



Andrew M. Cuomo, Governor



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NYS Office For People With Developmental Disabilities

# Putting People First

## Changes in Incident Management

June 27, 2013



# Putting People First

- There will be a Justice Center webinar on Friday 6/28 conducted by the Justice Center on mandated reporting
- All agencies should have submitted the form for the authorized person to receive CBC information to the Justice Center. If this is not completed the agency will not be able to hire staff
- All agencies should have provided off hours contact numbers to the OPWDD Incident Management Unit. If you have not send to Incident.  
Management@opwdd.ny.gov



## Justice Center Posters

- Posters generated by the Justice Center will be sent to agencies for posting
- Please prioritize by sites with larger sites first and post in areas such as break rooms, etc.
- Eventually enough posters should be circulated to be at all sites



- ***Off hours notifications to the OPWDD Incident Management Unit (IMU) effective June 30, 2013***



Effective June 30, 2013, the OPWDD Incident Management Unit will implement a centralized on call system to receive off hours notifications and provide technical assistance to all provider agencies. Off hours notifications to IMU can be made in the following two ways;



## *Telephone Notification*

- Incidents which rise to the level of Reportable Incidents must be reported via phone during off hours
- A toll free number will be posted on the OPWDD website prior to June 30, 2013
- In addition, whenever technical assistance is required with an incident during off hours, this method of reporting to IMU should also be used to reach IMU on call staff.



## *Email Notification*

- Notifications of incidents which do not rise to the level of a Reportable Incident but for which immediate notification to OPWDD is required or for which technical assistance is **not** needed may be made by sending the following information to [OPWDD.Incident.Notifications@opwdd.ny.gov](mailto:OPWDD.Incident.Notifications@opwdd.ny.gov)

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# Revisions to Part 624



- Part 624 applies to all services in the OPWDD system.
- Part 624 only applies to incidents that occur under the auspices of the agency.
- Incidents that are NOT under the auspices of the agency are subject to the requirements of New Part 625.



## Voluntary Providers

Part 624 applies to:

- All certified settings
- All non certified settings
- Voluntary Providers must report to the Justice Center all Reportable Incidents that occur in certified settings



# State Operations Offices

Part 624 applies to:

- All certified settings
- All non certified settings
- All State Operations Offices must report all Reportable Incidents to the Justice Center



# Part 624-Categories of Incidents



## Reportable Incidents: Abuse and neglect

- Abuse/Neglect:
  - Physical abuse
  - Sexual abuse
  - Psychological abuse
  - Deliberate inappropriate use of restraints



## Reportable incidents: Abuse and neglect

- Abuse /Neglect
  - Use of aversive conditioning
  - Obstruction of reports of reportable incidents
  - Unlawful use or administration of a controlled substance
  - Neglect (no subcategories)



## Reportable Incidents

### Significant incidents

- Conduct between individuals receiving services (that would constitute abuse if by a custodian)
- Seclusion
- Unauthorized use of time-out
- Medication error with adverse effect



## Reportable Incidents

### Significant incidents

- Inappropriate use of restraints
- Other mistreatment
- Self abusive behavior with injury
- Missing person
- Choking with known risk



- Other Part 624 Incidents which do not fall under the Justice Center



## Serious Notable Occurrences

- Injury
- Unauthorized absence
- Death\*
- Choking with no known risk
- Theft/Financial Exploitation



## Serious Notable Occurrences (Continued)

- Sensitive Situation
- ICF Violation

## Minor Notable Occurrences

- Injury
- Theft/Financial Exploitation



# Death Reporting to the Justice Center

- Separate Reporting Line for Deaths.
- Must report within 24 hours of occurrence/discovery
- Subsequent information submitted within 5 working days via IRMA



# Requirements to Report Incidents to the Justice Center (JC) and OPWDD



- Part 624 reporting only applies to incidents that occur under the auspices of the agency.



## Reporting to the Justice Center (JC)

In order to be reportable to the JC, the incident must meet the following criteria:

- Meet the definition of a “reportable incident” in Section 624.3 – abuse, neglect or a significant incident; AND
- Occurred under the auspices of a program certified by OPWDD or operated by OPWDD



- Programs **operated** by OPWDD (all programs, whether certified and non-certified) for DDSOOs
  - Reportable incidents & deaths – reported to the JC & OPWDD
  - Notable occurrences – reported to OPWDD only



- Programs **certified** by OPWDD for Voluntary Providers
  - Reportable incidents & deaths – reported to the JC & OPWDD
  - Notable occurrences – reported to OPWDD only



## Certified facilities include:

- **Residential:**

- ICFs, IRAs (supervised and supportive), Community Residences (supervised and supportive), Family Care, , Integrated Residential Community, Specialty Hospital, Private schools, monthly community habilitation, Free-standing Respite.

- **Non-residential:**

- Certified Day Habilitation, Day Treatment, Sheltered Workshops, Day Training, Article 16 clinics. (Note: Day Habilitation services may be either certified or non-certified)



## Non-certified programs (non-state-operated, e.g. voluntary-operated)

- **Reportable incidents & deaths – reported to OPWDD only**
- **Notable occurrences – reported to OPWDD only**
- **Non-certified programs are all programs which do not have an operating certificate.**
  - Examples of non-certified programs are: non-certified Day Habilitation, MSC, PCSS, SEMP, prevocational services, HCBS waiver respite (except for free-standing respite), hourly community habilitation, family support services.



ICFs must comply with additional requirements established by CMS which are still in force

These will be reported as ICF Violations which are serious notable occurrences



- Immediate protections
  - Agencies are required to provide any needed immediate protections (e.g. taking the person to the ER, removing the alleged abuser).



## Investigation

- Agencies are required to immediately investigate all reportable incidents and notable occurrences that are delegated to them for investigation.
- The Justice Center or OPWDD may inform the agency that it will be conducting the investigation and relieve the agency of continuing with the investigation.

If so, agencies will be required to complete some immediate investigative tasks. These are yet to be identified, but will include actions to ensure evidence preserved.



## Investigation

- Certain individuals cannot be assigned to conduct the investigation because of potential conflict of interest
- Investigations must be completed within specified timeframes (with exceptions).
- Investigative reports must be in a specified format.



- Notifications
  - Various additional notifications are required depending on the circumstances, including notification to guardians/parents/advocates, MHLS, boards of visitors, Willowbrook parties, law enforcement, coroner, etc.



## Findings

- Findings are required for allegations of abuse or neglect.
- The allegation is either **substantiated** or **unsubstantiated**.
- A concurrent finding can also be made that a **systemic problem** caused or contributed to the occurrence (in addition to the finding of substantiated or unsubstantiated)



## Burden of Proof

- The burden of proof for a finding (substantiated or unsubstantiated) is preponderance of evidence



## 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 at the conclusion of the investigation. OPWDD will provide to the Justice Center.



# Training of Investigators

- Investigators must complete training provided by the Justice Center. This is being placed on the OPWDD Website. Upon completion, a certificate will be generated to the investigator for their own and agency records.
- This must be completed before being assigned any investigations on or after June 30, 2013



# 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 also provide a training that will be completed in one day.
- This should be attended by experienced investigators



# 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
  - After the conclusion of the investigation, the Incident Review Committee (IRC) must review and monitor the incident.
  - Committee review is limited when the JC or OPWDD conducts the investigation.



## Part 625

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



- If an event/situation occurs in a facility subject to the oversight of another state agency;
  - School
  - Hospital
  - Doctor's office

this must be documented and reported to that facility if it rises to the level of an incident in Part 624



## Part 625 Definitions

Agencies are required to intervene if the event/situation meets the definitions of:

- Physical abuse
- Sexual Abuse
- Emotional Abuse
- Active/Passive/Self Neglect
- Financial Exploitation



## Interventions may include:

- Notifications to family, SCR, APS, law enforcement, etc.
- Offers to make referrals to service providers, clinicians, other state agencies, etc
- Interview of the individual or witnesses
- Assessment or monitoring the individual
- Review of records
- Education for the individual about choices



**MOU with APS  
remains in force**



## Responsible Agency

- Residential Facility
- Certified Day Program
- MSC or PCSS
- HCBS waiver service
- FSS, ISS and/or article 16 clinic



**Agencies must report in IRMA**



## 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



## 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.



## Submitting a request

- Prospective employer submits 2 completed forms:
- Request for MHL 16.34 check and applicant information for MHL 16.34 check
- Request is made by sending forms to OPWDD IMU via secure email
- Forms will be on the OPWDD website
- Request includes applicant name, SSN & DOB
- Applicant information includes employment/volunteer history



## OPWDD initial steps

- OPWDD IMU determines if any past employment/volunteer exp. was in OPWDD system
- If no – immediate response to prospective employer – no known abuse/neglect history
- If yes - “reasonably diligent search” for records of substantiated abuse/neglect



## “Reasonably diligent search” process

- OPWDD IMU transmits request to search records to identified past employers in the OPWDD system
- Both DDSOOs and Voluntary providers will receive requests from OPWDD IMU
- 10 working days to send response back to OPWDD IMU



## 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)



## Criteria for substantiated allegations that can be disclosed (con't)

- State employees must have been found guilty in a disciplinary proceeding or there was a settlement that included admitted guilt



## 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)



## Response to OPWDD from past employers

- If yes to both, past employer prepares a “summary report.”
- 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.
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- OPWDD will NOT make a determination about hiring/not hiring
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- OPWDD will maintain database to streamline responses to future requests about the same applicant.



## Requirements to request checks of the Statewide Central Register of Child Abuse and Maltreatment (SCR)



- SCR checks are required for programs certified or operated by OPWDD (not a change)
- Not for non-certified services operated by voluntary providers
- Eff. June 30, SCR checks are required for applicants that will have regular and substantial contact with individuals of any age (not just children)



- SCR checks are required for new employees, volunteers, contractors, consultants, family care providers, adults in the FC home
- Results of the SCR check must be received before unsupervised contact with individuals is permitted



- Agencies need to register to be able to request SCR checks
- Register right away if not already registered
- See info on OPWDD website