



## Justice Center Presentation

### Implementation Status

- Steps taken to address challenges, etc.
  - Change in SEL check process
- Multiple report requirements
- New Requirements for Providers
- Criteria for JC taking cases

## OPWDD Presentation

### Incident Reporting & other JC implementation updates

- Clarification on new incident reporting requirements (Part 624, Part 625)
- Significant incidents—individual to individual behavioral incidents
- ICF issues-
- False allegation protocols
- IRMA updates
- Role confusion
- Jonathan's Law
- IRC requirements-
- Investigations
- Death Reporting

Mental Hygiene Law 16.34

Andrew M. Cuomo, Governor



Laurie A. Kelley, Acting Commissioner

NYS Office For People With Developmental Disabilities

# Putting People First

## Update on Justice Center Implementation

August 16, 2013



# Justice Center Implementation Status



# Reminder

- The due date for comments on regulations is Tuesday, September 3



- Clarification on common questions related to new incident reporting requirements



## Reportable Significant Incidents 624.3(9)(i) Conduct between persons receiving services

- Must be reported to the Justice Center if the act would constitute abuse if committed by a custodian.



OPWDD is currently working with the Justice Center to provide additional guidance in this area and has submitted suggested language which is under review



## Reportable Significant Incidents of “Other Mistreatment”

624.3(9)(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 reasonable foreseeable potential to impair the health, safety or welfare of an individual receiving services, including **but not limited to:**



- Seclusion
- Unauthorized use of time-out
- Administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription



# Serious Notable Occurrences

## 624.4(c)(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



- Examples of an ICF violation could be:
- A report to the Justice Center of unacceptable interaction with an individual which is not accepted as a reportable abuse/neglect by the Justice Center
- These will be reported as ICF Violations which are serious notable occurrences



## ICFs must comply with additional requirements established by CMS

- Part 483.420 results of investigations must be reported to the administrator within 5 working days of the incident
- ICF providers should begin investigations immediately to ensure compliance with this requirement.
- OPWDD/DOH/Justice Center continue to work to improve process



Please continue to contact IMU with questions and any concerns about the ICF investigations



## Clinical Plans for False Allegations

- Every allegation must be reported to the Justice Center
- If the Justice Center accepts the report as a reportable incident of abuse/neglect an incident is created in IRMA and a full investigation must be completed
- If the Justice Center does not accept the report as a reportable incident, follow the clinical plan which is in place



**A history of false allegations**

**versus**

**A clinical plan in place**



## Part 625

- OPWDD has added new Part 625 to its regulation
- Part 625 applies to Events/Situations which are not under the auspices of the agency



## Part 625

- Does not require committee review
- Still requires responsive agency intervention
- Type of intervention is dependent upon the event/situation
- For ICFs, still requires a full investigation



## IRMA Updates

- If an incident is classified by the Justice Center as a reportable incident the classification is not to be changed in IRMA
- If an agency is in disagreement, contact IMU who will contact the JC



# Delegation of investigations in IRMA

Blue “J” on the summary page indicates the  
Justice Center has accepted the  
investigation



Delegation of investigations in IRMA  
other than those accepted for  
investigation by the JC

### **Voluntary Provider Agencies**

Reportable abuse/neglect & significant incidents  
will be delegated to the agency

Notable Occurrences will be delegated to the  
agency



# Delegation of investigations in IRMA other than those accepted for investigation by the JC

## **State Operations Offices**

Reportable abuse/neglect will be delegated to  
OPWDD OIIA

Reportable significant incidents will be delegated to  
the agency

Notable Occurrences will be delegated to the  
agency



- OPWDD OIIA may determine it will investigate additional incidents in both voluntary provider agencies and in state operations
- OPWDD OIIA will notify IMU of these determinations. IMU will change the delegation of the investigation in IRMA and will note this in the conversation area where this information can be viewed by the agency



## Jonathan's Law

- Notifications
- Release Records



## Prior to June 30, 2013

- Notifications required for all allegations of abuse
- Records subject to release concerning allegations of abuse which occurred prior to June 30, 2013



## On or after June 30, 2013

- Notifications required for all Reportable Incidents and Notable Occurrences
- Records subject to release concerning reportable incidents which occurred on or after June 30, 2013. Agencies are required to release all records and documents pertaining to reportable incidents to eligible requestors who make a request in accordance with applicable provisions in Part 624.8



# Incident Review Committees



## Required membership of IRC – NEW ADDITIONS

- Voluntary agency - Member of the governing body (board of directors)
- DDSOO – high-level administrator
- Direct support professional
- Individual receiving services
- Member of advocacy org. (self-adv., family, etc.)



## Incident Review Committee

- Committee review is limited when the JC or OPWDD conducts the investigation.
- Agencies may share committees



## Effective June 30, 2013

- For Reportable Incidents of abuse/neglect delegated to Agencies to investigate:
- Investigation to be entered into IRMA as is the case now
- Full investigative record must be sent to OPWDD Incident Management Unit securely at the conclusion of the investigation. OPWDD will provide to the Justice Center. (See memorandum dated July 31, 2013)



Justice Center will be sending additional guidance on confidentiality training requirement for Incident Review Committees



# Training of Investigators

- OPWDD will be offering 5 two day training opportunities during the summer and fall of 2013 for voluntary provider investigators. Additional trainings will be offered in 2014.
- This should generally be attended by new or less experienced investigators



# Training of Investigators

- OPWDD will be providing further guidance in conjunction with the Justice Center on investigative training requirements



# Confidentiality of Investigations



## Reporting Deaths

- All programs **operated or certified** by OPWDD are required to report all deaths to the **JC**
- Deaths that are suspected reportable incidents of abuse/neglect must be reported to the Vulnerable Persons Central Register (VPCR) and also to the death reporting line at the Justice Center



## Reporting Deaths

- Deaths that are not suspected to be related to abuse/neglect are to be reported to the death reporting line at the JC only
- All deaths must be entered into the Incident Report and Management Application (IRMA) as Serious Notable Occurrences



## Reporting Deaths

- The QCC-100 must be submitted to the Justice Center within 5 working days. These are submitted via IRMA
- Autopsy reports will be submitted to the Justice Center and OPWDD.



## Investigation of Deaths by the Justice Center

- The Justice Center completes an administrative review of every death reported
- The Justice Center will complete an investigation into every death classified as abuse/neglect
- Provider agencies will be responsible to review/investigate



## MHL 16.34 process

- MHL 16.34 check is requested after SEL check, when a CBC is also being requested for the applicant
- Applicants are prospective employees and volunteers only (not FC providers, contractors, etc.)
- Prospective employer is not permitted to allow the applicant to have unsupervised contact with individuals until the results of the MHL 16.34 check are received.



## Reminder

- Agencies may hire an employee and the employee may begin working while awaiting the results of the MHL 16.34 check as long as they do not have unsupervised contact with individuals



## Mental Hygiene Law Section 16.34

- Will provide information to prospective employers about abuse & neglect history
- Supplements the check of the Staff Exclusion List (SEL) – abuse/neglect after June 30, 2013
- Requires a search of substantiated allegations of abuse and neglect from before June 30, 2013



## Requests for MHL 16.34 Checks

- Form OPWDD 151 Abuse/Neglect History Check & both sides of Form OPWDD 152 Applicant Information must be completed.
  - Print legibly
  - Do not use abbreviations for agency names listed in employment history
  - Agency should ensure it is complete before sending to us



## Requests for MHL 16.34 Checks

- Please include last name of applicant(s) in email subject line & the form being sent
- (ie: Form OPWDD 151 and 152 or OPWDD Form 153 Agency Response to OPWDD Request to Search Abuse/Neglect History)
- Please make sure a contact phone number is included in the email



## Requests for MHL 16.34 Checks

When returning the OPWDD 153

- make sure all appropriate questions are answered
  - If applicable abuse/neglect is found, the summary report must be completed
  - if an applicant is a re-hire with no other employment history, send a completed 153 along with the required 151/152 to expedite the process



OPWDD is implementing steps to improve the efficiency of this process

New email address:

[mhlcheck@opwdd.ny.gov](mailto:mhlcheck@opwdd.ny.gov)



What constitutes a  
“Reasonably diligent search”?



## Criteria for substantiated allegations that can be disclosed

- Must be from a program certified or operated by OPWDD
- (VO only - If applicant did not work in a certified program no need to search records)
- Must be for physical abuse, sexual abuse, psychological abuse or “serious neglect”



## Criteria for substantiated allegations that can be disclosed

- Past employer must decide if a substantiated neglect constitutes “serious neglect”
- “Serious neglect” means intentional acts or omissions that endanger the life or health of a person receiving services.
- Must be for an employee or volunteer only (e.g. not contractor, FC provider)



## Next steps when a record of substantiated abuse or neglect is found

- Did the prospective employee/volunteer engage in behavior that constituted abuse or serious neglect?
- Can information about the substantiated allegation be disclosed (previous slide)
- If yes to both, past employer prepares a “summary report.”



## Response to OPWDD from past employers

- Past employers send completed form to OPWDD within 10 working days
- If information about a substantiated allegation can be disclosed, a summary report for each substantiated allegation must also be sent



- OPWDD will collect information from all past employers
- OPWDD sends the results of the MHL 16.34 check to the prospective employer, including summary reports



- Prospective employer evaluates information and makes decisions about hiring & restrictions.
- OPWDD will NOT make a determination about hiring/not hiring
- OPWDD will maintain database to streamline responses to future requests about the same applicant.



## Additional Future Guidance and Training

- Memorandum on Notification to Subjects of Investigations of abuse/neglect  
and
- SCR check on Subjects of Investigations of Abuse/Neglect
- FAQs to be issued soon
- OPWDD Provider Training will be in October 2013 and will include additional Updates on the Justice Center



# Additional Questions:

[Quality.Improvement@opwdd.ny.gov](mailto:Quality.Improvement@opwdd.ny.gov)