FSS or ISS (OPWDD operated services only);

(*i*) Any other service operated by OPWDD.

(*j*) Notwithstanding any other requirement in this subparagraph, 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, was caused by a reportable incident or notable occurrence that occurred under the auspices of an OPWDD certified or operated day program within thirty days of discovery of the death; under these circumstances the certified day program shall be responsible for reporting the death.

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.

(2) All deaths that are reported to the Justice Center shall also be reported to OPWDD.

(i) A death that occurred under the auspices of an agency (see paragraph (4) of this subdivision) shall be reported as a serious notable occurrence in accordance with this Part (see also paragraph (3) of this subdivision).

(ii) 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.

(3) The death of any individual who had received services certified, operated, or funded by OPWDD, and the death occurred under the auspices of the agency (see paragraph (4) of this subdivision), shall be classified as a serious notable occurrence, and reported and managed as such, in accordance with the requirements of this Part.

(4) A death is considered to have occurred under the auspices of an agency if:

(i) the individual was living in a residential facility operated or certified by OPWDD, including a family care home (but excluding free standing respite facilities), at the time of his or her death, or 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);

(ii) 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, defined in sections 624.3 and 624.4 of this Part, that occurred at the facility within thirty days of discovery of the death; or

(iii) the individual had received non-residential services operated, certified, or funded by OPWDD, and

(*a*) the death occurred while the individual was receiving services; or

(*b*) the death was caused by a reportable incident or notable occurrence, defined in sections 624.3 and 624.4 of this Part, that occurred within thirty days of discovery of the death.

(e) *Reporting to OPWDD - Required Reporting Formats.*

(1) Reporting using the OPWDD Incident Report and Management Application (IRMA; see glossary, section 624.20).

(i) Information shall be entered into IRMA for the following:

(*a*) reportable incidents; and

(*b*) serious notable occurrences.

(ii) Reporting initial information in IRMA.

(*a*) 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 information is first entered into IRMA.

(*b*) When a report of a reportable incident or a serious notable occurrence is made to the VPCR:

(*1*) initial information is automatically entered into IRMA; however,

(*2*) agencies are 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.

(*c*) When a report of a reportable incident or a serious notable occurrence is not made to the VPCR, 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.

(iii) Reporting subsequent information in IRMA.

(*a*) Subsequent information is information concerning the incident or occurrence that is not included in the initial information entered in 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).

(*b*) Subsequent information shall be entered by the close of the fifth working day after the action is taken or the information becomes available, except as follows:

(*1*) 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.

(*2*) 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.

(*3*) 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 (see subdivision (k) of this section);

(*ii*) notification of law enforcement officials (see section 624.6); and

(*iii*) minutes of incident review committee (IRC) meetings (see section 624.7).

(*4*) Agencies are not required to enter information about investigatory activities into IRMA until the investigative report is completed.

(*c*) Agencies shall comply with all requests by OPWDD for the entry of specific subsequent information.

(2) Written initial incident/occurrence report.

(i) Minor notable occurrences. Agencies may enter information about minor notable occurrences into IRMA in lieu of completing a written initial incident/occurrence report. Within 48 hours of occurrence or discovery or by close of the next working day, whichever is later, the agency shall either:

(*a*) complete a written initial incident/occurrence report in the form and format specified by OPWDD; or

(*b*) enter initial information into IRMA.

(ii) To comply with any requirement that the agency send or disclose a copy of the written initial incident/occurrence report (e.g. in section 624.6 of this Part), the agency shall send or disclose either:

(*a*) a copy of the written initial incident/occurrence report completed by the agency pursuant to this paragraph (if one was completed; with redaction if required); or

(*b*) a written initial incident/occurrence report printed from IRMA (with redaction if required).

(f) *Immediate protections*.

(1) A person's safety must always be 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.

(2) 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.

(3) 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.

(g) *General 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 (see subdivision (h) of this section).

(2) Investigations of all reportable incidents and notable occurrences shall be initiated immediately, with further investigation undertaken commensurate with the seriousness and circumstances of the situation.

(i) 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 is 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; and

(*d*) performing such other actions as specified by the Justice Center or OPWDD.

(ii) In the event that law enforcement directs that the agency forgo any of the actions specified in subparagraph (i) of this paragraph, the agency shall comply with such direction.

(iii) 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.

(iv) 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.

(v) Notwithstanding any other provision in this subdivision, Intermediate Care Facilities shall take steps as needed to comply with federal requirements for the completion of investigations within specified timeframes, including assuming the responsibility for conducting the investigation if necessary.

(3) Investigations conducted by agencies or the Central Office of OPWDD shall incorporate the following:

(i) 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.

(ii) Witnesses to the incident or occurrence shall be identified and shall be interviewed in as private an environment as possible.

(iii) 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.

(iv) Pertinent information shall be reviewed (e.g., records, photos, observations of incident scene, expert assessments).

(v) Physical evidence, if any, shall be identified and appropriate steps shall be taken to safeguard and preserve physical evidence.

(4) An 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 physical abuse). In this event, the agency shall report the reclassification in IRMA and (if appropriate) to the Justice Center and make all additional reports and notifications that may be warranted by the reclassification.

(5) When an agency is responsible for the investigation, the investigation shall be documented. Such documentation shall include an investigative report.

(i) For all reportable incidents and notable occurrences, investigative reports shall be in the form and format specified by OPWDD or in a similar format approved by the Central Office of OPWDD. At a minimum, the report shall contain the following information:

(*a*) identifying data, such as the name(s) of person(s) receiving services involved in the incident or occurrence; the date the incident/occurrence was reported and/or discovered; the classification of the incident; and the incident/occurrence number. For incidents/occurrences entered into IRMA, this includes the master incident number assigned by IRMA;

(*b*) a description of the incident or notable occurrence;

(*c*) immediate protections provided to person(s) receiving services;

(*d*) investigatory question(s);

(*e*) a description of the investigative process and specific evidence obtained;

(*f*) a summary of the evidence obtained in the investigation;

(*g*) conclusions, including the findings (see subdivision (i) of this section) in the case of a report of abuse or neglect; and

(*h*) recommendations, including recommendations for remedial actions.

(ii) For reportable incidents and serious notable occurrences, the full text of the investigative report shall be entered into IRMA pursuant to subparagraph 624.5(e)(1)(iii). (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 enter the investigative report into IRMA.)

(6) 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.

(7) An 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.

(8) Restrictions on situations that may compromise the independence of investigators.

(i) 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.

(ii) 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.

(iii) 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.

(iv) Members of an incident review committee (IRC) shall not routinely be assigned the responsibility of investigating incidents or occurrences. In the event that an IRC

member conducts an investigation of an incident or occurrence, the agency shall comply with subparagraph 624.7(d)(7)(ii).

(v) 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. The requirements identified in clauses (*b*) and (*c*) of this subparagraph reflect the minimum expectation regarding independence concerning the investigator's work function.

(*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 for 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 occurrence unless he or she is the immediate supervisor of any staff who are directly involved in the reportable incident or serious notable occurrence.

(9) For reports of abuse or neglect in programs certified or operated 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.

(i) Such notification shall be made in the manner specified by the Justice Center.

(ii) Such notification or the reason a notification was not made shall be reported to OPWDD in the manner specified by OPWDD.

(10) For reports of abuse or neglect in programs certified or operated 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 obtained pursuant to this paragraph shall be included in the investigation records submitted to OPWDD in accordance with subdivision (o) of this section.

(h) *Review/investigation by OPWDD and the Justice Center*.

(1) OPWDD and the Justice Center have the right to review and/or investigate any reportable incident and/or notable occurrence regardless of the source of the information. 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 review or investigation.

(2) 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:

(i) implement each recommendation in a timely fashion and submit documentation of the implementation to OPWDD; or

(ii) 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.

(3) When the Justice Center makes findings concerning matters referred to its attention and the Justice Center issues a report and recommendations to the agency regarding such matters, the agency shall make a written response, within ninety days of receipt of such report, of action taken regarding each of the recommendations in the report.

(4) 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 subdivision (g) of this section. Note that when the Justice Center conducts the investigation, the Justice Center is not required to adhere to the requirements of such subdivision (g).

(i) *Findings of reports of abuse or neglect.*

(1) 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:

(i) 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

(ii) 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.

(2) Concurrent finding. In conjunction with the possible findings identified in paragraph (1) of this subdivision, a concurrent finding may be made that a systemic problem caused or contributed to the occurrence of the incident.

(j) *Plans for prevention and remediation for substantiated reports of abuse or neglect.*

(1) Within 10 days of the completion of the investigation, if the report of abuse or neglect has been substantiated, the agency shall develop and implement 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 reportable incidents.

(2) The plan shall include written endorsement by the CEO or designee.

(3) The plan shall 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 (see subparagraph 624.5(e)(1)(iii)).

(5) OPWDD will inform the Justice Center about plans developed pursuant to this subdivision.

(k) *Reporting updates.*

(1) 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.

(2) Agencies shall complete required fields in IRMA for the reporting update. Among other required information, the reporting update shall include:

(i) 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

(ii) 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.

(3) If the agency is not responsible for conducting the investigation, the agency shall complete the required fields to the extent possible given information provided to the agency.

(4) Effective July 29, 2013, if the agency is responsible for conducting the investigation and if the investigation has not been completed within the timeframe specified in subdivision (l) of this section, 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.

(l) *Timeframe for completion of the investigation.* Effective June 30, 2013, when the agency is responsible for the investigation of an incident or notable occurrence, such 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.

(1) Investigations that were initiated for incidents that occurred before June 30, 2013 shall be completed no later than July 29, 2013. However, this does not apply to incidents that occurred before June 30, 2013 but were not discovered until on or after June 30, 2013.

(2) 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 that may justify an extension include (but are not limited to):

(i) whether a related investigation is being conducted by an outside entity (e.g. law enforcement) that has requested that the agency delay necessary investigatory actions; and

(ii) whether there are delays in obtaining necessary evidence that are beyond the control of the agency (e.g. an essential witness is temporarily unavailable to be interviewed and/or provide a written statement).

(m) *Closure of an incident or occurrence.* An incident or occurrence shall be considered closed:

(1) when the IRC has ascertained that no further investigation is necessary; or

(2) in the event that an investigation was conducted by the Central Office of OPWDD, when the Central Office of OPWDD has ascertained that no further investigation is necessary; or

(3) in the event that an investigation was conducted by the Justice Center, when the Justice Center has ascertained that no further investigation is necessary.

(n) *Final reports to the Justice Center*.

(1) Agencies 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 the Justice Center.

(3) Final reports must be submitted within 50 days of the VPCR accepting a report of abuse or neglect, and within 60 days of the VPCR accepting a report of a significant incident.

(4) Notwithstanding the timeframes specified in paragraph (3) of this subdivision, the agency may take additional time to submit its final report provided, however, that 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) Notwithstanding the requirements in paragraphs (1) – (4) of this subdivision, in the event that the Justice Center or OPWDD conducts the investigation in lieu 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, OWPDD 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.

(o) *Submission of investigation records.* 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.

(p) *Cooperation with the Justice Center.* In the event that the Justice Center requests additional information from the agency or OPWDD, in accordance with law or regulation, the agency or OPWDD shall provide such requested information in a timely manner.

(q) *Duty to report events or situations under the auspices of another agency.*

(1) If a reportable incident 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) Note that mandated reporters (e.g. custodians) are required to make reports to the VPCR pursuant to section 491 of the social services law. This means that mandated reporters at the discovering agency must report to the VPCR upon discovery of a reportable incident that occurred in another program or facility which is certified or operated by OWPDD.

(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.

(r) *Records and statistics.*

(1) Record retention. Agencies shall retain records pertaining to incidents and occurrences as follows:

(i) Records that must be retained 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.

(ii) Records shall be retained for a minimum period of seven years from the date that the incident or occurrence is closed (see subdivision (m) of this section). 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 that are reported in IRMA, such information shall be retrievable by the master incident number in IRMA.

(3) When there is a incident or occurrence reported involving more than one person receiving services:

(i) From a statistical point of view, the situation shall be considered as one event and shall be recorded as such.

(ii) 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.

(s) *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 pursuant to section 496 of the Social Services Law.

(t) *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 made 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 goods or 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.

- **Section 624.6 is amended as follows:**

624.6 Notifications.
[In addition to requiring the reporting of reportable incidents, serious reportable incidents, and allegations of abuse on forms as specified in section 624.5 of this Part, agencies shall ensure notification by appropriate means, as follows:]

[(a) 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).]

(a) For a report of abuse or neglect involving a person who resides in a facility certified or operated by OPWDD, 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; see glossary, section 624.20) within three working days of occurrence or discovery. The responsible agency or program shall inform MHLS of the results of the investigation.

[(b)] [All deaths shall be reported to the Commission on Quality of Care and Advocacy for Persons with Disabilities in the form and format as specified by the commission.]

(b) For reports of abuse or neglect that occur when a person receiving services is under the auspices of a residential facility operated by OPWDD, a family care home sponsored by OPWDD, or a certified day program operated by OPWDD, OPWDD shall send the written initial incident report

to the appropriate board of visitors within three working days of occurrence or discovery. OPWDD shall also inform the board of visitors of the results of the investigation.

(c) 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. In New York City, the police must also be notified.

[(d)] [In the case of any reportable incident, serious reportable incident, or allegation of abuse where a crime may have been committed, it is the responsibility of the chief executive officer to notify law enforcement officials.]

(d) Reporting to law enforcement.

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

(2) 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 or operated by OPWDD).

(i) 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.

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

[(e)] [When there is reasonable cause to believe a crime against a person may have occurred in a facility or program of any other service provider licensed, certified, funded, or operated by a State agency the chief executive officer of that facility or program shall be notified as soon as possible, but within three working days, unless he or she is alleged to have committed the crime.]

(e) In a case where a subject (see glossary, section 624.20) of a report of 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.

[(f)] [For serious reportable incidents that are classified as "restraint," "possible criminal act" or "sensitive situation;" a person's guardian, parent or correspondent/advocate, is to be notified within 24 hours of the completion of the initial incident report, unless:]

[(1) there is written advice from the guardian or parent that he or she does not want to be notified; or]

[(2) the involved person is a capable adult (see section 624.20 of this Part) and objects to such notification being made; or]

[(3) the alleged abuser is one of the aforementioned parties.]

[(g)] (f) For all reportable incidents [that are classified as "injury," "death" or "medication error;" serious reportable incidents that are classified as "injury," "missing person," "death" or "medication error;" and for all allegations of abuse] and notable occurrences:

Note: Paragraphs (1) – (2) of this subdivision are unchanged.

(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 [or initial allegation of abuse] report (for minor notable occurrences) or entry of initial information in IRMA by the agency.

(4) The telephone notice shall include:

(i) a description of the event or situation and a description of initial actions taken to address the incident or [alleged abuse] occurrence, if any;

(ii) an offer to meet with the chief executive officer (or designee) to further discuss the incident or [allegation of abuse] occurrence; and

(iii) for reports of abuse and neglect, an offer to provide information on the status and/or [resolution] finding of the [allegation] 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 [as is requested], the agency shall [ensure] protect the privacy rights of other parties.

Note: Paragraphs (5) – (6) of this subdivision are unchanged.

(7) Requests for the written initial incident/occurrence [or allegation of abuse] report.

(i) Process for requests.

(*a*) Requests may be made for a copy of the written initial incident/occurrence [or allegation of abuse] report by the person receiving services (or who formerly received services), guardian, parent(s), or correspondent/advocate.

Note: Clause (*b*) of this subparagraph is unchanged.

(*c*) If the person is a capable adult and objects to the provision of the written initial incident/occurrence [or allegation of abuse] report, such report shall not be provided to otherwise eligible requestors.

(*d*) If an otherwise eligible requestor is the alleged abuser, the written initial incident/occurrence [or allegation of abuse] report shall not be provided to that requestor.

(ii) Redaction.

(*a*) The copy of the report shall incorporate redaction of the names of employees who are involved in the incident or [alleged abuse] occurrence 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 subparagraph.

(*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, that [those] name[s] as well as any information tending to identify the party shall be redacted.

(iii) The copy of the written initial incident/occurrence report [or initial allegation of abuse 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.

(iv) The copy of the written initial incident/occurrence [or allegation of abuse] report shall be accompanied by a statement that all contents are preliminary and have not been substantiated.

(8) Report on actions taken.

(i) The agency shall provide a report on initial actions taken to address the incident or [abuse allegation] notable occurrence. Such report shall include:

(*a*) any immediate steps taken in response to the incident or [alleged abuse] 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 [alleged abuse] occurrence.

(ii) The agency shall provide the report on actions taken to any party specified in paragraph (1) or (6) of this subdivision who received the notification.

(iii) The report shall be provided 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 [or initial allegation of abuse report].

(iv) The report that is provided shall be in the form and format specified by [the commissioner] OPWDD or in a similar format developed by the agency.

(v) 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. [In addition, the report shall not identify 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.] Names of any such parties as well as any information tending to identify those parties shall be excluded or redacted.

(9) The following documentation shall be maintained:

Note: Subparagraph (i) of this paragraph is unchanged.

(ii) any requests for a meeting or the written initial incident/occurrence report [or allegation of abuse report];

Note: Subparagraph (iii) of this paragraph is unchanged.

(iv) when the report on actions taken and any requested written initial incident/occurrence report [or initial allegation or abuse report] was provided;

(v) a copy of the report on actions taken and any written initial incident/occurrence report [or initial allegation of abuse report] (with redaction) that was provided; and

Note: Subparagraph (vi) of this paragraph is unchanged.

Note: Paragraph (10) of this subdivision is unchanged.

- **Current subdivision (h) is deleted.**

[(h) Reported incidents and allegations of abuse which are not under the auspices (see section 624.20 of this Part) of an agency or sponsoring agency are not subject to the notification requirements of subdivisions (f) and (g) of this section.]

Note: Current subdivision (i) is renumbered to be (g) but is otherwise unchanged.

- **Subdivision (j) is renumbered to be (h) and new subdivision (h) is amended as follows:**

[(j)](h) [An] The individual's service coordinator ([or equivalent in an ICF] e.g. a Medicaid Service Coordinator or Plan of Care Support Services Service Coordinator, or Willowbrook Service Coordinator) [is to] must be notified by the agency of all reportable incidents[, serious reportable incidents, and allegations of abuse] and notable occurrences involving any individual receiving non-ICF services that are certified, funded, or operated by OPWDD [within 24 hours of the completion of the initial incident report unless the service coordinator is the alleged abuser. If the service coordinator is the alleged abuser, notification shall be made to the supervisor of the service coordinator or an administrator of the agency providing service coordination] and must be provided with subsequent information, as follows:

(1) The service coordinator must be notified within 24 hours of the completion of the written initial incident/occurrence report (for minor notable occurrences) or entry of initial information in IRMA by the agency. The notification must include a description of immediate protections.

(2) The service coordinator must be provided with subsequent information which 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. Specifically:

(i) The service coordinator must be provided with written information identifying investigative conclusions (including the findings of an allegation 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 service coordinator within 10 days following completion of the investigation.

(ii) If the IRC review results in additional findings, conclusions, or recommendations regarding the individual's care, protection, and/or treatment, this information must be provided to the service coordinator, in written form, within 3 weeks following committee review.

(iii) The service coordinator 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 service coordinator, the agency shall provide information that it deems appropriate. In providing this information, the agency must exclude information that directly or indirectly identifies 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 service coordinator of this determination and its justification, in writing, within 10 days following the request. If the agency does not have specific information requested by the service coordinator (e.g. if the Justice Center conducted the investigation and it has not provided that information to the agency) the agency shall advise the service coordinator that it does not have the requested information. If the information may be available from the Justice Center the agency shall so advise the service coordinator.

(3) If the service coordinator is identified as the subject 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) of this subdivision must be provided to the service coordinator's supervisor or the administrator of the agency providing service coordination in lieu of the service coordinator.

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

- **A new subdivision 624.6(i) is added as follows:**

(i) The individual's Qualified Intellectual Disabilities Professional (QIDP) and (if the person is a Willowbrook class member), the Willowbrook Case Services Coordinator (WCSC) must also be notified by the agency of all reportable incidents and occurrences involving any individual who resides in an Intermediate Care Facility that is operated or certified by OPWDD. The QIDP and WCSC must also be provided with subsequent information. Information to the QIDP and WCSC shall be provided in the same manner that the information is provided to the Non-ICF service coordinator, in accordance with paragraphs 624.6(h)(1) and (2). If the QIDP or WCSC is identified as the alleged abuser, or is a witness to an incident or alleged abuse, the required notifications and subsequent information must be provided to the QIDP's or WCSC's supervisor or the administrator of the agency providing the residential or WCSC services, in lieu of the QIDP or WCSC.

Note: A service coordinator (including a QIDP performing that function) may be permitted to access information related to substantiated reports in accordance with Section 496(2)(n) of the Social Services Law.

[(k)](j) Administrative appeal process - denial of requested records/documents.

(1) A requestor denied access to the initial incident/occurrence report or report on actions taken may appeal in writing such denial to the incident records appeals officer designated by the commissioner of [OMRDD] OPWDD.

Note: paragraphs (2) and (3) are unchanged.

[(l)](k) It is the responsibility of a designated staff member of the agency where a report on a reportable incident[, serious reportable incident, or allegation of abuse] or notable occurrence is received or made out, to notify any other agency with which the person is associated of that reportable incident or notable occurrence [, serious reportable incident, or allegation of abuse] if it has 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 elsewhere.

- **Section 624.7 is amended as follows:**

Section 624.7. [Standing committee to review and monitor reportable incidents, serious reportable incidents, and allegations of abuse to persons receiving services from the agency] Incident Review Committee (IRC).

(a) Every agency shall have one or more [standing] incident review committees to review and monitor reportable incidents [, serious reportable incidents, and allegations of abuse] and notable occurrences that occur to people [in its facilities] receiving services from the agency [; or to review situations which involve any of its employees, interns, volunteers, consultants, or contractors]. The agency's organizational structure and its own policies shall determine the number of [standing] committees needed.

(b) [A standing committee] An IRC shall review reportable incidents [, serious reportable incidents, and allegations of abuse] and notable occurrences to:

(1) ascertain that reportable incidents[, serious reportable incidents, and allegations of abuse] 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, preventive, remedial, and/or disciplinary action has been taken to protect persons receiving services from further harm, [and] to safeguard against the recurrence of similar reportable incidents[, serious reportable incidents, or alleged abuse] 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, preventive, 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[, serious reportable incident, or alleged abuse] or notable occurrence;

(4) identify trends in reportable incidents [, serious reportable incidents, and/or allegations of abuse] 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 [, serious reportable incidents, and allegations of abuse] 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, [and] preventive, and remedial action.

(c) [A standing committee] An IRC shall:

(1) meet as determined by agency policy, but no less frequently than on a quarterly basis and always within one month of the report of a [serious] reportable incident or [allegation of abuse] serious notable occurrence, or sooner should the circumstances so warrant. The IRC shall meet as necessary to meet the timeframes established for submission of a final report to the Justice Center for reportable incidents, if required;

(2) review and monitor all [reportable incidents] minor notable occurrences that are reported, which may be done by a sub-committee of the [standing committee] IRC or by individual assignment to members of the [standing committee] IRC,[;] 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 [serious] reportable incidents and/or [allegations of abuse] serious notable occurrences that are reported;

(4) review and monitor investigatory procedures, but shall not perform the routine investigation of reportable incidents[, serious reportable incidents, or allegations of abuse] or notable occurrences;

(5) make written recommendations to appropriate staff to eliminate or minimize similar reportable incidents[, serious reportable incidents, and/or abuse situations] 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[, serious reportable incidents, and/or allegations of abuse] and/or notable occurrences reviewed;

(7) forward findings and recommendations to the chief executive officer within two weeks of meeting;

(8) provide documentation that all reports of [serious] reportable incidents and [allegations of abuse] 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 [event] incident or notable occurrence. This may be done by the full committee or a member of subcommittee reporting to the full committee;

(11) in accordance with agency policy, report periodically, but at least annually, to the chief executive officer, chief agency executives, the governing body, and [the DDSO] OPWDD concerning the committee's general monitoring functions; general identified trends in reportable incidents [, serious reportable incidents, and allegations of abuse] 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 incidents[, serious reportable incidents, and allegations of abuse] and notable occurrences.

(d) Organization and membership of [a standing committee] the IRC.

(1) A [standing] committee or committees may be [organized so as] established to meet the organizational needs of an agency (e.g., on an agency-wide basis, for a certified class of facilities, for a grouping of certified classes of facilities, by types of services provided, etc.). An agency may establish its own committee or committees and/or may meet the requirements of this section in several other ways, either concerning all operations of the committee or for specific incidents/occurrences or types of incidents/occurrences.

(i) An agency may coordinate with other agencies in the establishment of a shared committee.

(ii) An agency may also coordinate with a different agency to use the other agency's IRC.

(iii) An alternate acceptable committee review arrangement may be arranged with the approval of OPWDD.

[Members shall be appointed by the chief executive officer.]

(2) Committee members shall be appointed by the chief executive officer. In the case of a shared committee, each chief executive officer shall appoint committee members and shall approve the shared committee membership arrangement.

[(2)] (3) [A standing committee] An IRC may have other responsibilities in addition to specified responsibilities related to reportable incidents [, serious reportable incidents, and allegations of abuse] and notable occurrences.

[(3)] (4) Membership of [a standing committee] an IRC shall include:

(i) except for state-operated services, a member of the governing body;

(ii) for state-operated services, a high-level administrator (note: this cannot be the Director);

(iii) at least two professional staff;

[(ii)] (iv) other staff, including professional[, direct care] or administrative staff, as deemed necessary by the agency to achieve the purposes of the committee pursuant to this section;

[(iii)] (v) [a physician, physician's assistant or nurse practitioner must either serve on the committee or be available for consultation to the committee] at least one licensed health care practitioner (e.g. physician, physician's assistant, nurse practitioner, or registered nurse);

(vi) at least one direct support professional (except for agencies that do not have direct support professionals);

(vii) at least one individual receiving services;

(viii) at least one representative of advocacy organizations (e.g. self-advocacy, family or other advocacy organizations); and

[(iv)] (ix) the participation of a psychologist on the committee is recommended.[; and]

[(v) the participation of a member(s) of the governing body is encouraged.]

(5) In the event that an agency is unable to obtain the members required by subparagraphs (i) and (v) – (viii), the agency shall document its periodic efforts to obtain the specified members.

[(4)] (6) Membership limitations.

Note: New material is underlined; deleted material is in [brackets].

(i) 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.

(ii) The administrator of a class or classes of facilities or a group or groups of services may be designated as a member only if the committee is an agency-wide or multi-program committee. If he or she is not a member, an administrator may be consulted by the committee in its deliberations.

[(5)] (7) Case-specific requirements.

(i) 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.

(ii) Restrictions on review of specific incidents or allegations of abuse.

(*a*) Any committee member who recognizes a potential conflict of interest in his or her assignment shall report this information to the committee and recuse him or herself from participating in committee review of the incident or occurrence in question.

[(*a*)](*b*) No committee member may participate in the review of any reportable incident[, serious reportable incident, or alleged abuse] 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, [or] preventive, or remedial action.

(*c*) 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.

[(*b*)](*d*) No committee member may participate in the review of a [serious] reportable incident or [allegation of abuse] 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, [or] preventive or remedial action.

[(6)] (8) Members of the committee shall be trained in confidentiality laws and regulations, and shall comply with section 74 of the public officers law.

(e) [Minutes. The chairperson of a standing committee shall ensure that minutes are kept for all meeting.] Minutes. The chairperson of an incident review committee shall ensure that minutes are kept for all meetings.

(1) 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.

(2) Minutes addressing the review of specific [serious] reportable incidents and/or [allegations of abuse] serious notable occurrences shall clearly state the filing number or identification code of the report, the person's full name and identification number (if used), 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).

[(2) Minutes are to be filed and otherwise maintained in a manner that ensures confidentiality.]

(f) Role of the IRC when investigations are conducted by the Central Office of OPWDD or the Justice Center. Notwithstanding any other provision of this Part, when an investigation of an incident or occurrence is conducted by the Central Office of OPWDD or the Justice Center:

(1) The IRC 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 (except disciplinary actions concerning services operated by OPWDD), 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) Concerning services operated by OPWDD:

(i) The IRC shall monitor all actions taken to implement recommendations made by the Central Office of OPWDD or the Justice Center, except recommendations for disciplinary action.

(ii) The IRC for state-operated services shall not review or monitor disciplinary action recommendations made by the Central Office of OPWDD or the Justice Center.

(4) Concerning facilities and programs that are not operated by OPWDD, the IRC shall monitor all actions taken to implement recommendations made by the Central Office of OPWDD or the Justice Center.

- **Section 624.8 is amended as follows:**

Section 624.8. Release of records [pertaining to allegations and investigations of abuse].

(a) Policies and procedures. Agencies shall have policies and procedures concerning the process for requesting the release of records [pertaining to allegations and investigations of abuse], including but not limited to identifying appropriate staff who are authorized to receive requests and those who are authorized to release records.

Note: Subdivision (b) is unchanged.

(c) Records subject to release concerning reports of abuse that occurred prior to June 30, 2013.

(1) 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 section 624.20 of this Part) of the agency or sponsoring agency to eligible requestors who make a request in accordance with the provisions of this section.

Note: Paragraphs (2) and (3) are unchanged.

(d) Records subject to release concerning reportable incidents that 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.

[d] (e) Procedures. [(1)] Eligible requestors shall submit a written request to staff designated by agency policy/procedures. If the request is made prior to the closure of [an alleged abuse case] the incident, the parties specified by agency policy/procedures shall provide the requested records no later than 21 days after the closure of the [alleged abuse case] the incident. If the request is made

at or subsequent to the closure of the [alleged abuse case] 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.

[(2) The closure of the alleged abuse case shall be considered to have occurred when the standing committee established pursuant to section 624.7 of this Part has ascertained that no further investigation is necessary and a conclusion is reached whether the allegation is substantiated, disconfirmed or inconclusive. Pursuant to the provisions of section 624.7 of this Part, the standing committee may have additional responsibilities related to the allegation that continue after the closure of the alleged abuse case, such as making recommendations to the chief executive officer and monitoring actions taken on recommendations.]

- **Existing subdivisions (e) – (h) are renumbered as (f) – (i) and are amended as follows:**

(f) Redaction of records.

(1) Prior to the release of records, agencies shall redact the names of employees who are involved in the [alleged abuse] 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. For the purpose of this section, "employee" has the same meaning as in section 624.6[(g)](f)(10) of this Part. Redaction shall be waived if the employee or person authorizes disclosure, unless redaction of the specific information is necessary because it tends to identity another employee or person who has not authorized disclosure or for another reason specified in this subdivision.

Note: paragraph (f)(2) is unchanged.

(g) Dissemination prohibition. Agencies shall give written notice to recipients, that the law specifies that records and documents released in accordance with this section shall not be further disseminated by the recipient (except as may be permitted by law). Such notice shall accompany each release of records. The dissemination of records and the notice/cover letter to recipients shall be in accordance with any pertinent requirements in section 33.25 of the Mental Hygiene Law.

Note: new subdivision (h) is unchanged.

(i) Administrative appeal process - denial of requested records/documents.

(1) A requestor denied access to the [initial incident report or report on actions taken] records and documents requested pursuant to this section may appeal, in writing, such denial to the incident records appeals officer designated by [the commissioner of OMRDD] OPWDD.

Note: paragraphs (2) and (3) are unchanged.

(j) Note that 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.

- **Section 624.20 is amended by the amendment, deletion, and addition of definitions as follows. The definitions are then alphabetized and renumbered.**

- **The following definitions in section 624.20 are amended:**

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

Agency, sponsoring. An oversight entity of one or more [OMRDD] OPWDD certified family care homes. In the case of family care homes operated under state sponsorship, the [DDSO] DDSOO is considered to be the sponsoring agency.

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

The current definition of "*Auspices, under the" is deleted and is replaced by the following:*

Auspices, under the. For the purposes of this Part and Part 625 of this Title, an event or situation in which the agency or family care provider is providing services to a person. The event or situation can occur whether or not the person is physically at a site owned, leased, or operated by the agency or family care provider.

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

(i) An event or situation in which agency personnel (staff, interns, contractors, consultants, and/or volunteers) or a family care provider (or respite/substitute

provider) are, or should have been, physically present and providing services at that point in time.

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

(iii) The death of an individual that occurred while the individual was receiving services or that was caused by or resulted from a reportable incident or notable occurrence defined in sections 624.3 and 624.4 of this Title.

(iv) Notwithstanding any other requirement in this subdivision, the death of an individual receiving services who lives in a residential facility operated or certified by OPWDD, including a family care home, is always under the auspices of the agency. The death is also under the auspices of the agency if the death occurred up to 30 days after the discharge of the individual from the residential facility (unless the person was admitted to a different residential facility in the OPWDD system). (Note: this does not include free-standing respite facilities.)

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

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

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

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

(iii) Any event or situation that occurs in the context of the provision of services that are subject to the oversight of a State agency other than OPWDD (e.g. special

education, article 28 clinic, hospital, physician's office), whether or not in the presence of agency personnel or a family care provider.

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

(v) The death of an individual who received OPWDD operated, certified, or funded services, except deaths that occurred under the auspices of an agency as specified in paragraph (1) of this subdivision.

Board, capability review. Those designated by [the commissioner] OPWDD [or a DDSO director] to review the ability of a person to consent to a particular situation when there is a dispute as to that person's ability. Capability review board services are not available in [i] Intermediate [c] Care [f] Facilities.

Body, governing. The over-all policy-making authority, whether an individual or a group, that exercises general direction over the affairs of an agency and establishes policies concerning its operation for the welfare of the persons it serves. In [DDSOs and S] state-operated [facilities] services, the governing body shall be the [c] Central [o] Office [administration] of [OMRDD] OPWDD. For purposes of this Part, a family care home does not have a governing body.

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

Crime. An act that is forbidden by law that makes the offender liable to punishment pursuant to that law. In New York State, the Penal Law defines a crime as a misdemeanor or a felony, but does not include a traffic infraction. [Examples of crimes are: homicide, homicide attempt (see glossary), rape, public lewdness, robbery, and assault (see glossary).]

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

Investigator. That party or parties, designated by [agency policy] the chief executive officer (or designee), by the Central Office of OPWDD, or by the Justice Center, responsible for collecting information to establish the facts relative to an event/situation, whether immediately following or

subsequent to that event/situation. [While an investigator need not be a person appointed to a position bearing that title or have highly specialized training in investigatory techniques, it is recommended that the investigation of allegations of abuse be conducted by an individual skilled, by virtue of training or experience, in the appropriate techniques necessary to bring such allegations to a satisfactory conclusion.] Investigators may be required to have training as specified by OPWDD or the Justice Center.

Office, Developmental Disabilities [Services (DDSO)] State Operations (DDSOO). The local administrative unit of [OMRDD] OPWDD responsible for the provision of state-operated services within a particular [service] geographic area.

Officer, [c] Chief [e] Executive. Someone (by whatever name or title known) designated by the governing body (see glossary) with overall and ultimate responsibility for the operation of one or more classes of facility, for the delivery of other services to persons with developmental disabilities, and with control over any and all equipment used in the care and treatment of such persons; or a designee with specific responsibilities as specified in agency policy/procedure. In a [developmental center and/or DDSO,] DDSOO, this party is referred to as the [d] Director.

Person/persons. For purposes of this Part, a child or adult with a [diagnosis of] developmental disability, who has been or is [being served by a state, private, or voluntary operated facility certified by OMRDD] receiving services which are operated, certified, sponsored, or funded by OPWDD.

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

Services, plan of. An individualized record system, by whatever name known, which documents the process of developing, implementing, coordinating, reviewing, and modifying an individual's [person's] total plan of care, including, but not limited to, health care, clinical, and habilitation services (as applicable) to address the individual's needs. [it is maintained as the functional record indicating all planning as well as services and interventions provided to the person. It contains, at a minimum, identification data, diagnostic reports, assessments, service plans, medical data, activity schedules, program planning team minutes and reports, staff action records, and information on efforts to place people in a less restrictive level of programming. Such record is also known as the clinical record in Part 636 of this Title.]

Substantiated. [An alleged abuse was confirmed] A finding concerning a report of abuse or neglect based on a preponderance of the evidence. The report of abuse or neglect is *substantiated* when it is determined that the incident occurred and the subject of the report was responsible or, if

no subject can be identified and an incident occurred, that, the facility or provider agency was responsible.

The following definitions are deleted:

[*Assault.* Based on the Penal Law in New York State, the following may be used as a guideline as to what should be reported to law enforcement authorities: any situation where there is intent to cause physical injury (impairment of physical condition or substantial pain) to another party and such injury occurs to that party or another.]

[*Attempt, homicide*. For purposes of this Part, an assault by a person in which there is apparent intent to kill.]

[*Conditioning, aversive*. The contingent application of a physical stimulus or device to a person's body or senses in order to modify or change behavior. Such a stimulus or device must be reasonably considered to be significantly uncomfortable, painful, or noxious to the person when applied. Examples of such stimuli may include, but are not limited to: water and other mists or sprays, noxious odors (e.g., ammonia), noxious tastes (e.g., hot sauce), corporal punishment (e.g., slapping, spanking, hitting, or pinching), air blasts, blindfolds, white noise helmets, and electric skin shock.]

[*Center, developmental.* A class of facility designated in article 13.17 of the Mental Hygiene Law and operated by the Office of Mental Retardation and Developmental Disabilities for the care and treatment of people with mental retardation and developmental disabilities.]

[*Commission on Quality of Care and Advocacy for Persons with Disabilities. See Disabilities, Commission on Quality of Care and Advocacy for Persons with.*]

[*CQCAPD.* See Disabilities, Commission on Quality of Care and Advocacy for Persons with.]

[*DDSO*. See Office, Developmental Disabilities Services.]

[*Disabilities, Commission on Quality of Care and Advocacy for Persons with (CQCAPD).* A commission, appointed by the Governor of New York State in conformance with article 45 of the Mental Hygiene Law, whose primary function is to review the organization, administration and delivery of services of the Office of Mental Retardation and Developmental Disabilities (OMRDD) and the Office of Mental Health (OMH) to ensure that the quality of care provided to persons with mental disabilities of a uniformly high standard. Included in this responsibility is the investigation of complaints of persons receiving services, employees, or others, of allegations of abuse or mistreatment and the review of all deaths of persons/patients in all OMRDD and OMH operated or licensed facilities.]

[*Disconfirmed.* An allegation of abuse was established as being untrue, based on available information]

[*Form, standardized.* For purposes of this Part, a document or documents specifically designed or designated by an agency for the purpose of recording reports of reportable incidents, serious reportable incidents, and alleged abuse (as defined herein and by agency policy) for use within that agency in such a manner that there will be consistency of information to facilitate the investigation, review and monitoring of those events or situations and the corrective actions taken, as well as the identification and analysis of trends. A standardized form may be used to report other situations or events an agency wants to record, monitor, and/or trend, in addition to reportable incidents, serious reportable incidents, or abuse allegations.]

[*Inconclusive.* It is impossible to capture sufficient information which would support or disprove an abuse allegation]

[*Intervention, physical*. Those intervention techniques, or the adaptations of such, that include hands-on techniques that deflect, protect from, or release hits, kicks or grabs by persons receiving services toward others in their environment, or holds of limited duration that may reduce, limit, or restrict an individual's freedom of movement in order to interrupt or control challenging behavior that is posing an immediate health or safety risk to the person or to others. There are three categories of physical intervention techniques:

(1) protective techniques, which include blocks, deflection strategies and grab releases;

(2) intermediate techniques, which include holds and escorts intended to maintain a person in a standing or seated position to reduce or limit movement, to maintain health and safety, and/or to remove a person from an unsafe location or situation;

(3) restrictive techniques, which include holds that restrict freedom of movement in order to interrupt or control behavior that is posing an immediate health or safety risk, and involve taking a person from a standing position to the floor or holding the person on the floor.]

[*Time-out.* Prior to May 31, 2014 of this Title, a behavioral intervention in which a person is temporarily removed from or denied the opportunity to obtain reinforcement and during which the person is under visual or auditory contact and supervision. When a room is used for time-out purposes, normal egress from that room can only be prevented by the direct physical action of appropriately trained staff and when such action is designated in a written plan. The placement of a person in a secured room or area from which he or she cannot leave at will, for other than the

purpose of time- out, is prohibited and is considered to be a form of abuse. Time-out is not considered to be a form of aversive conditioning (see glossary).

On or after May 31, 2014, time-out is a restrictive/intrusive intervention in which a person is temporarily removed from reinforcement or denied the opportunity to obtain reinforcement *and* during which the person is under constant visual and auditory contact and supervision. Time-out interventions include:

(1) placing a person in a specific time-out room, commonly referred to as exclusionary time-out;

(2) removing the positively reinforcing environment from the individual, commonly referred to as non-exclusionary time-out.]

- **The following new definitions are added.**

Abuse or neglect. Those reportable incidents defined in paragraphs 624.3(b)(1)–(8).

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

Custodian. A party that meets one of the following criteria:

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

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

(iii) a family care provider; or

(iv) a family care respite/substitute provider.

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

Intentionally. This term shall have the same meaning as provided in subdivision one of section 15.05 of the penal law which states: "A person acts intentionally with respect to a result or to

conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct."

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

Recklessly. This term shall have the same meaning as provided in subdivision three of section 15.05 of the penal law, which states: "A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto."

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

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

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

Unsubstantiated. A finding concerning a report of abuse or neglect based on a preponderance of the evidence. The report of abuse or neglect is *unsubstantiated* because it is determined not to have occurred or the subject of the report was not responsible, or because it cannot be determined that the incident occurred or that the subject of the report was responsible.

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

(1) receive reports of reportable incidents involving persons receiving services in programs operated or certified by OPWDD (and specified programs subject to the oversight of other state agencies);

(2) as warranted, refer reports alleging crimes to appropriate law enforcement authorities;

(3) notify appropriate parties and officials of received and accepted reports; and

(4) maintain an electronic database of each report and the finding associated with each report.

- **A new Part 625 is added to 14 NYCRR as follows:**

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

Section 625.1 *Applicability*.

(a) This Part is applicable to all facilities and programs that are operated, certified, or funded by OPWDD (including family care homes) for the provision of services to individuals with developmental disabilities.

(b) Requirements concerning events and situations that are not under the auspices of an agency are found in this Part. (Note that requirements concerning events and situations that are under the auspices of an agency are in Part 624 of this Title.)

(c) The requirements of this Part apply to events and situations that occur on or after June 30, 2013.

(d) Intermediate Care Facilities (ICFs, see Part 681 of this Title) including state operated developmental centers, must also comply with the requirements of 42 CFR Part 483. Events and situations involving ICF residents that meet the definitions of abuse and other violations under the federal regulation, but do not occur under the auspices of the ICF, must be reported and thoroughly investigated in accordance with federal requirements in 42 CFR Part 483 that are more stringent than requirements of this Part.

Section 625.2 *Definitions*. The following definitions apply to the terms as they are used in this Part. Definitions for other terms used in this Part may be found in the glossary in section 624.20 of this Title.

(a) *Auspices, under the.* For the purposes of this Part and Part 624 of this Title, an event or situation in which the agency or family care provider is providing services to a person. The event or situation can occur whether or not the person is physically at a site owned, leased, or operated by the agency or family care provider.

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

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

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

(iii) The death of an individual that occurred while the individual was receiving services or that was caused by or resulted from a reportable incident or notable occurrence defined in sections 624.3 and 624.4 of this Title.

(iv) Notwithstanding any other requirement in this subdivision, the death of an individual receiving services who lives in a residential facility operated or certified by OPWDD, including a family care home, is always under the auspices of the agency. The death is also under the auspices of the agency if the death occurred up to 30 days after the discharge of the individual from the residential facility (unless the person was admitted to a different residential facility in the OPWDD system). (Note: this does not include free-standing respite facilities.)

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

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

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

(ii) Any event or situation that exclusively involves the family, friends, employers, or co-workers of an individual receiving services (other than a custodian or another

individual receiving services), whether or not in the presence of agency personnel or a family care provider or at a certified site.

(iii) Any event or situation that occurs in the context of the provision of services that are subject to the oversight of a State agency other than OPWDD (e.g. special education, article 28 clinic, hospital, physician's office), whether or not in the presence of agency personnel or a family care provider.

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

(v) The death of an individual who received OPWDD operated, certified, or funded services, except deaths that occurred under the auspices of an agency as specified in paragraph (1) of this subdivision.

(b) *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.

(c) *Sexual abuse*. Non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.

(d) *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.

(e) *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.

(f) *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.

(g) *Self neglect*. An adult's inability, due to physical and/or mental impairments, to perform tasks essential to caring for oneself, including but not limited to, providing essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, mental health, emotional well-being, and general safety; or managing financial affairs.

(h) *Financial exploitation*. The use of an adult's funds, property, or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers, or denial of access to assets.

(i) *Death*. The end of life, expected or unexpected, regardless of cause.

Section 625.3 *Agency involvement in events or situations that are not under the auspices of an agency.*

(a) 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 (see subdivision 625.2(a)), the agency shall respond to the event or situation as follows:

(1) If the event or situation meets one of the definitions in sections 624.3 or 624.4 of this Title (reportable incidents and notable occurrences) and occurred under the auspices of another agency subject to the requirements of Part 624 of this Title:

(i) The agency shall comply with the requirements of subdivision 624.5(q) of this Title. 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.

(ii) Note that mandated reporters (e.g. custodians) are required to make reports to the Vulnerable Persons' Central Register (VPCR) pursuant to section 491 of the social services law. This means that mandated reporters at the discovering agency must report to the VPCR upon discovery of a reportable incident that occurred in another program or facility which is certified or operated by OWPDD.

(2) If the event or situation meets one of the definitions in sections 624.3 or 624.4 of this Title 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 as specified in subdivision (b) of this section 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 as defined in section 625.2 of this Part, unless the event or situation meets the criteria in paragraphs (1) or (2) of this subdivision.

(4) Requirements concerning agency involvement in deaths that are not under the auspices of an agency are in section 625.5 of this Part.

(b) 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:

(1) notifying an appropriate party that may be in a position to address the event or situation (e.g. Statewide Central Register of Child Abuse and Maltreatment, Adult Protective Services, law enforcement officials, family members, school, hospital, or the Office of Professional Discipline);

(2) offering to make referrals to appropriate service providers, clinicians, State agencies, or any other appropriate parties;

(3) interviewing the involved individual and/or witnesses;

(4) assessing and monitoring the individual;

(5) reviewing records and other relevant documentation; and

(6) educating the individual about his or her choices and options regarding the matter.

(c) The agency shall intervene as it deems necessary and appropriate (see subdivision (b) of this section for a list of interventions) when the event or situation meets the definition of physical, sexual, or emotional abuse; active, passive, or self neglect; or financial exploitation, and involves an adult who meets the following criteria:

(1) the individual resides in a residence certified or operated by OPWDD (or a family care home);

(2) the individual receives day program services certified or operated by OPWDD;

(3) the individual receives Medicaid Service Coordination (MSC) or Plan of Care Support Services (PCSS) authorized by OPWDD; and/or

(4) the individual receives Home and Community Based Services (HCBS) waiver services authorized by OPWDD.

(d) 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:

(1) the individual is only receiving family support services (FSS), individual support services (ISS), or Article 16 clinic services; and/or

(2) the individual is not available to the agency or sponsoring agency; and/or

(3) the individual is in need of protective services that the agency cannot provide.

(e) Mandated reporters identified in Section 413 of the Social Services Law who are required to report cases of suspected child abuse or maltreatment shall report to the Statewide Central Register of Child Abuse and Maltreatment in accordance with the requirements of Article 6 of the Social Services Law.

(f) 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.

(1) The agency responsible for intervening shall be the provider of the services to the individual (or sponsoring agency) in the order stated:

(i) residential facility, including a family care home (note: this does not include free-standing respite facilities);

(ii) 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);

(iii) MSC or PCSS;

(iv) HCBS Waiver services including respite services provided at a free standing respite facility or services under the Care at Home Waiver;

(v) FSS, ISS and/or Article 16 clinic services;

(vi) Any other service certified, operated, or funded by OPWDD.

(2) 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).

Section 625.4 *OPWDD involvement in events or situations that are not under the auspices of the agency.*

(a) Reporting to OPWDD. The agency shall report events or situations in which actions were taken by the agency in accordance with the requirements of section 625.3 of this Part as follows:

(1) The agency shall submit an initial report about the event or situation in the OPWDD Incident Report and Management Application (IRMA).

(2) The agency or sponsoring agency shall enter initial information about the event or situation within twenty-four 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.

(3) 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 (see subdivision 625.3(b)) and shall include information about the resolution of the event or situation.

(4) Requirements concerning OPWDD involvement in deaths that are not under the auspices of an agency are in section 625.5 of this Part.

(b) 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 sponsoring agency 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:

(i) implement each recommendation in a timely fashion and submit documentation of the implementation to OPWDD; or

(ii) 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.

Section 625.5 *Agency and OPWDD involvement in deaths that are not under the auspices of the agency*.

(a) 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 the agency, shall be reported to the Justice Center for the Protection of People with Special Needs (Justice Center), as follows:

(1) The initial report shall be submitted, by the agency's chief executive officer or designee, through a statewide, toll-free telephone number in a manner specified by the Justice Center.

(2) The initial report shall be submitted immediately upon discovery and in no case more than twenty-four hours after discovery.

(3) Subsequent information shall be submitted to the Justice Center, in a manner and on forms specified by the Justice Center, within five working days of discovery of the death.

(4) The results of an autopsy, if performed and if available to the provider agency, shall 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.)

(5) 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. The agency responsible for reporting to the Justice Center shall be the provider of the services to the individual in the order stated:

(i) 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);

(ii) MSC or PCSS (OPWDD operated services only);

(iii) HCBS Waiver services (OPWDD operated services only);

(iv) Care at Home Waiver services (OPWDD operated services only);

(v) Article 16 clinic services;

(vi) FSS or ISS (OPWDD operated services only);

(vii) Any other service operated by OPWDD.

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, or 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).

(b) All deaths that are reported to the Justice Center shall also be reported to OPWDD.

(1) A death that occurred under the auspices of a provider agency (see paragraph 625.2(a)(1) of this Part) shall be reported as a serious notable occurrence in accordance with Part 624 of this Title.

(2) A death that did not occur under the auspices of an agency (see paragraph 625.2(a)(2) of this Part) shall be reported in accordance with subdivision (c) of this section.

(c) 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 to OPWDD as follows:

(1) All deaths shall 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) shall not be sufficient to satisfy this requirement.

(2) 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 later, in the form and format specified by OPWDD.

(3) 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.

(4) 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 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);

(ii) OPWDD operated or funded MSC or PCSS;

(iii) OPWDD operated or funded HCBS Waiver services;

(iv) OPWDD operated or funded Care at Home Waiver services;

(v) Article 16 clinic services;

(vi) OPWDD operated or funded FSS or ISS services;

(vii) Any other service operated or funded by OPWDD.

(d) Investigations 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 such review or investigation.

(3) If the Justice Center or OPWDD is responsible for the investigation, the agency shall fully cooperate with the assigned investigator.

- **Subparagraph 633.4(a)(4)(xxiii) is amended as follows:**

(xxiii) the opportunity, either personally or through parent(s), guardian(s) or correspondent (see glossary), to express without fear of reprisal grievances, concerns and suggestions to the chief executive officer of the facility; the Commissioner of [OMRDD] OPWDD; the [Commission on Quality of Care and Advocacy for Persons with Disabilities] Justice Center for the Protection of People with Special Needs (Justice Center) (see glossary, section 633.99); for people in developmental centers, and in the community on conditional release from a developmental center, the Mental Hygiene Legal Service and the board of visitors; and for people in developmental centers, the ombudsman;

- **Subparagraph 633.4(a)(12)(iii) and (iv) are amended as follows:**

(iii) The [Commission on Quality of Care and Advocacy for Persons with Disabilities (see glossary)] Justice Center for the Protection of People with Special Needs (see glossary, section 633.99).

(iv) The Mental Hygiene Legal Service (see glossary, section 633.99), for developmental center residents and persons in the community on conditional release from developmental centers only.

- **Subparagraph 633.4(a)(12)(vi) is amended as follows:**

(vi) The commissioner or the [commission] Justice Center may be contacted at the following locations:

(*a*) Commissioner
Office [of Mental Retardation and] for People With Developmental Disabilities
44 Holland Avenue
Albany, NY 12229
(518) 473-1997;

(*b*) [Bureau of Quality Assurance

Note: New material is underlined; deleted material is in [brackets].

Commission on Quality of Care and Advocacy for Persons with Disabilities
401 State Street Schenectady, NY 12305
(518) 473-4090.]
Justice Center for the Protection of People with Special Needs
161 Delaware Avenue
Delmar, NY 12054
(518) 549-0200

- **Clause 633.4(b)(2)(iii)(*c*) is amended as follows:**

(*c*) the [Commission on Quality of Care and Advocacy for Persons with Disabilities] Justice Center for the Protection of People with Special Needs;

- **Subdivision 633.5(b) is amended as follows:**

(b) In accordance with the agency's policies/procedures, the application process for employees, volunteers (see section 633.99 of this Part) or prospective family care providers shall include, but need not be limited to, the following requirements:

(1) A statement or summary of the applicant's history of employment or related experience.

(i) Parties who are applying to be an employee or volunteer shall supply information about prior employment and volunteer history in the form and format specified by OPWDD to facilitate checks of abuse history by OPWDD in conformance with section 16.34 of the Mental Hygiene Law. This includes:

(*a*) complete employment/volunteer history for the prior seven years; and

(*b*) employment/volunteer history at any time for positions where the applicant provided services for individuals with developmental disabilities.

(ii) To the extent relevant information was not provided pursuant to subparagraph (i) of this paragraph, e[E]very effort shall be made to obtain the following information either on a written application or during the interview process:

([i]*a*) any prior or current experience as an employee, volunteer, or certified provider with [OMRDD] OPWDD; any other State agency; or any other provider of human services; and

([ii]*b*) any prior or current experience in direct care work relevant to the position for which an application is being made.

Note: Paragraphs (2) – (5) are unchanged.

(6) A sworn statement by the applicant, indicating whether or not to the best of his or her knowledge, he or she has ever been convicted of a misdemeanor or a felony in any jurisdiction, and whether there is any pending criminal charge against the applicant. The statement shall include a description of all convictions and pending criminal charges.

Note: Paragraph (7) is unchanged.

[(8) For applicants who will have regular and substantial unsupervised or unrestricted physical contact with people receiving services, the applicant shall provide information, statements and fingerprints as may be necessary for a criminal history record check to be conducted according to the requirements of section 633.22 of this Part.]

Note: paragraphs (9) and (10) are renumbered to be paragraphs (8) and (9).

- **Subdivision 633.5(c) is amended as follows:**

(c) Background check requirements.

(1) Check of the register of substantiated category one cases of abuse or neglect, also known as the Staff Exclusion List (SEL). Agencies shall request an SEL check concerning all applicants who are required to be checked pursuant to section 495 of the Social Services Law and section 633.24 of this Part.

(2) Criminal history record check. Agencies shall request a criminal history record check for applicants who are required to be checked pursuant to section 16.33 of the Mental Hygiene Law and section 633.22 of this Part.

(3) Check of the Statewide Central Register of Child Abuse and Maltreatment (SCR). Agencies shall request an SCR check for applicants who are required, and for applicants who are authorized, to be checked pursuant to section 424-a of the Social Services Law and section 633.24 of this Part.

(4) MHL 16.34 check. Agencies shall submit a request for an MHL 16.34 check to OPWDD for applicants who are required to be checked pursuant to section 16.34 of the Mental Hygiene Law and section 633.24 of this Part.

[The names of applicants who will have the potential for regular and substantial contact with children and who are being considered for staff positions, as volunteers, or as family care providers shall be submitted to the Statewide Central Register of Child Abuse and Maltreatment to determine if the applicant is the subject of an indicated report of child abuse or maltreatment, if such submission is permitted by section 424-a of the Social Services Law.]

- **The title of section 633.7 is amended as follows:**

Section 633.7 Conduct of employees, volunteers [and], family care providers and custodians.

- **A new subdivision (c) is added to section 633.7 as follows:**

(c) *Requirements concerning the code of conduct adopted by the Justice Center for People with Special Needs (Justice Center).*

(1) Applicability. The requirements of this subdivision are applicable to facilities and programs certified or operated by OPWDD.

(i) The agency operating the facility or program is responsible for assuring compliance with the requirements of this subdivision.

(ii) The sponsoring agency is responsible for compliance concerning family care homes.

(2) Pursuant to section 554 of the Executive Law, the Justice Center shall adopt a code of conduct for custodians with regular and direct contact with individuals receiving services from such facilities or programs. Such code of conduct governs the conduct of such custodians with respect to the safety, dignity and welfare of vulnerable persons to whom they provide care.

(3) For the purposes of this section only, the definition of *custodian* is: A party that meets one of the following criteria:

(i) a director, operator, employee or volunteer of a facility or program which is certified or operated by OPWDD; or

(ii) a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to such facility or

program pursuant to contract or other arrangement that permits such party to have regular and substantial contact with individuals receiving services from the facility or program; or

(iii) a family care provider; or

(iv) a family care respite/substitute provider.

(4) The code of conduct adopted by the Justice Center must be read and signed by existing custodians who have regular and direct contact with individuals receiving services from the facility or program by June 30, 2013.

(5) New custodians of the facility or program with regular and direct contact must read and sign the code of conduct at the time of employment or affiliation.

(6) All custodians with regular and direct contact must read and sign the code of conduct adopted by the Justice Center on at least an annual basis.

(7) Note that the Justice Center may amend the code of conduct as appropriate.

(8) Pursuant to section 554 of the Executive Law, the Justice Center shall establish a process which provides for the enforcement of the code of conduct consistent with appropriate collective bargaining agreements. The agency or sponsoring agency shall enforce the code of conduct in accordance with the process established by the Justice Center.

- **Paragraph 633.8(a)(2) is amended as follows:**

(2) [Persons, identified by their program planning team as being capable of benefiting from training in techniques and procedures to protect themselves from abuse, shall receive such training to the extent possible with regard to their level of disabilities consistent with their age, needs, and circumstances within the facility and/or related activities.]

Individuals receiving services shall be provided training in techniques and procedures to protect themselves from abuse and other events and circumstances that constitute reportable incidents as defined in Part 624 of this Title.

(i) Training is only required for individuals who have been identified by their program planning team as being capable of benefiting from such training.

(ii) Training shall be provided to the extent possible consistent with an individual's disabilities, age, needs, and circumstances.

- **Section 633.9 (Follow-up activities subsequent to a reported allegation of abuse to persons receiving services) is deleted and the section is reserved.**

- **Subdivision 633.22(a) is amended by the addition of a new paragraph (4) as follows:**

(4) Agencies and providers of services that are required to comply with this section are also required to comply with Part 701 of this Title – *Justice Center Criminal History Information Checks*. Note that the term, "criminal history record check" in this section is equivalent to the term "criminal history information check" as used in Part 701.

- **Paragraph 633.22(b)(3) is amended as follows:**

(3) *Criminal history record information*. The information provided to [OMRDD] the Justice Center for the Protection of People with Special Needs (Justice Center) from the Division of Criminal Justice Services in response to a duly authorized request for criminal history record information. This information includes, but is not limited to, a record of pending criminal charges and criminal convictions which are not vacated or reversed.

- **A new paragraph 633.22(b)(6) is added as follows and the rest of the subdivision is renumbered.**

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

- **Paragraph 633.22(c)(1) is amended as follows:**

(1) Each agency, sponsoring agency and provider of services shall designate one or more authorized parties and shall submit the name, position and contact information for the authorized party or parties to [OMRDD] the Justice Center in the form and format required by [OMRDD] the Justice Center.

- **Subparagraph 633.22(c)(2)(iii) is amended as follows:**

(iii) providing notifications to [OMRDD] the Justice Center when a party ceases to be a subject party; and

- **Subclause 633.22(d)(2)(i)(*a*)(*2*) is amended as follows:**

(*2*) home and community-based waiver habilitation services (including residential habilitation, day habilitation, community habilitation, supported employment, and pre-vocational services);

- **Subdivision 633.22(d) is amended by the addition of a new paragraph (4) as follows:**

(4) Note that requests for criminal history record checks must also be submitted for any additional situations that may be specified in section 701.5 of this Title.

- **Subdivision 633.22(e) is deleted and a new subdivision (e) is added as follows:**

(e) The agency or provider of services shall comply with the requirements of section 701.5 of this Title – *Process for requesting criminal history information checks*.

- **Subdivision 633.22(f) is amended as follows:**

(f) Pending results/temporary approval of a subject party. Notwithstanding the provisions of subdivision 701.5(f) of this Title, the provisions of this subdivision govern the process for temporary approval of a subject party in the OPWDD system.

Note: The rest of subdivision (f) is unchanged except for subclauses 633.22(f)(1)(i)(*b*)(*1*) and (*2*) and subparagraphs 633.22(f)(1)(vi) - (viii).)

- **Subclauses 633.22(f)(1)(i)(*b*)(*1*) and (*2*) are amended as follows:**

(*1*) was not subject to a criminal history record check or has had a criminal history record check determination issued from [OMRDD] the Justice Center;

(*2*) has been trained in requirements concerning incidents and abuse (see section 633.8(a)(1)[iii] iv - [v] vi of this Part and Part 624 of this Title);

- **Subparagraphs 633.22(f)(1)(vi) - (viii) are amended as follows:**

Note: New material is underlined; deleted material is in [brackets].

(vi) Temporary approval shall be denied if the agency or provider of services possesses written documentation, such as a statement provided by the subject party as part of the application process, that:

(*a*) the subject party has a pending felony charge, or a conviction or pending charge for one or more of the crimes specified in section [633.98 of this Part] 845-b(5)(a) of the Executive Law; and/or

(*b*) the subject party has a pending misdemeanor charge or a conviction for any crime other than those specified in section [633.98 of this Part] 845-b(5)(a) of the Executive Law, unless the agency or provider of services documents that temporary approval will not pose a risk of harm to persons receiving services.

(vii) At any time after the agency or provider of services receives a determination that [OMRDD] the Justice Center is not issuing a denial or directing the agency or provider of services to issue a denial, the restrictions imposed during the period of temporary approval may be lifted. The agency or provider of services does not need to notify [OMRDD] OPWDD or the Justice Center regarding the end of temporary approval in this situation.

(viii) When an agency or provider of services receives [OMRDD] Justice Center notification of any result of the criminal history record check, except as specified in subparagraph (vii) of this paragraph, any temporary approval of the subject party shall be revoked immediately, or as soon as reasonably possible. However, revocation of the temporary approval shall not be delayed if such delay may compromise the safety of people receiving services.

- **Subdivisions 633.22(g)-(i) are amended as follows:**

(g) *Criminal history record check process.*

(1) The agency, sponsoring agency or provider of services shall be responsible for ensuring the submission of a request for a criminal history record check, including fingerprints, in the form, format and manner established by [OMRDD] the Justice Center, for all required subject parties (see subdivision (d) of this section).

Note: Subparagraphs (1)(i) – (ii) and paragraphs (2) – (7) are deleted.

(2) Section 701.6 of this Title governs the process for criminal history review and evaluation.

(3) If the subject party is a potential family care provider or an adult who lives in the home of a family care provider, or a family care respite/substitute provider or an adult who lives in the home of the family care respite/substitute provider, the Justice Center shall provide information to the sponsoring agency requesting the criminal history record check in the same manner as specified for other subject parties in section 701.6.

(h) [OMRDD] *Justice Center determinations*. Justice Center determinations and the responses of the agencies and providers of services are made in accordance with section 701.5 of this Title. The following provisions concerning family care homes are in addition to the requirements of section 701.5:

Note: Current paragraphs (1) and (2) are deleted except for subparagraphs (2)(ii) and (iii).

[(ii)] (1) OPWDD/sponsoring agencies shall deny an application to be a family care provider if [OMRDD] the Justice Center issues a denial or directs the sponsoring agency to issue a denial concerning an applicant or an adult household member.

[(iii)](2) If the Justice Center issues a denial or directs the sponsoring agency to issue a denial for a family care provider or adult household member, and a person is currently receiving family care services in the family care home:

Note: Current clauses (iii)(*a*) – (*c*) are renumbered as subparagraphs (2)(i) – (iii) and subparagraphs (2)(iv) and (v) are deleted.

(i) Standards for [OMRDD] Justice Center determinations are in accordance with Part 701 of this Title.

Note: The rest of subdivision (i) is deleted.

- **Subparagraphs 633.22(j)(2)(iii), (iv) and (vii) are amended as follows:**

(iii) a list of parties whom have had a subject party change in status (e.g., separation from service) pursuant to subdivision (l) of this section within the past 12 months. The list shall indicate the date the criminal history record check was requested and the date [OMRDD] OPWDD or the Justice Center was notified that the party was no longer a subject party;

(iv) for each subject party concerning whom a request for a criminal history record check was submitted, a copy of [their] his or her signed informed consent form, a copy of the form submitted by the authorized party to request the criminal history

record check, the notification of a change in subject party status (if applicable), and the results of the criminal history record check and determination of [OMRDD] OPWDD or the Justice Center; unless the agency, sponsoring agency or provider of services has disposed of such records pursuant to paragraph (3) or (4) of this subdivision;

(vii) any other information necessary to determine compliance with this section as may be specified by [OMRDD] OPWDD or the Justice Center.

- **Paragraphs 633.22(j)(3)-(5) are amended as follows:**

(3) The agency, sponsoring agency or provider of services shall maintain such information and shall not dispose of such information prior to six years after the party ceases to be a subject party (e.g., is no longer an employee, volunteer or family care provider), unless otherwise directed to do so by [OMRDD] OPWDD or the Justice Center.

(4) If directed to do so by [OMRDD] OPWDD or the Justice Center, the agency, sponsoring agency or provider of services shall dispose of [the summary of the criminal history record information and/or any other] information related to criminal history record checks as directed.

(5) Disposal of the summary of the criminal history record information and [OMRDD] the OPWDD or Justice Center determinations shall be performed in a manner that ensures the privacy and confidentiality of the information.

- **Subdivisions 633.22(k) and (l) are amended as follows:**

(k) *Criminal charges or convictions subsequent to the initial criminal history record check.*

(1) Upon receiving notification from DCJS that, subsequent to the initial check, there is a conviction or pending criminal charge against a current employee, volunteer, family care provider or party living in the home of a family care provider; [OMRDD] the Justice Center [shall promptly] will notify the agency, sponsoring agency or provider of services of the conviction or pending charge.

Note: Paragraph (2) is unchanged.

(l) Required notifications. No later than 14 days after the event, the agency, sponsoring agency or provider of services shall notify [OMRDD] the Justice Center, in the form, format and manner

required by [OMRDD] the Justice Center, when a party ceases to be a subject party. This occurs when:

Note: paragraphs (1) – (4) are unchanged.

- **Subdivision (m) is deleted and is reserved.**

[(m) The following applies if a potential employee who is subject to a criminal history record check from OMRDD is also subject to another criminal history record check from the New York State Office of Mental Health (OMH) at the same time because of other responsibilities of the potential employment with the same agency or provider of services.

(1) A determination made by OMRDD shall be considered an interim determination if:

(i) it occurs prior to the determination by OMH; and

(ii) the determination is not to issue a denial or direct the issuance of a denial.

(2) If a determination made by OMH is that the subject party is denied (or equivalent); the agency, sponsoring agency, or provider of services shall notify OMRDD regarding the determination. OMRDD will then issue a final determination.]

- **Subdivision 633.22(n) is amended as follows:**

(n) Registered providers of services (registered providers). Providers of services specified in this subdivision shall submit an application to [OMRDD] OPWDD to become registered providers for purposes related to the criminal history record check process and other background check processes required pursuant to section 633.24 of this Part.

(1) Providers of services shall submit an application for registered provider status if:

(i) the provider contracts with (or will contract with) [OMRDD] OPWDD (or with an entity on behalf of OPWDD) or an agency which provides services certified by [OMRDD] OPWDD or HCBS waiver services (or with an entity on behalf of the agency);

(ii) either:

(*a*) the provider supplies:

[(*a*)](*1*) transportation services that are provided by employees who have or will have regular and substantial unsupervised or unrestricted physical contact; and/or

[(*b*)](*2*) staff, other than the provider himself or herself, who have or will have regular and substantial unsupervised or unrestricted physical contact with people receiving services; or

(*b*) the provider subcontracts for transportation services and/or staff as described in clause (*a*) of this subparagraph in order to supply such services or staff to OPWDD and/or agencies which provide services certified by OPWDD or HCBS waiver services;

(iii) the provider of services is not a professional corporation or other entity whose function is the provision of services as opposed to the provision of staff; and

(iv) the provider itself does not provide any of the following services:

(*a*) residential or non-residential services certified by [OMRDD] OPWDD;

Note: clauses (*b*) – (*d*) are unchanged.

(2) Application for registered provider status shall be in the form and format specified by the commissioner, and shall include the provider's agreement to terms established by [OMRDD] OPWDD.

(3) [OMRDD] OPWDD may revoke registered provider status if the provider of services is not in compliance with the requirements of this section and section 633.24 of this Part and/or is not in compliance with the terms established by [OMRDD] OPWDD.

(4) If an agency or provider of services contracts with a registered provider, the agency or provider of services shall develop and implement written policies and procedures to monitor whether the registered provider is in compliance with the requirements of this section. At a minimum, the policies and procedures shall require that the agency or provider of services verify that the contractor has attained registered provider status initially and, on a at least a quarterly basis, that the contractor maintains registered provider status. The requirement for policies and procedures applies regardless of whether the registered provider also contracts with [OMRDD] OPWDD. If an entity contracts with the registered provider on behalf of an agency or provider of services, the entity and agency

(or provider of services) shall both develop and implement such written policies and procedures.

(5) Notwithstanding any other requirement of this Part, when a registered provider meeting the criteria in clause (1)(ii)(*b*) of this subdivision subcontracts with another registered provider, only one of these registered providers shall assume responsibility for compliance with the requirements of this section and section 633.24 of this Part (e.g. submitting requests for background checks). This avoids duplicate requests concerning the same subject party and other duplicative compliance activities.

- **Subdivision 633.22(p) is amended as follows:**

(p) *Annual criminal history record check statement.*

(1) Every agency and provider of services, including registered providers, shall submit an annual criminal history record check statement to [OMRDD] the Justice Center and OPWDD in the form and format specified by the commissioner which includes, but is not limited to, the following:

(i) [the rosters of employees, volunteers, and family care providers (and adult household members) and information as specified in subparagraphs (j)(2)(i)-(iii) of this section;] a list of parties whom have had a subject party change in status (e.g. separation from service) pursuant to subdivision (l) within the past 12 months. The list shall indicate the date the criminal history record check was requested and the date the Justice Center was notified that the party was no longer a subject party;

(ii) for agencies which are not registered providers, the names of all registered providers [and] with which it contracts, and the names of all entities acting on behalf of the agency in contracting with registered providers;

(iii) for registered providers, the names of all agencies, entities on behalf of agencies, [and DDSOs] Developmental Disabilities State Operations Offices (DDSOOs), and entities on behalf of the DDSOOs with which it contracts;

(iv) a sworn statement of the chief executive officer that the agency or provider of services is in compliance with the provisions of this section and that the information provided is true; and

(v) an acknowledgment by the chief executive officer that he or she may be guilty of a crime if the submission contains a false statement or false information (offering a false instrument for filing in the second or first degree, sections 175.30 and 175.35 of the Penal Law).

(2) In lieu of the chief executive officer, the submission by a registered provider in accordance with paragraph (1) of this subdivision shall be executed by the party authorized and primarily responsible for the business affairs of the registered provider in the locality in which it operates as a provider of services in the [OMRDD] OPWDD system. If the registered provider provides services in more than one distinct locality, each local organizational entity shall submit a separate statement.

(3) Agencies and providers of services shall submit the initial statement and all subsequent statements by April 1st of each year.

(4) [OMRDD] OPWDD may take one or more of the following actions upon the agency's or provider of services' failure to timely file the annual criminal history record check statement or upon finding that a party employed by or volunteering with the agency (or family care provider or adult household member) is providing services in a manner that violates the provisions of this section:

Note: Subparagraphs (i) – (iv) are unchanged.

- **A new section 633.24 is added as follows:**

Section 633.24 Background checks (in addition to criminal history record checks).

(a) Applicability. This section applies to services which are certified, operated, authorized, approved and/or funded by OPWDD (including family care homes).

(b) Check of the register of substantiated category one cases of abuse or neglect, also known as the Staff Exclusion List (SEL).

(1) Agencies and sponsoring agencies shall request a check for all parties subject to a criminal history record check in accordance with section 633.22 of this Part, to the extent permitted by section 495 of the Social Services Law. The term, “subject party” has the same meaning in this section as the term is defined in subdivision 633.22(b) of this Part.

(2) Agencies (including sponsoring agencies) shall comply with the requirements in section 495 of the Social Services Law and procedures established by the Justice Center for the Protection of People with Special Needs (Justice Center) for checking the SEL.

(3) If the name of subject party has been submitted for a check of the SEL, the agency shall not allow the party to have regular and substantial contact with an individual receiving services until the agency has the results of the check.

(4) If a party is listed on the SEL, the agency or sponsoring agency shall not hire or otherwise allow such party to have regular and substantial contact with an individual receiving services.

(5) The agency or sponsoring agency shall comply with all requirements of the Justice Center regarding confidentiality and actions to be taken concerning the results of the SEL check.

(6) Registered providers (see subdivision 633.22(n) of this Part) shall request an SEL check for subject parties if the registered provider was required to request a criminal history record check for that party. Agencies with which the registered provider contracts are not required to request an SEL check concerning subject parties of a registered provider with which it contracts.

(c) Statewide central register of child abuse and maltreatment (SCR).

(1) Agencies shall request a check of the Statewide Central Register of Child Abuse and Maltreatment (SCR) for all parties subject to a criminal history record check in accordance with section 633.22 of this Part, to the extent permitted by section 424-a of the Social Services Law. SCR checks are required for all applicants (e.g. prospective employees, volunteers, and contractors) who are required or authorized to be checked pursuant to section 424-a of the Social Services Law. (Note that SCR checks are not required for current employees, volunteers, etc. but in some cases are permitted by section 424-a of the Social Services Law.) SCR checks are also required for family care providers and adults who live in the home of the family care provider in accordance with requirements in section 687 of this Part.

(2) Agencies shall comply with the provisions of section 424-a of the Social Services Law concerning checks which are required or authorized to be conducted.

(3) The SCR check shall be conducted after the agency obtains the results of the SEL check and shall only be requested if the agency does not deny the application based on the results of the SEL check.

(4) If the name of a subject party has been submitted for a check of the SCR, the agency shall not allow the party to have unsupervised contact with individuals receiving services until the agency has the results of the SCR check.

(5) The agency shall comply with the requirements of Article 6 of the Social Services Law and the Office for Children and Family Services (OCFS) concerning confidentiality and actions to be taken with regard to the results of the SCR check.

(6) If permitted by OCFS, registered providers (see subdivision 633.22(n) of this Part) shall request an SCR check for subject parties if the registered provider was required to request a criminal history record check for the subject party. Notwithstanding the provisions of paragraph (1) of this subdivision, if a registered provider is permitted by OCFS to submit requests for SCR checks concerning its subject parties, agencies with which the registered provider contracts are not required to request an SCR check concerning such subject parties.

(d) MHL 16.34 check.

(1) Agencies shall submit a request for an MHL 16.34 check to OPWDD in accordance with section 16.34 of the Mental Hygiene Law, to the extent permitted by section 16.34 of the Mental Hygiene Law.

(2) Agencies shall submit the request for an MHL 16.34 check in the form and format specified by OPWDD, including information from the applicant as specified by OPWDD.

(3) The MHL 16.34 check shall be submitted to OPWDD after the agency obtains the results of the SEL check and shall only be requested if the agency does not deny the application based on the results of the SEL check.

(4) If the name of a subject party has been submitted for an MHL 16.34 check, the agency shall not allow the party to have unsupervised contact with individuals receiving services until the agency has the results of the check.

(5) The agency shall comply with the requirements of section 496 of the Social Services Law and other applicable laws and regulations concerning confidentiality.

(6) Registered providers (see subdivision 633.22(n) of this Part) shall request an MHL 16.34 check for subject parties if the registered provider was required to request a criminal history record check for that party. Agencies with which the registered provider contracts

are not required to request an MHL 16.34 check concerning subject parties of a registered provider with which it contracts.

(e) Information about substantiated reports of abuse or neglect.

(1) The authorized party of an agency or registered provider may receive information about a substantiated reports of abuse or neglect concerning a subject party as a result of a background check. This information may either:

(i) be provided by the Justice Center about "category two conduct" in accordance with section 562 of the Executive Law; or

(ii) be provided by OPWDD about substantiated reports of abuse or neglect occurring before June 30, 2013 in accordance with section 16.34 of the Mental Hygiene Law.

(2) In the event that such information is provided, the agency or registered provider is required to review the information provided and to make a decision about whether to hire or otherwise allow the party to have regular and substantial contact with an individual receiving services. Such decision and the rationale for the decision shall be documented.

(3) Any information provided shall be subject to the confidentiality provisions of section 845-b (7) of the executive law and section 496 of the Social Services Law.

(f) Requests for information about substantiated reports of abuse or serious neglect. In the event that an agency receives a request from OPWDD to conduct a reasonably diligent search of its records and/or provide specific information and/or develop a summary report for substantiated reports of abuse or serious neglect in accordance with the provisions of section 16.34 of the Mental Hygiene Law, the agency shall comply with such request. The information shall be provided to OPWDD in the form and format specified by OPWDD within the timeframes specified in the request.

(g) Records retention.

(1) Agencies and registered providers shall maintain the following records related to background checks:

(i) all background check requests submitted in accordance with this section;

(ii) all information received as a result of such checks (including information received pursuant to section 562 of the Executive Law), including additional information obtained about SCR indicated reports; and

(iii) documentation of any decisions made by the agency or registered provider because of information provided as a result of such checks and the rationale for the decisions.

(2) Agencies and registered providers shall maintain such information and shall not dispose of such information prior to six years after the party ceases to be a subject party (e.g. is no longer an employee, volunteer or family care provider), unless otherwise directed to do so by OPWDD.

- **Section 633.98 (Criminal history record checks – presumptive disqualifying crimes) is repealed.**
- **The following subdivisions in section 633.99 are deleted and the current subdivisions renumbered.**

[Commission on Quality of Care and Advocacy for Persons with Disabilities. A commission, appointed by the Governor of New York State in conformance with article 45 of the Mental Hygiene Law, whose primary function is to review the organization, administration and delivery of services of the Office of Mental Retardation and Developmental Disabilities (OMRDD) and the Office of Mental Health (OMH) to ensure that the quality of care provided to people with mental disabilities is of a uniformly high standard. Included in this responsibility is the investigation of complaints of individuals, employees or others of allegations of abuse or mistreatment; investigation relative to child abuse; and the review of all deaths in all OMRDD- and OMH-operated or licensed facilities.]

[Disabilities, Commission on Quality of Care and Advocacy for Persons with. See Commission on Quality of Care and Advocacy for Persons with Disabilities.]

- **New subdivisions are added to section 633.99 in alphabetical order and the subdivisions are renumbered.**

Custodian. For the purposes of section 633.7 only, a party that meets one of the following criteria:

(1) a director, operator, employee or volunteer of a facility or program which is certified or operated by OPWDD; or

(2) a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to such facility or program pursuant

to contract or other arrangement that permits such party to have regular and substantial contact with individuals receiving services from the facility or program; or

(3) a family care provider; or

(4) a family care respite/substitute provider.

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

- **Paragraphs 687.4(b)(4) – (12) are amended as follows:**

(4) Applications shall be in writing, shall be verified and shall contain such information as is required by [OMRDD] OPWDD. The application process shall reflect the requirements of sections 633.5, [and] 633.22, and 633.24 of this Title.

(5) The application process shall include a request by the sponsoring agency that the Justice Center for the Protection of People with Special Needs (Justice Center) check the Staff Exclusion List (SEL) for the family care provider and all parties age 18 and older who are to reside in the family care home (except for individuals receiving family care services).

(6) The application process shall also include a request by the sponsoring agency that [OMRDD] the Justice Center conduct a criminal history record check[,] for the family care provider and all parties age 18 years and older who are to reside in the family care home (except for individuals receiving family care services). (See section 633.22 of this Title for requirements and procedures.)

[(6)] (7) The application process shall include a request by the sponsoring agency to the Statewide Central Register of Child Abuse and Maltreatment (SCR) as to whether the family care provider and all parties age 18 years and older (except for individuals receiving family care services) who are to reside in the family care home are the subject of an indicated report of child abuse or maltreatment.

[(7)] (8) No operating certificate shall be issued by the commissioner unless there is satisfaction as to:

Note: Subparagraphs (i) – (v) are unchanged.

(vi) the review of any criminal history record information received concerning the family care provider and all parties age 18 years and older who are to reside in the family care home, except for individuals receiving family care services; [and]

(vii) the review of any information received from the Justice Center as a result of the SEL check(s);

(viii) the review of any information received as a result of the SCR check(s); and

(ix) such other matters as the commissioner shall deem pertinent in the public interest.

[(8)] (9) The commissioner may disapprove an application for an operating certificate, may authorize fewer services than applied for, and may place limitations or conditions on the operating certificate, including but not limited to compliance with a time-limited plan of correction of any deficiency which does not threaten the health or well-being of any client. In such cases the applicant shall be given an opportunity to be heard at a public hearing if he or she so requests.

[(9)] (10) The commissioner shall specify on each operating certificate the kind or kinds of services authorized, any limitations or conditions of the certificate and the expiration date of the certificate.

[(10)] (11) Except as provided in paragraph [(9)] (10) of this subdivision, no family care home shall be issued an operating certificate for the purpose of providing suitable care therein to more than six persons.

[(11)] (12) Any provider of services providing family care to more than six persons on July 1, 1975 shall be issued an operating certificate for a family care home effective April 1, 1977, pursuant to the provisions of this Part, provided that such person fulfills all requirements of this Part except for the number of persons in care, and that such person agrees to provide family care to no more than 10 persons on and after April 1, 1977.

- **Subdivision 687.8(p) is amended as follows:**

(p) The following procedures and requirements apply when any party who is 18 years of age or older (except for an individual receiving family care services) begins to reside in the family care home,

and when a current resident (except for an individual receiving family care services) reaches the age of 18 years:

(1) The family care provider shall request that the sponsoring agency request [a criminal history record check pursuant to section 633.22 of this Title] background checks prior to or when such party begins to reside in the family care home or reaches the age of 18 years. The requested background checks include:

(i) a check of the staff exclusion list (SEL check) pursuant to section 633.24 of this Title;

(ii) a criminal history record check pursuant to section 633.22 of this Title; and

(iii) a check of the Statewide Central Register of Child Abuse and Maltreatment (SCR check) pursuant to section 633.24 of this Title.

(2) The family care provider shall ensure the provision, to the sponsoring agency, of information and fingerprints from the subject party, in the form, format and manner specified by [OMRDD] the Justice Center as necessary to conduct the criminal history record check, and any other information as may be necessary to conduct the other background checks [, or the information necessary for an expedited submission].

(3) The family care provider shall obtain a sworn statement from such subject party, indicating whether he or she has ever been convicted of a misdemeanor or felony, or whether there is any pending criminal charge against such subject party, and shall forward the statement to the sponsoring agency and [the DDSO] OPWDD.

(4) The family care provider shall ensure the provision of all required statements/information/fingerprints no later than five business days after the subject party becomes a resident or attains the age of 18 years.

(5) If the statement includes a conviction for a misdemeanor or felony, or a pending criminal charge, the sponsoring agency shall evaluate whether the safety of any people receiving family care services could be compromised by the party's continued residency and shall take appropriate steps to protect the safety of the person(s) receiving services.

(6) The sponsoring agency shall request:

(i) an SEL check;

(ii) [that OMRDD conduct] a criminal history record check [(see section 633.22 of this Title for applicable requirements and procedures).]; and

(iii) an SCR check.

(7) If [OMRDD] the Justice Center issues a denial or directs the sponsoring agency to issue a denial for a current family care provider or current adult household member, or if the potential household member begins to reside in the family care home, the sponsoring agency shall follow the requirements of section 633.22(h)(2)[(iii)] of this Title. If [OMRDD] the Justice Center issues a denial or directs the sponsoring agency to issue a denial for a potential household member, family care provider shall not permit the subject party to reside in the family care home.

(8) If a criminal history record check was conducted concerning a party (other than the family care provider) and the party does not move into the family care home or permanently moves out of the family care home, the family care provider shall notify the sponsoring agency and [the DDSO] OPWDD in writing within 72 hours of the occurrence. The sponsoring agency shall notify [OMRDD] the Justice Center within 14 days of the occurrence, in the form, format and manner required by [OMRDD] the Justice Center.

- **Subdivision 687.8(t) is amended as follows:**

(t) Respite/substitute providers – [criminal history record] background checks. The same requirements related to [criminal history record checks established by this Part and section 633.22 of this Title] background checks which are established for family care providers and family care household members are applicable to family care respite/substitute providers and, if respite is provided in the home of the respite/substitute provider, for adult household members. Required background checks include criminal history record checks, SEL checks and SCR checks. Sponsoring agencies shall deny an application to be a family care respite/substitute provider if [OMRDD] the Justice Center directs the sponsoring agency to issue a denial based on the results of any criminal history record check.