

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

**Effective: Thursday, September 26, 2013**

### AMENDMENTS TO 14 NYCRR PART 625

**NOTE:** *This is an unofficial version of 14 NYCRR Part 625 based on emergency regulations effective September 26, 2013.*

#### **PART 625. EVENTS AND SITUATIONS THAT ARE NOT UNDER THE AUSPICES OF AN AGENCY**

##### **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.

**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.

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- (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

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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.

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**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);

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- (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.

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- (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).

**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.

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- (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.

**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.

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- (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:

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- (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

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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.