

**To:** Provider Associations  
Voluntary Provider Agency Executive Directors  
Developmental Disabilities State Operations Office Directors  
Developmental Disabilities Regional Office Directors  
IBR Director

**From:** Barbara Brundage, Director  
OPWDD Regulatory Affairs  
Co-Chair, OPWDD Statewide Committee on Incident Review

Leslie Fuld, Director  
OPWDD Incident Management Unit  
Co-Chair, OPWDD Statewide Committee on Incident Review

**Date:** May 31, 2013

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

**Effective: June 30, 2013**

**Please visit the OPWDD website at  
[http://www.opwdd.ny.gov/opwdd\\_resources/incident\\_management/home](http://www.opwdd.ny.gov/opwdd_resources/incident_management/home)  
for the latest information on Incident Management Reform**

**Suggested Distribution:**

Administrators and Management Staff  
Incident Coordinators and Investigators  
Quality Assurance/Quality Improvement Staff  
Qualified Intellectual Disabilities Professionals and Clinical Staff  
Medicaid Service Coordination Staff

Last December, Governor Andrew Cuomo signed legislation creating the Justice Center for the Protection of People with Special Needs (Justice Center), an initiative that will transform how the state protects over one million New Yorkers in state operated, certified, or licensed facilities and programs.

This new law, the 2012 Protection of People with Special Needs Act (PPSNA), established a set of uniform standards to be implemented by the Justice Center for the protection of people receiving services from facilities and programs that are certified and/or operated by a number of state agencies, including

OPWDD. Applicable NYS statutes include Article 20 of the Executive Law, Article 11 of the Social Services Law, and various sections of the Mental Hygiene Law. OPWDD and other state agencies are required to develop and enforce regulations in accordance with the applicable statutes.

OPWDD has been working with the Justice Center to develop regulations and procedures necessary to implement provisions of the PPSNA. While this work is still underway, OPWDD recognizes that provider agencies need information to update their incident management systems and provide staff with information and training to be in compliance with the PPSNA and new OPWDD regulations that will be effective on **June 30, 2013**. As additional information and guidance for provider agencies becomes available, it will be posted on the OPWDD website.

The PPSNA requires significant changes to OPWDD's long-standing incident management requirements in 14 NYCRR Part 624 that will be effective on **June 30, 2013**. These changes include, but are not limited to, the following:

- Existing definitions of events that constitute reportable and serious reportable incidents and allegations of abuse in Part 624 will be deleted.
- New definitions will be added to Part 624 in conformance with NYS Social Services Law. Article 11 of the NYS Social Services Law defines **“reportable incidents,” which comprise allegations of abuse and neglect and "significant incidents."** (Definitions are attached, modified in bold and italics for emphasis.)
- The new definitions for familiar terms such as physical abuse, sexual abuse, and psychological abuse in Article 11 are significantly different from the definitions in current OPWDD regulations.
- OPWDD will likely include other types of incidents, beyond those specifically identified as “reportable incidents,” that will be classified as “notable occurrences.” The “notable occurrences” will **not** be reported to the Justice Center.
- All “reportable incidents” that occur **under the auspices of a facility or program that is certified or operated by OPWDD** must be reported to the Justice Center and to OPWDD. (Information on how to report incidents to the Justice Center, as well as changes in OPWDD reporting requirements, will follow.)
- “Reportable Incidents” that occur **under the auspices of a voluntary-operated non-certified service** (e.g., hourly community habilitation) must be reported to OPWDD, but **not** to the Justice Center.
- All reportable incidents and notable occurrences must also be reported to a provider agency's chief executive officer, or his or her designee, unless the chief executive officer and/or the designee are the subject(s) of the reportable incident. (Specific reporting requirements will follow.)
- “Reportable incidents” that occur **under the auspices of facilities or programs that are certified or operated by OPWDD** will be investigated by the Justice Center, OPWDD, or an independent

investigator from the provider agency. (The procedures for communication among the Justice Center, OPWDD, and provider agencies on delegating responsibility for investigations will follow.)

- An investigation into an allegation of abuse or neglect will result in a finding that the allegation is either "**substantiated**" or "**unsubstantiated**" based on a preponderance of evidence gathered during the investigation. (Existing dispositions of "disconfirmed" and "inconclusive" will be deleted from Part 624.)
- An investigation may also result in a "**concurrent finding**" regarding a systemic problem that contributed to the occurrence of the incident.
- Within 10 days of the completion of an investigation, an agency must develop a plan of prevention and remediation to address any **substantiated allegation of abuse or neglect**. (Details to follow.)
- Timeframes will be established for the completion of investigations and a standing committee review process will continue to be required. (Details to follow.)
- The attached definitions from Article 11 of the NYS Social Services Law also include descriptions of terms such as "**mandated reporter**" (identifying parties who must report reportable incidents to the Justice Center) and "**custodian**" (the word used for provider agency staff and others providing services) that are relevant to the implementation of the PPSNA.

The Part 624 amendments also include requirements on the use of OPWDD's Incident Report and Management Application (IRMA) that are similar to the requirements previously issued in the November 1, 2011 Administrative Memorandum #2011-03, *Required Format for Reporting Incidents and Allegations of Abuse*. Work is underway to adapt IRMA and the reporting requirements in accordance with provisions of the PPSNA and new definitions of events that constitute reportable incidents and notable occurrences in the OPWDD system.

OPWDD expects to make updated information, and guidance to assist providers to come into compliance with the new requirements, available at

[http://www.opwdd.ny.gov/opwdd\\_resources/incident\\_management/home](http://www.opwdd.ny.gov/opwdd_resources/incident_management/home) on the OPWDD website.

Provider agencies should check the website frequently, at least on a weekly basis, for the most up to date information.

Additional guidance from OPWDD will be issued to the field in the near future to alert providers to other changes associated with the PPSNA, such as changes to CBC procedures and the implementation of a centralized On Call system for Incident Management Unit notifications during off hours.

In the meantime, provider agencies may contact the OPWDD Incident Management Unit with any immediate questions or concerns about impending changes in the area of incident management at [Incident.Management@OPWDD.ny.gov](mailto:Incident.Management@OPWDD.ny.gov).