



Implementation of the PPSNA & Reforms to Incident Management

FINAL REGULATIONS

Emergency Regulations Effective: September 8, 2015

Permanent Adoption: December 2, 2015

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

The final regulations conform OPWDD regulations to Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act or PPSNA) by making a number of revisions. The major changes to OPWDD regulations made to implement the PPSNA are:

- Amendments to Part 624 (now titled “Reportable incidents and notable occurrences”) to incorporate categories of “reportable incidents” established by the PPSNA and other revisions needed for the management of reportable incidents in conformance with various provisions of the PPSNA.
- Amendments to Part 624 to specify that programs and facilities certified or operated by OPWDD must report “reportable incidents” to the Vulnerable Persons’ Central Register (VPCR), a part of the Justice Center for the Protection of People with Special Needs (Justice Center). (Non-certified programs that are not state operated, and programs certified under paragraph 16.03(a)(4) of the Mental Hygiene Law that are not state operated, are not required to report to the VPCR, but must report “reportable incidents” to OPWDD.)
- Amendments to section 633.7 to incorporate the code of conduct adopted by the Justice Center in accordance with Section 554 of the Executive Law and impose requirements on programs certified or operated by OPWDD. The code of conduct must be read and signed by custodians who have regular and direct contact with individuals receiving services as specified in the regulations.
- Amendments to section 633.22 to reflect the consolidation of the criminal history record check function in the Justice Center. The Justice Center will receive requests for criminal history record checks and will process those requests, rather than OPWDD.
- Addition of a new section 633.24 that contains requirements for background checks (in addition to criminal history record checks).
- Amendments to Part 687 that incorporate changes to criminal history record check and background check requirements in family care homes.

The regulations also include other changes associated with incident management or the implementation of the PPSNA. These changes include:

- Amendments to Part 624 to replace existing categories and definitions of incidents that were considered reportable or serious reportable incidents or allegations of abuse prior to June 30, 2013 with definitions of “reportable incidents,” which comprise “abuse,” “neglect,” and “significant incidents,” in accordance with the PPSNA and “notable occurrences.”
- Amendments to Part 624 that limit the Part’s applicability to events and situations that occur under the auspices of an agency.
- Addition of a new Part 625 that contains requirements applicable to events and situations that are not under the auspices of an agency.
- Amendments to Part 624 to mandate the use of OPWDD’s Incident Report and Management Application (IRMA), a secure electronic statewide incident reporting system, for reporting information about specified events and situations, and remove the existing requirement to submit a paper based incident report to OPWDD in certain instances.
- Amendments to Part 624 to make several changes to requirements for investigations. The amendments require that investigations of specified events and situations must be initiated immediately following occurrence or discovery (with limitations when it is anticipated that the Justice Center or the Central Office of OPWDD will conduct the investigation). Investigations conducted by agencies must be completed no later than thirty days after the initiation of an investigation, unless the agency documents an acceptable justification for an extension of the thirty-day time frame. The amendments also add new requirements to enhance the independence of investigators, and require agency investigators to use a standardized investigative report format.
- Amendments to Part 624 to make several changes regarding the composition and responsibilities of Incident Review Committees (IRCs). The amendments change requirements concerning membership of the IRC and include specific provisions concerning shared committees, using another agency’s committee, or making alternative arrangements for IRC review. The amendments also modify the responsibilities of a provider agency’s IRC when an incident is investigated by the Central Office of OPWDD or the Justice Center.
- Amendments to Part 624 to expand requirements on providing incident-related information to service coordinators.
- Amendment to Part 624 to impose an explicit requirement that providers must comply with OPWDD recommendations concerning a specific event or situation or must explain reasons for not complying one month’s time.

- Amendments to Part 624 to specify that 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 is required to make a written response to OPWDD within sixty days of receipt of such report, of action taken regarding each of the recommendations in the report.
- Amendments to Part 624 to include record retention requirements, including requirements that agencies must retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years, and in cases when there is a pending audit or litigation, that the pertinent records must be retained throughout the pendency of the audit or litigation.
- Addition of requirements in the new section 633.24 concerning background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013. These requirements are added to implement section 16.34 on the Mental Hygiene Law as amended by the PPSNA.
- Addition of requirements in the new section 633.24 in accordance with changes in Section 424-a of the Social Services Law, to extend requirements for checks of the Statewide Central Register of Child Abuse and Maltreatment to employees and others that have the potential for regular and substantial contact with individuals receiving services in programs certified or operated by OPWDD.
- Amendment of glossary definitions in Parts 624 and 633 to conform to PPSNA definitions.
- Amendments to provisions in Parts 624 and 633 to reflect the restructuring of entities within OPWDD and OPWDD's name change.

Finally, the regulations include the following additional changes that were not included in previous emergency regulations issued by OPWDD approximately every ninety days between June 30, 2013 and June 11, 2015:

- Amendments to Part 624, effective January 1, 2016, to expand the definitions of events that constitute reportable "significant incidents" to include types of incidents that OPWDD had previously required providers to report to OPWDD as "serious notable occurrences."
- Amendment to Part 624 to update the requirement for submission of final investigative reports to the Justice Center to reflect new procedures for electronic submission of these records.

- Amendment to Part 624, effective January 1, 2016, to require agencies to electronically submit investigative records on all deaths, and on any abuse or neglect incidents that are not under the jurisdiction of the Justice Center, to OPWDD.
- Amendment to Part 624 to add language to clarify that if an investigator recognizes a potential for conflict of interest based on information discovered while an investigation is underway, the investigator must report the potential conflict of interest to the provider agency, and the provider agency must relieve that person of duty to investigate an incident when a conflict of interest exists.
- Amendment to Part 624, effective January 1, 2016, to add a requirement for every agency providing services that are operated, certified, or funded by OPWDD, to establish a dedicated mailbox for incident notifications in order to act on issues, including requests from OPWDD, in a timely manner, effective 60 days after the effective date of the regulations.