



Andrew M. Cuomo, Governor

Laurie A. Kelley, Acting Commissioner

NYS Office For People With Developmental Disabilities

Putting People First

**Updates on the implementation
of the NYS Justice Center for
People with Special Needs
March 4, 2014**



NYS Office For People With Developmental Disabilities

Putting People First

**To Submit Questions during
VC email-**

Debra.Whiting@opwdd.ny.gov



Pre-employment Background Checks

New guidance document can be found on the OPWDD website on the Incident Management Page-

*OPWDD Required Background Checks
(February 2014)*



Additional Background Check administered by the Justice Center

- State Central Register (SCR) check for targets of abuse/neglect
- Form is found on the OPWDD website and must be submitted to the Justice Center for every target of abuse/neglect. This is to be submitted by the investigating entity
- Form must also be part of the investigative record submitted to OPWDD when an agency submits the completed investigation



Mental Hygiene Law (MHL) 16.34 OPWDD Background Check

As of 2/21/14 OPWDD has received **23,385**
history check requests and has issued
22,504 results

96% completion rate



Part 624 Reporting Requirements Notifications to OPWDD

- All reportable incidents and serious notable occurrences shall be reported immediately to OPWDD



Part 624 Reporting Requirements Notifications to OPWDD

- Immediate entry of initial information into the OPWDD Incident Report and Management Application (IRMA) shall not be sufficient to satisfy this requirement



Part 624 Reporting Requirements Notifications to OPWDD

- To report an incident during business hours, contact the OPWDD IMU Compliance Officer for your agency (found on the OPWDD website). If you cannot reach them, please call the main Incident Management Unit 1-518-473-7032 and someone will assist you.



Part 624 Reporting Requirements Notifications to OPWDD

- The OPWDD Incident Management Unit has an Off Hours On-Call System. Both Voluntary Providers and State Operations Offices must notify the IMU of Reportable Incidents and Serious Notable Occurrences.

Call (toll free) 1-888-479-6763



Part 624 Reporting Requirements Notifications to OPWDD

- Additional information on reporting of incidents is found on the Incident Management Page on the OPWDD Website



Provider Agency Off-Hours Contacts

- The Incident Management Unit keeps a record of off hours contact numbers for providers
- All providers should ensure current information has been supplied to the Incident Management Unit. This can be done by notifying an IMU Compliance Officer



Part 624 IRMA Requirements

- For reportable incidents and serious notable occurrences initial information shall be entered into IRMA within 24 hours of occurrence or discovery, or by close of the next business day, whichever is later.
- This must include information about the incident or occurrence which is required to create a new incident report in IRMA and any additional information available at the time.



Part 624 IRMA Requirements

- Additional information must be entered by the close of the fifth working day after the information became available except;



Requirements for reporting subsequent information in IRMA

- Subsequent information about immediate protections shall be entered into IRMA within 24 hours after the action is taken or by the close of the next business day, whichever is later.
- Information about notification to Law Enforcement shall be entered into IRMA within 24 hours of the report being made.



Reporting to Law Enforcement

- All allegations of physical and sexual abuse must be reported to local law enforcement.
- All possible crimes against an individual by a custodian must be reported to local law enforcement.



Requirements for reporting subsequent information in IRMA

- Agencies must comply with all requests by OPWDD for the entry of specific subsequent information.



Required Notifications to the Justice Center

- Facilities and programs that are operated or certified by OPWDD shall report all reportable incidents to the Vulnerable Persons Central Register (VPCR).
- Non-certified programs that are not state operated are not required to report to the VPCR.



Does every Mandated Reporter who witnesses an incident have to report to the Justice Center's VPCR?

All direct witnesses must report to the Justice Center. First line supervisors who witness or are notified of an incident must also report to the Justice Center.



Elder Justice

- All Intermediate Care Facilities (ICFs) must comply with the Elder Justice Act. Memorandum containing additional information can be found on the OPWDD Website.



Adult Abuse Reporting Law and MOU with APS

- OPWDD Memorandum of Understanding with Adult Protective Services is still in effect.



If an agency disagrees with classification of an incident by the Justice Center

- Please bring your concerns to the attention of the IMU Compliance Officer assigned to your agency.
- IMU will review the concerns and if appropriate will make a request to the Justice Center.



Timeframe for completion of investigations

Effective June 30, 2013, when the agency is responsible for the investigation, it shall be completed no later than 30 days after the incident or notable occurrence is reported to the Justice Center and/or OPWDD. An investigation shall be considered complete when the investigative report is completed.



Timeframe for completion of investigations

The agency may extend the timeframe for completion of a specific investigation beyond 30 days if there is adequate justification to do so. The agency shall document its justification for the extension in the 30 day update in IRMA.



Circumstances which may justify an extension include (but are not limited to):

- When an investigation is being conducted by an outside entity such as local law enforcement or the Justice Center.
- Delays in obtaining necessary evidence which are beyond the control of the agency (e.g. an essential witness is temporarily unavailable to be interviewed and/or provide a written statement).



NYS Office For People With Developmental Disabilities

Putting People First

Justice Center



Issues from the field for the Justice Center

- Concerns about interviews of potential witnesses being completed in a timely manner.
- Staff on leave (paid or unpaid) for long periods of time without investigative activity.
- Concerns by individuals and families about timely resolution.



Issues from the field for Justice Center

- What constitutes Obstruction?
- What does it mean for an agency to have category 4 substantiated? Do they go on a list at any point?
- Please explain concurrent findings.
- Do staff have the right to legal counsel when being questioned by the JC since it is a law enforcement entity?



Assessments for Substantial Diminution

OPWDD is working with the JC to develop guidelines and specific criteria for conducting these assessments.



False Allegation Guidance

Whenever a Mandated Reporter has reasonable cause to suspect a reportable incident involving a person with special needs, s/he is required to make a report to the VPCR immediately upon discovery.



False Allegation Guidance

Reasonable cause means that, based on the reporter's observations, training and experience, the reporter has a suspicion that a vulnerable person has been subject to abuse or neglect as described below. Significant incidents that may place a vulnerable person at risk of harm must also be reported.

Reasonable cause can be as simple as doubting the explanation given for an injury.



When the JC is conducting an investigation of Reportable abuse/neglect

The determination to return staff who are suspended or on administrative leave is made by the agency.



Categories of Reportable Abuse/Neglect and Staff Exclusion List (SEL)

Category 1-conduct is serious physical abuse, sexual abuse or other serious conduct by custodians and results in being placed on the Staff Exclusion List (SEL).



Categories and Staff Exclusion List (SEL)

Category 2-conduct by custodians that is not otherwise described in category one, but conduct in which the custodian seriously endangers the health, safety or welfare of a service recipient by committing an act of abuse or neglect.



Categories and Staff Exclusion List (SEL)

Category 2-conduct under this paragraph shall be elevated to category 1 conduct when such conduct occurs within three years of a previous finding that such custodian engaged in category 2 conduct. Reports that result in a category 2 finding not elevated to a category 1 finding shall be sealed after five years.



Other Categories

Category 3-abuse or neglect by custodians that is not otherwise described in categories 1 and 2. Reports that result in a category three finding shall be sealed after five years.



Other Categories

Category 4-conditions at a facility or provider agency that expose service recipients to harm or risk of harm where staff culpability is mitigated by systemic problems such as inadequate management, staffing, training or supervision.



Other Categories

Category 4- also shall include instances in which it has been substantiated that a service recipient has been abused or neglected, but the perpetrator of such abuse or neglect cannot be identified.



- For all incidents of Reportable Abuse/Neglect delegated to an agency to investigate, the agency must submit the full investigative record in a combined file to Incident.Management@opwdd.ny.gov.
- Files must be submitted via secure email.



Items which must be submitted

- OPWDD Form 158 Submission Form
- Notice to Target
- SCR Check Form
- Completed OPWDD Form 149 Required Investigative Report Format
- All supporting documentation

*Please note the investigative report must be entered into IRMA as well



What will agencies receive when an investigation of Reportable Abuse/Neglect is completed by the JC?

- Letter of determination from JC Office of General Counsel (OGC).
- A redacted investigative report.
- May receive a request for a Corrective Action Plan (CAP) to be completed.



What will agencies receive when an investigation of Reportable Abuse/Neglect is reviewed by the JC?

- Letter of determination from JC Office of General Counsel (OGC).
- May receive a request for a Corrective Action Plan (CAP) to be completed.



CAPs Submissions to the JC

- **Corrective Action Plans must be submitted to IMU.CAPS@opwdd.ny.gov including:**
- OPWDD Form 161 Corrective Action Plans- currently in development
- Supporting documentation for each corrective action



CAPs Submissions to the JC

- Corrective Action Plans must be submitted to OPWDD within 60 days of the date of the Notice to Provider of Investigation Determination from the JC Office of General Counsel.
- A memorandum with further guidance on this topic will be sent to the field in the near future.



Other Mistreatment

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 reasonably foreseeable potential to impair the health, safety, or welfare of an individual receiving services.



Reportable Significant Incident Conduct between Persons Receiving services

that would constitute abuse as described in paragraphs (1) through (7) of this subdivision if committed by a custodian, except sexual activity involving adults who are capable of consenting and consent to the activity;



Significant Incident

Is an incident, other than an incident of abuse or neglect, that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety, or welfare of a person receiving services.



Significant Incidents

- Significant Incidents investigations must be completed and incidents closed in IRMA by provider agencies in a timely manner.
- A status in IRMA of “Closed” or “Closed with Follow-up” will generate required information back to the JC.



Role of the Incident Review Committee (IRC)

When the JC or OPWDD OIA completes an investigation the role of the IRC is limited to matters involving compliance with the reporting and notification requirements of Part 624, protective and remedial actions taken, operational concerns, and quality of services provided.



NYS Office For People With Developmental Disabilities

Putting People First

Upcoming Training

Please see OPWDDs catalog of training programs for upcoming Keys to Completing a Thorough Investigation and Investigative Report during 2014.



NYS Office For People With Developmental Disabilities

Putting People First

QUESTIONS