



NYS Office For People With Developmental Disabilities

# Putting People First

## The Part 624 Handbook

A HANDBOOK FOR ALL OPWDD PROVIDERS



### **REPORTABLE INCIDENTS, SERIOUS REPORTABLE INCIDENTS, AND ABUSE**

The Reporting of Incidents and Abuse Allegations as Required by New York State  
in Conformance with Part 624 of 14NYCRR

Published by the OPWDD Statewide Standing Committee on Incident Review



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# **SECTION I-----Purpose of The Handbook and How To Use It**

In order to support OPWDD's mission, OPWDD requires that all service providers in the OPWDD system adhere to Title 14 of New York Codes, Rules and Regulations Part 624 (14 NYCRR Part 624), a regulation designed to protect people receiving OPWDD services.

Part 624 sets forth the minimum requirements for the management of incidents and abuse allegations. This Manual has been developed to assist everyone to understand the intent and direction of the Regulation, as well as the interrelationship of the various administrative entities within the OPWDD system.

This Manual replaces the prior Part 624 Handbook which was issued in 2005 and all updates to the 2005 Handbook. In addition, the guidance in this Handbook supersedes any contradictory guidance issued in OPWDD guidance documents, including administrative memos, prior to January 26, 2010.

It is the hope and expectation of OPWDD that this Handbook will enable people to interpret various situations in relation to the expectation of Part 624 and apply the information to specific situations they encounter. It is impossible to anticipate every variable, every question, every situation that causes confusion, but perhaps this Handbook will provide enough insight as to the intent of the Regulation to enable people to make sound and conscientious decisions.

For Providers - The Handbook will provide both general and specific information to an agency's administration, as well as to its line staff. It contains information and guidance which agencies may use when developing their own policies or procedures, training materials, etc., and in the management of its incident/abuse process.

For DDSOs - The Handbook is intended to provide DDSOs with clarification as to their role in the incident/abuse reporting process as well as to provide staff with insight as to the intent of the Regulation to enable them to respond to the many questions and problems that arise in relation to the implementation of the Regulation.

For Central Office - The Handbook will provide Central Office administrators and staff with a total picture of the incident/abuse reporting process.

The organization and contents of the handbook have been developed to reflect the issues and problems that have been identified to OPWDD since Part 624 was originally implemented on February 17, 1986 and revised as of June 14, 1995 and in 2007-2008. The major portion of this Handbook (Section II) addresses each standard in the current Regulation, standard-by-standard.

Each standard is stated on a separate page, with commentary material following. Some standards are, at this time, without commentary; they have been included to facilitate the addition of notes, as appropriate, by the user.

Sections III & IV provide links to the Forms OPWDD 147 and OPWDD 148.

Sections V, VI and VII give a brief overview of the role of the DDSOs, Central Office and outside agencies, respectively.

Section VIII discusses the relationship of Part 624 to non-certified or non-OPWDD-operated programs.

The Appendix provides material related or pertinent to the incident/abuse process.

Readers should be aware that enforcement of the requirements of Part 624 is only one component of OPWDD's commitment to reducing the number of incidents. OPWDD also has instituted an aggressive

campaign to reduce abuse and neglect by strengthening the relationships between the individuals receiving services and those that care for them. (See the OMRDD Press release, 6/18/2008 at [www.opwdd.ny.gov](http://www.opwdd.ny.gov))

*For further information on the purpose of this Handbook or how to use it, please contact your local DDSO Incident Coordinator or forward all questions/comments to the Statewide Committee on Incident Review at [opwdd.scir@opwdd.ny.gov](mailto:opwdd.scir@opwdd.ny.gov).*

## **SECTION II-----Commentary**

## 624.1 Applicability

**624.1(a) This Part relates to services for persons (see Glossary) with developmental disabilities (see Glossary) and applies to persons receiving services in any facility (see Glossary) operated or certified by the Office For People With Developmental Disabilities, hereinafter referred to as “OPWDD.”**

### Commentary:

- A “facility” is defined in Part 624.20(y) as:  
  
*“...a developmental center or any other site certified by OPWDD in which either residential or non-residential services are provided to persons with developmental disabilities (e.g., community residence, including an individualized residential alternative [IRA]; intermediate care facility [ICF/DD]; day treatment; workshop; clinic; family care home or a day habilitation site).”*
- As a “facility” operated by OPWDD, each developmental center is required to comply with this regulation.
- Certified facilities are to report all events which meet the Part 624 definitions of incident or abuse involving any person receiving services from that facility.
- If a person with a developmental disability attends an OPWDD certified facility, but resides in a facility under the auspices of another agency (e.g., OMH, DSS, SED) and is involved in an incident or has allegedly been abused at this agency’s residential site, then this agency would be considered as the lead agency and the procedures of the lead agency should be followed. However, in all cases, the OPWDD facility/agency should monitor the situation and the DDSO should be notified and kept apprised of the status of the case, as appropriate.
- If a reportable incident, serious reportable incident or alleged abuse should also be a possible crime, the chief executive officer of the provider of services where the crime has alleged to have occurred is to be notified as soon as possible, but at least within three working days unless that chief executive officer is alleged to have committed the crime (also see subdivisions 624.3(g) and 624.6(e)).
- If an agency provides services to others who do not have a developmental disability (e.g., agency operates facilities certified by the Office of Mental Health) or people who do not have a disability are employed in the same environment (e.g., workshops), this regulation is not applicable to them. However, if OPWDD is paying for services to an individual then Part 624 applies.
- This regulation is applicable to Home- and Community-Based (HCBS) Waiver Services and to services which are funded through contract by OPWDD. See subdivision 624.1(d) for further information.

**624.1(b) In addition, this Part is controlling over any other Part of this Title insofar as the reporting, investigation (see Glossary), review or monitoring of incidents, allegations (see Glossary) of abuse to persons receiving services or other potentially harmful events related to persons receiving services, may be concerned, unless said Part is more restrictive and specifically states that it is controlling.**

Commentary:

- While regulations for specific types of facilities may have referenced incident/abuse reporting and management, the promulgation of Part 624 meant that, should there be any conflict in existing regulations, Part 624 would supersede those regulations.
- If a regulation written after the promulgation of Part 624 is to contain requirements more restrictive than Part 624, the new regulation should explicitly state that this is the case.

**624.1(c) This Part applies to any Developmental Disabilities Services Office (see Glossary), hereinafter referred to as a DDSO, operating a developmental center or certified facility or any voluntary (not-for-profit) agency operating a certified facility. When the term “agency” is used herein, this shall mean the requirement(s) is applicable to both DDSOs and voluntary agencies.**

Commentary:

- Though DDSOs function as the administrative unit of OPWDD for coordinating the overall service delivery system (both State-operated and voluntary) within a particular geographic area, it is also the manager of the State-operated facilities and services provided by the DDSO. In that capacity, the requirements set forth in the regulation as being applicable to an “agency” also apply to the State-operated service delivery system of the DDSO.

**624.1(d) Pursuant to Section 635-10.1 (c) of this Title, Home and Community-Based Waiver Services (HCBS) providers shall comply with the requirements of this Part.**

Commentary:

- Subdivision 635-10.1(c) states:

*“In addition, all authorized HCBS waiver providers shall comply with the requirements of Parts 624 and 633 of this Title.”*

Therefore, situations which meet the definition of reportable incident, serious reportable incident or alleged abuse which occur to people receiving HCBS waiver services, even in non-certified settings, and which are known to a provider of HCBS waiver services, are to be reported and follow-up activities must occur.

- A “non-certified setting” is a place where services are delivered, but that place does not carry OPWDD certification. A person’s own home would be a “non-certified” setting. Another example of services delivered in a non-certified setting would be day habilitation services provided in the community, also known as “day habilitation without walls.”
- If HCBS waiver services are being provided to a person who resides in or attends a certified facility, strict adherence to Part 624 is required and “facility” procedures are to be followed.
- If, while receiving HCBS waiver services at a non-certified location, a situation (which meets the definition of a reportable incident, serious reportable incident or alleged abuse) occurs to a person who resides in an OPWDD-certified facility, the residential facility assumes the responsibility for handling the situation (also see paragraph 624.5(d)(1)).
- If a reportable incident, serious reportable incident or alleged abuse occurs in which staff of any provider of HCBS waiver services are directly involved, the situation is to be handled as though the event occurred in a facility, regardless of where the event occurred.
- When HCBS waiver services are provided to persons who do not live in a certified facility and the services are delivered in the person’s own home or another non-certified location, the service provider should utilize the agency’s current process with regard to record keeping, investigations, review by the standing committee and monitoring.
- When HCBS waiver services are provided to persons who do not live in a certified facility, and the services are delivered in the person’s own home or another non-certified location, it is suggested that:
  - At the time of intake, the person, family or other involved parties should be advised of the requirements of Part 624 with regard to staff recording those situations of which they are aware that meet the definition of a reportable incident, serious reportable incident or alleged abuse; of the requirement for the situation to be assessed and, possibly, investigated; of the requirement that any child abuse be reported to the Statewide Central Register of Child Abuse and Maltreatment; and of the requirement that any crime

committed against a person receiving services be reported to the local law enforcement authority (Mental Hygiene Law [MHL] 16.13).

- The person receiving services, their family, or other involved parties should be provided with information as to the policies and procedures that will be followed when a situation that meets the definition of reportable incident, serious reportable incident or abuse is known to the waiver service provider.
- All situations that meet the definition of a reportable incident, serious reportable incident or abuse that are known to a provider of HCBS waiver services should be recorded in a uniform manner as established by the agency receiving the reports and acted upon as the situation dictates. For instance:
  - Assess the situation (e.g., is there an indication of a pattern of inappropriate care at home, inability of a person living alone to cope with demands of daily living, possible abuse, unsafe physical environment?).
  - Report possible crimes committed against a person receiving services to appropriate law enforcement authorities.
  - Report alleged child abuse to the New York Statewide Central Register of Child Abuse and Maltreatment by telephone.
  - For allegations of abuse of individuals age 18 and older, investigate and intervene as necessary. The primary responsibility for intervention in these situations rests with the provider and not with the Local Department of Social Services – Protective Services for Adults program. Please refer to Appendix 7 of this handbook. If services are being provided by more than one agency, refer to paragraph 624.5(d)(2) for help with determining which agency is responsible.
  - Advise the advocate and service coordinator (case manager) of the situation.
  - Determine, with input from the service coordinator, if support services or other assistance (e.g., counseling, sexuality counseling or education, psychiatric or psychological services, education on positive care-giving) should be provided to the person, his or her family, or others, whether by the agency or arranged for through the service coordinator.
  - Advise other providers of services of the situation.
  - Immediately notify the DDSO of any situation reported to law enforcement authorities or Local Department of Social Services Child Protective Services or Protective Services for Adults program.
  - Notify the DDSO of any potentially sensitive situations.

NOTE: If the provider of services does not have the administrative structure to facilitate the necessary monitoring of the situation and review by a Standing

Committee, the situation should be brought to the attention of the DDSO for technical assistance and guidance.

- When those providing HCBS waiver services in non-certified settings report situations that meet the definition of a reportable incident, serious reportable incident or alleged abuse to a supervisor, the ground-work is laid for monitoring the situation so as to protect the person, to the extent possible, from other events that could be avoided had there been appropriate intervention or assistance, if a pattern had evidenced itself. It would also be prudent to note other situations that are not as egregious for the same reason.
- See Section VIII of this handbook, *Application for Non-Certified Programs or Services*, for further information on the management of untoward events when other non-certified services (non-waiver) are being provided.

**624.1(e) The requirements of this Part are also applicable to services for persons with developmental disabilities (see paragraph 1.03(4) of the Mental Hygiene Law) which are funded through contract by OPWDD.**

Commentary:

- For many years, OPWDD required services which are funded through contract to comply with Part 624 based on provisions of the contract. Previous regulations only explicitly applied to services which were certified by OPWDD (facilities) or HCBS waiver services. This provision (added in 2007) makes it clear in the regulation that services funded by contract must also comply with Part 624.
- Services funded by contract include family support services, individualized support services, and Medicaid Service Coordination.
- Services covered by this provision only include those services which are considered to be “services for the mentally disabled” as defined in the Mental Hygiene Law, paragraph 1.03(4). This term is defined in the statute as “examination, diagnosis, care, treatment, rehabilitation, or training of the mentally disabled.”
- Contractual services which cannot be considered “services for the mentally disabled” are not subject to the requirements of Part 624. This includes services such as cleaning, maintenance and snow removal.
- The provisions of Part 624 are applicable to contract transportation delivered by registered providers (as defined in regulations governing criminal history record checks, subdivision 633.22(n)). However, generally, compliance with Part 624 in contract transportation setting is the responsibility of the DDSO or voluntary agency which contracts for the service. The contractor would be responsible for ensuring that required reporting occurs and for cooperating with investigators and implementing recommendations. However, investigation, notification, review by a standing committee, etc. are the responsibility of the DDSO or voluntary agency.
- Similarly, in other situations in which a contractor is delivering “services for the mentally disabled,” the DDSO or voluntary agency may generally be responsible for compliance with Part 624. For instance, this could include a contractor delivering physical therapy.
- In contracted services such as Medicaid Service Coordination and family support services, the agency providing the services is generally responsible for compliance with Part 624. Smaller agencies may request the assistance of the DDSO in complying.
- The use of the term “facility” throughout Part 624 should be read to be inclusive of contractors and other non-certified services. While technically non-certified services are not “facilities,” this usage predates the existence of widespread non-certified services in the OPWDD system and should not be read literally to apply only to facilities with an operating certificate.

## 624.2 Background and Intent

- 624.2(a) The purposes for reporting, investigating, reviewing, correcting and/or monitoring certain events or situations are to enhance the quality of care provided to persons with developmental disabilities who are in facilities, to protect them (to the extent possible) from harm, and to ensure that such persons are free from mental and physical abuse.**

### Commentary:

- The safety and welfare of people receiving services is the overall focus of this regulation.
- Staff should not view the process as retaliatory.
- Agencies need to take the above two considerations into effect when developing their agency/site specific policy/procedure manual and training material. When done correctly, the process should be supportive of staff as well as provide protection to people when receiving services.
- A good process will enable management to feel confident that they can encourage persons to explore the least-restrictive alternatives while management is ensured of a safe environment.
- As used in this regulation, the phrase “reporting, reviewing, correcting and monitoring” incorporates:
  - Putting the known information in writing as a “report.”
  - Looking into a situation with whatever degree of intensity is necessary to ascertain the facts.
  - Taking corrective actions, whether related to the environment, staffing, training, protection of other individuals, revision of a plan of services, etc.
  - Examining the process and outcomes by a designated group to evaluate actions taken and make recommendations.

**624.2(b) The primary function of the reporting of certain events or situations is to enable a governing body (see Glossary), executives, administrators and supervisors to become aware of problems, to take corrective measures, and to minimize the potential for recurrence of the same or similar events or situations. The prompt reporting of alleged abuse can ensure that immediate steps are taken to protect persons receiving services from being exposed to the same or similar risk.**

Commentary:

- If events or situations are not reported to management, it is difficult to effect corrective measures in a timely manner. For example, if a person is injured on a broken step and repairs to the steps are not made promptly; many other injuries may occur that could have been prevented.
- It may be difficult to report a situation which does or may involve a co-worker (or others) in alleged abuse of a person receiving services; however, prompt reporting can possibly resolve the situation effectively. In addition, the safety and welfare of persons receiving services should always be the primary concern.
- When those providing waiver services in non-certified settings report situations that meet the definition of a reportable incident, serious reportable incident or alleged abuse to a supervisor, the ground-work is laid for monitoring the situation so as to protect the person, to the extent possible, from other events that could be avoided had there been appropriate intervention or assistance.

**624.2(c) The reporting of certain events or situations in an orderly and uniform manner facilitates identification of trends, whether within a facility or class of facilities, by one or more agencies, or on a statewide basis, which ultimately allows for the development and implementation of preventive strategies.**

Commentary:

- Each agency is responsible for developing its own policies/procedures which assist staff in the correct reporting procedure and assist management in the overall administration of the agency.
- An efficient management will ensure the collection of useful data, which, when put to use, can provide trend analysis.
- Trend analyses are viewed as useful analytical techniques for sorting out patterns which may indicate systemic problems which call for broad, overall solutions versus those occurrences of an isolated and unpredictable nature.
- Trends may be analyzed by each individual facility or as part of an agency's overall delivery system. The method is up to the agency. However, such analysis should be at a level of detail sufficient to identify trends at a given facility.
- The collection of data and the development of trends in those non-certified settings where waiver services are being provided are to be done. This information is to be kept separate from the data and trends analysis done for facilities.

**624.2(d) It is the intent of this Part to require a process whereby those significant events or situations which endanger a person’s well-being while in or under the auspices of a certified facility, defined in Section 624.4 of this Part as “Reportable Incidents” or “Serious Reportable Incidents” are reported, investigated, reviewed, and corrective actions are taken as necessary.**

Commentary:

- The regulation delineates those events or situations that OPWDD considers, at a minimum, to be significant enough to require consistent processing in a formal and intensive manner, in accordance with its regulations.
- There are many other events or situations which occur, which do need monitoring, but the how and wherefore have been left up to each agency.
- The term “under the auspice” in this subdivision is used in the same manner as in paragraph 624.5(d)(1). The definition in the glossary (Section 624.20(j)) does not apply here.

**624.2(e) It is the intent of this Part to require a process whereby an allegation (see Glossary) of abuse, as defined in Section 624.4 of this Part, while a person is in or under the auspices of a certified site, is reported, investigated or reviewed and corrective actions taken as necessary.**

Commentary:

- If a person resides in or attends a facility operated or certified by OPWDD, situations that meet the definition of a reportable incident, serious reportable incident, or abuse are to be reported and recorded by the facility, even if the situation occurred at another location (e.g., the person's home). The situation will then be investigated (to the extent possible or by outside authorities), reviewed and monitored by the agency.
- The regulation specifies those actions that OPWDD considers to constitute abuse of a person receiving services.
- There are other statutory and regulatory requirements that must be met relative to the oversight by other parties (Commission on Quality of Care & Advocacy for Persons with Disabilities, Mental Hygiene Legal Service). A uniform process facilitates this.
- The term "under the auspices" in this subdivision is used in the same manner as in paragraph 624.5(d)(1). The definition in the glossary (Section 624.99) does not apply here.

**624.2(f)** It is not the intent of this Part to mandate that every potentially harmful event, occurrence, or situation attributable to or involving a person receiving services in certified facilities such as an aggressive behavior problem (including the need for psychiatric services elsewhere), illness, medication problems, inappropriate living arrangements or conditions, or inappropriate social behavior, be recorded as a reportable incident or serious reportable incident. It shall be the responsibility of the agency (see Glossary) to determine if and how events or situations involving persons receiving services, other than reportable incidents, serious reportable incidents or allegations of abuse (as defined in section 624.4 of this Part), are to be documented, processed, corrected (including corrective actions to be taken for the protection and/or safety of all those exposed to potential harm), monitored or analyzed for trends through the development of policies and procedures that are in compliance with 14 NYCRR; and to develop a mechanism for review to ensure compliance with such policies and procedures.

Commentary:

- While the occurrences set forth in the regulation represent the minimum that OPWDD requires to be processed as described in the Regulation, it does not represent the minimum that an agency is required to address relative to other occurrences. In addition to behavior problems, this includes other occurrences such as, but not limited to, the repeated illness of one or more persons, infections/epidemics, fires, employee problems, violation of facility rules, or problems encountered due to a person's living environment.
- Each agency is required to identify those situations which it deems important to monitor, even though the situation does not meet the definitions contained in Part 624.4. Agency policy/procedure, administrative memorandum, etc., should define these "*agency reportable incidents*" and the reporting, processing, monitoring, and analysis of them.
- The determination of what must be reported as an *agency reportable incident* is left entirely to the discretion of the agency, but should be decided, based upon such factors as the population served (abilities/disabilities/needs), physical environment, program focus and needs. However, it should be remembered that ensuring the safety and welfare of individuals is paramount in making these decisions. Thus, one facility (or unit) with a medically fragile population may require that every injury, no matter how slight, must be reported and that the person must be examined by a nurse, with a complete report written on the agency's incident reporting form. Another facility (or unit) with more independent people may only require that slight injuries be cared for by a person trained in first aid, and that such injuries need only be logged on a master sheet and reviewed periodically.
- Occurrences of behavior problems which may jeopardize the safety of the person or others may be considered as *agency reportable incidents*. When the behavior results in a situation which meets the regulatory definition of a reportable incident or abuse, then it is to be reported in accordance with Section 624.5. However, the incident/abuse reporting process should not be the mechanism to monitor all situations of this nature.
- Other situations, which may be considered as *agency reportable incidents*, are such things

- as injuries that do not come up to the level of seriousness as defined in Part 624, tardiness, violation of facility or agency rules; behavioral outbursts or inappropriate social behavior.
- Staff should be trained to observe and identify the type of events that may be important to supervisors and administrators.
- If a person is in need of psychiatric services elsewhere (a psychiatric center, psychiatric unit of a hospital), this, in and of itself, does not constitute a reportable or serious reportable incident. The need for hospitalization because of illness (physical or mental) is not an incident. Hospitalization for an injury or medication error is reportable as an incident in accordance with Part 624.
- Whenever situations occur and corrective actions are taken, these corrective actions must address the behavior of the person directly involved in or causing the situation. In addition, it is also necessary to address the risk of harm to others and to take actions for their protection and/or safety.
- Those providing HCBS waiver services in a non-certified setting should make note of these types of events and advise others providing HCBS waiver services of those situations that might impact upon the services being delivered. The service coordinator (case manager) should be included anytime such notification is made.

**624.2(g) It is the intent of this Part to require a process whereby all serious behavior problems are recorded, reviewed by appropriate parties and a record maintained of actions taken. However, reporting through the incident/abuse process shall only occur when the behavior problem results in an incident or an allegation of abuse as defined in this Part.**

Commentary:

- The more serious/difficult behavior problems must be recorded and tracked, but the incident/abuse reporting process is not the appropriate method.
- Agencies are expected to record and monitor all behavior problems.
- The incident/abuse reporting process is used when the behavior problems result in an event that meets the definition of a reportable incident, serious reportable incident or abuse.
- The most appropriate entity at the agency to deal with behavioral issues is the team working with the person with a behavioral problem. However, there is nothing to preclude asking for the input of the standing committee that reviews incidents/abuse on service plans or corrective action plans proposed by the team which addresses the protection or safety of others.
- If a person receiving HCBS waiver services evidences behavior problems that were not identified in the ISP but which can interfere with the delivery of services under this plan, the service coordinator (case manager) is to be notified.

**624.2(h) It is the intent of this Part to require a process whereby the governing body ensures the effectiveness of the identification, recording, investigation, review and corrective actions with regard to events or situations involving persons receiving services referenced within this Part. This shall be achieved through the establishment of the governing body's own protocol, which may include, but shall not be limited to: regular review of the minutes of the standing committee, which reviews and monitors reportable incidents, serious reportable incidents and allegations of abuse and periodic attendance at that committee's meetings.**

Commentary:

- Governing bodies are charged with the oversight of all facilities and services under their jurisdiction. Thus, there should be a mechanism whereby this group is informed of significant events on a regular basis. This will enable the governing body to develop strategies that ensure a safe environment at all the facilities and services under their jurisdiction.
- It is necessary that the governing body be fully aware of its responsibility and assumes some sort of significant oversight role in the incident/abuse reporting process.
- The regulation only makes suggestions as to how the governing body can involve itself in the process of incident/abuse management. The Regulation requires the governing body to develop its own methods to achieve this.
- It would be appropriate for a member of the governing body to be a member of the standing committee (see subparagraph 624.7(d)(3)(v)).
- It would be appropriate for the governing body, or a delegated sub-committee, to review standing committee minutes on a regular basis.
- It would be appropriate for governing body members to sit in on the standing committee meetings or be a participating member.
- Governing bodies should be made aware that any such information reviewed must be kept confidential. If parents/guardians are members of the governing body, they should be made aware that should clinical needs indicate that parts of their offspring's records be withheld, this need should be observed. Their role on the governing body would not supersede that of being a parent in this instance.

**624.2(i) It is the intent of this Part to hold the governing body and the chief executive officer (see Glossary) responsible for the management of incidents and alleged abuses. However, the chief executive officer may designate a senior staff member (see Glossary) or members (such as a program administrator - see Glossary) to assume specified responsibilities to facilitate the day-to-day process, and these designations shall be set forth in writing in agency policy/procedure and made known to all staff or others with a need to know.**

Commentary:

- Regardless of how incidents and abuse allegations are handled on a day-to-day basis, the ultimate responsibility for ensuring the safety and protection of the persons being served lies with the chief executive officer and the governing body.
- While it is understandable that a chief executive officer cannot be directly involved in every serious reportable incident or abuse allegation, best practices show that they are advised immediately of the most egregious situations and that they receive regular summaries of other situations.
- If a chief executive officer delegates the overall day-to-day management of the incident/abuse system to another or several employees of the agency, any employee so designated should be a member of the senior staff.
- All staff should be made aware of the agency's incident/abuse reporting procedures, who needs to be contacted, and how to make those contacts. Others that should be aware of this information are parents, guardians, correspondents, advocates, service coordinators (case managers) and providers of non-certified services. This information should be provided in writing.

**624.2(j)      Though failure on the part of an agency/facility to provide humane care and treatment may not meet the definition of a reportable incident, serious reportable incident or abuse, as defined herein, OPWDD has, pursuant to statute, the authority to investigate or cause the investigation of conduct, performance and/or alleged neglect of duty. Whether such situations reflect the philosophical ideology or orientation of an agency or reflect a lack of sensitivity to the issues at hand, does not minimize the responsibility and prerogative of OPWDD to investigate and/or promote recommendations for changes when seen as being in the best interest of persons receiving services.**

Commentary:

- While each agency is empowered and mandated to investigate incidents or abuse allegations brought to its attention, OPWDD has the responsibility and right to investigate any situation brought to its attention which it considers might jeopardize the health, safety or welfare of the individuals at the facility, whether or not reported as a reportable incident or abuse allegation. Such investigations may be conducted by the DDSO or by other OPWDD staff.
- It must also be understood that it is possible for an agency, by its own philosophical/administrative direction, to abuse persons receiving services. For example, enforcing “house rules” which are not individualized and are restrictive and personnel policies which do not allow adequate staffing to meet the needs of the person. Should it be alleged that such a situation does exist, the agency must be aware that it may be subject to an investigation of abuse as a result of any allegation brought to the attention of the oversight bodies, such as OPWDD (whether at the DDSO or Central Office level) or the Commission on Quality of Care & Advocacy for Persons with Disabilities (CQCAPD).

**624.2(k) It is the intent of this Part to require a process for facilities that is in full compliance with the provisions of Section 29.29 of the Mental Hygiene Law.**

Commentary:

- Section 29.29 of the Mental Hygiene Law requires a “patient care and safety team.” The standing committee convened pursuant to Section 624.7 will satisfy this requirement.
- Chapter 24 of the Laws of 2007 (Jonathan’s Law) amended MHL Section 29.29 so that it applies to all facilities. Prior to Chapter 24, Section 29.29 only applied to “departmental facilities” (i.e. state-operated facilities).
- The 2007 amendments to Part 624 added this provision to eliminate any confusion about the interpretation of the statutory language predating and added by Chapter 24.
- If an agency is in full compliance with Part 624, OPWDD considers that it is in full compliance with MHL Section 29.29. For instance, it is not necessary to specify that a standing committee is a “patient care and safety team.”

### **624.3 Statutory Authority**

- (a) Section 13.01 of the New York State Mental Hygiene Law establishes that New York State has responsibility for the comprehensively planned care, treatment and rehabilitation of New York State’s citizens with developmental disabilities.**
- (b) Section 13.07(c) of the Mental Hygiene Law establishes that OPWDD shall have responsibility for seeing that persons with developmental disabilities, who are receiving care and treatment, have their personal and civil rights protected.**
- (c) Section 13.09(b) of the Mental Hygiene Law grants the commissioner of OPWDD the authority to adopt rules and regulations necessary and proper to implement any matter under his or her jurisdiction.**
- (d) Section 13.21(b) of the Mental Hygiene Law requires the reporting of every complaint of abuse or mistreatment in a developmental center (see Glossary) to its board of visitors and to the Mental Hygiene Legal Services (see Glossary); and notifying the district attorney or other appropriate law enforcement officials, if it appears that a crime may have been committed.**
- (e) Section 13.33 of the Mental Hygiene Law empowers the board of visitors of State operated facilities to investigate all cases of alleged abuse or mistreatment charged against an employee and to interview persons receiving services, employees of the facility or family care providers in pursuit of such investigations where such alleged abuse or mistreatment took place.**
- (f) Section 16.01 of the Mental Hygiene Law enables the commissioner to regulate and assure the consistent high quality of services provided within the state to persons with developmental disabilities.**
- (g) Section 16.13 of the Mental Hygiene Law requires providers of services to notify the district attorney or other appropriate law enforcement officials and the commissioner as soon as possible, but at least within three working days, if it appears that a crime may have been committed against a person receiving services. It also requires that if there is reason to believe that the crime may have occurred in a facility or program of any other service provider licensed, certified, funded, or operated by a State agency (see Glossary), the chief executive officer of such other provider of services shall be notified as soon as possible, but within three working days, though this requirement is waived if the provider of services is alleged to have committed the crime.**
- (h) Sections 16.11 and 16.13 of the Mental Hygiene Law authorize the commissioner or an authorized representative to conduct investigations and inspections and permit review of a facility and all its books and records.**
- (i) Section 16.13 of the Mental Hygiene Law requires holders of operating certificates issued by the commissioner to cooperate during inspections by permitting review of a facility and all its books and records.**
- (j) Section 16.17 of the Mental Hygiene Law authorizes the Commissioner to revoke, suspend or limit an operating certificate for failure to comply with the provisions of applicable**

statutes, rules or regulations; and permits the removal of any or all persons receiving services if there is a situation that poses imminent danger to the health or safety of any person.

- (k) Section 16.19 of the Mental Hygiene Law addresses the confinement, care and treatment of persons who have a developmental disability; and empowers the commissioner to cause an investigation to be made into any situation when there is reason to believe that a person with a developmental disability is being detained or given inadequate, cruel, or unsafe care by anyone.
- (l) Section 29.29 of the Mental Hygiene Law requires the compilation and analysis of incident reports in facilities and the submission of aggregated information to the State Commission on Quality of Care & Advocacy for Persons with Disabilities on at least a semi-annual basis; composition of a committee to review incidents within facilities is also specified.
- (m) Article 33 of the Mental Hygiene Law establishes the basic civil rights pertaining to persons receiving services for mental disabilities. Section 33.13 establishes standards for clinical records and confidentiality.
- (n) Section 33.03 of the Mental Hygiene Law establishes that each person receiving services shall receive care and treatment that is suited to his or her needs and skillfully, safely and humanely administered with full respect for his or her dignity and personal integrity.
- (o) Section 33.23 of the Mental Hygiene Law requires notification to specified parties of certain incidents that occur at a facility.
- (p) Section 33.25 of the Mental Hygiene Law requires the release of records and documents pertaining to allegations and investigations of abuse at a facility to specified parties.
- (q) Section 41.41 of the Mental Hygiene Law ensures each person residing in a community residence has the right to be free from physical or psychological restraint or pressure.
- (r) Section 45.19 of the Mental Hygiene Law requires the prompt reporting of any allegations of abuse or mistreatment of a person receiving services to the State Commission on Quality of Care & Advocacy for Persons with Disabilities.
- (s) Article 47 of the Mental Hygiene Law describes the Mental Hygiene Legal Service and its functions, powers and duties.
- (t) Article Six, Title Six of the Social Service Law, Child Protective Services, requires the reporting of suspected child abuse or maltreatment to a statewide register.

Commentary:

- OPWDD, as a matter of course in writing its regulations, includes a section that sets forth those statutes that authorize OPWDD to develop specific regulations that require the promulgation of regulations, or that impact upon the regulations themselves.

- The above referenced items refer to specific sections of the Mental Hygiene Law or Social Services Law.
- Copies of any of the referenced items can be requested from the Regulatory Affairs Unit of OPWDD. Contact RAU either by e-mail – [rau.unit@opwdd.ny.gov](mailto:rau.unit@opwdd.ny.gov) or by mail – OPWDD, RAU, 44 Holland Avenue, Albany, NY 12229.
- Copies of the New York State Mental Hygiene Law (3 volumes) or Social Services Law can be ordered through:

Thomson/West  
50 W. Kellogg Blvd.  
St. Paul, MN 55102  
<http://west.thomson.com>

In addition, the NYS Mental Hygiene Law and Social Services Law can be accessed at no charge through the Internet as follows:

<http://assembly.state.ny.us>

Click on: Legislative Information (under Bill Search)

Click on: New York State Laws

Scroll down and click on: MHY Mental Hygiene or SOS Social Services

## 624.4 Reportable Incidents, Serious Reportable Incidents and Abuse Defined

**624.4(a)** In relation to a facility (see Glossary), reportable incidents, serious reportable incidents and abuse are those events which, in accordance with the requirements of Section 624.5 of this Part, are required to be recorded, reviewed, investigated and reported to designated parties according to established procedures of the agency; reviewed by a standing committee; and acted upon in an appropriate manner to safeguard the well-being of persons receiving services and to bring the matter to closure.

### Commentary:

- The process set forth in Part 624 is to be followed for any situation that meets the definition of a reportable incident, a serious reportable incident, or an alleged abuse in a facility; if they occur in a non-certified setting, the procedures are basically the same and should be modified to meet the community requirements (see subdivision 624.1(d) and Section VIII of this handbook).
- Part 624 of 14 NYCRR indicates that occurrences which endanger the well being of a person receiving services:
  - Must be reported by every class of facility operated or certified by OPWDD.
  - Must be reviewed or investigated according to the agency's established procedures.
  - Must be reviewed by a standing committee specifically charged with that responsibility.
  - Must be acted upon in an appropriate manner by the Chief Executive Officer and/or designated staff to bring the matter to closure.
- While the process described above is required by OPWDD for occurrences set forth in regulation, agencies may require that additional occurrences be addressed and processed. *Agency reportable incidents* are those events or situations, other than those defined in Part 624 and expanded upon in this document, which are required to be reported, recorded, and reviewed in conformance with each agency's policies and procedures. The procedures may be the same as those for reportable and serious reportable incidents and abuse allegations or may use different forms and a different procedure entirely. The agency needs to specify those situations to be reported for people in non-certified settings. Also see subdivisions 624.1(d) and 624.2(f) and Section VIII of this handbook.
- The agency has the responsibility for defining the events or situations to be reported. The determination of what should be reported as an *agency reportable incident* is left entirely to the discretion of the agency, but the basis for any decision should be such factors as the person's characteristics (abilities/disabilities/needs), physical environment, program focus and needs -- while at the same time ensuring that the safety and welfare of all persons receiving services is paramount in making these decisions. Thus, one facility (or unit) with a medically fragile population may require that every injury, no matter how slight, must be reported and the person must be examined by a nurse, with a complete report written on the agency's incident reporting form. In contrast, another facility (or unit) with more independent individuals may only require that slight injuries (that can be cared for by a person trained in first aid), be logged on a master sheet and reviewed periodically.

**624.4(b) Reportable Incidents and Serious Reportable Incidents – Significant events or situations endangering a person’s well-being. A “serious reportable incident” is a “reportable incident,” which, because of the severity or sensitivity of the situation, must also be immediately reported to the DDSO in whose area of jurisdiction the incident occurred and followed up in writing in the form and format specified by the commissioner, to that DDSO.**

Commentary:

- The types of events which are to be reported are referred to in this document as “reportable incidents.” However, certain levels of severity of these incidents cause them to be labeled “serious reportable incidents,” which means that additional parties outside of the agency are also to be made aware of the situation as promptly as possible.
- The following pages explain those incidents which must be reported in accordance with OPWDD’s requirements.
- Agencies are required to use Form OPWDD 147 to document reportable incidents, serious reportable incidents and all allegations of abuse. Agencies may develop their own forms to report occurrences that do not rise to the level of a reportable incident. These are often referred to as “occurrences,” “minor incidents,” “notable events” or some similar term.
- “Immediately” means that the situation is to be reported without delay to the DDSO. It is recognized that, occasionally, it may be impossible to make a report at once; but the report should be made as soon as is practicable.

## 624.4(b)(1) Injury

**Reportable Incident** – Any suspected or confirmed harm, hurt, or damage to a person receiving services, caused by an act of that person or another, **whether or not by accident, and whether or not the cause can be identified, which results in a person requiring medical or dental treatment** (see Glossary) by a physician, dentist, physician’s assistant, or nurse practitioner, and such treatment is more than first aid. Illness, in and of itself, shall not be reported as an “injury” or any other type of incident.

**Serious Reportable Incidents** – Any injury which results in the admission of a person to a hospital or 24-hour infirmary for treatment or observation because of the injury.

**NOTE:** If the injury is suspected to have been caused by abuse, the abuse is to be reported; see subdivision 624.4(c).

### Commentary:

- “Requiring medical or dental treatment” is defined in the Glossary of Part 624 as being:  
*That situation whereby a person who, by virtue of his or her condition as a result of a reportable incident or serious reportable incident, must see a physician, dentist, physician’s assistant, or nurse practitioner to have the condition controlled and/or attended to with more than first aid procedures. While individual agency policy/procedure may direct that a person who is in any way injured or has suffered any ill effects is to see a medical professional even though first aid has adequately addressed the situation, this does not always constitute “requiring medical or dental treatment” in terms of defining a reportable incident or serious reportable incident. If a person is retained in a hospital overnight for observation, this would be a situation that required medical treatment, and be reported as a serious reportable incident.*
- The phrase “requiring medical or dental treatment,” means that a person who, because of the severity of an injury and the resulting care, **MUST** be treated by a physician, physician’s assistant, nurse practitioner or dentist in order to care for the injury.
- If it is medically acceptable to treat an injury solely with first aid procedures, the injury is not a reportable incident in relation to Part 624, even if the first aid is provided by a nurse, physician or other health care professional. For the purpose of incident management, the administration of any over-the-counter drugs, including the application of commonly used over-the-counter topical medications, the use of antiseptic cleansers, and medication in the dosage prescribed that is available over-the-counter are considered “first aid,” even if a physician or dentist writes a prescription for such. If it is unknown if a medication at the dosage prescribed is available over the counter or requires a prescription, then ask a pharmacist.
- The administration of a tetanus booster is not considered “more than first aid,” even if a physician or dentist writes a prescription for such.

- If the person goes to an emergency room/urgent care facility, HMO or clinic, if only first aid is provided by or recommended by health care professionals, the incident is not a reportable incident. These occurrences may be considered agency reportable incidents and should be managed accordingly. They may be of particular concern if they are injuries of unknown origin.
- If it is the policy of the agency that every injury, no matter how slight, must be examined and treated by a nurse, physician, etc., this does not necessarily mean that the injury must be reported in conformance with Part 624. It is the severity of the injury and the resulting care, not agency policy that is controlling in determining whether the injury is to be classified as a reportable incident.
- If diagnostic procedures (e.g., x-rays) are performed and an additional positive finding for an injury is revealed, regardless of whether it requires or does not require medical or dental treatment, it must be reported as a reportable or serious reportable incident. If a diagnostic procedure is performed and does not result in an additional positive finding for an injury or require more than first aid treatment then a reportable or serious reportable incident is not indicated. Here are some scenarios:

Scenario #1: The individual has a soft tissue injury (contusion, bruise) and is examined by a health care professional. The diagnosis is sprain and the treatment is no more than first aid. This is not a reportable incident; a Form OPWDD 147 **is not** required.

Scenario #2: Same situation as specified in Scenario 1. The health care professional orders an x-ray which is negative for a fracture. Since it is already known that the individual has a sprain and no treatment beyond first aid is given, this is not considered to be a reportable incident; a Form OPWDD 147 **is not** required.

Scenario #3: Same situation as specified in Scenarios 1 and 2. The x-ray is positive for a fracture. This is a reportable incident; a Form OPWDD 147 **is** required.

Scenario #4: The individual falls and is examined by a health care professional. A diagnostic procedure reveals a broken rib. This is a reportable incident; a Form OPWDD 147 **is** required.

- Pursuant to Section 633.10(a)(4), the agency must notify the individual's parent, guardian or correspondent/advocate every time a health problem results in emergency room/urgent care services or admission to a hospital or infirmary.
- If an injury *required* medical treatment (a "reportable" injury) and resulted in the person being admitted to a hospital or any other type of 24-hour treatment facility, whether for further treatment or observation, the injury is considered to be a serious reportable incident.
- Do not automatically report every injury of unknown origin as an allegation of abuse or neglect unless it rises to the criteria of abuse or neglect as defined in Part 624.
- Illness (including mental illness) is not a reportable incident. Hospitalization for a health-related problem (e.g., seizures, blood pressure, psychotic episode, pneumonia) does not constitute a serious reportable incident. If agency review of the situation indicates possible neglect, the neglect is to be reported at that time as an allegation of abuse.

- If a person fell related to a medical problem (e.g., during a seizure), and required sutures, the injury would be a reportable incident. If they were admitted to the hospital for a possible concussion from the fall, this would be a serious reportable incident. However, if they were admitted to a hospital due to the seizure only (not the injury), this would not constitute a serious reportable incident.
- Injuries that meet the definition of Part 624 are to be reported as soon as possible after the person's safety and welfare have been ensured, using the incident reporting form (OPWDD 147). A report of a serious reportable injury, must also be transmitted as quickly as possible (and certainly no more than 24 hours after observation or discovery) to the DDSO.
- Injuries resulting from injurious behaviors (either to oneself or others) are not required to be reported in conformance with the OPWDD Part 624 process unless the injury required medical treatment (a reportable incident), or the injury resulted in admission to a hospital, etc. (a serious reportable incident). The behavior must be addressed as part of the person's plan of care. If agency review of the situation indicates possible neglect, the neglect is to be reported at that time as an allegation of abuse.
- If an injury is intentionally imposed upon a person receiving services by another person receiving services, in some situations the event may be considered a criminal act and should be reported as such. Refer to paragraph 624.4(b)(6) for examples of a possible criminal act or consult the DDSO.
- Part 624 is exclusively focused on incidents and abuse as they affect individuals receiving services. It may happen that employees may be injured due to the aggressive behavior of a person or in some other way related to workplace violence. In general, like other employee injuries, this would not be reported in the Part 624 process, but would be handled through the workers' compensation and insurance process at the agency, and/or other required reporting processes. The New York State Workplace Violence Prevention Law (Section 27-b of the Labor Law) also addresses this issue in state worksites.
- Please see Appendix 17 for guidance related to the dating of bruises for the purpose of an investigation of an injury.

**624.4(b)(2) Missing Person**

**Serious Reportable Incident** – The unexpected or unauthorized absence of a person after formal search procedures (see Glossary) have been initiated by the agency:

- (i) Formal search procedures must be initiated if a person’s whereabouts are unknown for four hours. An incident report is to be initiated at this point.
- (ii) Reasoned judgment, taking into consideration the person’s habits, deficits, capabilities, health problems, etc., shall determine when such formal search procedures need to be implemented.
- (iii) It is mandated that formal search procedures be initiated immediately upon discovery of the absence of a person whose absence constitutes a recognized danger to the possible well-being of that person or others.

Commentary:

- Any situation that meets the definition of “Missing Person” will always be considered to be a serious reportable incident.
- The intent of the serious reportable incident category entitled “Missing Person” is to capture those situations in which a person’s whereabouts are unknown to the staff; or the reporting of the departure from a facility of a person remanded to that facility under a court order.
- In a facility, the determination as to when it is necessary to actually start “formal search procedures” for a person whose exact whereabouts is unknown to the staff is a decision that must be made based on knowledge of and experience with a person receiving services. Therefore, a more independent person who walks home from his or her workshop and who usually stops on the way to visit with a shopkeeper or neighbors might not be considered “missing,” even though the workshop closed at 4:00, the walk home only takes 15 minutes, and it is now 4:30. Staff, knowing this person, might not be concerned unless the person fails to return by 5:00. On the other hand, if a more independent, but ritualistic person at the same workshop who is always back at the residence by 4:15 fails to return by that time, staff may determine the need to initiate formal search procedures immediately.
- Even though a person’s whereabouts are unknown while reasonable informal efforts to locate him or her (telephone calls, checking within the residence, checking with neighbors or friends) are being made, the regulation provides the leeway to initiate “formal search procedures” after a certain period of lapsed time, which may be up to four hours.
- “Formal search procedures” means that specific actions, designated by agency procedures, are initiated when a person is missing from a facility. This could include notifying appropriate supervisory and/or administrative personnel, notifying local law enforcement authorities, and organized searching for the missing person.

- If a person is potentially dangerous to himself or others with whom he or she may come in contact (e.g., unable to cope with traffic hazards, on a very restrictive medication regimen, assaultive), then it is necessary to implement the agency's formal search procedures immediately upon discovering the absence of the person.
- If a person leaves a residence or program without the staff's consent and yet he or she is being followed, chased, or even accompanied by staff until his or her return, this is not required to be reported in accordance with the OPWDD Part 624 process. It should be recorded and dealt with in accordance with agency practice.
- Once an absent person is determined to be a "Missing Person" (i.e., formal search procedures were initiated), the DDSO must be informed as soon as is reasonably possible, but within 24 hours. A written confirmation on Form OPWDD 147 is to be submitted to the DDSO within 24 hours. If the initial contact is made by faxing an OPWDD 147 to the DDSO, no further copy is required.
- Even though there is a four hour period allowable before formal search procedures are to be initiated (as long as, in the reasoned judgment of staff, the person's absence does not constitute a danger to the individual or others), it should be remembered that this is an "outside" or maximum timeframe, and its purpose is to allow facilities to deal with certain situations in a routine, less formal manner. It does not mean that this timeframe applies to every situation. Knowledge of the person and the circumstances must determine the appropriate timeframe.
- If a person, due to personal problems or behavior or even intervention of a parent, is at another location which is known to staff, this does not necessitate a "Missing Person" report in conformance with Part 624. It would be appropriate, however, to be recorded in the person's record and should be dealt with appropriately.
- If a person lives independently and does not arrive at day program, this would not automatically become a "Missing Person" incident. The person would be an "absentee," and the day program should follow-up to the extent required in its own practices. An incident report would be filed only if it had been determined that something had happened to the person which met the definition of another category of reportable incidents, or if the person's whereabouts are unknown to his or her family or others and it is necessary to notify authorities.
- If a person receives non-certified services and lives at home, the person would be considered a "missing person" if the family has notified police of the person's unknown whereabouts. If a person is not at home, and the situation warrants, the provider of the non-certified services may have to encourage the family to make such a notification or may have to make the notification him/herself.

**624.4(b)(3) Death**

**Reportable Incident – All loss of life, regardless of cause.**

**Serious Reportable Incidents – Death when due to circumstances unrelated to the natural course of illness or disease or proper treatment in accordance with acceptable medical standards; an apparent homicide or suicide; or an unexplained or accidental death.**

Commentary:

- All deaths, regardless of the reason for the death, are to be considered as a reportable incident and reviewed by, at least, the committee that reviews incidents. This will be in addition to any other medically oriented/constituted Committee within the agency organizational structure that may also be charged with the responsibility.
- Any person's death due to other than natural and expected causes is to be reported to the DDSO as a serious reportable incident. Consideration must be carefully given to the circumstances surrounding a death to determine whether or not the death falls within the "reportable" or "serious reportable" category. For example, if a person, well advanced in age, who has serious medical complications including heart disease and whose death is not unexpected, should die, but the death came about after being exposed to excessive heat for an extended period of time, there might be a doubt that the death was due to "natural" causes. It would therefore be reported as a serious reportable incident. Conversely, if a person with the same history died in his or her sleep, the death would probably be a "reportable incident" only.
- If a person dies after being injured (and the injury was reported as a reportable or serious reportable incident), initiate another incident report to record the death as a serious reportable incident (though the death may have been expected, the death was not natural). Be sure to refer to the original incident report (if the injury was reported) in the narrative section of the report form.
- Agencies must submit the OPWDD 147 and the QCC100 (reporting form for deaths issued by CQCAPD) to the DDSO for all reportable and serious reportable deaths, regardless of cause.
- Refer to the memorandum titled, "Reporting Deaths" from the Deputy Commissioner of the Division of Quality Management dated July 9, 2009 for additional information on reporting deaths.
- Also see subdivision 624.6(b) for further information on reporting deaths to the Commission on Quality of Care & Advocacy for Persons with Disabilities (CQCAPD) and see subdivision 624.6(c) for further information on reporting deaths to the coroner/medical examiner.

**624.4(b)(4) Restraint**

**Serious Reportable Incident** – The act of limiting or controlling a person’s behavior through the use of:

- (i) Any device which prevents the free movement of both arms and both legs, as ordered by a physician.
- (ii) Any device which totally immobilizes (see Glossary) a person, as ordered by a physician.
- (iii) Any device which is ordered for the express purpose of controlling behavior in an emergency (see Glossary).

**NOTE:** Nothing in this Part shall prevent the use of mechanical supports to provide stability necessary for therapeutic measures such as immobilization of fractures, administration of intravenous or other medically necessary procedures.

- (iv) Any medication as ordered by a physician which renders a person unable to satisfactorily participate in programming, leisure or other activities.

Commentary:

- Any time that a device is used to limit or control behavior, which results in a person receiving services being unable to move both arms or both legs or which results in a person being immobilized, the device is always to be ordered by a physician or a dentist and its use always recorded as “restraint.” If a device is used inappropriately or is unauthorized, then it is to be categorized as abuse.
- The use of mechanical or manual supports to facilitate medically necessary procedures does not constitute restraint under this definition as a serious reportable incident. As used in this paragraph, “manual supports” refers to the *physical* holding of an individual’s arms, legs and/or the head to restrict that individual’s movement for the purposes of safely facilitating necessary medical and/or dental appointments or procedures. The mechanical or manual supports are only to be used to provide stabilization/immobilization necessary for therapeutic measures, and only for the duration of a medical or dental appointment or procedure. The use of mechanical or manual supports to facilitate medically necessary procedures should be ordered by a physician or dentist and the supports should be incorporated into an individual’s specific plan, for individuals residing in a residence certified or operated by OPWDD or family care home. See OPWDD ADM #2010-02 in Appendix 19 for additional guidance.
- Devices that restrict the free movement of only one arm or one leg or that do not totally immobilize a person are not considered restraints under this definition as a serious reportable incident. The use of these devices may constitute abuse depending on the circumstances.

- There are certain circumstances under which a person, due to physiological problems, is in need of some sort of mechanical device to assist an individual in maintaining himself or herself while participating in various activities. Examples are seat or shoulder straps to assist a person who is non-ambulatory to maintain proper seating posture, or the use of a helmet to protect the head of a person who is seizure-prone and whose seizures have not been able to be medically controlled. The use of such devices is not to be reported as an incident under the OPWDD Part 624 process. However, such use should be sanctioned by the person’s program planning team and ordered by a physician, with continued use reviewed by the team and physician.
- Devices used as medical safeguards, (other than those which result in a person being unable to move both arms or both legs, or those which immobilize a person), may be ordered for use by a physician to facilitate a healing process and only while healing takes place. However, if the use of such a device is necessary because of the person’s self-injurious behavior which caused the injury in the first place, there is to be a plan in place to address the control, modification, and amelioration of such behavior.
- While the use of psychotropic medications to assist in the management of a person’s behavior should be considered and sanctioned by the person’s program planning team and the agency should control and monitor such use, for purposes of Part 624, such use is not considered to be “restraint.” The intent of Part 624 is to indicate that “restraint” occurred when:
  1. Medication, which was prescribed by a physician for the express purpose of terminating a person’s self-injurious or assaultive behavior in an episodic situation, causes the person to be sedated to the point that he/she is unable to participate in programming or other activities; or
  2. The ongoing use of medication is prescribed at such levels for that person so as to inhibit his or her functioning to such an extent that he or she is continuously unable to take part in and benefit from programming (habilitative measures), leisure and/or any other type of activities, the implication being that it is necessary to review the medication regimen and explore alternative treatment.

If medication is used for purpose of restraint under either of these circumstances, the use is to be recorded as a serious reportable incident, and processed as such.

- The use of medication to pre-medicate a person prior to a routine procedure (dental visit, gynecological exam) is permissible provided there is a physician’s order, the medication used and the duration of effectiveness is commensurate with the procedure, and there is a written individual-specific plan in place for the medication. The plan should also identify strategies to desensitize the person to the procedure or provide evidence that such a process has been reasonably attempted in the past and has failed. The determination to use medication for this purpose is to be made on an individualized basis. The use of medication in this manner is not considered “restraint” as a serious reportable incident. See OPWDD ADM #2010-02 in Appendix 19 for additional guidance.
- If a mechanical restraining device or medication is used to control a person other than as previously described and is used for staff convenience, for disciplinary purposes, for retribution, as a substitute for programming, or as a substitute for supervision, the situation is always to be considered abuse and is to be reported as such. In other words, if a staff person employed a mechanical restraining device at a time other than that specified in the person’s plan of care, this

would be abuse. By way of an example: sleeve boards are sanctioned at certain times of day for a person who demonstrates self-injurious behavior, but not while the person is eating. However, to speed things up at breakfast, a staff member applies the sleeve boards and feeds the person. Then the use of the device would not be recorded as restraint, but as abuse (see paragraph 624.4(c)(5) for further information).

- The proper use of “hands-on” or physical/personal intervention techniques is not considered to be a situation which is to be reported as “restraint” in conformance with Part 624. When properly used, hands-on techniques are used by persons who have been trained to use them and are specified in a person’s plan of services; or the technique has been used in an emergency situation.
- Refer to 624.4(c)(1) for criteria for physical abuse.

**624.4(b)(5) Medication Error**

**Reportable Incident** – That situation in which a person evidences marked adverse effects or a person’s health or welfare is in jeopardy due to:

- (i) The administration of medication in an incorrect dosage, in an incorrect specified form, by incorrect route of administration, or which has not been prescribed or ordered.
- (ii) Administration of a medication to the wrong person.
- (iii) Failure to administer a prescribed medication.

**NOTE:**Errors which do not result in marked adverse effects are not reportable incidents, but must be documented in a person’s record in accordance with agency procedures and shall be dealt with administratively.

**Serious Reportable Incidents** – Only when the error results in the admission of a person to a hospital or 24-hour infirmary for treatment or observation.

Commentary:

- “Medication error” is a term which has come to mean any incorrect or erroneous procedure related to the handling and administration of medication, regardless of the consequences to a person receiving services. All these “errors” should be recorded and dealt with administratively. However, it should be remembered that the Part 624 incident reporting process is not designed to be used to capture all staff errors or all behaviors of persons receiving services. There are more appropriate methods of doing this. Therefore, for purposes of the Part 624 incident reporting requirements, a “medication error” is limited to those more egregious situations where a person’s health or welfare are truly at risk or there is evidence of serious adverse effect. It is inappropriate for an incident review committee to expend its efforts and time over a staff person who has dropped a medication or incorrectly documented an administration of medication at the expense of more serious situations. Therefore, in this type of situation, it would probably be best to record and deal with it at the supervisory level; and administratively if disciplinary action needs to be taken. However, there would be nothing to preclude an “incident review” committee from reviewing general medication error trends and making suggestions to improve or correct systemic situations.
- One of three basic pre-conditions is to be present before a situation must be reported as a medication error in conformance with the Part 624 process because of a person evidencing marked adverse effects or a person’s health or welfare are in jeopardy:
  - (i) Incorrect administration

- a. Incorrect dosage (amount other than prescribed). Examples:
    - Two tablets are given instead of one and only one was prescribed.
    - The medication is given three times during the day instead of two times, as prescribed.
    - One teaspoon is administered instead of two, as prescribed.
  - b. Incorrect form (configuration or makeup other than as prescribed). Examples:
    - Tablets rather than liquid.
    - Capsules opened and mixed with liquid without a physician's instructions.
    - Tablets crushed and mixed with food/liquid without a physician's instructions.
  - c. Incorrect route (method of administration, other than as prescribed). Examples:
    - Eye drops administered as an oral medication.
    - Suppository administered orally.
  - d. Incorrect medication (administration of a medication not currently prescribed or ordered for a person). Examples:
    - Medication has been administered which has been temporarily or permanently discontinued.
    - A person receiving services obtains and uses or ingests medication not prescribed for him or her.
    - Medication used by a staff person is administered to a person receiving services.
    - Over-the-counter medication is administered to a person receiving services without a physician's approval.
    - Medication is administered to one person receiving services, which was prescribed for another person receiving services.
- (ii) A person receiving services received an incorrect medication.
- (iii) A prescribed medication was not administered as prescribed. Examples:
- Medication was not administered at all.

- Medication was not administered within a reasonable timeframe of the times prescribed.
  - Medication was administered too early to be effective.
  - Medication was administered too late to be effective.
- The determination of when a person receiving services shows or indicates a “marked adverse effect” or when a person receiving service’s health or welfare are in jeopardy cannot be defined with hard and fast criteria. As in any incident reporting situation, the good judgment of staff, supervisors, and administrators must prevail. Examples:
    - If aspirin is ordered for a person receiving services as it is considered to be the best remedy for the person’s condition and the person receiving services develops a slight rash, it would not be considered a medication error as one of the three basic pre-conditions listed as (i), (ii), and (iii) in Section 624.4(b)(5) are not present. However, it should be reported, reviewed, and monitored according to agency policy/procedure.
    - If medication is not administered to a person receiving services who has a seizure disorder at the prescribed time and the fact that such a delay means that there is potential for the chemical levels in his or her body to be affected so as to be unable to compensate for the physical needs of the person receiving services and a seizure might result, this would be considered a reportable “medication error” incident.
    - If a person receiving services is at a movie and will arrive at the residence later than the normal time he or she takes medication, but such a delay is within a reasonable timeframe (ask the physician, dentist, pharmacist, physician’s assistant or registered nurse to provide guidelines), this need not be reported as a medication error in conformance with Part 624. If an agency, by policy, has stated that there will be no leeway, this would be reported within the program in accordance with such policy. Other delays need to be recorded and dealt with in accordance with agency mandates.
  - If a medical order is not followed then an allegation of neglect may be filed. In order to rise to the level of an allegation of abuse in any category, including neglect, the physical or emotional well-being of the person must be endangered. If failure to follow the medical order does not endanger the physical or emotional well-being of the individual, the agency should not file an allegation of neglect.
  - An agency may have policies and procedures in place for the reporting of many other erroneous or incorrect procedures and staff are required to adhere to them, in addition to the requirements of OPWDD.
  - If errors involving medication do not meet the definition of a medication error as defined in Part 624, the agency is to ensure that they are dealt with appropriately, but this would not have to be through routine involvement of the committee that reviews incidents and abuse.
  - If problems with medication, other than those defined in Part 624, are reported to the DDSO, the DDSO will remove them from the statistical reporting base and advise the agency administration that it is to deal with the problem internally.

## 624.4(b)(6) Possible Criminal Acts

**Serious Reportable Incidents – Actions by persons receiving services which are or appear to be a crime (see Glossary) under New York State or Federal law.**

### Commentary:

- The classification of an incident as a “Possible Criminal Act,” as used in Part 624, is intended only to capture those situations in which a person receiving services is the alleged perpetrator. If an alleged crime has been committed against a person receiving services, this should be incorporated in the records, depending upon the situation, as an incident (e.g., sensitive situation, injury) or as an alleged abuse (see subdivision 624.4(c)) and an OPWDD 147 should be completed as appropriate.
- A “crime” is defined in Article 10 of the Penal Law as a “misdemeanor or a felony.” It is defined in the Glossary of Part 624 as follows:

*“An act that is forbidden by law that makes the offender liable to punishment pursuant to that law. In New York State, the Penal Law defines a crime as a Misdemeanor or a Felony, but does not include a traffic infraction. Examples of crimes are: homicide, homicide attempt (see Glossary), rape, public lewdness, robbery, and assault (see Glossary).”*

For further clarification and guidance, the agency should discuss this requirement with its own legal adviser and the district attorney or other appropriate law enforcement officials and develop its own policies/procedures, guidelines, training, etc., from these discussions.

- Not every district attorney or other law enforcement official responds in exactly the same way to reported crimes, particularly in relation to those involving persons receiving services. Therefore, it would be appropriate for each agency to contact the district attorney or other appropriate law enforcement officials to develop a mutually agreeable process for reporting apparent crimes.

#### 624.4(b)(7) Sensitive Situations

**Reportable Incidents** – Those situations involving a person receiving services which are not described above, which may be of a delicate nature to the agency, and which are reported to the administration to ensure awareness of the circumstances.

**Serious Reportable Incidents** – Those sensitive situations which, in the judgement of the chief executive officer, need to be brought to the attention of OPWDD, through the DDSO, as expeditiously as possible.

#### Commentary:

- This is not intended to be a “catch-all” category for events or circumstances that are perceived as not fitting neatly into other categories; if the event or circumstance meets the definition of one of the other six categories of incidents, it is to be reported under that classification only.
- The intent was that the designation of “sensitive” be used for the purpose stated – to advise administrators within an agency that a situation related to a person receiving services had developed, or might develop, of which the administrator(s) should be made aware. In turn, it is the responsibility of the chief executive officer (or designee) to make a determination as to whether or not the situation should be brought to the attention of the DDSO as a serious reportable incident.
- Just because something happens in a program that is untoward, but not designated as a “reportable incident,” it does not mean that the situation has to be reviewed by the “incident review committee” or that OPWDD has to be notified. As previously mentioned, there are many situations that an agency may determine to be *agency reportable incidents* and these would be dealt with in accordance with the agency’s own policies and procedures.
- There may be other “sensitive situations” that occur that are not related to a person receiving services that may well be in need of bringing to the attention of the agency administration or the Commissioner of OPWDD. Such reports should be made, but not through the Part 624 process (e.g., vandalism of a facility, possible staff involvement in criminal act).
- It would be appropriate to use this category to report a situation in which a crime has been committed against a person receiving services by a staff person or by someone in the community. If the crime was committed by another person receiving services, this would be reported under the “Possible Criminal Acts” category. Examples of crimes that would be reported in this category are: a mugging; having one’s pocket picked; a hold-up; a physical assault (as defined in the Glossary of Part 624), or being the victim of a scam operation or extortion.
- Section 13.21(b) of the Mental Hygiene Law requires that if, as a result of alleged abuse of a person receiving services or mistreatment in a facility, it appears that a crime may have been committed, this must be reported to the district attorney or other appropriate law enforcement officials as soon as possible, and in any event within three working days.

- Section 16.13(b) of the Mental Hygiene Law requires that if it appears that a crime may have been committed against a person receiving services from a provider [of services], it is necessary to provide notification to the district attorney or other appropriate law enforcement officials and to the Commissioner of OPWDD (through the DDSO) as soon as possible, or in any event within three working days. Part 624 requires such notification to OPWDD (the DDSO) be made within 24 hours.
- Section 16.13(b) of the Mental Hygiene Law requires that if there is reasonable cause to believe that a crime against a person receiving services may have occurred in a facility or program of any other service provider licensed, certified, funded or operated by a state agency (e.g., OPWDD, OMH, SED, DOH, DSS), the administrator or chief executive officer of that service provider is to be notified as soon as possible, or in any event within three working days -- provided, however, the administrator or chief executive officer is not alleged to have committed the crime. In such an instance, this is to be brought to the attention of the DDSO.

**624.4(c) Abuse** – The maltreatment or mishandling of a person receiving services which would endanger the physical or emotional wellbeing of the person through the action or inaction on the part of anyone, including an employee, intern, volunteer, consultant, contractor, visitor, or others, whether or not the person is or appears to be injured or harmed. The failure to exercise one’s duty to intercede on behalf of a person receiving services also constitutes abuse. While a person receiving services may have allegedly abused another person receiving services, it is necessary to take into consideration the aggressor’s judgment and cognitive capabilities to determine whether the act is to be reviewed as an abuse allegation or as a behavioral problem. All allegations (see Section 624.20 of this Part) of abuse are to be reported on a standardized form (see Section 624.20 of this Part); reviewed, investigated and reported to designated parties according to established procedures; reviewed by a standing committee; and acted upon in an appropriate manner by the chief executive officer to safeguard the well-being of persons receiving services and to bring the matter to closure. All such allegations of abuse must be immediately reported to the DDSO in whose area the alleged abuse occurred and followed up in writing in the form and format specified by the Commissioner. Abuse is categorized as follows:

Commentary:

- It is important to remember that abuse is not a “catch-all” category, nor is it intended to be used solely for personnel issues. While many actions of staff may be against policy, they should be handled as personnel issues and not classified as abuse.
- It is necessary for all employees to understand that while certain actions or behaviors that staff may display in a familial or community setting may be acceptable in those settings, they may be “abuse” of a person under the care and protection of the OPWDD service system.
- Employees who fail to intervene in a situation in which a person receiving services is or may be being abused, may be considered to be contributing to the abuse of this person receiving services.
- Failure to report suspected abuse may be considered to be contributing to the abuse of a person receiving services.
- As a rule, aggression among persons receiving services is due to behavioral problems, and should be recorded as such. The incident/abuse reporting Form OPWDD147 and the incident/abuse process should not be used to track behavioral problems. However, if the review of the incident determines that such aggression is due to other than behavioral problems the aggression should be reported on form OPWDD147 and investigated as any other allegation of abuse. Refer to subdivision 624.2(f) for further discussion of the handling of situations which are not described as incidents or abuse in Part 624.
- The aggressive behavior of one person receiving services toward another person receiving services that results in an injury should be reported as an injury, investigated, and upgraded to an allegation of abuse if it meets the criteria for abuse.

- *It is essential that it is understood that the words “maltreatment” and “mishandling” are an important part of the definition of abuse. For the purposes of Part 624 reporting:*
  - “Mishandling” is to manage wrongly or ignorantly.
  - “Maltreatment” is cruel or rough treatment (or handling) of a person receiving services.
- The standard requires that any allegation of abuse must be reported without delay (i.e., immediately) to the DDSO. It is recognized that, occasionally, it may be impossible to make a report at once; but the report should be made as soon as practicable. The use of a telephone will be the most common method of complying with this standard. However, it does not preclude the use of e-mail, fax or other electronic or telecommunication process.
- There may be a situation in which the treatment team has identified that a particular person has a pattern of making false allegations of abuse. See commentary under 624.5(b)(2) for guidance on how to handle these situations.
- It is possible for an agency, either by agency action or administrative direction, to abuse persons receiving services. The agency should be aware that it is subject to investigation of abuse, as defined in Part 624, as a result of any allegations brought to the attention of oversight bodies such as OPWDD (whether at the Central Office or DDSO level), or the Commission on Quality of Care & Advocacy for Persons with Disabilities (CQCAPD).
- While the responsibility associated with caring for a person in a facility means that the criteria for determining abuse may be higher than that in a private home it is still the responsibility of anyone providing HCBS waiver services to report any situation that meets the definition of abuse in accordance with Part 624.
- Please see Appendix 17 for guidance related to the dating of bruises for the purpose of an investigation of abuse.

**624.4(c)(1) Physical Abuse – Physical contact which may include, but is not limited to such obvious physical actions as hitting, slapping, pinching, kicking, hurling, strangling, shoving, unauthorized or unnecessary use of personal intervention, or otherwise mishandling a person receiving services. Physical contact which is not necessary for the safety of a person and/or causes discomfort to the person may also be considered to be physical abuse, as may the handling of a person with more force than is reasonably necessary.**

Commentary:

- The word “may” was used deliberately in defining “physical abuse” so that the circumstances and the degree of intensity are taken into consideration to determine if an allegation of physical abuse should be filed. An allegation may be brought against any individual charging that his or her action was excessive.
- There is often a fine line between proper and improper physical conduct in relation to the handling of persons receiving services. It is necessary for staff to be educated as to how to judge where this line is. This can be done through training, ongoing discussions, and the appropriate behavior of those in positions of authority as role models.
- As a rule, aggression among persons receiving services is due to behavioral problems, and should be recorded as such. The incident reporting Form OPWDD 147 and the incident reporting process should not be used to track behavioral problems. However, if the review of the incident determines that such aggression is due to other than behavioral problems the aggression should be reported on form OPWDD 147 and investigated as any other allegation of abuse. See subdivision 624.2(f) for further discussion of the handling of situations which are not described as incidents or abuse in Part 624.
- Clinical and administrative judgment should be used to determine if an act is physical abuse when a person receiving services assaults another person receiving services. For example, aggression on the part of a person receiving services that is determined to be intentional and/or premeditated (such as a noted pattern of stalking or other predatory behaviors directed at certain peers, targeting peers who are not capable of self defense, etc.) as opposed to aggression that is determined to be incidental and/or impulsive could constitute physical abuse.
- If it is determined that an event occurred as a result of a behavior problem and does not constitute physical abuse per Part 624, but the situation is reported to law enforcement authorities, then a possible criminal act should always be filed naming the aggressor. For example, a person receiving services exhibits a behavior and injures another person receiving services and the injured person or his/her advocate decides to report this event to authorities. Refer to paragraph 624.4(b)(6) for further information on possible criminal acts.
- Unauthorized/unnecessary use of any physical/personal intervention technique in either a planned or emergency situation by staff trained in the OPWDD approved training curriculum that includes physical/personal intervention techniques includes:
  - the use of any physical/personal intervention technique in a manner inconsistent with or contraindicated by the treatment plan (for example, using more restrictive techniques before less restrictive techniques have been attempted and proven unsuccessful); or

- the use of any physical/personal intervention technique when not necessary to protect the individual or others from harm during a behavioral event or in an emergency situation; or
- the implementation of any modified physical/personal intervention technique on an individual other than for whom the modified technique has been authorized and approved; or
- the use of any medically contraindicated physical/personal intervention technique\*; or
- the use of any physical/personal intervention technique which is improperly implemented; or
- the use of any physical/personal intervention which is not part of the approved agency curriculum (e.g. any face-down [prone] intervention, also known as a lying wrap up), or is not a minor and acceptable variation of an approved intervention; or
- the use of a **restrictive** physical/personal intervention over the written objection of a parent, guardian or other designated surrogate\*.

\* NOTE: While it is necessary to file allegations of abuse for the use of physical/personal interventions that are medically contraindicated and/or over the objection of an individual providing his/her own consent or their surrogate, the allegation should be disconfirmed if the investigation shows that the emergency use of such an intervention was necessary in order to prevent injury to the individual or others.

- “Unauthorized use” of any physical/personal intervention requires that an OPWDD 147 be filed as an allegation of physical abuse. Furthermore, any physical/personal intervention techniques that are performed with excessive force or with the intent to harm or endanger the welfare of a person receiving services are to be reported as physical abuse.
- Use of approved physical interventions on an emergency basis is not “unauthorized” if it is justified by the circumstances (i.e. imminent threat of injury), even if it is not part of a behavior plan. A behavioral note/completion of agency specific data sheet specific to use of physical interventions, but not a 147, would be required.
- If an approved restrictive physical/personal intervention lasts for longer than 20 minutes and there is no evidence that an attempt to release the person receiving services has been made then this would be an unauthorized use of physical/personal intervention and should be reported as an allegation of physical abuse. If an attempt is made to release the person at the 20 minute threshold but they continue to present an imminent risk of harm to self or others that justifies the ongoing use of the intervention, then re-implementing the intervention does not meet the criteria for an incident or allegation of abuse.
- “Untrained staff” refers to those staff members who have never been trained in the OPWDD training curriculum that includes physical/personal intervention techniques. Staff members who have never been trained in the OPWDD curriculum are nonetheless obligated to intervene in emergency situations in which the health and safety of others is at risk. The use of physical/personal interventions by “untrained staff” could be reported as an agency reportable or equivalent or sensitive situation and should be investigated and upgraded to an allegation of physical abuse only if the circumstances meet the established criteria for physical abuse.
- An action which would typically be considered to be physical abuse but is necessary to ensure the safety of an individual may not be filed as an allegation of physical abuse. For example, an individual is running toward the road where there is traffic and staff “tackles” the individual to prevent him or her from running into traffic. Events such as these which are not filed as an allegation of abuse must be well documented by the agency. If there is any question as to

whether or not the action taken by staff was necessary to ensure the safety of the individual (e.g. a witness of the event indicates that he or she did not feel that the action was necessary) then an allegation of physical abuse must be filed and investigated in accordance with Part 624.

- It is the agency's responsibility to train staff to respond safely to behavioral crises. Therefore, repeated use of physical/personal intervention techniques by an untrained staff, uncertified staff (staff who have been previously trained but have since lapsed in their certification in the OPWDD approved curriculum), or staff who have not demonstrated competence in the intervention in question would generally be seen as a systemic issue, and not a matter of personal staff wrongdoing.
- It may be necessary at times for staff who have lapsed in their certification in the OPWDD training curriculum to use physical/personal intervention techniques to ensure the protection and safety of a person receiving services. In these instances, an allegation of abuse should not be filed against the staff person unless the circumstances meet the criteria for physical abuse. However, if an agency fails to maintain a system to monitor recertification in the OPWDD training curriculum that includes physical/personal intervention techniques for staff, depending on the specifics of the incident, the target of the investigation may properly be the agency for failing to provide the necessary training,.
- In the event that a person suffers an injury during, immediately following, or as a result of the physical/personal intervention and requires treatment beyond first aid it must be reported as an injury, investigated, and only upgraded to an allegation of physical abuse if it meets the criteria for physical abuse.
- All use of physical/personal intervention techniques should be reviewed to determine whether or not the use of the technique was appropriate. If the use of the technique was not appropriate then an allegation of abuse should be filed.
- Physically forcing a person to take a medication when he/she refuses to do so who refuses to take a medication to do so would be considered physical abuse. This does not include following an approved plan to increase the likelihood of the person taking the medication, including placing the medication in a food substance (such as pudding or applesauce) that makes the administration less objectionable to the person.

**624.4(c)(2) Sexual Abuse – Any sexual contact between a person receiving services and an employee, intern, consultant, contractor or volunteer of an agency is always considered to be sexual abuse and is prohibited. Any sexual contact between persons receiving services and others, or among persons receiving services, is considered to be sexual abuse unless the involved person(s) is a consenting adult. This shall not include those situations in which a person with a developmental disability who was a service recipient becomes an employee of a service provider organization and already has a relationship with another service recipient of the same or another service provider organization; in such a situation, this shall be noted in the person’s service plan and the relationship shall not be considered as “sexual abuse” unless there is reason to believe that there is harassment, coercion, exploitation, etc., involved. Sexual contact is defined as the touching or fondling of the sexual or other intimate parts of a person, not married to the actor, for the purpose of gratifying the sexual desire of either party, whether directly or through clothing. Sexual contact also includes causing a person to touch anyone else for the purpose of arousing or gratifying personal sexual desires.**

Commentary:

- Consent for sexual contact includes two conditions: the “capacity” to consent to sexual contact and “voluntarily” entering into the sexual contact. Thus the terms “consent” and “consenting” when used in this regulation presume that all the individuals involved in the sexual contact have the “capacity” to consent to sexual contact and have voluntarily entered into such contact.
- As used in this section, the phrase employee, intern, consultant, contractor or volunteer applies only if the employee, intern, consultant, contractor, or volunteer works at an agency where the person receives services.
- In developing policies and procedures regarding sexual contact and consent the July 30, 1993 memorandum titled “*Considerations for the Development of Agency Policies and Procedures Concerning Sexual Contact and Consent*” should be used as guidance. It is included as Appendix 3.
- Non-contact situations such as exhibitionism, voyeurism, “dirty talk” or verbal sexual harassment should be reported as psychological abuse. Other aggressive physical acts may be reported as physical abuse.
- Physical contact with sexual or other intimate parts of a person which are not for the purpose of gratifying personal sexual desires *may* not be considered sexual abuse. For example, individuals are playing a game of football and one pats the other on the buttocks as they are running out onto the field.
- It is the responsibility of the agency to ensure that no person receiving services is exploited sexually.
- In all situations filed as “possible criminal act” or “sexual abuse,” where a crime may have occurred, the agency must notify the law enforcement authorities as soon as possible or in any

event within three working days. Suggested language to use when notifying law enforcement regarding an allegation of Sexual Abuse is as follows:

- “I am an Administrator/Representative of the DDSO/OPWDD agency and I am calling to notify you of an Allegation of Sexual Abuse that was reported to have occurred in our agency. State regulations require us to notify law enforcement officials, therefore I am reporting to you. Our state regulations also mandate that we immediately conduct our own internal investigation, which has all ready been initiated.”
- Then proceed to explain what your process entails-- immediate protection/medical follow up to the alleged victim, separation/administrative leave of the alleged perpetrator, notifying all appropriate parties, taking statements from witnesses, assigning a special investigator to conduct the investigation, findings and conclusions reviewed, appropriate disciplinary/criminal action taken as necessary, etc.
- It would be appropriate to contact the local law enforcement authority to make arrangements for a process for the reporting of sexual abuse situations that may not require immediate action on their part.
- Please refer to the decision matrix on the next page for additional guidance regarding sexual contact between persons receiving services.

<b>Decision Matrix for Sexual Contact Involving Persons Receiving Services</b> (Words in <i><b>Bold italic font</b></i> represents type of incident per Part 624)		
Characteristics of Involved People	Use of Coercion/force	
	Coercion/force was not used	Coercion/force was used
Both receive services; Both capable of consent	<i><b>Not an incident or allegation</b></i>	<i><b>Initiator- Possible criminal act Victim- Allegation of sexual abuse</b></i>
Both receive services; Initiator capable of consent, Other not capable of consent	<i><b>Initiator- Possible criminal act Non-Initiator- Allegation of sexual abuse</b></i>	<i><b>Initiator- Possible criminal act Victim- Allegation of sexual abuse</b></i>
Both receive services; Initiator not capable of consent, Other capable of consent	<i><b>Sensitive situation for initiator and non-initiator</b></i>	<i><b>Initiator- Possible criminal act Victim- Allegation of sexual abuse</b></i>
Both receive services; Both not capable of consent	<i><b>Initiator- Sensitive situation Non-Initiator- Allegation of sexual abuse</b></i>	<i><b>Initiator- Possible criminal act Victim- Allegation of sexual abuse</b></i>
Initiator receives services and not capable of consent; Other does not receive services	<i><b>Sensitive situation <u>or</u> possible criminal act if coercion/force was not used <u>but</u> other person did not consent</b></i>	<i><b>Possible criminal act</b></i>
Initiator receives services and is capable of consent; Other does not receive services	<i><b>Not an incident or allegation if other person consents Sensitive situation <u>or</u> possible criminal act if coercion/force was not used <u>but</u> other person did not consent</b></i>	<i><b>Possible criminal act</b></i>

- The above matrix does not apply to employees of an agency where the people involved are receiving services. Any sexual contact between a person receiving services and an employee, intern, consultant, contractor or volunteer of an agency is always considered to be sexual abuse and is prohibited. Refer to 624.4(c)(2).

**624.4(c)(3) Psychological Abuse – The use of verbal or non-verbal expression, or other actions, in the presence of one or more persons receiving services that subjects the person(s) to ridicule, humiliation, scorn, contempt or dehumanization, or is otherwise denigrating or socially stigmatizing. In addition to language and/or gestures, the tone of voice, such as that used in screaming or shouting at or in the presence of persons receiving services, may, in certain circumstances, constitute psychological abuse.**

Commentary:

- It is important to remember that abuse is not a “catch-all” category, nor is it intended to be used solely for personnel issues. While many actions of staff may be against policy, they should be handled as personnel issues and not classified as abuse.
- The mere presence of a person receiving services when staff are using language that is generally discouraged does not constitute psychological abuse, provided the staff are not directing such language at the person to ridicule, humiliate, scorn or dehumanize the person, *and the person is not adversely affected by the language*. Such lapses in conduct should be handled as a personnel issue.
- If an argument between staff members is witnessed or heard by persons receiving services and the person receiving services is adversely affected or has an unpleasant experience as a result, then this should be reported as an allegation of psychological abuse. If the persons are not adversely affected by witnessing the argument an allegation should not be filed (or the allegation should be disconfirmed once it is determined that the individuals were not adversely affected). Similarly, if an argument occurs between staff members when persons receiving services are not present an allegation should not be filed. These situations should be handled as a personnel issue.
- Exhibitionism, voyeurism, or verbal sexual harassment of a person receiving services by an employee, intern, consultant, contractor or volunteer of an agency should be reported as psychological abuse.
- Verbal aggression or verbal disputes among persons receiving services which are due to behavioral problems and should be recorded and handled as such. The incident reporting Form OPWDD 147 and the incident reporting process should not be used to track behavioral problems. However, if review of the event determines that such verbal aggression or verbal dispute is due to other than a behavioral problem it should be reported on Form OPWDD 147 and investigated as any other allegation of abuse.
- Clinical and administrative judgment should be used to determine if an act should be dealt with as an allegation of psychological abuse when a person receiving services uses a verbal or non-verbal expression or other actions to ridicule, humiliate, scorn, convey contempt, dehumanize or otherwise denigrate another person receiving services. For example, when a person receiving services displays a clear pattern of intentional verbal abuse directed toward another person receiving services and the recipient of the verbal abuse is adversely affected or has an unpleasant experience as a result, this could be reported as an allegation of Psychological Abuse. Verbal abuse that is determined to be incidental and/or impulsive would not be reported as an allegation of psychological abuse.

- Clinical and administrative judgment should be used to determine if psychological abuse has occurred when a person receiving services has a one-time occurrence or a pattern of behaviors such as exhibitionism, voyeurism, or verbal sexual harassment toward another person receiving services; if it is determined that these actions should not be dealt with as a behavioral problem the event must be reported as an allegation of Psychological Abuse.
- While in the community, away from the facility, persons receiving services may be subject to verbal abuse by members of the general public. Such situations should be brought to the attention of the administrator, through the incident reporting process, and dealt with appropriately.

**624.4(c)(4) Seclusion – The placement of a person in a secured room or area from which he or she cannot leave at will. This does not include placement in a time-out (see Glossary) room as part of a behavior management plan that meets all applicable requirements. Seclusion is considered to be a form of abuse and is, therefore, prohibited.**

Commentary:

- “Seclusion” and use of a “time-out room” are not the same.
- Seclusion occurs when by use of a door or other physical means, the person cannot leave at will unless the restriction is imposed pursuant to a time-out plan. Please refer to the definition of time-out in the glossary under subdivision 624.20(aq).
- Seclusion is considered to be an act taken for the convenience of staff, for disciplinary purposes, as a means of retribution, or as a substitute for programming or supervision of a person receiving supports.
- Isolation (i.e.: restricting a person receiving services to a room or area) for medical purposes such as quarantine or protection from infection is not considered a form of seclusion.

**624.4(c)(5) Unauthorized or Inappropriate Use of Restraint – The use of a mechanical restraining device to control a person without the written, prior authorization of a physician or the “senior staff member” (see Glossary) if the physician cannot be present within 30 minutes; or the use of a mechanical restraining device without it being specified in a plan of services; or used for medical purposes (see Glossary) without a physician’s order. The intentional use of a medication to control a person’s behavior that has not been prescribed by a physician for that purpose is considered to be unauthorized use of restraint. Inappropriate use of a restraint shall include, but not be limited to, the use of a device(s) or medication for convenience, as a substitute for programming, or for disciplinary (punishment) purposes.**

Commentary:

- If a mechanical restraining device or medication is used to control a person’s behavior other than as stipulated in the person’s plan of services the situation should be considered to be abuse.
- A mechanical restraining device or medication ordered by a physician in an emergency situation is not considered unauthorized or inappropriate use of restraint.
- In a situation that is not an emergency the use of a mechanical restraining device or medication to control a person’s behavior without the required authorization(s) is considered to be abuse.
- If a medication is prescribed for a medical reason, but is administered to control a person’s acting out behavior, this is considered to be abuse of a person receiving supports.
- For the purposes of this definition of abuse, if the requirements specified in Section 33.04 are not met then the use of restraints as defined in Section 33.04 would constitute abuse. The use of the term, “restraint” in Part 624, however, includes the use of any mechanical restraining device, not just those specified in MHL Section 33.04. The requirements in the law do not apply to the use of any mechanical restraining device (just the use of the devices that meet the definition that is in the law). Refer to Appendix 10 for the MHL Section 33.04 Restraint of Patients.
- Section 33.04 of the Mental Hygiene Law allows for a person designated as a “senior staff member” (See glossary – 624.20(ae)) to allow the use of restraint in an emergency and when a physician does not respond (cannot be reached). If an agency chooses by policy to follow this procedure, and the senior staff member allows the use of a device, the situation would not automatically be reported as “abuse.” It would be reported as a “Restraint” incident.
- The unauthorized or improper use of “hands-on” physical/personal intervention techniques should not to be reported under this category. Any situation that involves unauthorized techniques (except in an emergency) must be filed as physical abuse. Refer to 624.4(c)(1) for additional criteria for physical abuse.

**624.4(c)(6) The Unauthorized or Inappropriate Use of Aversive Conditioning**

(see “Conditioning, Aversive” in Glossary) – The use of aversive conditioning without appropriate permissions is the unauthorized use of aversive conditioning. Inappropriate use of aversive conditioning shall include, but not be limited to, the use of the technique for convenience, as a substitute for programming, or for disciplinary (punishment) purposes.

Commentary:

- Aversive conditioning is defined as follows: Contingent upon a person’s behavior, the application to a person’s body of a physical stimulus to modify or change behavior with such stimulus being considered extremely uncomfortable or painful, or which may be noxious to the person. Examples of such stimuli include but, are not limited to: water and other mists or sprays, noxious odors (e.g., ammonia), noxious tastes (e.g., Tabasco), corporal punishment (e.g., slapping, spanking, hitting, or pinching), air blasts, blindfolds, white noise helmets, and, electric shock.
- If aversive conditioning is used with a person other than as stipulated in an individual-specific plan that has been expressly approved by the Commissioner it is always considered abuse and must be reported as such.
- No plans are currently approved by the Commissioner as of February 2010 so under all circumstances the use of aversive conditioning would be considered abuse.

**624.4(c)(7) The Unauthorized or Inappropriate Use of Time-Out (see “Time-out” in Glossary) – The use of time-out without appropriate permission is the unauthorized use of time-out. Inappropriate use of time-out shall include, but not be limited to, the use of the technique for convenience, as a substitute for programming or for disciplinary (punishment) purposes.**

Commentary:

- Time-out is not to be confused with seclusion.
- Time-out, when used correctly, is a technique which may be used in modifying, altering or controlling a person’s maladaptive behavior. The use of time-out is to be detailed in the person’s behavior plan.
- Use of time-out in any way other than as specified in an individual-specific behavior plan constitutes abuse.
- When a room or other area is used for time-out purposes, normal egress from that room or area can only be prevented by the direct continuous physical action of an appropriately trained staff. For example, when a room is used for time-out purposes, the mechanism by which a door is secured is only operational when a staff member controls it (when released by the staff member the door would be “open” and a person could leave at will) and when such action is designated in an approved written plan. If a door is secured in any other way (bar, lock) or a person is restricted to an area because of a disability (a non-ambulatory person who uses a wheelchair is put in an area whose only egress is by means of stairs), this is considered “seclusion” and is strictly prohibited.
- If an individual receiving services goes into a time out room on his/her own initiative, whether or not time-out is in the individual’s behavior support plan, and staff do not close the door, this does not constitute unauthorized or inappropriate use of time out. However, staff members need to ensure that the door remains open, that they encourage the individual to leave and that they continue to monitor the individual in the room if the individual will not leave. The team should try to determine why the individual receiving services went into the time out room on his/her own initiative, particularly if this is a pattern of behavior, and develop appropriate alternative strategies for the individual. An individual receiving services will often seek out a quiet corner, or in this instance, space, when the commotion, activity and/or noise in the setting is upsetting to them or when they begin to feel “out of control.” The team should try to develop an alternative quiet, calming area for the person.
- Situations in which an individual receiving services refuses to leave the time-out room after an hour of authorized time out, should not be filed as an allegation of abuse under either the category of mistreatment or unauthorized or inappropriate use of time out.

**624.4(c)(8) Violation of a Person's Civil Rights – Any action or inaction which deprives a person of the ability to exercise his or her legal rights, as articulated in State or Federal law.**

Commentary:

- Civil rights are those rights stipulated in State or Federal law for all persons in the United States, such as, but not limited to, the right to be free from discrimination, the right to vote, the right of children to education, and the right of persons with disabilities to access public buildings.
- This category is not intended to capture reports of denial of programming, socialization, recreation, etc. Such denials would more appropriately be reported as “mistreatment” or “neglect.”
- If a restriction is imposed on an individual receiving services without incorporation of an approved behavior plan this does not constitute a civil rights violation. However, this could be filed as an allegation of mistreatment or neglect unless it is an emergency situation in which sound judgment is used.
- This category is not intended to capture all reports of possible violations of the Health Insurance Portability and Accountability Act (HIPAA). Most breaches of confidentiality and HIPAA violations do not constitute a civil rights violation under this part. These violations may be filed as a sensitive situation and reviewed and upgraded if necessary. Unauthorized disclosures of confidential protected health information (PHI) or clinical information may constitute a breach under HIPAA and HITECH and should be reported in compliance with the agency’s HITECH breach reporting and notification policy.

**624.4(c)(9) Mistreatment – The deliberate and willful determination on the part of an agency’s administration or staff to follow treatment practices which are contraindicated by a person’s plan of services (see Glossary), which violate a person’s human rights, or do not follow accepted treatment practices and standards in the field of developmental disabilities.**

**Commentary:**

- Every instance of failure to follow accepted treatment practices or standards does not constitute mistreatment. The failure must be deliberate and willful in nature.
- Agencies are responsible for ensuring that staff receive training appropriate for maintaining and enhancing their capabilities to provide quality care to persons receiving services.
- The denial of programming, socialization, recreation, etc., might be categorized as abuse in the form of mistreatment.
- When a staff member not certified in the OPWDD training curriculum that includes physical/personal intervention techniques, for reasons such as lack of training or lapse in certification, participates in an intervention this should not be reported as an allegation of mistreatment. Refer to paragraph 624.4(c)(1) on physical abuse.
- Situations in which an individual receiving services refuses to leave the time-out room after an hour of authorized time out, should not be filed as an allegation of abuse, under either the category of mistreatment or unauthorized or inappropriate use of time out.
- If an employee reports to duty while intoxicated or under the influence this does not by itself constitute mistreatment. This should be handled as a personnel issue unless there is a negative impact on individuals receiving services that rises to the level of a reportable incident, and then it should be filed under the proper category if the criteria for that category are met.
- Violations of agency policy may not constitute mistreatment. They should be handled as personnel issues. If a violation of agency policy has an adverse affect on a person receiving services then it should be filed as an incident or allegation of abuse under the proper category if the criteria for that category are met.

**624.4(c)(10) Neglect – A condition of deprivation in which persons receiving services receive insufficient, inconsistent or inappropriate services, treatment, or care to meet their needs; or failure to provide an appropriate and/or safe environment for persons receiving services. Failure to provide appropriate services, treatment, or care by gross error in judgment, inattention, or ignoring may also be considered a form of “neglect.”**

Commentary:

- It is important to remember that neglect is not a “catch-all” category, nor is it intended to be used solely for personnel issues. While many actions of staff may be against policy, they should be handled as personnel issues and NOT classified as neglect.
- Neglect is a condition (i.e. a state of being) and generally not a one-time occurrence. Neglect is the result of:
  - Gross error(s) in judgment; or
  - A pattern of failure to provide appropriate services, treatment or care; or
  - An egregious failure to provide a person with a needed service or a safe environment.
- If a medical order is not followed then an allegation of neglect may be filed. In order to rise to the level of an allegation of abuse in any category, including neglect, the physical or emotional well-being of the person must be endangered. If failure to follow the medical order does not endanger the physical or emotional well-being of the individual, the agency should not file an allegation of neglect.
- When a staff member does not attempt to intervene during an assault of a person receiving services on another person receiving services an allegation of neglect should be filed. If the staff member tries to intervene but is not successful in stopping the altercation, an allegation of neglect should not be filed.
- When a staff member is found to be sleeping on duty it should be handled as a personnel issue. If this act immediately jeopardizes the health and safety of individuals receiving services in any way then an allegation of neglect should be filed.
- If an employee reports to duty while intoxicated or under the influence this does not by itself constitute neglect. This should be handled as a personnel issue unless there is a negative impact on individuals receiving services that rises to the level of a reportable incident, and then it should be filed under the proper category if the criteria for that category are met.
- Every instance of a mistake (including those that may in some way be attributed to minor errors in judgment, inattention or ignoring) does not constitute neglect. These failures should be dealt with administratively. For example, a person’s clinic appointment is rescheduled because the house vehicle will not start. The clinic appointment is not urgent in nature. Staff make the decision to reschedule the appointment for a later date rather than attempting to secure other transportation. Agency managers and supervisors conclude that staff acted inappropriately in not seeking alternative transportation. This failure should be dealt with administratively. Another example is an instance in which a person fails to receive a snack after return from day program. The person does not get a snack because there is no fresh fruit available and the person is only allowed fresh fruit as a snack. This failure should be dealt with administratively.

## **624.5 Reporting, Recording and Investigation Requirements**

### **624.5(a) Policies and Procedures**

**624.5(a)(1) Every DDSO and voluntary agency (or “agency,” as both are referred to herein) with oversight responsibilities for one or more facilities shall develop incident/abuse policies and procedures that are in conformance with this Part to ensure:**

- (i) Reporting, recording, investigation, review and monitoring; and**
- (ii) Identification of reporting responsibilities of employees, interns, volunteers, consultants, contractors and family care providers.**

#### Commentary:

- Part 624 is to be used as the basis for an agency to develop its own policies and/or procedures related to the management of incidents and abuse allegations; those policies and/or procedures, at a minimum, are to be in conformance with Part 624. Agency policy may be more restrictive than Part 624, but it can never be less restrictive.
- No reportable or serious reportable incident or allegation of abuse should go unaddressed. Agency policy is set forth in the reporting requirements/procedures within the agency.
- Part 624 must be used as the basis for any agency to make the differentiation between those events which will be reported as a reportable incident, serious reportable incident or abuse allegation and those which will not be reported as such, but which may be reported as *agency reportable incidents* (see subdivisions 624.2(f) and 624.2(g)).
- The determination of who fills out any incident/abuse allegation report form is to be made by each agency. OPWDD has no specific mandates.
- Family Care providers are to inform the designated staff person at the DDSO (for state-sponsored family care homes) or the voluntary agency (for voluntary agency-sponsored family care homes) of any significant event in the life of a person receiving services and of any condition affecting the health and/or adjustment of the person receiving services. Staff so designated at the agency/DDSO are to initiate an incident/abuse report when the reported situation warrants such action. (Also see the Family Care Policy Manual for further details.)
- The agency is responsible for completing all phases of incident/alleged abuse management for its family care homes (i.e., completing forms, making notifications, investigating, committee review, making corrections, and maintaining statistical data).
- A voluntary agency is responsible for making appropriate notifications to the DDSO, as it would for any other class of facility operated under its auspices, including family care.
- Policies and/or procedures need to be developed to cover situations when services are being delivered in a non-certified setting.

**624.5(a)(2) Agency policies and procedures, whether newly developed or representing change from previously approved policies, shall be subject to approval by the agency's governing body and shall be in compliance with 14NYCRR.**

Commentary:

- While an agency's policies or procedures may be more restrictive than Part 624, they cannot be less restrictive. They must, minimally, be in compliance with Part 624.
- The governing body (and chief executive officer) have the ultimate responsibility for ensuring that the incident/abuse reporting process is in compliance with Part 624.
- Other than for a new facility at a new agency, existing agency policies/procedures need not receive the approval of OPWDD before implementation. However, OPWDD has the right to review any such policies and reject them if they are not consistent with Part 624, or any other applicable regulation.
- The governing body should review and approve policies related to reportable incidents/abuse allegations. Given its overall management responsibilities, it would be appropriate for the governing body to establish its own protocols relative to this matter.

**624.5(a)(3) Policies/procedures shall be made known to all persons receiving services and their parent, guardian, or correspondent (see Glossary) or advocate (see Glossary); to agency employees, interns, volunteers, consultants, and contractors; and to family care providers (see Glossary). This may be done by providing a copy of the appropriate policies/procedures to those with a need to know (e.g., staff consultants, family care providers) or as an overview to others.**

Commentary:

- An incident/abuse process cannot be effective unless all parties involved with the person receiving services are aware of the agency's policies and/or procedures to be followed.
- Information can be shared by providing copies of all or pertinent policies/procedures; or to those who are not intimately involved with the process (such as parents, guardians, correspondents, advocates, service coordinators [case managers] who are employed by another provider, or office staff), an overview or synopsis may be adequate.
- When services are provided to persons in non-certified settings, to avoid conflict and/or problems at a later date, persons' family/involved friends, etc., should be advised of the policies/procedures of the agency relative to reporting situations that meet the definition of a reportable incident, serious reportable incident or alleged abuse within the agency, to OPWDD (the DDSO), and, when a crime against a person receiving services is involved, to the local law enforcement authorities.

**624.5(a)(4) Agency policy shall require that internal reports are made on a standardized form(s) (which may have been designed for that purpose or may be multi-purpose), as selected by the agency.**

Commentary:

- Agencies are required to use the OPWDD 147 to document reportable incidents, serious reportable incidents and all allegations of abuse. The OPWDD 147 is to be considered the initial incident or allegation of abuse report. Agencies may not alter the OPWDD 147.
- Agencies may use supplemental forms to track additional information such as notifications. Additional forms should not be considered part of the initial incident or allegation of abuse report and should be kept separate from the OPWDD 147.
- Agencies may develop their own forms to report occurrences that do not rise to the level of a reportable incident. These may be referred to as “agency reportable incidents,” “occurrences,” “minor incidents,” “notable events” or some similar term.
- The agency would need to develop its own policies/procedures as to how an in-house form is used and how it is processed.
- The purpose of the form is to identify and record a particular event, which in turn, starts a process of investigation and review.

## **624.5(b) General Reporting Requirements**

### **624.5(b)(1) Initial incident report and initial allegation of abuse report.**

**624.5(b)(1)(i) Reportable incidents.** The chief executive officer (or designee) shall be advised of all reportable incidents within 48 hours of their occurrence or discovery. The agency shall complete an initial incident report in the form and format specified by the commissioner within 48 hours of occurrence or discovery.

#### Commentary:

- The initial incident report and initial allegation of abuse report are both equivalent to form OPWDD 147.
- By definition, the chief executive officer also includes a designee, who must be a senior staff person.
- A designee should be identified in writing, at least by position, in agency policy/procedure or some other form of information sharing accessible to staff, persons receiving services, family care providers, family, guardians, correspondents, advocates, service coordinators (case managers), volunteers, interns, etc.
- Good management practices suggest that a chief executive officer or designee should be made aware of significant events as soon as possible. As Part 624 sets forth those situations that are considered significant enough to be dealt with by regulation as reportable incidents, it is reasonable to expect that the chief executive officer (or designee) be made aware of at least the situations defined in the regulation as reportable incidents within 48 hours.
- “Immediately,” as related to the reporting of serious reportable incidents and abuse allegations to the chief executive officer (or designee) means that they are to be reported without delay after the Form OPWDD147 is completed. It is recognized that, occasionally, it may be impossible to make a report at once; but the report should be made as soon as practicable. Therefore, policy/procedure should provide adequate guidance to staff so that this timeframe can be met. The primary responsibility of staff is to ensure the safety of persons receiving services. Once this is established, the mechanics of the reporting process should begin. It is up to the agency to give staff clear directions on this through its own policy/procedure, etc.
- A written report should be initiated as soon as a situation has occurred or been discovered. The report should not be delayed while waiting for further information.
- IRMA is the Incident Report and Management Application currently in effect in all DDSOs. The application is also available to and may ultimately be required for the voluntary sector. IRMA can produce an electronic version of the OPWDD 147 if all of the necessary information has been entered into the application. If using IRMA, all necessary information must be entered into IRMA within the timeframes noted in Part 624 for the electronic version of the OPWDD 147 to be in compliance.

**624.5(b)(1)(ii) Serious reportable incidents and allegations of abuse. Any serious reportable incident or any allegation of abuse shall be reported immediately (but no later than 24 hours) upon observation or discovery to the chief executive officer (or designee). The agency shall complete an initial incident report or initial allegation of abuse report within 24 hours of occurrence or discovery.**

**624.5(b)(2) Any report of a serious reportable incident or allegations of abuse shall immediately be investigated in accordance with the agency’s policies/procedures. The chief executive officer is responsible for ensuring that such action is taken as is necessary to protect the safety and welfare of the person(s) receiving services. Subsequent thereto, the agency shall observe its own policies and procedures for the reporting and investigation of alleged abuse as well as the requirements set forth in this Part.**

Commentary:

- By definition, the chief executive officer may also include a designee, who must be a senior staff person.
- A designee should be identified in writing, at least by position, in agency policy/procedure or some other form of information-sharing accessible to staff, persons receiving services, family care providers, family, guardians, correspondents, advocates, service coordinators (case managers), volunteers, interns, etc.
- “Immediately” means as soon as is practicable, taking into consideration that the chief executive officer is required to ensure that the situation is looked into (see the definition of “investigate” in the Glossary).
- Even if an abuse allegation is anonymously brought to the attention of an agency, the agency is obligated to manage the allegation in conformance with all of the applicable requirements of Part 624.
- When there is an allegation that a child has been abused by a family member, it may not be possible for the agency to investigate. It may be necessary to rely on the assistance of investigators from the child protective system.
- In situations which don’t involve agency operations where a crime may have been committed, it may not be possible for the agency to investigate. It may be necessary to rely on the investigation by law enforcement authorities.
- When there is an allegation of abuse of an adult by a family member (or other allegation of abuse which doesn’t involve agency operations) the agency is required to investigate and intervene as necessary. The primary responsibility for intervention in these situations rests with the provider and not with the Local Department of Social Services – Protective Services for Adults program. Please refer to Appendix 7 of this handbook for more information. If services are being provided by more than one agency, refer to paragraph 624.5(d)(2) for help with determining which agency is responsible.
- Anytime that a person makes an allegation of abuse it is to be taken seriously and investigated so as to determine if the preponderance of evidence supports that the abuse occurred (substantiated), if the preponderance of evidence supports that the abuse did not occur (disconfirmed), or if there is insufficient evidence to substantiate or disconfirm (inconclusive).
- There may be a situation in which the treatment team has identified that a particular person has a pattern of making false allegations of abuse. The agency may choose to record and investigate

future allegations made by the person without filing an OPWDD 147 and making the usual notifications to outside parties ONLY if ALL of the following conditions are met AND the incident review committee has approved managing allegations for the designated person(s) receiving services in this manner:

1. Upon reporting or discovery of the allegation, the executive director or his/her designee is immediately notified and all necessary protections are immediately provided for the person.
2. There must be a number of allegations of abuse made by the person on file with the incident review committee. These allegations must be of a specific pattern and similarity. Of these allegations, an overwhelming percentage must have been DISCONFIRMED based upon evidence that the allegations were false.

NOTE: A misunderstanding by the person receiving services is not to be considered a false allegation e.g., a person receiving services misinterprets a staff person's actions.

3. The person has presented a current pattern of making false allegations. Current means within one year prior to the request to the incident review committee.
4. A functional analysis of the person's behavior of making false allegations of a specific pattern must be completed, and a behavior management plan developed and implemented. There must be evidence that the treatment team, the incident review committee and the agency's specially-constituted committee (if the facility is an ICF/DD) have reviewed and approved the functional analysis and the plan. The behavior plan must identify behavioral interventions. The plan must indicate that each allegation made by the person is recorded on a behavior data sheet. The plan must indicate that the person is protected upon discovery/reporting of the allegation. **THE PLAN MUST REQUIRE THAT EACH ALLEGATION MADE BY THE PERSON RECEIVING SERVICES IS INVESTIGATED, WITH THE INVESTIGATION DOCUMENTED.**

All investigations of allegations must be resolved within 24 hours of discovery. If such an allegation cannot be disconfirmed within the 24 hours, an OPWDD 147 must be filed and all required notifications made.

5. The incident review committee must review and approve the functional analysis/behavior plan prior to its implementation.
6. The functional analysis/behavior plan must be reviewed by the treatment team at least quarterly and revised if necessary. On a quarterly basis, the team forwards a summary of each behavioral event and the investigation to the incident review committee for review.
7. An annual presentation must be made to the incident review committee for review and approval of the functional analysis/behavior plan and its continued implementation.

**624.5(b)(3) Any serious reportable incident or any allegation of abuse shall be reported immediately to the DDSO by telephone or other appropriate methods; and,**

Commentary:

- The standard requires that any serious reportable incident or any allegation of abuse must be reported without delay (i.e., immediately) to the DDSO. It is recognized that, occasionally, it may be impossible to make a report at once; but the report should be made as soon as practicable. The use of a telephone will be the most common method of complying with this standard. However, it does not preclude the use of a computer hook-up, fax machine, or other electronic or telecommunication process; if such methods are used, accuracy of transmittal is vital to protect the privacy of reports.
- The DDSO needs to establish policies and procedures to ensure a systematic gathering, recording, and processing of reports from all state-operated programs under its jurisdiction, including the developmental center.
- Voluntary agencies should establish a process whereby a designated individual(s) is responsible for reporting serious reportable incidents and allegations of abuse to the DDSO. This would enable the DDSO to establish a consistent point of contact with the agency.
- It is recommended that agencies complete an OPWDD 147 prior to notifying DDSO, since the telephone notification to the DDSO should be based on information in the OPWDD 147.
- The DDSO should establish a central reporting number to receive initial telephone reports, and to advise state and voluntary providers of that number.
- The DDSO, when receiving telephone reports, may record the information in any manner it deems appropriate.
- The DDSO is to ascertain whether the report actually constitutes a serious reportable incident or abuse allegation.
- The DDSO should establish files for all reports received.
- All agencies should be aware that should a serious reportable incident or an allegation of abuse be of such gravity or grievousness that it is sensible to advise the Commissioner or that person on-duty for the Commissioner, contact will be made as soon as possible by the DDSO director personally, or specifically designated staff, who will then ensure notification to the Central Office or OPWDD. Most serious reportable incidents and abuse allegations will not be of such gravity or grievousness to warrant notifying the Commissioner. Refer to Appendix 12 for further information.

**624.5(b)(3)(i) A written initial incident report of any serious reportable incident shall be sent to the DDSO in the form and format specified by the commissioner, within 24 hours of observation or discovery, and shall contain such information as is known at the time the form is completed.**

Commentary:

- Voluntary agencies must submit the OPWDD 147 to the DDSO for serious reportable incidents and allegations of abuse.
- The OPWDD 147 must be used and cannot be altered.
- The initial OPWDD 147 may be retrieved by the DDSO via IRMA. IRMA is the Incident Report and Management Application currently in effect in all DDSOs. The application is being offered to the voluntary sector. IRMA can produce an electronic version of the OPWDD 147 if all of the necessary information has been entered into the application. If using IRMA, all necessary information must be entered into IRMA within the timeframes noted in Part 624 for the electronic version of the OPWDD 147 to be in compliance.
- The OPWDD 147 is to be sent to the DDSO within 24 hours of the discovery or observation of the event generating the initial report.
- There is no requirement that the DDSO receive the hard copy within 24 hours, only that it be sent.
- Agency policies/procedures are to ensure a process for timely recording and reporting serious reportable incidents and allegations of abuse and are not to defer such activity until “the next business day.”
- Even though the DDSO has been made aware of the situation, a “hard copy” of the report is to be conveyed to the DDSO to confirm the initial contact and avoid possible error or omission.
- The Form OPWDD147 is not intended to be used as a form on which to detail all the information relative to a serious reportable incident (e.g., staff interviews, notification, records, medical exam findings, 8 reports, etc.). The purpose of the form is to record that information which is known to the person at the time that the form is being completed. There is a requirement elsewhere (refer to subdivision 624.5(e) and paragraph 624.5(e)(2)) which requires the submission of further information on no less than a monthly basis.
- Holidays and weekends are not excluded in this 24-hour requirement. Each agency should develop its own procedures for the mailing (or whatever other means selected) of a hard copy to the DDSO.
- Agencies with certain electronic equipment (e.g., fax capability, computer modem, E-mail capability) may elect to use such equipment to comply with the requirement for immediate and hard copy notification. In doing so, agencies must be aware of the need for confidentiality in the transmittal of such information; and the need for training staff in the use of such equipment to prevent information being directed to a wrong address.

- Reports of serious reportable incidents and abuse allegations concerning persons receiving services residing in their own homes and non-certified HCBS waiver services at home are to be reported to the DDSO on Form OPWDD 147, when known to the service provider.

**624.5(b)(3)(ii) A written initial allegation of abuse report shall be sent to the DDSO in the form and format specified by the commissioner, within 24 hours of occurrence or discovery of the alleged abuse, and shall contain such information as is known at the time the form is completed.**

Commentary:

- The written report (OPWDD 147) is to be sent to the DDSO within 24 hours of the discovery or observation of the event generating the initial report. It is important that a “hard copy” of the report be conveyed to the DDSO to confirm the initial contact and to avoid possible error/omission.
- Agencies with certain electronic equipment (e.g., fax capability, computer modem, E-mail capability) may elect to use such equipment to comply with the requirement for immediate and hard copy notification. In doing so, agencies must be aware of the need for confidentiality in the transmittal of such information; and the need for training staff in the use of such equipment to prevent information being directed to a wrong address.
- The initial OPWDD 147 may be retrieved by the DDSO via IRMA. IRMA is the Incident Report and Management Application currently in effect in all DDSOs. The application is being offered to the voluntary sector. IRMA can produce an electronic version of the OPWDD 147 if all of the necessary information has been entered into the application. If using IRMA, all necessary information must be entered into IRMA within the timeframes noted in Part 624 for the electronic version of the OPWDD 147 to be in compliance.
- The Form OPWDD 147 is not intended to be used as a form on which to detail all the information relative to an abuse allegation (e.g., staff interviews, notification records, medical exam findings, police reports, etc.). The purpose of the form is to record that information which is known to the person at the time that the form is being completed. There is a requirement elsewhere (see subdivision 624.5(e) and paragraph 624.5(e)(2)), which requires the submission of further information on no less than a monthly basis.
- Holidays and weekends are not excluded in this 24-hour requirement. Each agency should develop its own procedures for the mailing (or whatever other means selected) of a hard copy to the DDSO. Remember, it is only confirmation of a report – not the whole history.
- Reports of serious reportable incidents and abuse allegations to persons residing in their own homes and receiving non-certified HCBS waiver services at home are to be reported to the DDSO on Form OPWDD 147, when known to the provider.

**624.5(b)(4) A written report, in the form and format specified by the commissioner, of any allegation of abuse is to be sent to the Commission on Quality of Care & Advocacy for Persons with Disabilities (see section 624.20) within 48 hours of occurrence or discovery.**

Commentary:

- The Commission on Quality of Care & Advocacy for Persons with Disabilities is more commonly referred to as the “CQCAPD.”
- The Mental Hygiene Law requires the “prompt report to the commission (of) any allegations of abuse or mistreatment...” (Section 45.19) [underlining added for emphasis]. Therefore, it is each agency’s responsibility to forward a copy of the OPWDD 147 directly to the CQCAPD on all allegations of abuse to persons receiving services.
- It is the responsibility of the reporting agency to forward a copy of the OPWDD 147 to the CQCAPD within the 48 hours following discovery/reporting of alleged abuse.
- “Discovery” means the time at which a staff person (at the agency reporting the alleged abuse) identified and reported the situation.
- The 48-hour timeframe applies to sending the report. It does not mean that CQCAPD must receive the report within 48 hours.
- As Section 45.19 of the Mental Hygiene Law requires “any allegations” of abuse to be brought to the attention of the CQCAPD, the OPWDD 147 is to be forwarded, even if a determination has already been made that the allegation is disconfirmed, or unsubstantiated due to lack of information. However, this should be so noted on the report form in the narrative section (or on an attachment).
- The address to which reports to CQC should be sent is:  
  
Commission on Quality of Care  
& Advocacy for Persons with Disabilities (CQCAPD)  
Bureau of Quality Assurance  
401 State St.  
Schenectady, NY 12305
- There is no requirement that follow-up information be forwarded to CQCAPD, though such information may be shared upon request.
- CQCAPD is to be informed of known alleged abuses to a person receiving non-certified services.

**624.5(b)(5) An allegation of abuse, involving a person who resides in a facility, requires a written report, in the form and format specified by the commissioner, to be sent to the Mental Hygiene Legal Service (see section 624.20) within three working days. If a person resides in a State-operated facility, the initial allegation of abuse report shall also be sent within three working days to the board of visitors of the applicable DDSO. The Mental Hygiene Legal Service and the board of visitors shall be informed of the results of the investigation.**

Commentary:

- Article 47, Section 47.01(a) of the Mental Hygiene Law, gives the Mental Hygiene Legal Service (MHLS) an active role in safeguarding the right of any person receiving services in a facility to protection from abuse (Section 47.03(e)).
- To facilitate this role, a copy of the Form OPWDD 147 is to be forwarded to the local office of MHLS within 3 working days of the occurrence or discovery of an alleged abuse of a person residing in a facility.
- Section 13.33(h) of the Mental Hygiene Law empowers the Board of Visitors of a DDSO to investigate all cases of alleged abuse or mistreatment charged against an employee and to interview persons receiving services and employees of the facility in pursuit of such investigations where such alleged abuse or mistreatment is filed by a State-operated residential facility in the DDSO's area.
- The Board of Visitors is to be notified of any allegation of abuse filed by a state-operated residential facility. In these situations, a copy of the Form OPWDD 147 is to be forwarded to the appropriate Board of Visitors within 3 working days of the occurrence or discovery of the alleged abuse.
- Both MHLS and the Board of Visitors are to receive information at the conclusion of the investigation. It would be appropriate to utilize the monthly status report which indicates closure of a case (see paragraph 624.5(e)(2)).
- The "3 working day" timeframe applies to sending the report. It does not mean that the receiving party has to receive it within 3 working days.
- The Mental Hygiene Legal Service is organized by judicial departments (regions). The addresses of these offices are:

First Judicial Department  
60 Madison Avenue 2<sup>nd</sup> Floor  
New York, NY 10010

Third Judicial Department  
40 Steuben Street Suite 501  
Albany, NY 12207

Second Judicial Department  
170 Old Country Road.  
Mineola, NY 11501

Fourth Judicial Department  
50 East Avenue Suite 402  
Rochester, NY 14604

- MHLS is to be advised, by way of Form OPWDD 147, of any abuse that occurs to a person receiving services who resides in a certified residence. The agency that files an allegation of abuse of a person who resides in a certified residence is responsible for ensuring that the Form OPWDD 147 is forwarded to MHLS.

**624.5(b)(6) Any reportable incident, serious reportable incident, or any instance of alleged abuse is to be thoroughly investigated by the chief executive officer or designated senior staff. A full investigation of serious reportable incidents or allegations of abuse shall take place immediately, with further investigation undertaken commensurate with the seriousness and circumstances of the situation. All such investigations shall be documented.**

Commentary:

- The circumstances surrounding the event under investigation will govern the intensity of the investigatory activities needed.
- It is strongly recommended that all staff investigating alleged abuse be trained in investigatory techniques.
- Investigations may vary in their scope and intensity. In all cases, investigations must be thorough enough to determine whether the event actually occurred. The investigation must continue until the case is closed regardless of whether or not the directly involved staff member separates from service (e.g. resigns or is terminated). The investigation should identify contributing factors and the cause(s) of what occurred so that appropriate recommendations can be made to address the current event and to prevent similar events from occurring in the future.
- The investigator should, when appropriate, review the following factors:
  - the number of staff present to meet individual needs,
  - adequacy of staff training,
  - management supervision of staff,
  - use of overtime,
  - environmental factors,
  - individual behavior management plans,
  - individual health care needs
- Investigative reports should include specifics such as who was involved; where the situation occurred, what happened, when it happened, and why it happened.
- Investigators should avail themselves of input from medical staff or consultants in those situations where a person receiving services has been seriously injured or abused.
- It may be necessary to involve child or adult protective services investigators or local law enforcement authorities to handle investigations of alleged abuse in private homes.

**624.5(c) Investigation, Follow-Up and Records Maintenance**

- (1) No one may participate in the investigation of any reportable incident, serious reportable incident, or allegation of abuse in which he or she was directly involved, in which his or her testimony is incorporated, or in which a spouse or immediate family member was directly involved. When a serious reportable incident or allegation of abuse is to be investigated, every effort is to be made to have someone conduct or review the investigation who is not an immediate supervisor of staff directly involved with the situation or event so as to be as disinterested and objective a party as possible. Those who are members of a standing committee to review and monitor reportable incidents, serious reportable incidents, and allegations of abuse shall not routinely be assigned the responsibility of investigating such events.**

Commentary:

- Investigations cannot be conducted by a person who is the subject of an investigation of a reportable incident or alleged abuse, a witness whose testimony will be solicited, or a person who is married to or closely related to a person who is the target of an investigation.
- It is always better to have an unbiased person investigate serious reportable incidents or alleged abuse. Supervisors, because of their relationship to their staff, may be biased (either negatively or positively) and/or the investigation may implicate the supervisor because of the nature of their supervisory capacity. However, OPWDD acknowledges that, in some settings, it is not always possible to eliminate immediate supervisors from the investigatory process and allows for such action to take place.
- It is difficult to provide an across-the-board definition of “immediate supervisor,” as there is a big difference between a large facility such as a developmental center and a four person IRA. For example, a direct care staff working in a developmental center may have more than one supervisor who provides him/her with direction on a day to day basis.
- The role of the standing committee is to review and monitor reportable incidents and alleged abuse. Thus, to perform this function in an unbiased manner and to eliminate any possible conflict of interest, members should not routinely (regularly) conduct or participate in the investigations at a facility or agency.
- If a member of the standing committee conducts or participates in an investigation, he or she should not be involved in the committee’s review and evaluation of the incident/alleged abuse case and its investigation (see paragraph 624.7(c)(4) and subparagraph 624.7(d)(5)(ii)). That person could, however, participate in making recommendations (see paragraphs 624.7(c)(5)) and 624.7(c)(6)) and any other functions of the committee.

**624.5(c)(2) Unless deemed necessary by OPWDD or a DDSO, multiple independent investigations of a single situation are not required.**

Commentary:

- Every agency is responsible for conducting an investigation into every reportable incident, serious reportable incident, or alleged abuse. However, because there may be an injury as well as an alleged abuse, separate investigations into each situation need not be made. If an investigation of an injury led to an investigation of alleged abuse, the injury investigation and the abuse investigation could be incorporated into the same investigation.
- A situation could arise whereby an agency begins an investigation and, because of the seriousness of the situation, requests assistance from the DDSO, the OPWDD Office of Investigations and Internal Affairs, or the police. In such a situation, the agency might be expected to defer further investigation until that of an external authority is completed. However, it would be expected that the agency keep aware of the status of such investigations.
- No agency can abrogate its responsibility for conducting an investigation immediately into any reportable incident, serious reportable incident, or abuse allegation. However, if another party wants to participate jointly in an investigation, this is permissible.
- No agency can wait for another party to conduct an investigation (other than the police), thereby eliminating the task.

**624.5(c)(3) With regard to all reportable incidents, serious reportable incidents, and/or all allegations of abuse, a person’s safety must always be the primary concern of the chief executive officer. He or she shall take whatever measures appear to be reasonable and prudent to ensure the protection of a person from further harm, injury, or abuse, and to provide prompt treatment or care. When appropriate, an employee, intern, volunteer, consultant, or contractor alleged to have abused a person shall be removed from immediate proximity to, or responsibility for, the person.**

Commentary:

- It is usually preferable to relocate a staff person alleged to have abused a person receiving services rather than relocate the person receiving services though there is nothing to prevent the removal of a person receiving services, if done in accordance with current “placement policies.”
- It is not mandatory that a staff person who has allegedly abused a person receiving services be relocated. In many instances, however, it is the prudent course of action until such time as more information is gathered.
- An agency must always act in conformance with any union contracts in effect.
- Further recommendations can be found in Part 633.9, as follows:
  - “(1) *Each situation shall be evaluated immediately, evidence preserved, when possible, and appropriate actions taken, which may include the investigation by trained investigators. Such actions shall cause as little disruption possible to the daily routine of the person(s) being served, yet provide for the ensuring of health and safety. Consistent with the demands of the situation, one or more of the following actions may be considered and implemented while an allegation of abuse is being investigated:*
    - (i) *Removal, reassignment, relocation or suspension of the alleged abuser, consistent with appropriate collective bargaining agreements and applicable provisions of the Civil Service Law or other applicable laws or regulations.*
    - (ii) *Increasing the degree of supervision of the alleged abuser.*
    - (iii) *Provision of counseling to the alleged abuser.*
    - (iv) *Provision of increased training to the alleged abuser and staff pertinent to the prevention and remediation of abuse.*
    - (v) *Increasing supervision and providing additional support to restore a secure environment to the affected staff and persons in the facility.*
    - (vi) *Removal or relocation of the person, consistent with his or her developmental needs (or any court order applicable to the person), when it is determined that there is a risk to such individual if he or she continues to remain in the program.*

- (vii) *Provision of counseling to the individual and to other persons in the agency, as appropriate.*
- (2) *When an allegation of child abuse has been accepted and designated as “indicated” (see Glossary, Section 633.99 of this Part) by the Statewide Central Register of Child Abuse and Maltreatment, the agency shall develop a corrective action plan in conformance with Sections 16.29(c) and 29.29(d) of the Mental Hygiene Law.*
- (3) *After an allegation of child abuse that has been accepted and “indicated” by the New York Statewide Central Register of Child Abuse and Maltreatment, and investigation by the New York State Commission on Quality of Care & Advocacy for Persons with Disabilities, it may be determined that some credible evidence of abuse exists that may be attributable in whole or in part to non-compliance by the agency with this Part or any other regulations of the commissioner applicable to the residential facility under investigation. In such an instance, the agency or the sponsoring agency shall develop and implement a plan of prevention and remediation.*
- (4) *When it appears that a crime may have been committed against a person receiving services by any party including another person receiving services, suspected criminal activity shall be reported to the district attorney or other local law enforcement official having jurisdiction. Such reporting shall be:*
  - (i) *The responsibility of the chief executive officer (see Glossary) or program administrator (see Glossary).*
  - (ii) *Made as soon as possible, or, in any event, within three working days.*
  - (iii) *In accordance with policies/procedures established by the agency/facility or the sponsoring agency. Every effort shall be made to develop such policies/procedures with input from the district attorney or other appropriate local law enforcement official(s).*
- (5) *When an allegation of abuse is determined to be unfounded, immediate and appropriate action shall be taken to exonerate the party against whom the allegation was made.”*

A facility will be surveyed against the following requirements:

- (1) *“A corrective action plan has been developed and implemented for all reports of child abuse accepted by and designated as “indicated” by the New York Statewide Central Register of Child Abuse and Maltreatment:*
  - (ii) *within 10 days of receipt of an indicated report;*
  - (iii) *which includes the plan of action to be taken with respect to an individual employee or volunteer to assure the continued health and safety of children; and,*
  - (iv) *which includes the plan of action to provide for the prevention of future acts of abuse.*

*In the event that after an investigation of child abuse by the New York Statewide Commission on Quality of Care & Advocacy for Persons with Disabilities, the Statewide Central Register of Child Abuse and Maltreatment determines that some credible evidence of abuse exists and such abuse may be attributed in whole or in part to non-compliance by the agency with this Part or any other regulations of the commissioner applicable to the residential facility under investigation, the agency or the sponsoring agency developed a plan of prevention and remediation that was:*

*(i) Submitted to OPWDD within ten working days of notification of the findings and need for such a plan;*

*(ii) Approved by OPWDD; and,*

*(iii) Implemented within the timeframes specified in the plan.*

*(2) OPWDD shall verify that the implementation of plans specified in paragraphs (1) and (2) of this subdivision are in conformance with the plans and any timeframes specified therein.”*

- When a person receiving services in a non-certified setting, is involved, it may be necessary to have child or adult protective services and/or the local law enforcement authorities participate in ensuring the protection of that individual.

**624.5(c)(4) Appropriate action is to be taken when there is an injury (as defined in section 624.4(b)(1)), which, upon review or investigation is determined to be of unknown origin. On no less than an annual basis such injuries are to be reviewed; overall corrective measures taken, as may be applicable; and trends are to be analyzed.**

Commentary:

- All injuries of unknown origin, including those that do not rise to the level of a reportable or serious reportable incident, should be investigated to determine cause, prevent reoccurrence and to identify trends and/or assist the agency in taking corrective action to eliminate problems/issues of a systemic nature. The purpose of such data collection and investigation is to ensure the health and safety of persons receiving services.
- The data to be collected is at the discretion of the agency. However, it is highly recommended that the agency analyze the overall frequency of injuries of unknown origin along with relationship to the time of day (including any relationship to the time of administration of medication), the place, the staff on-duty, the disability of the person receiving services, etc.
- Agency policy should indicate how often the data analysis is to be completed. This should be based on need but must be done no less than annually.
- There should be documentation of such data analysis, including findings and recommendations.
- If certain actions are recommended there should be documentation that they have been acted upon; or an explanation of why they have not been acted upon.

**624.5(c)(5) OPWDD has, pursuant to statute, the right to review and/or investigate any reportable incident, serious reportable incident and/or allegation of abuse regardless of the source of the information. All relevant records, reports and/or minutes of meetings at which the incident or alleged abuse was discussed shall be made available to reviewers or investigators. Persons receiving services, staff and any other relevant parties may be interviewed in pursuit of any such review and/or investigation. Such reviews and/or investigations include those conducted by the DDSO. OPWDD shall ensure confidentiality.**

Commentary:

- It is assumed that every agency will conduct as complete an investigation as is necessary to bring to closure any situation involving a reportable/serious reportable incident or alleged abuse.
- In conformance with Sections 16.11, 16.13, and 16.19 of the Mental Hygiene Law, OPWDD may conduct investigations at facilities. If it is concerned about any reportable incident or alleged abuse, it may conduct its own investigation. Such investigations may be directed by the DDSO, or an entity within OPWDD's administrative structure (i.e., the Division of Quality Management, Office of Investigations and Internal Affairs).
- Any employee of OPWDD is mandated to ensure the confidentiality of any records in its possession, in accordance with NYS law; therefore, access should not be denied to them.

**624.5(c)(6) Reportable incident, serious reportable incident, and abuse reports and subsequent reports or documentation of investigations shall be maintained so as to protect the privacy of persons receiving services, anyone else involved, or others whose names may appear in the report. Such reports shall be retrievable by the person's name and, if used, filing number or identification code.**

Commentary:

- The intent of this section is to address the storage of records.
- Incident and abuse reports, as required by Part 624, are not to be part of the person's program plan. A brief notation about the reported event should appear in the program plan (in accordance with agency requirements), but names of other staff and/or persons receiving services should not be used.
- Full names of persons receiving services and/or staff should appear in the file of the incident/abuse.
- Upon request, the agency must be able to retrieve any or all reports and records relative to a specific person. They must also be able to retrieve all records relative to a specific case identification number, if such numbers are used.
- Incident and abuse allegation files (whether active or closed) should be filed/stored in such a manner that will ensure limited access by staff or others.

**624.5(d) Irregular situations**

- (1) A reportable incident, serious reportable incident, or alleged abuse occurs while a person is still directly under the auspices of the agency, but is not physically at the facility (e.g., in a restaurant, at the doctor, visiting family, in school, on a vacation trip, at camp, receiving non-certified services at a non-certified location):**

Commentary:

- Please note that the definition of the term “under the auspices” which is in the glossary in Section 624.20(j) does not apply to the usage of the term here. The definition in the glossary only applies to notification and access to records as discussed in Sections 624.6 and 624.8. For further clarification please refer to 624.5(d)(1)(iii).
- Reportable, serious reportable, or allegations of abuse that involve an individual who resides in or attends a certified facility but is not physically present at the facility at the time of the incident must be reported in accordance with Part 624 requirements and investigated to the extent possible. Paragraphs 624.5(d)(1)-(3) are only applicable to individuals receiving services who reside in a certified residence and/or attend a certified day program.

**624.5(d)(1)(i) The process to be followed shall be the same as would be followed had the situation happened in the facility.**

Commentary:

- When a person is a resident of a facility, any incident or alleged abuse, regardless of where it occurs (except in a certified day facility), is to be reported, recorded, investigated and followed through (to the extent possible), and reviewed by the standing committee as though it had occurred at the facility.
- When the person is a resident of a facility, any incident or alleged abuse that occurs while visiting family or friends is to be reported, recorded, investigated and followed through (to the extent possible), and reviewed by the standing committee as though it had occurred at the facility.

**625.5(d)(1)(ii) Investigation and follow-up shall be made to the extent possible, and available community resources utilized (e.g., law enforcement authorities, department of social services child and adult protective services).**

Commentary:

- If it appears that a crime may have been committed or is being committed against a person receiving services, it is necessary to notify local law enforcement, the DDSO and any other voluntary or State agency providing services to that person.
- In cases where abuse is suspected to have occurred at a location not under the jurisdiction of OPWDD, it may be necessary to contact the Statewide Central Register of Child Abuse and Maltreatment, Protective Services for Adults/Adult Protective Services, MHLS, other advocacy organizations, or local law enforcement.
- Referrals to the Local Departments of Social Services (LDSS) - Protective Services for Adults (PSA) should only occur when effective investigation or intervention requires specific authority by the PSA related to legal actions or services which are unavailable in the OPWDD system.
- Procedures related to an allegation that family members have abused a person receiving services or other allegation outside the scope of service provisions are discussed further in Appendices 7, 8 and 9.
- OPWDD operated or certified facilities have no authority to go into another program or any facility operated under the auspices of another State agency. Therefore, it is appropriate for the DDSO to assume the role of the liaison for the follow-through with others in resolving such matters.
- Other State agencies are not responsible to report according to OPWDD regulations. Other agencies are required to document according to their own regulations, policies and procedures. It would be the responsibility of the chief executive officer of the OPWDD operated or certified facility to ensure that there is an established relationship with other agency programs that provide services for OPWDD persons so that they be made aware of those situations that are reportable incidents and/or allegations of abuse in accordance with OPWDD regulations. The OPWDD chief executive officer, when advised of such situations, would then assess if it is a reportable incident or allegation of abuse. Then, according to Part 624, the administrator ensures that appropriate reporting, recording, and investigations of the event are made to the extent possible and the situation is brought to the attention of the DDSO, as appropriate.
- Serious reportable incidents and alleged abuse, which take place at a location not under the auspices of another OPWDD agency or another New York State agency, are to be reported on the OPWDD 147, investigation made to the extent possible, and the situation brought to the attention of appropriate outside authorities (e.g., police, Adult Protective Services, Statewide Central Register of Child Abuse and Maltreatment), as well as the DDSO.
- As a means of tracking/monitoring an incident or alleged abuse that occurred outside an agency's jurisdiction, there is nothing to preclude following up the situation in conformance with an agency's own policies/procedures. However, an "open status" should not be maintained indefinitely for purposes of reporting status to the DDSO (i.e., if an agency has taken all

appropriate steps and the final outcome is to be determined under other parties, the case may be “closed” with regard to the monthly update reports required to be sent to the DDSO). It would be appropriate, however, to notify the DDSO of the final outcome.

- If there is reasonable cause for the reporting agency to presume that a reportable/serious reportable incident or alleged abuse occurred in another program, it may contact the DDSO, provide them with sufficient information to support this position, and request that the DDSO follow through with the other program for a complete investigation there.

**624.5(d)(1)(iii) The meaning and usage of the term “under the auspices” in this paragraph is different from the meaning and usage of the same term in sections 624.6, 624.8 and 624.20, related to notification and access to records for qualified parties.**

Commentary:

- The usage of the term “under the auspices” in this paragraph is different than the usage related to notifications required by subdivision 624.6(f) and 624.6(g) and access to records requirements in Section 624.8.
- The obligation of providers to become involved in events or situations affecting individuals receiving services, when the events or situations rise to the level of an incident or allegation of abuse, is independent of the obligation to notify parents, guardians and advocates/correspondents or to disclose records and documents.
- The provisions of Chapter 24 of the Laws of 2007 (Jonathan’s Law) necessitated significant changes to the notification requirements in Section 624.6 and the addition of a new Section 624.8 related to access to records and documents. However, the pre-existing requirement to become involved as expressed in this paragraph and elsewhere in the regulation and this Handbook were unchanged by the revisions to Section 624.6 and addition of Section 624.8 (which excludes situations which are not “under the auspices” of the agency or sponsoring agency from being subject to those requirements). The current language of this paragraph was therefore unchanged, despite the difference in meaning of the term “under the auspices” that resulted.
- Please note that the definition of the term “under the auspices” which is in the glossary in Section 624.20 does not apply to the usage of the term here. The definition in the glossary only applies to notification and access to records.

**624.5(d)(2)** A reportable incident, serious reportable incident, or abuse is alleged by a facility to have occurred while a person was under the supervision of another agency's facility (e.g., day treatment facility staff alleges that a situation occurred at a residence; residential staff alleges that a situation occurred at a workshop):

(i) The discovering agency shall make a written record of the report.

Commentary:

- While it is not necessary to record situations (that meet the definition of a reportable or serious reportable incident or abuse) that occur at another agency on an incident/abuse report form, there must be a record of the event and information as to how it was referred to another agency.
- The discovering agency need not make out an incident/abuse report. The situation can be recorded in any manner established by the agency.

**624.5(d)(2)(ii) The discovering agency shall determine if the event has/will be duly reported and investigated by the other agency/facility.**

Commentary:

- If there is any question on the part of an agency which suspects that an incident or abuse has occurred at another OPWDD operated or certified location, the chief executive officer (or designee) is required to determine to the best of his or her ability that a report has been made. If the chief executive officer (or designee) cannot determine this or has any concerns about the situation, the DDSO is to be contacted and the situation brought to its attention. The DDSO is responsible for ensuring that reports are appropriately filed.
- As a means of tracking/monitoring an incident or alleged abuse that occurred outside an agency's jurisdiction, there is nothing to preclude following up the situation in conformance with an agency's own policies/procedures. However, it is not to be considered an "open" case and become a "statistic" of the discovering agency.
- If a situation arises, such as when a day program makes a report about an injury whose time and place of occurrence is not immediately known, and that program seeks the assistance of another OPWDD program in making a determination as to where the injury occurred, the other program should provide whatever assistance is necessary to make the determination. If the other program does not cooperate, the reporting program should contact the DDSO for assistance.
- The agency under whose auspices an event is alleged to have occurred has the responsibility for completing the initial incident/abuse report, notifying the DDSO, following through on the situation, and including the event in its quarterly statistical report to the DDSO.

**624.5(d)(2)(iii) The agency in whose facility or under whose auspices (e.g., transportation) the serious reportable incident or abuse is alleged to have occurred, shall report the situation to its DDSO.**

Commentary:

- It is mandated that the agency responsible for the person at the time a serious reportable incident or alleged abuse occurred report the situation to its DDSO. The “finding” agency does not make a report of an incident of alleged abuse to its DDSO. It would only contact its DDSO when there are difficulties encountered with the agency responsible for handling the reporting process and it is possible that it will not be duly reported.
- The provider of an individual receiving services contracting transportation for that individual will be responsible to report/investigate incidents that occur while that individual is being transported to/from another facility.
- If the reportable incident, serious reportable incident, or abuse is alleged to have occurred in a family care home, it is the responsibility of the sponsoring agency to complete the incident/abuse report and investigate the situation and report to the DDSO as necessary.
- Please note that the definition of the term “under the auspices” which is in the glossary in Section 624.20 does not apply to the usage of the term here. The definition in the glossary only applies to notification and access to records.

**624.5(d)(2)(iv) It shall be the responsibility of the agency with authority over the facility or service where the situation is alleged to have occurred to investigate, review, correct and monitor the situation; to keep the discovering agency informed of the progress and outcome, and, to keep its DDSO informed, as required by subdivision (e) of this Part, below.**

Commentary:

- It is mandated that the agency with responsibility for the person at the time the situation occurred is to handle the process.
- The discovering agency is to be kept informed of the general findings of the investigating agency, and the outcome.
- Part 624.5(e) requires that the DDSO be kept informed of the progress of investigations of all serious reportable incidents and alleged abuses. It is the responsibility of the agency with responsibility for the person at the time the situation occurred to do this.

**624.5(d)(2)(v) If the agency suspecting or alleging the incident or abuse is not satisfied that the situation will be or is being investigated or handled appropriately, it shall bring the situation to the attention of its DDSO. The DDSO shall follow-up and take whatever steps may be necessary to ensure appropriate action by the other agency or by another DDSO (as applicable).**

Commentary:

- If there is reasonable cause for the discovering agency to presume that a serious reportable incident or alleged abuse occurred in another agency and it is not being handled appropriately, it may contact the DDSO, provide them with sufficient information to support this position, and request that the DDSO follow through with the other agency for a complete investigation there.
- The DDSO has the responsibility for ensuring that the agency where the situation is alleged to have occurred provides documentation about the event.

- 624.5(d)(3) A reportable incident, serious reportable incident, or abuse is alleged to have occurred while a person, who attends a certified day program, was at another location (e.g., at home, at a friend's home):**
- (i) An incident report shall be completed.**
  - (ii) The information shall be evaluated and a determination made as to the appropriate course of action to be taken immediately and/or subsequently.**
  - (iii) Investigation and follow-up shall be made to the extent possible, and available community resources utilized (e.g., law enforcement authorities, department of social services child and adult protective services).**

Commentary:

- When a person receiving services does not reside in an OPWDD facility, it is the responsibility of a day program to make out a report of any situation, of which it is aware, that occurs outside the program that meets the definition of a reportable incident, serious reportable incident or abuse.
- If it appears that a crime may have been committed or is being committed against a person receiving services, the agency is required to report the situation to local law enforcement authorities.
- In cases where abuse is suspected to have occurred at a location not under the jurisdiction of OPWDD, it may be necessary to contact the Statewide Central Register of Child Abuse and Maltreatment, Protective Services for Adults/Adult Protective Services, MHLS, other advocacy organizations, or local law enforcement. Referrals to the Local Departments of Social Services (LDSS) - Protective Services for Adults (PSA) should only occur when effective investigation or intervention requires specific authority by the PSA related to legal actions or services which are unavailable in the OPWDD system.
- See Appendices 7, 8, and 9 of this handbook regarding alleged abuse of adults.
- It may be necessary to obtain or provide support services or other assistance to the family or others with whom the person resides.
- If there is a service coordinator (case manager) and/or advocate, they should be advised of the situation.
- The DDSO should always be notified of any situation which has been referred to other authorities or agencies (e.g., DSS child or adult protective services, law enforcement authorities).
- The DDSO should always be notified of any situation that meets the definition of a serious reportable incident or abuse.

**624.5(d)(4) There is a reportable incident, serious reportable incident, or abuse allegation reported involving more than one person receiving services.**

- (i) From a statistical point of view, the situation shall be considered as one event.**
- (ii) The agency shall establish whatever procedures it deems necessary to ensure that overall statistics reflect single events and that, when an event involves more than one person, records are retrievable by event in addition to being retrievable by a person's name.**

Commentary:

- Regardless of how many people were involved in a situation, it should be investigated, reviewed, and monitored as ONE event.
- When a situation involves more than one person, there should not be independent investigations, conclusions, and resolutions. Though there may be more than one investigator, the results of the investigation should be coordinated into a single file.
- The instructions for the OPWDD 147 in Section III of this handbook state:
  - If an event or situation involves more than one person receiving services, and the classification and description of the event is the same concerning all persons, a single OPWDD 147 should be completed for the event or situation, and a single number assigned. IRMA automatically assigns a number to each incident. IRMA will identify the event with one master incident number with appendices for the number of persons involved. For statistical purposes, this is considered one event. Notifications must be made to the appropriate persons (e.g. parent, advocate, service coordinator) for each person receiving services. An example would be a car accident in which several persons were injured. If a single event results in different classifications (e.g. sexual abuse of a person by another person receiving services), a separate OPWDD 147 must be generated for each classification (sexual abuse on one OPWDD147, possible criminal act on another OPWDD 147). IRMA will allow for this to be registered within the master number.
- When submitting statistics to OPWDD for the quarterly report, do not base the report on the number of people involved in a situation; report the event as a single event. Note: IRMA presents the statistical information to OPWDD Central Office. Refer to commentary in this handbook under paragraph 624.5(b)(1)(i) for more information on IRMA.
- It is always important to staff, administrators, investigators, and the standing committee to know about a person's involvement in previous incidents or alleged abuse situations, so information should be retrievable on a person-specific basis as well.

**624.5(e) Reporting Updates**

- (1) The DDSO shall be kept informed on at least a monthly basis of the progress or results of investigations of serious reportable incidents or allegations of abuse.**

Commentary:

- The DDSO is to receive a report once a month on each serious reportable incident/abuse allegation. The agency may elect to submit the updates collectively on all serious reportable incidents or abuse allegations or on an individual basis.
- Whether submitted individually, collectively, or as part of the regular monthly report, initial updates should be submitted to the DDSO within 30 days of the date of occurrence or discovery of the event that generated the report. Subsequently, the update may be incorporated, on a monthly basis, with other updates.

**624.5(e)(2)** Such information may be in any form an agency chooses such as a summary report, copies of investigation reports, copies of minutes of review committee meetings, or an agency designed form, as long as the following identifying and factual information is included:

- (i) Name or names of person(s)/subject(s) of the report.
- (ii) Incident/abuse report number (if applicable).
- (iii) Date of incident/allegation of abuse.
- (iv) Classification of incident/allegation of abuse (as first reported).
- (v) Name of agency reporting, and name and address of any other agency/facility involved.
- (vi) Name of agency investigating.
- (vii) Corrections, changes (including reclassification of an original report), updates to original report, if any.
- (viii) Status (open or closed), and until closure, a brief review of findings of the investigation since submission of the last report to the DDSO.
- (ix) Upon closure of an alleged abuse case, the resolution: substantiated (see Glossary), disconfirmed (see Glossary), or inconclusive (see Glossary).
- (x) Corrective and/or preventative actions taken.

Commentary:

- OPWDD is not mandating a specific form or format in which monthly updates are submitted. It is only necessary to incorporate the information listed. Accuracy and conciseness is desired rather than volume. OPWDD, if desirous of obtaining more detailed information, can contact the agency. However, the process/procedure is entirely at the agency's discretion.
- Name or names of subject(s) of the report -- Do not use initials; use the proper name of each person receiving services.
- Incident/abuse report number (if applicable) -- Use the information as entered on the initial OPWDD 147.
- Date of incident/allegation of abuse -- Use the information as entered on the initial OPWDD 147.
- Classification of incident/allegation of abuse (as first reported) -- Use the information as entered on the initial OPWDD 147.

- Name of agency reporting and name and address of any other agency/facility involved -Use the name of the agency that originated the report; provide the operating certificate number of the facility where the incident or alleged abuse is presumed to have occurred whenever possible. The name of any other agency (State or voluntary) that has been involved in the reporting of the situation should also be included in the report (e.g., the agency which “discovered” an incident or alleged abuse that occurred while a person was under the care of another agency).
- Name of agency investigating – Under certain circumstances, the investigation may not always be done by the reporting agency. When an agency submits a report alleging that an incident or abuse took place at a site outside its jurisdiction, the responsibility for investigation may have to be turned over to another party (e.g., law enforcement authorities, DSS child protective services). In this instance, indicate on the monthly report the name(s) of the party(ies) to whom responsibility has been given for investigation. Once the agency making the original report has done everything within their realm of control to deal with the situation, it may consider the case “closed.”
- Corrections, changes including reclassification of an original report, updates to original report, if any – If, upon investigation and/or since the previous monthly report, any of the information provided in the original report has been found to be inaccurate, in need of clarification, or amplification, the agency is to provide this information. Frequently, upon investigation, the classification of the event may be changed to a more appropriate one. It is appropriate to do so, and this information should be included in the update.
- Status (open or closed) and until closure, a brief review of findings of the investigation since the last report to the DDSO.
  - Concisely, but clearly, describe any investigatory activity and the findings since the previous report. If a case has been open for more than 90 days, this should include a rationale for the time lapse in bringing the case to closure.
  - Every effort should be made to bring each case to closure.
  - It is the role of the provider’s standing committee to determine if the investigation conducted is thorough and complete. OPWDD (for state-operated services) or the voluntary provider must reach a conclusion as to whether the allegation is substantiated, disconfirmed or inconclusive. Once the standing committee has ascertained that no further investigation is necessary the case should be considered “closed.” Similarly, reportable and serious reportable incidents should be considered closed when the standing committee determines that the investigation is thorough and complete. Once a case is determined to be closed it is imperative that providers update the status in OPWDD’s Incident Report and Management Application (IRMA) (by selecting the “closed” option) as soon as is possible.
  - While the case is closed when the investigation portion of the Part 624 process is completed, the standing committee may need to make recommendations and continue to monitor the case as per their responsibilities in paragraphs 624.7(b)(3), 624.7(c)(5), and 624.7(c)(6). In these circumstances, agencies should select the “closed with follow-up issues” option in IRMA. Each provider should develop its own follow-up mechanism; however, the actual status of the reported situation can be considered “closed” for purposes of reports made to the DDSO. Once all follow-up issues have been completed and/or resolved, the status should be changed to “closed” in IRMA.

- It is important to note that circumstances might arise that might warrant the reopening of a closed case. These circumstances include but are not limited to a request for further investigation by OPWDD or the provider becoming aware of additional information.

- Corrective/preventive actions taken – Concisely, but clearly, describe any corrective or preventive actions which have been implemented or are in the process of implementation since the last report. Disciplinary actions taken or recommended should be included. Designation of the staff of the agency with the authority to make a determination that a case can be “closed” should be set forth in agency policy/procedure.
- Upon closure of an allegation of abuse, indicate whether the investigation and review of the allegation resulted in the conclusion that it was:
  - **SUBSTANTIATED** - If the preponderance of the evidence supports that the abuse occurred, the appropriate conclusion is “substantiated.”
  - **DISCONFIRMED** - If the preponderance of the evidence supports that the abuse did not occur, the appropriate conclusion is “disconfirmed”.
  - **INCONCLUSIVE** - An allegation is found to be “inconclusive” if there is insufficient evidence to substantiate or disconfirm.

Note: A “preponderance” of the evidence indicates the likelihood that the abuse either did occur or did not occur.

**624.6 Notifications – In addition to requiring the reporting of reportable incidents, serious reportable incidents, and allegations of abuse on forms, as specified in Section 624.5, agencies shall ensure notification by appropriate means, as follows:**

Commentary:

- There are certain people or entities that are to be advised of events that occur to persons receiving services, and, for the most part, this may be done by telephone.
- To ensure the privacy and confidentiality of other persons whose names may appear on a report, the OPWDD 147 should not be used as the means of making such notifications.
- Agencies/facilities should develop their own policies/procedures (and forms, if they so choose), to implement this section.

**624.6(a) For children under 18 years of age, notification of alleged abuse must immediately be made to the New York Statewide Central Register of Child Abuse and Maltreatment by telephone (1-800-342-3720).**

Commentary:

- Initial contact with the Statewide Central Register of Child Abuse and Maltreatment (more commonly known as the “Child Abuse Register”) should always be made.
- The Statewide Central Register of Child Abuse and Maltreatment will not always accept an alleged abuse allegation. This is because the definition of abuse in Social Services Law, upon which the Center bases its determination, is not as broad as the definition in Part 624. In such instances, the agency should document the contact and results, and proceed with its own investigation in conformance with Part 624. Following such a refusal to accept an alleged abuse, if an agency feels very strongly that the alleged abuse should be recognized by the Statewide Central Register of Child Abuse and Maltreatment, it is suggested that the telephone call be placed again.
- It is still the responsibility of the agency to conduct its own investigation and to monitor any alleged child abuse, even though reported to the Statewide Central Register of Child Abuse and Maltreatment.
- The Commission on Quality of Care & Advocacy for Persons with Disabilities (CQCAPD) is mandated to investigate any alleged child abuse in a residential facility referred to it by the Statewide Central Register of Child Abuse and Maltreatment. However, the agency is still mandated to investigate and monitor any situation of which they are aware.
- Records of the agency relative to child abuse are to be kept separate and distinct from those developed by CQCAPD or for DSS. The expunging of CQCAPD or DSS records does not affect the agency’s own records.
- Effective October 1, 2007 a new law requires mandated reporters who observe or have direct knowledge of child abuse or child maltreatment to make the required reports to the New York Statewide Central Register of Child Abuse and Maltreatment personally, and immediately notify the chief executive officer or a designee. The agency may not require staff to provide prior notification or seek approval of a supervisor before making the report to the Central Register. See Appendix 6 of this handbook for more information.
- Section 413 of the Social Services Law mandates that certain individuals report suspected child abuse to the Register. These individuals include, but are not limited to: a physician, dentist, dental hygienist, osteopath, optometrist, chiropractor, podiatrist, psychologist, registered nurse, social services worker, mental health professional or any other employee or volunteer of a residence providing direct care services.
- Anyone, any official, or any institution, required to report a case of suspected child abuse, who willfully fails to do so is guilty of a Class A misdemeanor, and is civilly liable for the damages proximately caused by such failure.

- If the record of alleged abuse is expunged at the Statewide Central Register of Child Abuse and Maltreatment because the investigation determined that abuse, as defined in DSS law did not occur, this does not mean that the agency incident records are to be expunged. OPWDD definitions of abuse differ from DSS, the reporting and investigation process is different, and there are no legal mandates requiring expunging. However, paragraph 633.9(a)(6) of 14 NYCRR requires that when an allegation of abuse has been determined to be unfounded, the agency is to take appropriate steps to exonerate the person against whom the charges were made.

**624.6(b) All deaths shall be reported to the Commission on Quality of Care & Advocacy for Persons with Disabilities in the form and format as specified by the Commission.**

Commentary:

- The CQCAPD requires the use of the QCC 100 form.
- All residential facilities are to complete the form and submit it to the CQCAPD upon the death of a resident, whether the person died at the facility or elsewhere.
- The sponsoring agency is responsible for completing the QCC 100 upon the death of a person receiving services who lives in a family care home.
- Non-residential facilities should complete a QCC 100 upon the death of a person receiving services who attends the program but does not reside in an OPWDD facility. The form is to be completed to the best of the non-residential program's ability, incorporating whatever facts are known to staff. It is not necessary for the agency to intrude on a family's period of mourning to gather anything more than basic information.
- The agency completing the QCC 100 must also submit the form to the appropriate DDSO.
- See Appendix 4 for additional information about reporting deaths.

**624.6(c) All suicides, homicides, accidental deaths, or deaths due to suspicious, unusual or unnatural circumstances must be reported immediately by telephone, and later in writing, to the coroner/medical examiner. In New York City, the police must also be notified.**

Commentary:

- Such notification is a requirement that applies to any person who dies under any of these circumstances, whether or not a person receiving services in a facility. These notification requirements are not peculiar to persons receiving OPWDD services, but are mandated by laws for the general public.
- The regulation requires the forwarding of some form of written notification to ensure that the party notified has the facts in hand; and so that the agency can document, at any time, that the appropriate authorities were provided with the information.
- The appropriate party to be notified and the telephone number(s) should be available to staff.

**624.6(d) In the case of any reportable incident, serious reportable incident or allegation of abuse where a crime may have been committed, it is the responsibility of the chief executive officer (CEO) to notify law enforcement officials.**

Commentary:

- The chief executive officer is responsible for notifying law enforcement officials if he or she has a reasonable basis to believe that a person who receives services may be the victim of criminal activity or may have committed a crime, unless a report to law enforcement has already been made.
- It is the responsibility of the agency to make this notification even if the person or the person's parents or guardian object.
- This obligation to report is derived from the Mental Hygiene Law, sections 13.21(b) and 16.13(b) and applies regardless of whether the possible crime was committed by an employee or another person or by the person receiving services.
- Crimes committed by persons receiving services would be reported on the OPWDD 147 in accordance with Part 624. Crimes committed by employees do not get reported on the Form OPWDD 147 as a possible criminal act because, by regulatory definition, "possible criminal acts" are actions that can only be made by persons receiving services. Instead, crimes committed by employees are reported, classified and monitored in accordance with agency policy/procedures.
- Possible crimes must be reported to appropriate law enforcement officials as soon as possible and, in any event, must be reported within three working days.
- In addition to notifying law enforcement officials, provider agencies must also report possible crimes which are serious reportable incidents or allegations of abuse as such to OPWDD.
- The Glossary of Part 624 (624.20(s)) gives guidance by defining a crime as:

*"An act that is forbidden by law that makes the offender liable to punishment pursuant to that law. In New York State, the Penal Law defines a crime as a Misdemeanor or a Felony, but does not include a traffic infraction. Examples of crimes are homicide, homicide attempts (see Glossary), rape, public lewdness, robbery, and assault (see Glossary)."*

*Assault, Based on the Penal Law in New York State, the following may be used as a guideline as to what should be reported to law enforcement authorities: any situation where there is intent to cause physical injury (impairment of physical condition or substantial pain) to another party and such injury occurs to that party or another. (624.20 (h)) ;*

*Homicide attempt, For purposes of this Part, an assault by a person in which there is apparent intent to kill. (624.20(i);*

- The definitions below do not appear in the Glossary of Part 624 but are provided as general descriptions of common crimes (this is not an exhaustive list). A list of crimes can be found in the New York State Penal Law, and some crimes are defined in other statutes. Agencies should consult an attorney for advice about whether a particular incident or event may be a crime.

*Arson, recklessly or intentionally causing damage to a building or motor vehicle by intentionally starting a fire or causing an explosion;*

*Burglary, unlawfully entering or remaining in a building with the intention to commit a crime;*

*Coercion, compelling a person by intimidation, threat of harm to person or property, to engage in or to refrain from certain conduct;*

*Endangering the welfare of an incompetent or physically disabled person – intentionally or recklessly causing physical injury to such person by a caretaker.*

*Larceny, intentionally taking, obtaining, or withholding property from its rightful owner;*

*Robbery, forcibly stealing the property of another person by using or threatening the use of physical force;*

*Sexual Offenses:*

*Sexual abuse -- subjecting another person to sexual contact when such other person is incapable of consent by reason of some factor other than being less than seventeen years old or is less than fourteen years old;*

*Sexual misconduct -- engaging in sexual intercourse or oral or anal sexual conduct with another person without such person's consent;*

*Criminal sexual act -- being twenty-one years old or more, engaging in oral or anal sexual conduct with a person less than seventeen years old; or*

*Forcible touching -- intentionally, and for no legitimate purpose, forcibly touching the sexual or other intimate parts of another person for the purpose of degrading or abusing such person or for the purpose of gratifying the actor's sexual desire.*

- Note that many of these crimes require a particular the mental state on the part of the person alleged to have committed the crime. Also, for some of these crimes, there is also a lesser crime of attempting to commit that crime, as in the case of attempted homicide.
- For further clarification and guidance, the agency should discuss this requirement with its own legal adviser and the district attorney or other appropriate law enforcement officials and develop its own policies/procedures, guidelines, training, etc., from these discussions.
- Each agency should contact the district attorney or other appropriate law enforcement officials to develop protocols for reporting apparent crimes. Items that may be included in such a protocol are:

- the types of incidents including issues that are not crimes (i.e. individuals who are unsafe in the community and found unsupervised in the community) that law enforcement authorities wish to be informed about;
  - the process for reporting such types of incidents;
  - the procedures for investigating serious incidents;
  - the means of preserving evidence of serious incidents;
  - the circumstances under which law enforcement will rely on the agency's investigation of an incident;
  - police access to facilities, service of warrants, weapons safety;
  - restrictions on disclosure of clinical information to law enforcement officials other than the district attorney;
  - suspension of disciplinary proceedings pending prosecution of offenses;
  - identification of specific persons to act as liaison between the agency and law enforcement officials;
  - maintaining confidentiality, pursuant to Mental Hygiene Law Section 33.13 and the federal HIPAA Privacy Rule, of clinical information and information tending to identify a person receiving services;
  - the procedures for filing a criminal complaint;
  - the means by which an agency can make recommendations to law enforcement authorities regarding the conduct of police investigations or prosecution of criminal offenses in light of the clinical consideration of persons receiving services; and
  - any other matters of local importance.
- Although crimes are to be reported to the appropriate law enforcement authority upon discovery within three working days, some crimes need to be reported immediately because of the need for immediate response. Others can be reported in a more routine manner; therefore, the need for developing protocols is extremely important.
  - By developing protocols with the local law enforcement authority for reporting certain situations, it will not always be necessary for a person receiving services to be placed on the "blotter" and, thereby, be subject to publication.
  - If a crime is committed against a person receiving non-certified services, this must be reported to local law enforcement authorities.
  - If law enforcement authorities conduct a criminal investigation, the agency should defer to the law enforcement authorities and cooperate in their investigation. Agencies will need to conduct their own investigation of the incident or allegation of abuse in accordance with Part 624 requirements. However, it may be necessary for the agency to defer its investigation if that request is made by law enforcement authorities.

**624.6(e) When there is reasonable cause to believe a crime against a person may have occurred in a facility or program of any other service provider licensed, certified, funded, or operated by a State Agency, the chief executive officer of that facility or program shall be notified as soon as possible, but within three working days, unless he or she is alleged to have committed the crime.**

Commentary:

- Section 16.13 of the Mental Hygiene Law requires that the chief executive officer of any other provider of services which is operated under the auspices of any State agency (whether by virtue of some form of permit to do so or because of financial aid or assistance received from a State agency) or which is operated by a State agency (e.g., Office of Children and Family Services, Office of Mental Health and State Education Department) must be notified when an apparent crime has been committed at that facility or program against a person receiving services.
- Notification must be made within three working days; the notification does not have to be received by the other party within three working days.
- If the chief executive officer is alleged to have committed the crime, notification does not have to be made to that agency. All other required notifications must be made.

**624.6(f)** For serious reportable incidents that are classified as “restraint,” “possible criminal act” or “sensitive situation;” a person’s guardian, parent or correspondent/advocate, is to be notified within 24 hours of the completion of the initial incident report, unless:

- (1) there is written advice from the guardian or parent that he or she does not want to be notified; or
- (2) the involved person is a capable adult (see section 624.20) and objects to such notification being made; or
- (3) the alleged abuser is one of the aforementioned parties.

Commentary:

- OPWDD requires that a person’s guardian, parent, or correspondent/advocate be notified of serious reportable incidents in the categories of restraint, possible criminal act, or sensitive situation within 24 hours of the completion of the initial incident report (OPWDD 147). The initial incident report (OPWDD 147) must be completed within 24 hours of the occurrence or discovery of the event for serious reportable incidents and allegations of abuse, and within 48 hours of the occurrence or discovery for reportable incidents.
- The description of the event or situation should be a brief summary of the facts known at the time of the notification. Special care should be taken not to include speculation or opinion.
- If the parent or guardian does not wish to be notified of such events they must provide the agency with written advice stating such. The agency must keep the written advice in the person’s file and ensure it includes the date it was received by the agency.
- If the person is an adult (18 years of age or older), is capable of understanding the situation, and objects to such notification being made, the agency is to adhere to the wishes of the person. Such capability and desire should be documented. See Section 624.20(b) for a definition of a capable adult.
- The correspondent or advocate may not necessarily be the parent or guardian. In such cases, the correspondent or advocate should be notified of serious reportable incidents.
- The requirement for notification in this subdivision only applies to events or situations which are “under the auspices” of an agency or sponsoring agency (see subdivision 624.6(h) and definition in Sections 624.20(j), 624.20(j)(1), 624.20(j)(2), 624.20(j)(3), 624.20(j)(4), and 624.20(j)(5)).
- Notification to parents, etc. of other categories of serious reportable incidents, some categories of reportable incidents, and allegations of abuse is required by the next subdivision, Section 624.6(g).
- While there is generally no legal or regulatory requirement to notify guardians, parents or correspondents/advocates of other events (e.g. some reportable incidents, agency reportable incidents, behavioral outbursts), agencies should develop a policy regarding such events. The policy should specify when it is necessary to provide notification to a guardian or parent or

advocate/correspondent. The agency should be sensitive to the concerns of guardians, parents and correspondents/advocates with regard to the safety and welfare of the person receiving services.

- Paragraph 633.10(a)(4) requires notification to a parent, guardian, or correspondent if a person is suspected or diagnosed as having a health problem which requires emergency room services.

**624.6(g) For reportable incidents that are classified as “injury,” “death” or “medication error;” serious reportable incidents that are classified as “injury,” “missing person,” “death” or “medication error;” and for all allegations of abuse:**

**(1) The agency shall provide telephone notice to one of the following: a person’s guardian, parent, spouse or adult child.**

Commentary:

- OPWDD requires that a person’s guardian, parent, spouse or adult child be provided telephone notice of reportable incidents in the categories of injury, medication error and death; serious reportable incidents in the categories of injury, missing person, medication error and death; and all allegations of abuse.
- In the event that the person receiving services does not have a guardian, parent, spouse or adult child, or if such parties are not reasonably available, the agency should provide notice (including the report on actions taken, an offer to hold a meeting and an offer to provide information on the status and/or resolution of an allegation of abuse) to the person receiving services, if the person is a capable adult.
- If there is no guardian, parent, spouse or adult child and the person receiving services is not a capable adult, notice should be provided to an advocate/correspondent (including the report on actions taken, an offer to hold a meeting and an offer to provide information on the status and/or resolution of an allegation of abuse).
- In the circumstances where a person receiving services is being notified and no notification is being provided to a guardian, parent, spouse or adult child; an advocate/correspondent should also be notified if one exists, unless the person receiving services is a capable adult and objects to such notification. Notice to the advocate/correspondent should include an offer to hold a meeting and an offer to provide information on the status and/or resolution of an allegation of abuse. In addition, the Report on Actions Taken (e.g. OPWDD 148) must be provided to the advocate/correspondent. The advocate/correspondent may also request a redacted copy of the initial incident or allegation of abuse report (OPWDD 147).
- A capable adult receiving services may object to a guardian, parent, spouse, adult child or the advocate/correspondent receiving notification. The capable adult should receive the full notification and the guardian, parent, spouse, adult child or advocate/correspondent should not be notified.
- If there is more than one person eligible to receive the notification agencies can be guided by the list of surrogate decision makers for informed consent which can be found in Section 633.11.
- See Section 624.20(b) for a definition of “Adult, capable.”
- Notification to one of those listed is required. It is permissible to provide notification to more than one individual at the discretion of the agency. For example, if a person’s parents are

divorced but both request to be notified, notification should be provided to both individuals. Notification to any additional individual may include an offer to meet with the chief executive officer, the Report on Actions Taken, and an offer to provide information on the status and/or resolution of an allegation of abuse. Again this is left to the agency's discretion. Agencies should exercise candor and sensitivity in addressing the legitimate concerns of family members.

- If the Consumer Advisory Board (CAB) is the correspondent or co-correspondent, it must receive the notification, with an offer to meet with the chief executive officer or a designee and an offer to provide information on the status and/or resolution of an allegation of abuse. CAB must also receive the report on actions taken.
- If there is no guardian, parent, spouse, adult child or advocate/correspondent and the person is not a capable adult, notification is not required under this subdivision (other notification requirements i.e. law enforcement, CQCAPD, DDSO if required, still apply).
- The requirement for notification in this subdivision only applies to events or situations which are "under the auspices" of an agency or sponsoring agency (see subdivision 624.6(h) and definition in Sections 624.20(j), 624.20(j)(1), 624.20(j)(2), 624.20(j)(3), 624.20(j)(4), and 624.20(j)(5)).

**624.6(g)(2) However, the agency shall not provide such notice to any party in the following situations:**

- (i) there is written advice from the guardian, parent, spouse or adult child that he or she objects to such notification to himself or herself (notice shall then be provided to another party who is a guardian, parent, spouse or adult child, if one exists); or**
- (ii) if the person receiving services is a capable adult who objects to such notification being made. If the capable adult objects to notification of all parties who are a guardian, parent, spouse or adult child, the capable adult shall be provided the notice described in this subdivision; or**
- (iii) if the guardian, parent, spouse or adult child is the alleged abuser.**

Commentary:

- Notification should not be made to a guardian, parent, spouse or adult child who does not want to be notified. There must be written advice from the individual stating these wishes. Such written advice must be maintained by the agency and include the date the advice was received by the agency.
- If the written advice directs an agency to notify another individual the agency should comply with these wishes. For example, an elderly parent requests the sibling of the individual receiving services be notified.
- If the person receiving services is a capable adult and objects to the notification of all the parties on the list (guardian, parent, spouse or adult child) the parties should not be notified. Instead, the capable adult must be provided the full notification (provision of the report on actions taken, an offer to meet with the Chief Executive Officer/Executive Director/DDSO Director or designee and an offer to provide information on the status and/or resolution of an allegation of abuse).
- In the circumstances where the person receiving services is being notified and no notification is being provided to a guardian, parent, spouse or adult child, an advocate/correspondent should also be notified if one exists, unless the person receiving services is a capable adult and objects to such notification. Notice to the advocate/correspondent should include an offer to hold a meeting and an offer to provide information on the status and/or resolution of an allegation of abuse. In addition, the Report on Actions Taken must be provided to the advocate/correspondent. The advocate/correspondent may also request a redacted copy of the initial incident or allegation of abuse report (OPWDD 147).
- See Section 624.20(b) for a definition of “Adult, capable.”
- There is no requirement that agencies ask a capable adult who is receiving services whether he or she objects to notification of another person. Agencies will generally know the individuals that they are serving and whether a person might object. If there is a possibility that a capable adult might object, agency staff should ask the person.

- If an abuse allegation has been made against a guardian, parent, spouse or adult child, the alleged abuser should not be notified. If notification to any other person in one of the above categories is likely to result in the alleged abuser being provided with the information (e.g. spouse or relative living with the alleged abuser), the notification to that person should not be made. If notification is not made to a guardian, parent, spouse or adult child then the advocate/correspondent must be notified, along with the person receiving services if he or she is a “capable adult.” Refer to paragraphs 624.6(g)(6) and 624.6(g)(7) for more detail.

**624.6(g)(3) The telephone notice shall be provided as soon as reasonably possible, but no later than 24 hours after completion of the initial incident or initial allegation of abuse report.**

Commentary:

- The timeframe for the notification should be commensurate with the seriousness of the event or situation and the wishes of the person being notified but must be within the mandated time parameters.
- The initial report is the OPWDD 147.
- OPWDD recognizes that it is not always possible to reach the guardian, parent, spouse or adult child in the required timeframe and that the notification cannot always be completed due to the unavailability of the person to be notified. The agency must make a reasonable attempt to contact the guardian, parent, spouse or adult child in the given timeframe and document all attempts to do so.
- Because of the requirement for confidentiality and the sensitivity of the information disclosed during the notification, agency staff should exercise discretion in leaving messages. Unless staff is certain that messages will be accessed only by the intended recipient, detailed messages should not be left.
- The agency must continue to attempt to contact the individual once the required timeframe has lapsed, if previous attempts were unsuccessful.
- If it is expected that the primary contact person will be unavailable for an extended period of time, or if efforts to reach the primary contact person are unsuccessful after a reasonable period of time, notification must be made to one of the other parties on the list (guardian, parent, spouse, adult child, if one exists or an advocate/correspondent if one exists).
- If appropriate and consistent with concerns of the primary contact person, efforts should be made to inform the primary contact person once they become available (e.g. return from vacation).

**624.6(g)(4) The telephone notice shall include:**

- (i) a description of the event or situation and a description of initial actions taken to address the incident or alleged abuse, if any;**

Commentary:

- The description of the event or situation should be a brief summary of the facts known at the time of the notification. Special care should be taken not to include speculation or opinion.
- A description of the initial actions taken to address the incident or alleged abuse, if any, must also be provided. This includes steps taken to protect the health and safety of the person receiving services. Examples include initial:
  - medical or dental treatment provided
  - administrative actions taken (increased supervision, target placed on leave)
  - environmental modifications made (e.g. repairs to a faulty step)
  - counseling provided (to staff or person receiving services)
- This description is limited to initial actions taken. It is not meant to encompass all measures that may be taken as a result of an investigation. The description only needs to include those steps taken to ensure that the immediate health and safety of the person receiving services is maintained and protected.
- This requirement has been included based on the premise that generally parents, guardians and others (absent written notice stating a desire not to be notified) have the right to receive assurances that their loved one has been appropriately protected. Agencies have an obligation to foster positive and supportive relationships between parents, individuals receiving services and the agency.
- The names of other individuals receiving services or staff should not be included the description.

**624.6(g)(4)(ii) an offer to meet with the chief executive officer or designee to further discuss the incident or allegation of abuse; and**

Commentary:

- If a guardian, parent, spouse or adult child wishes to meet with the chief executive officer (typically, the Executive Director or DDSO Director) or a designee, an appointment must be scheduled. The appointment does not have to be scheduled during the initial notification but must be done within a reasonable amount of time following the incident or allegation of abuse.
- There is no specified timeframe regarding when the meeting must be held, but it should be held within a reasonable period after the incident or allegation. The timeframe for holding the meeting should be commensurate with the level of concern of the person being notified and his or her availability.
- Regardless of when the meeting is scheduled, an offer for a meeting must be made during the initial notification process.
- If there is no guardian, parent, spouse, or adult child (or they are unavailable), but the person has an advocate or correspondent, an offer to hold a meeting should be made to the advocate or correspondent.
- If there is no guardian, parent, spouse or adult child (or they are unavailable), and the person receiving services is a “capable adult” as defined in the regulations, an offer to hold a meeting should be made to the capable adult. In this situation an advocate or correspondent should also be offered a meeting so long as the capable adult does not object.
- If applicable, the agency should document all attempts made to schedule a meeting.
- If a person initially requests a meeting, the agency must make a good faith attempt to set up the requested meeting. On occasion, the meeting will not occur due to the unavailability of the person who made the request. Agencies should document all attempts to set up the meeting. If the person is not available for a meeting within a reasonable timeframe after these attempts, the agencies should document the attempts in a letter to the person and reiterate the offer to hold a meeting.

**624.6(g)(4)(iii) for allegations of abuse, an offer to provide information on the status and/or resolution of the allegation. Requested information shall be provided verbally or in writing, unless the person is a capable adult and objects to the provision of this information. In providing such information as is requested, the agency shall ensure the privacy rights of other parties.**

Commentary:

- It is appropriate that, upon request, a guardian, parent or correspondent/advocate be advised as to the overall status or resolution of an abuse allegation.
- If there is no guardian, parent, spouse or adult child (or they are unavailable), and the person receiving services is a “capable adult” as defined in the regulations, the offer to provide such information should be made to the capable adult. In this situation an advocate or correspondent should also be offered the information so long as the capable adult does not object.
- If there is no guardian, parent, spouse or adult child (or they are unavailable), but the person has an advocate or correspondent, the offer to provide such information should be made to that individual.
- Information on the status and/or resolution of an abuse allegation can include:
  - Periodic updates regarding the status of the investigation. This should be brief. If the investigation is taking an unusually long time it could include a reason for the delay.
  - A summary of findings.
  - Results of the investigation: substantiated, disconfirmed or inconclusive.
  - Appropriate recommendations, especially those specific to the person receiving services, which are being implemented as a result of the incident or allegation.
- This provision is a longstanding requirement in OPWDD regulations governing abuse allegations. It is not a new requirement. It does not include a requirement to inform individuals being notified of the opportunity to access records pursuant to Section 624.8.
- Not all of these individuals are “qualified persons” eligible to receive investigation records and documents pursuant to Section 624.8.

**624.6(g)(5) Methods of notification.**

- (i) The complete notice may be comprised of more than one call, so long as the initial call includes a description of the event or situation and is within the required period of time or is attempted within the required period of time. Follow-up calls with the additional information shall be made within a reasonable timeframe after the initial call.**
- (ii) Notice may be made in person instead of by telephone.**
- (iii) Notice may be provided by other methods at the request of the party receiving the notice.**

Commentary:

- The complete notification required includes:
  - a description of the incident or allegation of abuse;
  - an offer to hold a meeting with the chief executive officer or a designee; and
  - for allegations of abuse, an offer to provide information on the status and/or resolution of the allegation.
- The notification call made within 24 hours of the completion of the initial incident report must include a description of the incident or allegation of abuse.
- The offer to hold a meeting and the offer to provide information on the status and/or resolution of an allegation of abuse may be made in subsequent follow-up calls.
- If subsequent calls are made to complete the notification, the calls must be made within a reasonable timeframe. It is not the intent of this provision to allow agencies to unduly prolong the notification process. Instead, it enables agencies to have the most appropriate person complete various components of the notification. Further, permitting the notification to be in more than one call enables agencies to provide initial notification in a timelier manner, by staff who may not be aware of all required components of the notification process.
- If appropriate, the notice may be made in person instead of by telephone. If initial notice is made in person it may be appropriate to provide the description of the event or situation in person and follow-up with the offer to hold a meeting and the offer to provide information on the status and/or resolution of an allegation of abuse by telephone.
- The individual receiving the notice may request to be notified in another manner (i.e. via letter). The individual should submit this request to the agency in writing. The agency must document this request and keep it on file.

**624.6(g)(6) If the person does not have a guardian, parent, spouse or adult child, or if such parties are not reasonably available, or if there is written advice that such parties do not want to be notified; the agency shall provide notice to the following parties in the manner (and subject to the same limitations) specified in this subdivision:**

- (i) the person receiving services, if the person is a capable adult; and**
- (ii) the person's advocate or correspondent (if one exists).**

Commentary:

- If the person receiving services:
  - a) does not have a guardian, parent, spouse or adult child; or
  - b) does have a guardian, parent, spouse or adult child but that individual(s) is not reasonably available (i.e. on vacation, not reachable by telephone after several attempts); or
  - c) does have a guardian, parent, spouse or adult child but there is written advice from that individual that he or she does not wish to be notified (i.e. does not want to be notified at all, would like someone else to be notified instead); or
  - d) does have a guardian, parent, spouse or adult child but the person receiving services is a capable adult and objects to the notification to that individual; or
  - e) does have a guardian, parent, spouse or adult child but that individual is the alleged abuser.
- The agency should provide notice (including the report on actions taken, an offer to hold a meeting and an offer to provide information on the status and/or resolution of an allegation of abuse) to the person receiving services if the person is a capable adult. The capable adult may also request a redacted copy of the initial incident or allegation of abuse report (OPWDD 147).
- In the circumstances where the person receiving services is being notified and no notification is being provided to a guardian, parent, spouse or adult child an advocate/correspondent should also be notified if one exists, unless the person receiving services is a capable adult and objects to such notification. Notice to the advocate/correspondent should also include the Report on Actions Taken, an offer to hold a meeting and an offer to provide information on the status and/or resolution of an allegation of abuse. The advocate/correspondent may also request a redacted copy of the initial incident or allegation of abuse report (OPWDD 147).
- A capable adult receiving services may object to the advocate/correspondent receiving notification. In this case the advocate/correspondent should not be notified.
- If there is no guardian, parent, spouse or adult child and the person receiving services is not a capable adult, notice should be provided to an advocate/correspondent as described above.
- If there is no guardian, parent, spouse adult child or advocate/correspondent and the person is not a capable adult, notification is not required under this subdivision (other notification requirements i.e. law enforcement, CQCAPD, DDSO still apply if required).

- There is no requirement that an agency offer to provide the initial incident or allegation of abuse report (OPWDD 147) during the notification telephone call(s).

**624.6(g)(7) Requests for the initial incident or allegation of abuse report.**

**(i) Process for requests.**

- (a) Requests may be made for a copy of the initial incident or allegation of abuse report by the person receiving services (or who formerly received services), guardian, parent(s), or correspondent/advocate.**
- (b) Such request shall be in writing. However, at the discretion of the agency, documented verbal requests may be accepted in lieu of a written request.**
- (c) If the person is a capable adult and objects to the provision of the initial incident or allegation of abuse report, such report shall not be provided to otherwise eligible requestors.**
- (d) If an otherwise eligible requestor is the alleged abuser, the initial incident or allegation of abuse report shall not be provided to that requestor.**

Commentary:

- The person receiving services (or who formerly received services) is the individual who is identified on line 8 of the OPWDD 147. The guardian, parent or advocate/correspondent of that person receiving services (or who formerly received services) are the only requestors eligible under these provisions to receive the redacted initial incident or allegation of abuse report (OPWDD 147) for that individual.
- The initial incident or allegation of abuse report is the OPWDD 147. When an agency completes the OPWDD 147, the completed form itself must not include any attachments or addenda. Agencies may develop additional forms related to incidents and allegations of abuse, such as a notification checklist. However, these additional forms are not to be considered to be a part of the initial incident or allegation of abuse report or OPWDD 147.
- There is no requirement that an agency offer to provide the initial incident or allegation of abuse report (OPWDD 147) during the notification telephone call(s).
- Written requests for the initial incident or allegation of abuse report (OPWDD 147) are preferable; however, an agency may accept a documented verbal request. Documentation should include the date of the request, who made the request and who received the request (in addition to the documentation required by paragraph 624.6(g)(10)).
- A request for the initial incident or allegation of abuse report (OPWDD 147) may be made by an eligible requestor via email. Before the agency may reply to such request, the identity of the requestor and the address the information will be sent to must be verified. This must be done verbally, either in person or over the telephone. Agencies should document that the requestor's identity and address were confirmed.

- While an eligible requestor may make a request for the initial incident or allegation of abuse report (OPWDD 147) via email, the agency may NOT provide the redacted report via email.
- There is no requirement that a capable adult “give permission” for the provision of the initial incident or allegation of abuse report (OPWDD 147) to an eligible requestor. However if a capable adult objects to such, the report shall not be provided to the otherwise eligible requestor.
- If an eligible requestor is the alleged abuser, the initial incident or allegation of abuse report (OPWDD147) shall not be provided to that requestor. This does not preclude the eligible requestor from requesting and receiving a copy of initial reports for events or situations in which he or she is not the alleged abuser.
- All names and information tending to identify people receiving services and employees must be redacted (Refer to Sections 624.6(g)(7)(ii), 624.6(g)(7)(ii)(b), and 624.6(g)(8)(v) for more information on redaction).
- The redacted report must be provided within 10 calendar days of the request. There is no timeframe in which eligible parties must make a request.
- When an agency denies a request for the OPWDD 147, the agency must inform the requestor in writing of the opportunity to appeal such denial to the OPWDD Incident Records Appeals Officer. The agency shall inform the requestor of the opportunity to send his or her written appeal to the OPWDD Incident Records Appeals Officer, Office of Counsel, 44 Holland Avenue, Albany, NY 12229. The right to appeal a denial is in subdivision 624.6(k) and in OMRDD ADM #2009-04 which is Appendix 15 of this handbook.
- See Section 624.20(b) for a definition of “Adult, capable.”

**624.6(g)(7)(ii) Redaction.**

- (a) **The copy of the report shall incorporate redaction of the names of employees who are involved in the incident or alleged abuse or the investigation or who are interviewed as a part of the investigation, persons receiving services (or who formerly received services), and any information tending to identify such employees or persons. Redaction shall be waived if the employee or person authorizes disclosure, unless redaction of the specific information is necessary because it tends to identify another employee or person who has not authorized disclosure or for another reason specified in this subparagraph.**

Commentary:

- The intent of the redaction is to encourage employees to report suspected abuse and fully cooperate with investigators by assuring them that to the extent possible their identity will be protected. It also is meant to protect the confidentiality of other persons receiving services and to encourage their reporting and cooperation.
- Redaction must be done in the spirit of meaningful disclosure.
- Redaction only applies to names and information that would identify or tend to identify, an employee or individual receiving services (i.e. date of birth, employee title, gender or physical attributes).
- Redaction may apply to employees and individuals who complete or review the initial incident or allegation of abuse report (OPWDD 147), who participate in or conduct the investigation, who are part of the investigation review process, or who are interviewed as part of the investigation.
- Information that provides description, context or follow-up should not be redacted. It would be inappropriate to redact information such as a description of the event, date and time, location, or referrals made.
- The name of the individual receiving services does not have to be redacted if the report (OPWDD 147) is going to be reviewed by that individual's parent, guardian, spouse, adult child or advocate/correspondent. The names and identifying information of all other individuals receiving services should be redacted.
- If an employee or person receiving services authorizes the disclosure of their identity, his or her name and identifying information may not be redacted unless the disclosure will identify a person receiving services or an employee who did not authorize disclosure, or if redaction is required because of the redaction provisions related to child abuse discussed on the next page.
- The agency does not have a responsibility to ask employees or individuals receiving services if they would like to authorize the disclosure of their name and other identifying information. It may be assumed that employees and individuals receiving services do not authorize disclosure

and therefore would like their names and identifying information redacted unless such individuals state otherwise.

- If an employee or individual receiving services does authorize disclosure, the agency must document the name of the individual providing authorization, the date the authorization was provided and the staff person who accepted the authorization.
- Agencies must keep the original non-redacted records and documents, as well as a copy of the redacted records and documents which were provided to the requestor.
- The process of redaction will likely involve blacking out the relevant information and then copying the relevant page. The requestor should be provided the copy. Agencies should keep in mind that it is often possible to ascertain information which is blacked out on a document which is not copied.
- If handwritten documents are subject to release, and the requestor may be familiar with the handwriting of the author (e.g. staff who send notes home on a routine basis), it may be necessary to transcribe the handwritten document as the handwriting might tend to identify the author.

**624.6(g)(7)(ii)(b) In addition, if the report identifies a particular party as having made a child abuse or maltreatment report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation, those names as well as any information tending to identify the party shall be redacted.**

Commentary:

- The identity of an individual making a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR or otherwise cooperated in a child abuse/maltreatment investigation must be redacted.
- Redaction only applies to information that would tend to identify an employee or individual receiving services, not information that provides description, context or follow-up.
- It is not necessary to redact the information in box 21a on the OPWDD 147, related to whether a referral to SCR was made or accepted.

**624.6(g)(7)(iii) The copy of the initial incident report or initial allegation of abuse report shall be provided to an eligible requestor as soon as reasonable, but in no event more than 10 days after the request.**

Commentary:

- An eligible requestor can request a redacted copy of the initial incident or allegation of abuse report (OPWDD 147) at any time.
- Once a request is made an agency has 10 calendar days from the time the request was received to provide a copy of the redacted report.
- Documentation must be maintained regarding the date the request was received by the agency, the date the report was provided, and a copy of the redacted report.

**624.6(g)(7)(iv) The copy of the initial incident or allegation of abuse report shall be accompanied by a statement that all contents are preliminary and have not been substantiated.**

Commentary:

- An example of an appropriate statement is as follows:
  - Attached, is the initial incident or allegation of abuse report - OPWDD 147. This report is being provided to you in response to your request. The OPWDD 147 is used specifically for the purpose of identifying and recording an event or situation which is required to be reported and investigated in conformance with the NYS OPWDD regulations. Because the report must be completed within a prescribed timeframe shortly after the incident or allegation occurred or was discovered, it is not intended to capture information collected subsequent to the identification of the event or situation. Please note that information contained in this report is preliminary and subject to further investigation; and that the information was not verified at the time of the completion of the form.
  - The attached report may have had names and information tending to identify someone redacted in accordance with requirements of NYS OPWDD regulations.

**624.6(g)(8) Report on actions taken.**

- (i) The agency shall provide a report on initial actions taken to address the incident or abuse allegation. Such report shall include:**
  - (a) any immediate steps taken in response to the incident or alleged abuse to safeguard the health and safety of the person receiving services; and**
  - (b) a general description of any initial medical or dental treatment or counseling provided to the person in response to the incident or alleged abuse.**

Commentary:

- The report on actions taken should be completed for reportable incidents in the categories of injury, medication error and death; serious reportable incidents in the categories of injury, missing person, medication error and death; and, all allegations of abuse.
- Immediate steps taken in response to the incident or alleged abuse to safeguard the health and safety of the person receiving services may include, but are not limited to the following:
  - administrative action (e.g. increased supervision, staff reassignment, staff administrative leave)
  - repairs or environmental changes (e.g. repairs to handrail, removal of slippery area rug)
  - medical or dental treatment provided
  - counseling provided (to staff or person receiving services)
- In most cases the information on the report on actions taken will be the same as listed on the OPWDD 147, box 20. There may be additional actions taken after the OPWDD 147 was completed that may also be considered to be “immediate” and should therefore be listed.
- List actions taken in response to the event. Only those actions taken immediately after the event or situation should be listed. While there is no specific timeframe noted, typically these actions will occur the same day or within a few days of the occurrence.
- Some events or situations do not require any immediate steps. This should be noted on the form. (e.g. “None” or “Not applicable”)
- Systemic changes, information about the investigation, etc., should not be included in this report.

**624.6(g)(8)(ii) The agency shall provide the report on actions taken to any party specified in subparagraph (1)(i) or paragraph (7) of this subdivision who received the notification.**

Commentary:

- The report on actions taken must be provided to the individual who received the notification of the incident or allegation of abuse. This may include a person's guardian, parent, spouse, adult child, or the person receiving services or the person's advocate/correspondent.
- If more than one person received notification, the report should be provided to all parties receiving the notification (i.e. divorced parents). If a capable adult and advocate/correspondent received the notification, the report on actions taken must be provided to both. If the Willowbrook Consumer Advisory Board (CAB) is co-correspondent, both the CAB and the correspondent must be provided the report on actions taken.

**624.6(g)(8)(iii) The report shall be provided within 10 days of the completion of the initial incident report or initial allegation of abuse report.**

Commentary:

- The agency may provide the initial incident or allegation of abuse report (OPWDD 147) in whatever manner it deems appropriate (i.e. regular mail, certified mail, in person, at a meeting with the chief executive officer or designee) with the exception of email. This report may not be provided via email.

**624.6(g)(8)(iv) The report that is provided shall be in the form and format specified by the commissioner or in a similar format developed by the agency.**

Commentary:

- OPWDD has developed the OPWDD 148 - Report on Actions Taken. Agencies may use this form, or a substitute report may be used provided that it contains equivalent information. The OPWDD 148 is included in Section IV of this handbook.

**624.6(g)(8)(v) The report that is provided shall not include names of anyone who is involved in the incident or alleged abuse or the investigation or who are interviewed as a part of the investigation, or any information tending to identify such parties. In addition, the report shall not identify a particular party as having made a child abuse or maltreatment report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation. Names of any such parties as well as any information tending to identify those parties shall be excluded or redacted.**

Commentary:

- Because this report is being developed specifically for the guardian, parent or advocate/correspondent it should not include the names of employees or other individuals receiving services or identifying information. If the report does include names they must be redacted in accordance with subparagraph 624.6(g)(8)(ii).

**624.6(g)(9) The following documentation shall be maintained:**

- (i) the telephone notice and responses received, including the identity and position of the party providing the notice, the name of the party receiving the notice, the time of the original call or attempted call, the time of subsequent attempted calls if the initial call was not successful and the time of follow up calls if the notice occurred in more than one call;**
- (ii) any requests for a meeting or the initial incident report or allegation of abuse report;**
- (iii) meetings held in response to the request, and those present;**
- (iv) when the report on actions taken and any requested initial incident report or initial allegation of abuse report was provided;**
- (v) a copy of the report on actions taken and any initial incident report or initial allegation of abuse report (with redaction) that was provided; and**
- (vi) advice that a particular party does not want to receive notifications or that the capable adult receiving services objects to notice or objects to the provision of documents/information.**

Commentary:

- Documentation may be maintained by the agency in whatever manner the agency deems appropriate. However, the agency must be able to produce the documentation upon the request of OPWDD.

**624.6(g)(10) For the purpose of redaction as specified in this subdivision and section 624.8 only, the term “employee” means any party who is, or formerly was:**

- (i) directly employed by an agency; or**
- (ii) used by an agency to provide services substantially similar to those that are or could be provided by someone who is directly employed by an agency. Such parties shall include, but not be limited to: those who are employed by other entities on behalf of an agency and/or for the care and treatment of the person receiving services; consultants; contractors; or volunteers; or**
- (iii) a family care provider or family care substitute/respice provider; or a party living in the home of the provider.**

Commentary:

- This definition of employee is applicable only to redaction of the initial incident or allegation of abuse report (OPWDD 147), and the records and documents pertaining to allegations and investigations of abuse released pursuant to Section 624.8.

**624.6(h) Reported incidents and allegations of abuse which are not under the auspices (see section 624.20) of an agency or sponsoring agency are not subject to the notification requirements of subdivisions (f) and (g) of this section.**

Commentary:

- See Sections 624.20(j), 624.20(j)(1), 624.20(j)(2), 624.20(j)(3), 624.20(j)(4), and 624.20(j)(5) for a definition of “auspices, under the.”
- Agencies are required to investigate and take appropriate action related to incidents and allegations of abuse which are not under the auspices of an agency. Guidance regarding this responsibility is included in the Appendix.
- Agencies are encouraged to inform guardians, parents and an advocate/correspondent of incidents and allegations of abuse which are not under the auspices of an agency, if appropriate. In some instances, it may be necessary to contact those individuals in order to investigate and take appropriate action. However, this contact is not to be considered notification pursuant to the requirements of paragraph 624.6(f) or 624.6(g), and individuals do not have the right to access the initial incident or allegation of abuse report (OPWDD 147), receive the Report on Actions Taken, etc.

**624.6 (i) For the Willowbrook class, agencies shall comply with the incident reporting requirements of the Willowbrook Permanent Injunction, dated March 11, 1993.**

Commentary:

- If the Consumer Advisory Board (CAB) is the correspondent, it must receive the notification, with an offer to meet with the chief executive officer or a designee and an offer to provide information on the status and/or resolution of an allegation of abuse. CAB must also receive the report on actions taken.
- If the CAB is co-correspondent, the CAB and the other correspondent must both receive the notification, with offers and the report on actions taken.
- If the CAB is correspondent or co-correspondent, the CAB must be sent the initial incident or allegation of abuse report (OPWDD 147) for reportable incidents classified as injury, medication error or death, all serious reportable incidents and all allegations of abuse. CAB does not need to specifically request the OPWDD 147; it must be sent automatically.

**624.6(j) An individual's service coordinator (or equivalent in an ICF) is to be notified of all reportable incidents, serious reportable incidents, and allegations of abuse within 24 hours of the completion of the initial incident report unless the service coordinator is the alleged abuser. If the service coordinator is the alleged abuser, notification shall be made to the supervisor of the service coordinator or an administrator of the agency providing service coordination.**

Commentary:

- A description of all reportable incidents, serious reportable incidents and allegations of abuse must be provided to the service coordinator within 24 hours of the completion of the initial incident report (including any reportable incidents which are not otherwise subject to the notification requirements in regulation).
- An offer to hold a meeting with the chief executive officer or a designee and the offer to provide information on the status and/or resolution of an allegation of abuse do not have to be made to the service coordinator.
- The Report on Actions Taken does not have to be provided to the service coordinator.
- The initial incident or allegation of abuse report (OPWDD 147) does not have to be provided to the service coordinator.
- Agencies should recognize that OPWDD requirements for Medicaid Service Coordinators include advocating for the individual and activities associated with the person's health and safety. OPWDD expects agencies to fully cooperate with service coordinators who become involved in incidents or allegations of abuse at the agency in fulfillment of these requirements.

**624.6(k) Administrative appeal process – denial of requested records/documents.**

- (1) A requestor denied access to the initial incident report or report on actions taken may appeal in writing such denial to the Incident Records Appeals Officer designated by the Commissioner of OPWDD.**
- (2) Upon receipt of the appeal, the agency issuing the denial will be notified of the appeal and given an opportunity to submit relevant information to the Incident Records Appeals Officer, including the reasons for denial, within ten business days of the receipt of such appeal. The Incident Records Appeals Officer may also request additional information from the requestor as may be necessary to resolve the appeal.**
- (3) Within 10 business days of the receipt of complete information, the Incident Records Appeals Officer will make a determination about whether the requested documents should be released. The Incident Records Appeals Officer will issue his or her determination with an explanation of the reasons for the determination to the requestor and the agency. If so directed by the Incident Records Appeals Officer, the agency shall provide the requested records and/or documents to the requestor.**

Commentary:

- See OMRDD ADM #2009-04, which is Appendix 15, for additional information.
- When an agency denies a request for the OPWDD 147, the agency must inform the requestor in writing of the opportunity to appeal such denial to the OPWDD Incident Records Appeals Officer. The agency shall inform the requestor of the opportunity to send his or her written appeal to the OPWDD Incident Records Appeals Officer, Office of Counsel, 44 Holland Avenue, Albany, NY 12229.
- The Incident Records Appeals Officer will render a determination within 20 business days of making the request for information to the agency if the agency does not respond to the Officer's request within 10 business days.

**624.6(l) It is the responsibility of a designated staff member of the agency where a report on a reportable incident, serious reportable incident, or allegation of abuse is received or made out, to notify any other agency with which the person is associated of that reportable incident, serious reportable incident, or allegation of abuse if it has resulted in visible evidence of injury to the person, may be of concern to another agency, or may have an impact upon programming or activities elsewhere.**

Commentary:

- Other facilities or places which a person receiving services regularly attends, or the place of residence, are to be notified when there is a reportable incident, serious reportable incident, or an abuse allegation whenever it may impact the person receiving services or another provider of services.
- All providers in the OPWDD system which provide services to individuals who live in residences certified by OPWDD must inform the residential agency about all reportable and serious reportable incidents and allegations of abuse concerning the resident.
- Whenever there is an injury that can be observed, other facilities and/or service providers should be made aware of that injury. There is no point in having two facilities report and investigate the same situation; courtesy dictates the sharing of such information.
- If a person is injured, but the injury is not visible or the injury requires special care or caution, other facilities or providers of services should be made aware of this to prevent additional injury. Another agency may have to adjust the services provided, due to injury, and should be given as much advance warning as possible to enable it to do this.
- An incident might have occurred because of a behavioral problem; notifying other agencies involved with the person could result in a more effective plan of care being developed.
- Responsibility to notify service coordinators:

OPWDD's Medicaid Service Coordination (MSC) Vendor Manual (Published May 23, 2011, revised June 20, 2011), Chapter 2, discusses various responsibilities of service coordinators. Two sections, *Monitoring Health and Safety* and *Advocating*, discuss the role of service coordinators in advocating for the individual, especially regarding health and safety concerns. For Willowbrook class members only, service coordinators are specifically required to complete a Service Coordination Observation Report (MSC7-SCOR) to report suspected unmet health or safety needs in any OPWDD certified residential setting, including suspected abuse.

Because of the service coordinator's potential advocacy on behalf of the individual who has been harmed or abused, every incident and allegation of abuse "may be of concern" to the person's Medicaid Service Coordinator. Consequently, agencies must notify the person's Medicaid Service Coordinator of all reportable incidents, serious reportable incidents and allegations of abuse concerning the person, if the person is receiving MSC.

Pursuant to subdivision 624.6(j), the service coordinator must be notified of reportable and serious reportable incidents and allegations of abuse within 24 hours of completion of the OPWDD 147. All notifications may occur verbally or in writing. Agencies are not required to

share copies of the OPWDD 147 or other written incident management materials with service coordinators. If the service coordinator requests updates, the agency must provide written or verbal updates. Agencies should understand that advocacy is a part of the requirements of MSC. Agencies should fully cooperate with the advocacy efforts of service coordinators.

**624.7 Standing Committee to Review and Monitor Reportable Incidents, Serious Reportable Incidents and Allegations of Abuse to Persons Receiving Services from the Agency**

**624.7(a) Every agency shall have one or more standing committees to review and monitor reportable incidents, serious reportable incidents, and allegations of abuse that occur to people in its facilities; or to review situations which involve any of its employees, interns, volunteers, consultants, or contractors. The agency's organizational structure and its own policies shall determine the number of standing committees needed.**

Commentary:

- The number of standing committees at an agency is to be determined by the agency. An agency might have a committee for day programs and another for residential programs; or it might have one committee for all.
- An agency might have a committee for its certified facilities and another for non-certified services; or it might have one committee for all.
- The structure and responsibilities of the standing committee should be in writing.
- A DDSO standing committee does not have to review the process of a voluntary agency; this can be done administratively.

**624.7(b) A standing committee shall review reportable incidents, serious reportable incidents, and allegations of abuse to:**

Commentary:

- The primary focus of the standing committee is to make recommendations to improve the protection of persons receiving services based on its monitoring of the reporting process for reportable incidents, serious reportable incidents, and abuse allegations; to evaluate the quality of completed investigations; and to ensure implementation of all recommended corrective action(s).
- The standing committee should devote its time to overseeing reportable incidents, serious reportable incidents, and abuse allegations. It may consider “other” events related to persons receiving services, but not at the expense of the time set aside for incident and abuse allegation review.
- It is the responsibility of the agency’s/facility’s management and governing body to ensure an environment where committee recommendations are: positively received, carefully considered, and acted upon in the interest of minimizing future occurrences of incidents or abuse.
- The responsibility for committee review is by the agency which reports the situation.
- The DDSO has to review all the serious reportable incidents and alleged abuses forwarded to it by voluntary agencies. This may be done by assignment to individual staff member; it does not have to be done by a committee unless it chooses to do so.
- A standing committee is to review all serious reportable incidents and abuse allegations involving persons receiving non-certified services under the auspices of the agency.

**624.7(b)(1) Ascertain that reportable incidents, serious reportable incidents, and allegations of abuse were reported, managed, investigated and documented consistent with the provisions of this Part and with agency policies and procedures to make written recommendations to the appropriate staff and/or the chief executive officer to correct, improve or eliminate inconsistencies.**

Commentary:

- Members or a member of the committee should not routinely (regularly) conduct or participate in investigations within the agency (see Sections 624.7(c)(4) and 624.7(d)(5)(ii)).
- If a member of the committee conducts an investigation, he or she should not take any role in the committee's review and evaluation of the incident/alleged abuse case and its investigation. If he or she has been involved, he or she is responsible for so advising the committee. That person could, however, participate in making recommendations (see paragraphs 624.7(c)(5) and 624.7(c)(6)) and other functions of the committee.
- It is the responsibility of the agency's administration and governing body to ensure that there is a management system for the overall coordination and timely processing of reportable incidents, serious reportable incidents, and abuse allegations; and that this system is used, in its entirety, for each reported event related to persons receiving services required to be reported under Part 624.

**624.7(b)(2) Ascertain that necessary and appropriate corrective, preventive, and/or disciplinary action has been taken to protect persons receiving services from further harm and to safeguard against the recurrence of similar reportable incidents, serious reportable incidents, or alleged abuse and to make written recommendations to the chief executive officer to correct, improve or eliminate inconsistencies.**

Commentary:

- Committee members should be familiar with the expectations of the agency, its incident/abuse management system, and its policies/procedures to ensure that appropriate measures are taken and/or have been followed.
- The committee has a responsibility to make recommendations to the chief executive officer or his or her designee.

**624.7(b)(3) Ascertain if further investigation or if additional corrective, preventive, and/or disciplinary action is necessary, and if so, to make appropriate written recommendations to the chief executive officer relative to the reportable incident, serious reportable incident, or alleged abuse.**

Commentary:

- While the committee may be of the opinion that continued investigation is necessary, it is not its role to conduct such investigations (see Sections 624.7(c)(4) and 624.7(d)(5)(ii)). The committee should request that further investigation be conducted.

**624.7(b)(4) Identify trends in reportable incidents, serious reportable incidents, and/or allegations of abuse (e.g., by type, person, site, employee involvement, time, date, circumstances, etc.) and to recommend appropriate corrective, preventive, and/or disciplinary action to the chief executive officer to safeguard against such recurring situations, reportable incidents, serious reportable incidents, and allegations of abuse.**

Commentary:

- The Committee may delegate this responsibility to a sub-committee of its membership.

**624.7(b)(5) Ascertain and ensure the adequacy of the agency's reporting and review practices, including the monitoring of the implementation of approved recommendations for corrective and preventive action.**

Commentary:

- The committee should make written recommendations to the chief executive officer, or designee, as to ways to improve, streamline, make more effective, etc., the incident and abuse reporting process.
- The incident management system developed by the agency's administration, and approved by the governing body, must address the means through which the standing committee's recommendations will be received and considered in the interest of minimizing future occurrences of incidents or abuse.

**624.7(c) A standing committee shall:**

- (1) Meet as determined by agency policy, but no less frequently than on a quarterly basis and always within one month of the report of a serious reportable incident or allegation of abuse, or sooner should the circumstances so warrant.**

Commentary:

- Depending on the size of the agency, the number of its facilities, the services provided, and the characteristics of its population, monthly meetings may be excessive. Therefore, the regulations allow an agency to determine how frequently the committee must meet, but this can be no less than quarterly. However, the committee is mandated to meet within one month of the date that a serious reportable incident or allegation of abuse is discovered and reported.

**624.7(c)(2) Review and monitor all reportable incidents that are reported, which may be done by a sub-committee of the standing committee or by individual assignment to members of the standing committee; and maintain a record of such incident review, recommendations, and/or actions taken in such a manner as to provide for tracking and trending.**

Commentary:

- It is the responsibility of the standing committee to oversee the process for reportable incidents. However, this can be done in the manner deemed most appropriate by the agency. It is acceptable for various members of the committee to be assigned to review reportable incidents as a small group (sub-committee of the standing committee) or even as individuals; there is nothing, however, to preclude the review being done by the entire committee.
- Regardless of the manner in which the review is accomplished, there should be a record of the review, any recommendations made or the actions taken.
- The full committee is to be made aware of the activities/findings of those who handle reportable incidents if the review and monitoring is not done by the standing committee as a whole.
- Statistics should be maintained on all reportable incidents, which can then be used to develop trend information.

**624.7(c)(3) Review and monitor all serious reportable incidents and/or allegations of abuse that are reported.**

Commentary:

- Reviewing and monitoring do not mean the same as “investigation.” The committee is not to investigate incidents or abuse allegations (see Sections 624.7(c)(4) and 624.7(d)(5)(ii)).
- The primary focus of the standing committee is to review serious incidents and abuse allegations to make sure appropriate protections were taken, the investigation was thorough, the classification, corrective actions and recommendations were appropriate and that all other requirements of Part 624 were met.
- Committee members should be familiar with the expectations of the agency, its incident management system and its policies/procedures to ensure that appropriate measures are taken and/or have been followed.

**624.7(c)(4) Review and monitor investigatory procedures, but shall not perform the routine investigation of reportable incidents, serious reportable incidents or allegations of abuse.**

Commentary:

- The committee is to critically assess whether or not appropriate investigatory procedures are followed, and to make recommendations to the chief executive officer, or designee, when necessary (see paragraph 624.7(c)(6)).
- Members or a member of the committee should not routinely (regularly) conduct or participate in investigations at the agency (see Sections 624.7(c)(4) and 624.7(d)(5)(ii)).
- If a member conducts or participates in an investigation, he or she should not be involved in the committee's review and evaluation of the incident/alleged abuse case and its investigation and is responsible for voluntarily withdrawing from deliberations. That person could, however, participate in making recommendations and other functions of the committee.
- In reviewing investigatory procedures the committee must ensure that the investigator has reviewed all appropriate documentation, interviewed all pertinent witnesses and thoroughly examined all evidence.
- The committee should make sure the investigation identified contributing factors and the cause(s) of the event so that they can make appropriate recommendations to address the current event and to prevent similar events from occurring in the future. If the committee finds that the investigation is inadequate to validate the finding or the investigation does not identify contributing factors, the committee should request that the investigation be re-opened. The incident should remain open until an acceptable investigation is completed.
- It is recommended that committee members receive investigation training.

**624.7(c)(5) Make written recommendations to appropriate staff to eliminate or minimize similar reportable incidents, serious reportable incidents, and/or abuse situations in the future; and/or to improve investigatory or other procedures.**

Commentary:

- The agency, with the oversight of the governing body, must ensure that there is a process for the standing committee's written recommendations to be sent to appropriate staff and administrators so as to foster an environment whereby such recommendations are positively received, considered, and responded to.
- It is the related responsibility of the agency's administration and governing body to create an environment whereby committee recommendations are positively received and considered in the interest of minimizing future occurrences of incidents or abuse and responded to, by the designated administrator in writing.

**624.7(c)(6) Make written recommendations to the chief executive officer on changes in agency policy or procedures and to improve conditions contributing to the reportable incidents, serious reportable incidents, and/or allegations of abuse reviewed.**

Commentary:

- The committee has an advisory responsibility and function to the chief executive officer and other administrative staff he or she designates.
- It is the responsibility of the agency's administration and governing body to foster an environment where committee recommendations are positively received and considered in the interest of minimizing future occurrences of incidents of abuse.

**624.7(c)(7) Forward findings and recommendations to the chief executive officer within two weeks of meeting.**

Commentary:

- The manner in which such information is forwarded to the chief executive officer, or designee, and other staff is to be determined by the agency.
- It is the responsibility of the agency's administration and the governing body to ensure and enforce an agency procedure which provides for a written response to the standing committee, by staff receiving recommendations.

**624.7(c)(8) Provide documentation that all reports of serious reportable incidents and allegations of abuse have been reviewed by the committee and that results and recommendations have been conveyed to appropriate agency executives and others with a need to know.**

Commentary:

- The agency determines how such documentation will be made. Inclusion in the committee minutes would be sufficient to document that such recommendations have been forwarded.
- The confidentiality of those whose names appear in the minutes needs to be considered.
- The agency staff shall establish a standardized procedure and written format for the regular transmittal of the standing committee minutes and recommendations to the appropriate agency executives.

**624.7(c)(9) Monitor actions taken on any and all recommendations made and advise the chief executive officer when there is a problem.**

Commentary:

- If there is a lack of action taken, without justification, the chief executive officer, or designee, needs to be made aware of the situation.
- It is the responsibility of the chief executive officer and the governing body to ensure that committee recommendations are positively received and considered in the interest of minimizing future occurrences of incidents and abuse.

**624.7(c)(10) Monitor trends of other events or situations attributable to a person receiving services which may be potentially harmful, but do not meet the definition of being a reportable event. This may be done by the full committee or a member of sub-committee reporting to the full committee.**

Commentary:

- While the committee or sub-committee may do trend analysis of other events (e.g., *agency reportable incidents* or other situations that are potentially dangerous to persons receiving services), it is not necessarily the role of the committee to do this. Trend analysis may be done elsewhere within the agency.
- The committee is to review such trends and monitor them to be in a position as to advise the chief executive officer if there are problems evidenced.

**624.7(c)(11)** In accordance with agency policy, report periodically, but at least annually, to the chief executive officer, the governing body and the DDSO concerning the committee's general monitoring functions; general identified trends in reportable incidents, serious reportable incidents, and allegations of abuse; and, corrective, preventive and/or disciplinary action pertaining to identified trends.

Commentary:

- The committee may prepare a single report summarizing the activities over the course of the past year which may serve all parties identified in the regulation; they may report monthly or quarterly; or they may report to any frequency as long as it is no less than annually.
- The emphasis of the report is to be on the general activities/functioning of the committee. Hence, information included in the report should include aggregated data and/or information and not individual case specifics.
- The report should include, at a minimum, the general identified trends in reportable/serious reportable incidents and allegations of abuse for the time period which the report covers; an analysis of the trends identified; and a summary of the types of corrective action(s) which have been developed, taken by the agency, in an effort to avoid circumstances known to have resulted in reportable incidents, serious reportable incidents, and allegations of abuse.

**624.7(c)(12) Interact with the governing body and comply with the policies in relation to the review and monitoring of all reportable incidents, serious reportable incidents, and allegations of abuse.**

Commentary:

- The governing body is to be available to the committee for support and guidance.
- The agency's incident and abuse management system, as reflected in agency policy, the minutes of the committee; the committee's annual report, and, where appropriate, minutes of the governing body may provide substantiation of compliance with this requirement.

**624.7(d) Organization and membership of the standing committee**

- (1) A standing committee or committees may be organized so as to meet the organizational needs of an agency (e.g., on an agencywide basis, for a certified class of facilities, for a grouping of certified classes of facilities, by types of services provided, etc.). Members shall be appointed by the chief executive officer.**

Commentary:

- Depending on the size and organizational structure of an agency, there may be one standing committee that is responsible for addressing all incidents and abuse allegations. This is permissible.
- If an agency operates ICF/DDs, community residences, IRAs, day programs and/or family care homes, it may have a standing committee by program type.
- It is also permissible to have a separate standing committee for each site and/or for At Home Residential Habilitation, Medicaid Service Coordination, and other non-certified services.

**624.7(d)(2) A standing committee may have other responsibilities in addition to specified responsibilities related to reportable incidents, serious reportable incidents, and allegations of abuse.**

Commentary:

- In the interest of making the most effective use of staff time, there is nothing to preclude the members of the standing committee from addressing other issues (e.g., infection control, risk management), but not at the expense of agency management of incidents and abuse allegations through the standing committee.

**624.7(d)(3) Membership of the standing committee shall include:**

- (i) At least two professional staff.**

Commentary:

- As used in Part 624, professional staff refers to such clinicians as are identified in the regulations governing the facility, and may include:
  - Applied Behavioral Sciences Specialist
  - Developmental Specialist
  - Habilitation Specialist
  - Nurse (RN)
  - Nurse Practitioner
  - Occupational Therapist
  - Physician
  - Physician's Assistant
  - Physical Therapist
  - Psychologist
  - Social Worker
  - Speech Therapist
  
- While there may be more than two professional staff members on the committee, there can never be less.

**624.7(d)(3)(ii) Other staff, including professional, direct care or administrative staff, as deemed necessary by the agency to achieve the purposes of the committee pursuant to this section.**

Commentary:

- The inclusion of direct care staff on the committee is highly encouraged.
- At the time Part 624 was developed, the issue arose as to whether or not a parent or person receiving services could/should be a participating member of an incident/abuse review committee. There were those who felt very strongly that incorporating such a requirement could very negatively effect the operation of a committee/agency/facility and violate confidentiality of persons receiving services and staff alike because it would be a violation of the Mental Hygiene Law, Section 33.13; there were others who felt such participation is justified. The regulation remains silent on the topic. However, in a developmental center and State operated facilities, a member of the Board of Visitors who is a parent or person receiving services would be an appropriate participant; in a voluntary agency, a parent or person receiving services who is a member of the governing body would be an appropriate participant. Any parent or person receiving services who participates in the activities of the standing committee must be fully aware of and agree to comply with the requirement of absolute confidentiality of information discussed or reviewed.

**624.7(d)(3)(iii) A physician, physician's assistant or nurse practitioner must either serve on the committee or be available for consultation to the committee.**

Commentary:

- Without such input available, the committee may not be able to adequately assess and evaluate medical information.
- While the participation on a regular basis of such professionals is highly desirable, it has been recognized by OPWDD that in certain settings this may not be possible, hence, the allowance for consultation.

**624.7(d)(3)(iv) Participation of a psychologist on the committee is recommended.**

Commentary:

- As many of the situations reported have their genesis in maladaptive or inappropriate behavior, it would be highly desirable to have a psychologist as a member of the committee, but this is not mandated.

**624.7(d)(3)(v) The participation of a member(s) of the governing body is encouraged.**

Commentary:

- Governing bodies are charged with the oversight of all facilities and services provided by the agency. They should be aware of significant events that take place in a facility. Participating on the standing committee is one way of affecting this.
- Also see Section 624.2(h) “Commentary” in the handbook for further information on the role/responsibilities of the governing body.

**624.7(d)(4) Membership Limitations**

- (i) **The chief executive officer of the agency shall not serve as a member of the committee, but may be consulted by the committee in its deliberations.**

Commentary:

- As the committee's primary function is an advisory one to the chief executive officer, or designee, it is inappropriate for the chief executive officer to be an active member of the committee.

**624.7(d)(4)(ii) The administrator of a class or classes of facilities or a group or groups of services may be designated as a member only if the committee is an agencywide or multi-program committee. If he or she is not a member, an administrator may be consulted by the committee in its deliberations.**

Commentary:

- If the agency operates several types of programs (e.g., ICF, IRA, family care, day services) and has one overall standing committee, then it is permissible and may be appropriate for the administrator of one or more of these programs to be a committee member.
- If the agency operates only one type of program, it would be inappropriate for the direct administrator of that program to be a member of the committee.

**624.7(d)(5) Case-Specific Requirements**

- (i) **There shall be representation by someone from or with knowledge of the agency's own organizational entity where the event, which is under discussion, occurred; or, by someone who is familiar with the person(s) involved.**

Commentary:

- Only a person associated with a specific program (e.g., ICF, IRA, family care, day services etc.) may be familiar enough with the operation of the program, its facilities and/or its persons receiving services to be able to respond to the general questions of the committee regarding the specific situation under review. Therefore, a person familiar with the program is to be invited to that portion of a committee meeting when incidents/abuse allegations for that program are under discussion, if there is not a committee member that can fulfill that role.
- It is not appropriate for the committee to meet with outside parties. For example, it is unacceptable for a family member of any individual involved in an incident to discuss that incident.

**624.7(d)(5)(ii) No committee member may participate in the review of any reportable incident, serious reportable incident, or alleged abuse in which he or she was directly involved, in which his or her testimony is incorporated, in which his or her spouse or other immediate family member was directly involved, or which he or she investigated or participated in the investigation. Such members may, however, participate in Committee deliberation regarding appropriate corrective or preventive action.**

Commentary:

- “Testimony,” as used in Part 624, does not refer to “legal” testimony. It is used to refer to any information a person has given relative to a situation under review or investigation.
- If a committee member was present at the time of an incident of alleged abuse, and provided information about the situation, that committee member cannot participate in the committee’s review as to how the case was handled.
- If a committee member finds himself/herself in this position, it is his/her responsibility to so advise the committee and not to participate in the review of the handling of the investigation and actions taken.

**624.7(e) Minutes – The chairperson of a standing committee shall ensure that minutes are kept for all meetings.**

- (1) Minutes addressing the review of specific serious reportable incidents and/or allegations of abuse shall clearly state the filing number/identification code of the report (if used), the person’s full name and identification number (if used) and provide a brief summary of the situation (including date, location and type), that caused the report to be generated, Committee findings (including reclassification of event, if applicable) and recommendations and actions taken on the part of the agency as a result of such recommendations. Full names of all parties involved are to be recorded (not initials).**

Commentary:

- The chairperson is to ensure that, at each meeting, there is a person or persons designated to take notes of the meeting and to write the minutes.
- Minutes may be recorded in any form or format the agency desires, as long as the required information listed in the regulation is incorporated into the minutes for each situation reviewed.
- If minutes are to be used to meet the requirement of paragraph 624.5(e)(2), which requires a monthly status report to be sent to the DDSO, the minutes must include:
  - name or names of subjects of the report
  - incident/abuse report number
  - date of incident/abuse
  - classification of incident/allegation of abuse (as first reported)
  - name of agency and facility reporting and name and address of any other agency/facility involved
  - name of agency investigating
  - corrections, changes (including reclassification of an original report), updates to original report (if any)
  - status (open or closed), and until closure, a brief review of finding of the investigation since the last report to the DDSO
  - upon closure of an alleged abuse case, the resolution (substantiated, disconfirmed, or inconclusive)
  - corrective and/or preventive actions taken

**624.7(e)(2) Minutes are to be maintained in a manner that ensures confidentiality.**

Commentary:

- Maintaining minutes in a manner to ensure confidentiality does not mean that identifying names cannot be used and that the actual minutes of meetings must be recorded in such a way that parties cannot be identified. Rather, “maintaining” minutes refers to the way in which they are filed/stored. Because it is expected that minutes will contain identifying information, the agency must make sure that where and how such minutes are filed or stored provides a means of ensuring that confidentiality is maintained and that the minutes are not accessible to unauthorized persons.
- It would be appropriate for agency policy/procedures to designate who can access committee minutes and how this would be done.
- If minutes need to be provided to other parties for information purposes, names and any other identifying information should be deleted as necessary to ensure confidentiality. This requirement does not apply to information provided to the DDSO or other OPWDD representative.

## **624.8 Release of records pertaining to allegations and investigations of abuse**

**624.8(a) Policies and procedures. Agencies shall have policies and procedures concerning the process for requesting the release of records pertaining to allegations and investigations of abuse, including but not limited to identifying appropriate staff who are authorized to receive requests and those who are authorized to release records.**

### Commentary:

- Agency policies and procedures should provide an overview of the process for releasing records and/or documents pertaining to allegations and investigations of abuse.
- The policies and procedures must address at a minimum which staff are authorized to receive requests for records and documents and those staff who are authorized to release records to eligible requestors.
- Policies and procedures may include topics such as redaction, determination of the validity of a request (not an eligible requestor, not a timely request, not under the auspices of an agency, etc.), timelines or documentation.
- Policies and procedures must be in compliance with all applicable regulations including, but not limited to, “Jonathan’s Law” and “HIPAA”.

**624.8(b) Eligible requestors. Persons receiving services or who formerly received services; and guardians, parents, spouses, and adult children of such persons, pursuant to paragraph (a)(6) of section 33.16 of the Mental Hygiene Law, are eligible to request the release of records as established by this section, subject to the following restrictions:**

Commentary:

- The only individuals who are eligible to request records and documents pertaining to an allegation or investigation of abuse are:
  - a person receiving services who is the subject of the alleged abuse; and
  - any guardian, parent, spouse or adult child of the person receiving services who is the subject of the alleged abuse (if he or she is a “qualified person” according to paragraph 33.16(a)(6) of the Mental Hygiene Law).
- Legal guardians appointed for children or adults are generally considered “qualified persons.” These include (but are not limited to) guardians appointed pursuant to Article 17-A of the Surrogate’s Court Procedure Act and Article 81 of the Mental Hygiene Law, and legal guardians for children.
- If the guardianship order limits the authority of the guardian so that the guardian would not have relevant authority (e.g. over property only), the records and documents should not be provided.
- Parents of minors (under the age of 18 years) are considered to be “qualified persons” unless their parental rights have been legally terminated.
- Generally, parents, spouses and adult children of adults receiving services (age 18 or older) are “qualified persons” if they are involved with the person receiving services and they have consented to service plans and/or medical/dental treatment in the past. If they have not consented in the past but would be asked to provide consent should a need arise at the present, they would also be considered to be “qualified persons.”
- The agency is not required to provide documents and records to non-eligible persons, unless required by law. Access to investigative documents is personal to qualified persons. The agency should not provide access to someone other than the qualified person even if such qualified person has authorized another person to obtain the investigative records and documents.
- A guardian, parent, spouse or adult child is not eligible to receive documents and records pertaining to allegations of abuse when the individual receiving services is not the subject of the report. For example, a person receiving services may be interviewed during the course of an investigation because he or she was a witness. In this case the “interviewee” and the guardian, parent, spouse or adult child of the person interviewed are not authorized to receive a copy of those records.
- If a person receiving services is the target of a report (there may be an allegation that he or she abused another person receiving services), qualified persons associated with the person who is targeted are not eligible to receive copies of the records and documents pertaining to that investigation.

- If more than one eligible person requests the investigation records and documents, the documents must be provided to all eligible requestors.
- If the person is 18 years of age or older, is a “capable adult” according to the definition in Section 624.20(b) (“adult, capable”), and objects to the records and/or documents being provided to an otherwise eligible requestor, the agency is to adhere to the wishes of the capable adult. Such capability and objection should be documented.
- When an agency denies a request for record and documents, the agency must inform the requestor in writing of the opportunity to appeal such denial to the OPWDD Incident Records Appeals Officer. The agency shall inform the requestor of the opportunity to send his or her written appeal to the OPWDD Incident Records Appeals Officer, Office of Counsel, 44 Holland Avenue, Albany, NY 12229. The right to appeal a denial is in subdivision 624.8(h) and in OMRDD ADM #2009-04, which is Appendix 15, of this handbook.

**624.8(b)(1) In the event that an otherwise eligible requestor is an alleged abuser, such requestor is not eligible to receive any records or documents pertaining to the specific allegation or investigation of the event or situation in which he or she was the targeted alleged abuser, regardless of the conclusion.**

Commentary:

- If the guardian, parent, spouse or adult child is the “target” or alleged abuser of an abuse allegation, that individual is not eligible to receive records or documents pertaining to that specific allegation. This is true regardless of the conclusion of the investigation (substantiated, inconclusive or disconfirmed).
- This does not preclude the individual from being provided records and documents pertaining to a different allegation in which he or she was not the alleged abuser.
- This also does not preclude another eligible guardian, parent, spouse or adult child (who is not the alleged abuser) from requesting and receiving the records and documents. However, the relationship of the other requestor to the person targeted should be considered. If the provision of information to another requestor is likely to result in the targeted person being provided the information, the request should be denied (e.g. if the other requestor is the spouse of the targeted person who lives with the targeted person).
- When the alleged abuser is the qualified person (i.e. a parent of a minor who receives services) it is likely that the allegation will not be “under the auspices” of the agency. For example, if the alleged abuse occurred in the parent’s home when no agency staff members were present it is not under the auspices of the agency. Pursuant to the subdivision 624.8(c), only allegations pertaining to events or situations which are “under the auspices of the agency” are subject to release. Requests for records and documents made by any qualified person (whether or not the requestor is the alleged abuser) can be denied on the basis that the event or situation was not under the auspices of the agency. Please refer to the definition of “auspices, under the” to determine whether a particular event or situation meets that definition.

**624.8(b)(2) If the person receiving services or who formerly received services is a capable adult and objects to the provision of records and/or documents to an otherwise eligible requestor, such requestor is not eligible to receive those records or documents.**

Commentary:

- If the person is 18 years of age or older, is a “capable adult” according to the definition in Section 624.20(b) (“adult, capable”), and objects to the records and/or documents being provided to an otherwise eligible requestor, the agency is to adhere to the wishes of the capable adult. Such capability and desire should be documented.
- There is no requirement that a capable adult “give permission” for the provision of the records and/or documents to an eligible requestor. Agencies are not specifically required to ask the person receiving services whether they have an objection to the release of records. If agencies have any question whether the person receiving services might object to the provision of the records and documents to the requestor, agencies should ask the person. If a capable adult objects to the provision of such, the documents and/or records shall not be provided to the otherwise eligible requestor.
- The definition of “capable adult” in Section 624.20(b) states: “A capable adult person cannot override the authority granted a guardian pursuant to Article 81 of the Mental Hygiene Law or of a conservator or a committee; or the authority granted a guardian in accordance with the Surrogate’s Court Procedure Act.” In general, this means that if a request is made by a guardian, and the person receiving services lodges an objection to the provision of records and/or documents, the agency must provide the requested records and/or documents to the guardian. If the guardianship order limits the authority of the guardian so that the guardian would not have relevant authority (e.g. over property only) and the capable adult objects, the records and documents would not be provided.

**624.8(c) Records subject to release**

- (1) Agencies are required to release all records and documents pertaining to allegations and investigations into abuse under the auspices (see section 624.20) of the agency or sponsoring agency to eligible requestors who make a request in accordance with the provisions of this section.**

Commentary:

- Agencies should use discretion in determining what documents are considered “pertaining to allegations and investigations into abuse.”
- Employee personnel files or disciplinary procedures are not to be considered part of the investigation documents and records.
- While agencies are required to take appropriate action to investigate abuse allegations that did not occur “under the auspices” of the agency, the records and documents pertaining to these kinds of investigations are not subject to release to otherwise eligible requestors. For example, while agencies must conduct full investigations of suspected abuse occurring on a home visit (for a person who lives in a certified residential facility) those records are not required to be made available to eligible requestors, regardless of their involvement in the abuse allegation, because the alleged abuse did not occur under the auspices of the agency.
- See Section 624.20(b) for a detailed definition of “auspices, under the.”
- The provisions of this section only apply to allegations of abuse. This section does not require agencies to release records and documents pertaining to incidents, whether serious reportable, reportable, or agency reportable.
- If the release of records and documents might cause harm or be detrimental to the person receiving services or others, agencies should consult an attorney before the release about whether the request could be denied or whether specific records could be withheld. For example, information contained in requested records or documentation may cause the requestor to seek retaliation against the person receiving services.

**624.8(c)(2) Agencies are required to release records and documents pertaining to allegations of abuse which occurred or were discovered on or after May 5, 2007, regardless of the date of the submission of the written request.**

Commentary:

- The time that the allegation occurred or was discovered is recorded on the initial allegation of abuse report (OPWDD 147) which was completed for the allegation.
- There is no time limitation for eligible requestors submitting a request for an allegation of abuse which occurred or was discovered on or after May 5, 2007.
- Eligible requestors have a time limitation of December 31, 2012 for submitting a request for an allegation of abuse which occurred or was discovered during the time period of January 1, 2003 through May 5, 2007.

**624.8(d) Procedures**

- (1) Eligible requestors shall submit a written request to staff designated by agency policy/procedures. If the request is made prior to the closure of an alleged abuse case, the parties specified by agency policy/procedure shall provide the requested records no later than 21 days after the closure of the alleged abuse case. If the request is made at or subsequent to the closure of the alleged abuse case, the agency shall provide the requested records no later than 21 days after the request is made. The written request shall specify the records that are requested.**

Commentary:

- Requests for records and documents must be made by an eligible requestor in writing.
- A request can be made at any time during the investigation process or after its conclusion.
- The request should specify what records and documents are being requested. Requests may be for all records and documents subject to release or may be limited. Agencies may wish to discuss the types of records and documents that are available with the requestor to help the requestor identify the documents that may be of interest and to assist the requestor in framing the request. The request can be limited to specific documents or types of documents of interest to the requestor (i.e. investigative report, witness statements, supporting documents, photographs, medical information).
- If the request is received by the agency prior to the closure of an alleged abuse case, records and documents must be provided within 21 days of the closure.
- If the request is made subsequent to the closure of the alleged abuse case, the agency shall provide the requested records no later than 21 days after the request is received by the agency.
- A request for records and documents pertaining to an allegation of abuse may be made by an eligible requestor via email. Before the agency may reply to such request, the identity of the requestor and the address the information will be sent to must be verified. This must be done verbally, either in person or over the telephone. Agencies should document that the requestor's identity and address was confirmed.
- While an eligible requestor may make a request for records and documents pertaining to an allegation of abuse via email, the agency may NOT provide the redacted records and documents via email.

**624.8(d)(2) The closure of the alleged abuse case shall be considered to have occurred when the standing committee established pursuant to section 624.7 has ascertained that no further investigation is necessary and a conclusion is reached whether the allegation is substantiated, disconfirmed or inconclusive. Pursuant to the provisions of section 624.7, the standing committee may have additional responsibilities related to the allegation that continue after the closure of the alleged abuse case, such as making recommendations to the chief executive officer and monitoring actions taken on recommendations.**

Commentary:

- It is the role of the standing committee to determine if the investigation conducted is thorough and complete. OPWDD (for state operated services) and the voluntary provider must reach a conclusion as to whether the allegation is substantiated, disconfirmed or inconclusive. (See commentary under 624.5(e)(2) for additional guidance on closing cases.)
- Once the standing committee has ascertained that no further investigation is necessary the investigation responsibilities should be considered “closed” and the 21 day time period for requests for records and documents made prior to closure begins.
- While the investigation portion of the 624 process is to be considered closed, the standing committee may need to continue to monitor the case as per their responsibilities in paragraph 624.7(b)(3) to ensure appropriate action is taken in response to recommendations made.

**624.8(e) Redaction of records**

- (1) Prior to the release of records, agencies shall redact the names of employees who are involved in the alleged abuse or the investigation or who are interviewed as a part of the investigation, persons receiving services (or who formerly received services), and any information tending to identify such employees or persons. For the purpose of this section, “employee” has the same meaning as paragraph 624.6(g)(11). Redaction shall be waived if the employee or person authorizes disclosure, unless redaction of the specific information is necessary because it tends to identify another employee or person who has not authorized disclosure or for another reason specified in this subdivision.**

Commentary:

- The intent of the redaction is to encourage employees to report suspected abuse and fully cooperate with investigators by assuring them that to the extent possible their identity will be protected. It also is meant to protect the confidentiality of other persons receiving services and to encourage their reporting and cooperation.
- Redaction must be done in the spirit of meaningful disclosure.
- Redaction only applies to names and information that would identify or tend to identify an employee or individual receiving services (i.e. date of birth, employee title, gender or physical attributes).
- Redaction may apply to employees and individuals who complete or review the initial incident or allegation of abuse report (OPWDD 147), who participate in or conduct the investigation, who are part of the investigation review process, or who are interviewed as part of the investigation.
- Information that provides description, context or follow-up should not be redacted. It would be inappropriate to redact information such as a description of the event, date and time, location, or referrals made.
- The name of the individual receiving services does not have to be redacted if the records and documents are going to be reviewed by that individual’s parent, guardian, spouse, adult child or advocate/correspondent. The names and identifying information of all other individuals receiving services should be redacted.
- If an employee or person receiving services authorizes the disclosure of their identity, his or her name and identifying information may not be redacted unless the disclosure will identify a person receiving services or an employee who did not authorize disclosure, or if redaction is required because of the redaction provisions related to child abuse discussed on the next page.
- The agency does not have a responsibility to ask employees or individuals receiving services if they would like to authorize the disclosure of their name and other identifying information. It may be assumed that employees and individuals receiving services do not authorize disclosure

and therefore would like their names and identifying information redacted unless such individuals state otherwise.

- If an employee or individual receiving services does authorize disclosure, the agency must document the name of the individual providing authorization, the date the authorization was provided and the staff person who accepted the authorization.
- Agencies must keep the original non-redacted records and documents, as well as a copy of the redacted records and documents which were provided to the requestor.
- The process of redaction will likely involve blacking out the relevant information and then copying the relevant page. The requestor should be provided the copy. Agencies should keep in mind that it is often possible to ascertain information which is blacked out on a document which is not copied.
- If handwritten documents are subject to release, and the requestor may be familiar with the handwriting of the author (e.g. staff who send notes home on a routine basis), it may be necessary to transcribe the handwritten document as the handwriting might tend to identify the author.

**624.8(e)(2)** In addition, if any records which are subject to release identify a particular party as having made a child abuse or maltreatment report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation, those names as well as any information tending to identify the party shall be redacted.

Commentary:

- The identity of an individual making a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR or otherwise cooperated in a child abuse/maltreatment investigation must be redacted, even if the individual authorizes disclosure.
- Redaction only applies to information that would tend to identify an employee or individual receiving services, not information that provides description, context or follow-up.
- It is permissible to identify that a report was made to the SCR and whether the report was accepted or rejected.

**624.8(f) Dissemination prohibition. Agencies shall give written notice to recipients, that the law specifies that records and documents released in accordance with this section shall not be further disseminated by the recipient. Such notice shall accompany each release of records.**

Commentary:

- The eligible requestors are prohibited by statute, Mental Hygiene Law section 33.25, from further disseminating records and documents pertaining to allegations and investigations of abuse.
- This prohibition is on the dissemination of documents and records. It is inappropriate for an agency to prohibit or attempt to prohibit qualified persons from discussing the information contained in the documents and records.
- Agencies are required to inform requestors of this prohibition. This can be done in a cover letter attached to the records and documents. Sample language is as follows:

Dear [Qualified Person]:

Enclosed are the records and documents you requested pertaining to the investigation of the allegation of abuse involving [your son/your daughter/name] reported on [date]. These records/documents have been provided to you in accordance with the requirements of Jonathan's Law (Mental Hygiene Law Section 33.25) and regulations promulgated by the NYS Office for Persons With Developmental Disabilities (14 NYCRR Section 624.8).

OPWDD regulations require agencies to promptly report and thoroughly investigate all allegations of abuse. Based upon the findings of such investigation, an allegation of abuse may be:

- Disconfirmed – the allegation was determined to be untrue based upon available information;
- Substantiated – the alleged abuse was confirmed; or
- Inconclusive – it was not possible to obtain sufficient information to support or disprove an abuse allegation.

The investigation is considered closed when the standing committee, which is required to review and monitor allegations of abuse, has determined that no further investigation is necessary and a determination is made whether the allegation is disconfirmed, substantiated or inconclusive.

Additional information about the procedures and requirements applicable to incidents and allegations of abuse can be found in the brochure, *Learning about Incidents*, which is available on the OPWDD website at <http://www.opwdd.ny.gov> and in OPWDD regulations at 14 NYCRR Part 624.

The investigation of the allegation involving [your son/your daughter/name] is now closed. In accordance with Mental Hygiene Law Section 33.25 and OPWDD regulations (14 NYCRR Section 624.8), information in the records and documents that identify other individuals served in the OPWDD system and employees has been redacted from the copies provided to you.

In addition, please note that these laws also prohibit you from further disseminating these records and documents.

If you have any questions, please contact [agency contact person] at [contact information].

Sincerely,  
XXXX

**624.8(g) Documentation**

- (1) The written request for the release of records shall be maintained and the time the request was received shall be documented.**
- (2) A copy of the redacted records that were released shall be maintained and the time the records were provided shall be documented.**

Commentary:

- Documentation may be maintained by the agency in whatever manner the agency deems appropriate. However, the agency must be able to produce the documentation upon request.

**624.8(h) Administrative appeal process – denial of requested records/documents.**

- (1) A requestor denied access to records and documents pertaining to allegations and investigations of abuse may appeal in writing such denial to the Incident Records Appeals Officer designated by the Commissioner of OPWDD.**
- (2) Upon receipt of the appeal, the agency issuing the denial will be notified of the appeal and given an opportunity to submit relevant information to Incident Records Appeals Officer, including the reasons for denial, within ten business days of the receipt of such appeal. The Incident Records Appeals Officer may also request additional information from the requestor as may be necessary to resolve the appeal.**
- (3) Within 10 business days of the receipt of complete information, the Incident Records Appeals Officer will make a determination about whether the requested records and/or documents should be released. The Incident Records Appeals Officer will issue his or her determination with an explanation of the reasons for the determination to the requestor and the agency. If so directed by the Incident Records Appeals Officer, the agency shall provide the requested records and/or documents to the requestor.**

Commentary:

- See OMRDD ADM #2009-04, which is Appendix 15 for additional information.
- When an agency denies a request for record and documents, the agency must inform the requestor in writing of the opportunity to appeal such denial to the OPWDD Incident Records Appeals Officer. The agency shall inform the requestor of the opportunity to send his or her written appeal to the OPWDD Incident Records Appeals Officer, Office of Counsel, 44 Holland Avenue, Albany, NY 12229.
- The Incident Records Appeals Officer will render a determination within 20 business days of making the request for information to the agency if the agency does not respond to the Officer's request within 10 business days.

## **624.20 Glossary**

**The Glossary is arranged so that the last word in a title or phrase is the key word to look up and those words are arranged alphabetically.**

**624.20(a) Administrator, Program – Someone designated by the governing body and/or the chief executive officer to be responsible and accountable for the daily operation of one or more types of services provided by an agency (e.g., ICF Program, community residence program, residential habilitation program, respite program, family support program).**

### Commentary:

- As used in Part 624, the title “program administrator” is a generic term to designate the staff member whose job it is to oversee various types of services provided by an agency.

**624.20(b) Adult, Capable – For purposes of this Part, a person 18 years of age or older who is able to understand the nature and implication of an issue. The assessment of capability in relation to each issue as it arises will be made by the person’s program planning team (see Glossary). Capability, as stipulated by this definition, does not mean legal competency; nor does it necessarily relate to a person’s capability to independently handle his or her own financial affairs; nor does it relate to the person’s capacity to understand appropriate disclosures regarding proposed professional medical treatment. Whenever there is doubt on the part of any other party interested in the welfare of the person as to that person’s ability to make decisions, as ascertained by the program planning team or others called upon by an agency, a determination of capability for a specific issue or issues may be made by a Capability Review Board (see Glossary) designated by the commissioner except that in an ICF/MR facility the requirements of 14NYCRR Section 681.13 may apply. A capable adult person cannot override the authority granted a guardian pursuant to Article 81 of the Mental Hygiene Law or of a conservator or a committee; or the authority granted a guardian in accordance with the Surrogate Court Procedure Act.**

Commentary:

- The phrase “For purposes of this Part,” means that the definition applies only to the regulation in which it appears and relates only to the contents of that regulation. There may be a definition in another regulation that is different.
- If a person resides in an ICF, the process for determining the capability of an adult is set forth in 14NYCRR, Part 681.13, and is to be followed in such facilities.
- There is no mandate that the Capability Review Board be used in determining an adult’s capability. However, this process is offered by OPWDD for the convenience and support of all providers. If the input of a Capability Review Board is desired, the DDSO will contact the Commissioner’s Office for the available names.

**624.20(c) Advocate – As used in this Part, someone who has volunteered to help a person apply for HCBS waiver services who gives advice and support, who helps the person make informed choices, and who acts on behalf of the person when that person is unable to do so by himself or herself. While an advocate plays an active role in promoting self-advocacy and in assisting with service planning, implementation, and monitoring, he or she has no legal authority over a person’s affairs unless designated as the legal guardian.**

Commentary:

- The reference to an “advocate” comes from Subpart 635-10, *Provision of Home and Community Based Waiver Services*. The definition in Subpart 635-99 includes specific requirements, as follows:

“(b) *Advocate.* For the purposes of the home and community-based services (HCBS) waiver, a party chosen by the participant in the waiver who assists the person with the application process and in the development, implementation, review, and revision of the services, supports, and activities that the person chooses in order to attain his or her personal life goals and individualized service environment. A capable adult, as defined in Section 633.99 of this Title may choose not to have an advocate. The advocate must be 18 years or older and may include an involved parent or other member of the family, legal guardian, friend, or member of the community who is not providing direct services to the person pursuant to the individualized service plan or who is not employed by an entity providing direct services to the participant in the waiver. However, an ombudsperson at a developmental center, appointed pursuant to section 13.34 of the Mental Hygiene Law, may also be considered as a person’s choice for his/her advocate. The fact that someone is functioning in the role of advocate for a person enrolled in the HCBS waiver does not endow that party with any legal authority over the person’s affairs unless they also happen to be the adult person’s guardian or the parent of a minor.”

- In those situations in which the person receiving services is their own advocate, it is necessary to determine if there is a parent or guardian who should also be notified when an incident or alleged abuse has occurred.

**624.20(d) Agency – the operator of a facility, program or service operated, certified, authorized or funded through contract by OPWDD. In the case of State-operated facilities, the DDSO is considered to be the agency. Family care providers are not considered to be an agency (also see “agency, sponsoring”).**

Commentary:

- As used in Part 624, an “agency” is the operator of an IRA (individualized residential alternative), ICF (intermediate care facility), community habilitation, community residence, day habilitation facility, day treatment facility, HCBS waiver services, Medicaid Service Coordination, family support services, other contract services subject to the oversight of OPWDD, etc. The agency can be a voluntary agency or the DDSO.
- The term “agency” also includes the DDSO or voluntary agency in its role as sponsoring agency related to family care homes.

**624.20(e) Agency, Sponsoring – An oversight entity of one or more OPWDD certified family care homes. In the case of family care homes operated under state sponsorship, the DDSO is considered to be the sponsoring agency.**

Commentary:

- For purposes of clarity in trying to designate who is responsible for meeting certain requirements related to family care homes (whether under State or voluntary agency oversight), the term “sponsoring agency” is used.

**624.20(f) Agency, State – a New York State governmental unit created for the management/delivery of services to the citizens of the State.**

Commentary:

- The State agencies with which the OPWDD system is most likely to have contact are: the Office of Children and Family Services (OCFS), the Department of Health (DOH), the State Education Department (SED), the Office of Mental Health (OMH), and the Division of the Budget (DOB).

**624.20(g) Allegation (of abuse) – For purposes of this Part, the implication is that abuse of a person may have occurred, based upon the report of a witness, upon a person’s own account, or upon physical evidence of probable abuse.**

Commentary:

- Any time that a person makes an allegation of abuse it is to be taken seriously and investigated so as to determine the allegation was accurate (substantiated), was definitely not accurate (disconfirmed), or no determination could be made as to whether or not the abuse did/did not occur (inconclusive).
- If a person is known to make frequent accusations, it is still the responsibility of the agency to determine if the allegation is with or without merit. The mere fact that a person receiving services has a history of making unfounded allegations of abuse is not a sufficient excuse to avoid looking into the situation.
- Please refer to paragraph 624.5(b)(2) for further discussion on how to handle this situation.

**624.20(h) Assault – Based on the Penal Law in New York State, the following may be used as a guideline as to what should be reported to law enforcement authorities: any situation where there is intent to cause physical injury (impairment of physical condition or substantial pain) to another party and such injury occurs to that party or another.**

Commentary:

- Any crime committed against a person receiving services is mandated by the Mental Hygiene Law (Section 16.13) to be reported to the local law enforcement authority. Assault, as defined in the Penal Law in New York State, is a crime. While the dictionary defines assault as “violent physical or verbal attack,” the penal law is more specific. If an agency has any question as to whether or not to report an attack by one person receiving services or another, or someone else, as “assault,” a legal advisor, or the local law enforcement authority should be consulted.

**624.20(i) Attempt, Homicide – For purposes of this Part, an assault by a person in which there is apparent intent to kill.**

Commentary:

- This definition is not a legal definition, but one developed to provide guidance to users of Part 624.

**624.20(j) Auspices, under the.** For the purposes of sections 624.6 and 624.8 only (related to notification and access to records), circumstances in which the agency/sponsoring agency or family care provider is providing services to a person which are operated, certified, authorized or funded through contract by OPWDD. These circumstances can occur whether or not the person is physically at a site owned, leased or operated by the agency/sponsoring agency or family care provider.

Commentary:

- This term is intended to distinguish between those events or situations in which the agency has direct responsibility and oversight and those events or situations which occur in the lives of individuals outside the scope of the provision of services in the OPWDD system.
- The term as defined here is only used in Part 624 related to the notifications to parents, guardians, etc. required by paragraphs 624.6(f) and 624.6(g) and the release of records required by Section 624.8. Only events or situations which are under the auspices of an agency or sponsoring agency are subject to the notification requirements established by paragraphs 624.6(f) and 624.6(g) and the requirements for release of records in Section 624.8.
- Reportable and serious reportable incidents and allegations of abuse which are “under the auspices” must be reported on an OPWDD 147, recorded, investigated, reviewed by the standing committee, etc. Please note that the same requirements may also apply to other events and situations which are not “under the auspices” according to this definition.
- The agency or sponsoring agency is required to intervene and take appropriate action concerning some events and situations which are not under the auspices of the agency or sponsoring agency. This may include reporting on an OPWDD 147, recording, investigation, etc. Further information on these requirements can be found in Sections 624.1(d), 624.5(d)(1), and Section VIII of this handbook.
- It may be appropriate to notify parents, guardians, advocates or correspondents concerning events and situations which are not under the auspices of the agency. Agencies are encouraged to be responsive to the requests of advocates regarding their loved one, and to notify individuals about situations that would be of concern even if the notification is not required. In some instances, it may also be necessary to contact someone in order for the agency to fulfill its responsibility to intervene and take appropriate action. This notification/contact does not have to include the offer to hold a meeting, provision of the report on actions taken, etc.
- NOTE: THE COMMENTARY ON THIS PAGE APPLIES ONLY TO NOTIFICATION AND ACCESS TO RECORDS.

**624.20(j)(1) Such circumstances are those 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.**

Commentary:

- An individual receiving services is under the auspices of an agency when agency personnel are, or should have been physically present and providing services at that point in time.
- Agency personnel include: staff, interns, contractors, consultants and/or volunteers, a family care provider or respite/substitute provider.
- The applicable settings include: all certified facilities when staff are scheduled to be present or with the person receiving services; or during the time that non-certified services are provided (e.g. at home residential habilitation, day habilitation without walls, or a recreation program funded by family support services).
- Examples:
  - A staff member takes a person receiving services into the community. While in the community, the staff person hits the individual receiving services. This event would be under the auspices of the agency.
  - The mother, who is a volunteer at a day habilitation program, slaps her son while he is receiving services at the program. This event would be under the auspices of the agency because the mother is a volunteer. (Note: there is an exception to notification and the release of records to the alleged abuser.)
  - An at home residential habilitation employee is providing services in an individual's home and slaps the individual receiving services. This is under the auspices of the agency.
  - Staff are required to be with a person receiving services on a shopping trip. While on the trip, the staff person leaves the person in one store while he or she goes to a different store, when the safety of the person requires that he or she not be unsupervised. The person receiving services falls in the store and sustains an injury when staff should have been present. This is under the auspices of the agency.
  - A resident of a supportive IRA falls and sustains an injury while on a shopping trip, when staff is not present and is not required to be present. This is not under the auspices of the agency.
- NOTE: THE COMMENTARY ON THIS PAGE APPLIES ONLY TO NOTIFICATION AND ACCESS TO RECORDS.

**624.20(j)(2) In addition, any circumstances involving physical conditions at the site provided by the agency or family care home are under the auspices of the agency or sponsoring agency, even in the absence of agency personnel or the family care provider.**

Commentary:

- The agency or sponsoring agency/family care provider is responsible for the environmental conditions at facilities or family care homes. OPWDD regulations provide that no person shall be denied a safe and sanitary environment.
- The notification requirements in paragraphs 624.6(f) or 624.6(g) apply.
- A qualified person may receive the investigation records and documents pursuant to Section 624.8.
- Example:
  - A broken handrail contributes to an individual receiving services falling down the stairs and sustaining an injury at a supportive IRA when staff is not present. This is under the auspices of the agency.
  - A broken lock may have contributed to an intruder gaining entrance to a supportive IRA. The resident is injured by the intruder. This is under the auspices of the agency.
- NOTE: THE COMMENTARY ON THIS PAGE APPLIES ONLY TO NOTIFICATION AND ACCESS TO RECORDS.

**624.20(j)(3) An event or circumstance is not under the auspices of an agency or sponsoring agency if it exclusively involves the person’s family, friends, employers, or co-workers, whether or not in the presence of agency personnel or a family care provider.**

Commentary:

- Situations in which staff are present but the incident or allegation of abuse exclusively involves the person’s family, friends, employers, or co-workers are not under the auspices of the agency.
- The notification requirements in paragraphs 624.6(f) and 624.6(g) DO NOT apply. However, notification of parents, guardians, advocates or correspondents may be appropriate concerning these events and situations. Agencies are encouraged to be responsive to the requests of advocates regarding their loved one, and to notify individuals about situations that would be of concern even if the notification is not required. In some instances, it may also be necessary to contact someone in order for the agency to fulfill its responsibility to intervene and take appropriate action. This notification/contact does not have to include the offer to hold a meeting, provision of the report on actions taken, etc.
- The agency is not required to provide the records and documents related to an allegation of abuse or its investigation pursuant to Section 624.8.
- Depending on the circumstances, an agency may be required to investigate and intervene.
- Examples:
  - The person receiving services tells staff at a day habilitation program that their mother slapped them the night before. This is not under the auspices of the agency.
  - The mother (who is not an employee or volunteer) comes to the day habilitation program and slaps her son who is receiving services at the program in front of staff. This is not under the auspices of the agency.
  - Co-workers of an individual use inappropriate language at the workplace. This is not under the auspices of the agency.
- NOTE: THE COMMENTARY ON THIS PAGE APPLIES ONLY TO NOTIFICATION AND ACCESS TO RECORDS.

**624.20(j)(4) An event or circumstance is not under the auspices of an agency or sponsoring agency if it occurs in the context of the provision of services which are subject to the oversight of State Agency other than OPWDD (e.g. special education, Article 28 clinic, hospital, physician’s office), whether or not in the presence of agency personnel or a family care provider.**

Commentary:

- Many services received by people with developmental disabilities are not under the jurisdiction of OPWDD. Some of these services are “generic” in that any individual with or without a developmental disability can access the services, such as a private physician. Other services that are exclusively or primarily for individuals with developmental disabilities which are not under the jurisdiction of OPWDD include pre-school special education programs and some “Article 28” clinics.
- The following examples illustrate some common situations:
  - Residence staff accompany a person receiving services to the doctor’s office.
  - a) The nurse employed by the doctor’s office slaps the person – not under the auspices of the agency
  - b) The residence staff slaps the person at the doctor’s office – under the auspices of the agency
  - c) The person trips in the waiting room and sustains an injury – may be under the auspices of the agency if agency staff should have been more closely monitoring or assisting the person
- For events and situations that are not under the auspices of the agency, the agency may be required to take appropriate steps, such as notifying program administrators or the licensing State Agency. However, the notification requirements specified in paragraphs 624.6(f) and 624.6(g) are not applicable and the records and documents pertaining to the investigation are not required to be released pursuant to Section 624.8.
- NOTE: THE COMMENTARY ON THIS PAGE APPLIES ONLY TO NOTIFICATION AND ACCESS TO RECORDS.

**624.20(j)(5) Related to incidents and abuse as defined in section 624.4, 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 are also deemed to be under the auspices of the agency or sponsoring agency. However, if such party is alleged to have been involved in an incident or allegation of abuse during the time he or she was providing services which are subject to the oversight of a State Agency other than OPWDD, the incident or allegation is not under the auspices of the agency or sponsoring agency.**

Commentary:

- If agency staff visit a person receiving services outside of the scope of their official duties, and become involved in a situation which would be an incident or allegation of abuse, it is considered to be under the auspices. For example, a staff person from a certified day habilitation program visits a person who receives services at home and abuses the person. This is under the auspices of the agency.
- Agencies may provide some services subject to the oversight of OPWDD and other services subject to the oversight of a different State Agency. Sometimes individuals receiving services subject to the oversight of OPWDD will also receive services from the same agency which are subject to the oversight of a different State Agency.

For example, an individual may attend a school subject to the oversight of the State Education Department and live in a residence certified by OPWDD. Sometimes the same staff may be involved in the provision of these different services. If an event or situation occurs in a program or service subject to the oversight of a different State Agency, such as the school in the above example, it is not considered to be “under the auspices” of the agency or sponsoring agency. This is true even if the staff person involved with the situation in their capacity as a school employee also works in the residence. To further clarify the example: Sue works both in the school and residence operated by the agency. John lives in the certified residence where Sue works and also attends the school. If Sue slaps John during any time she is functioning as a school employee, it is not under the auspices of the agency. If Sue slaps John while she is working at the residence or any time she is not functioning as a school employee, it is under the auspices of the agency.

- NOTE: THE COMMENTARY ON THIS PAGE APPLIES ONLY TO NOTIFICATION AND ACCESS TO RECORDS.

**624.20(j)(6) An allegation of neglect which is based on conditions in a private home (excluding a family care home) or workplace is not under the auspices of an agency or sponsoring agency.**

Commentary:

- Agencies or sponsoring agencies/family care providers are only required to provide a safe and sanitary environment in facilities under their jurisdiction.
- If unsafe or unsanitary conditions are reported or observed in a private residence or workplace, the agency is responsible for taking appropriate action to investigate and intervene appropriately.
- These situations are not considered under the auspices of the agency. The notification requirements specified in paragraphs 624.6(f) and 624.6(g) are not applicable and the agency is not required to release the documents and records pertaining to the allegation of neglect and its investigation.
- NOTE: THE COMMENTARY ON THIS PAGE APPLIES ONLY TO NOTIFICATION AND ACCESS TO RECORDS.

**624.20(j)(7) This definition does not apply to the term as used in paragraph 624.5(d)(1).**

Commentary:

- Please refer to the commentary in Section 624.5(d)(1) for more information.

**624.20(j)(8) Agencies are required to intervene and take appropriate action in situations which are not under the auspices of an agency or sponsoring agency pursuant to the requirements of section 624.5.**

Commentary:

- Please refer to Section 624.5 of this Handbook for more information about these requirements.

**624.20(k) Board, Capability Review – Those designated by the commissioner or a DDSO director to review the ability of a person to consent to a particular situation when there is a dispute as to that person’s ability. Capability review board services are not available in Intermediate Care Facilities.**

Commentary:

- For further discussion of the use of the Capability Review Board, see the definition of “Adult, Capable” in Section 624.20(b).

**624.20(1) Body, Governing – The overall policy-making authority, whether an individual or a group, that exercises general direction over the affairs of an agency and establishes policies concerning its operation for the welfare of the persons it serves. In DDSOs and State-operated facilities, the governing body shall be the central office administration of OPWDD. For purposes of Part 624, a family care home does not have a governing body.**

Commentary:

- The Governing Body is frequently referred to as the Board of Directors or “the Board.”

**624.20(m) Center, Developmental – A class of facility designated in Article 13.17 of the Mental Hygiene Law and operated by the Office For People With Developmental Disabilities for the care and treatment of people with developmental disabilities.**

Commentary:

- Not every DDSO operates a developmental center.

**624.20(n) Commissions on Quality of Care & Advocacy for Persons with Disabilities – See “Disabled, Commission on Quality of Care & Advocacy for Persons with Disabilities.”**

**624.20(o) Conditioning, Aversive – Contingent upon a person’s behavior, the application to a person’s body of a physical stimulus to modify or change behavior with such stimulus being considered extremely uncomfortable or painful, or which may be noxious to the person. Examples of such stimuli include but, are not limited to: water and other mists or sprays, noxious odors (e.g., ammonia), noxious tastes (e.g., Tabasco), corporal punishment (e.g., slapping, spanking, hitting, or pinching), air blasts, blindfolds, white noise helmets, and, electric shock.**

**624.20(p) Contact, Sexual – As specified in Penal Law 130.00(3), the touching or fondling of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying the sexual desire of either party, whether directly or through clothing. It also includes causing a person to touch anyone else for the purpose of arousing or gratifying personal sexual desires.**

Commentary:

- See the “Considerations” in Appendix 3 of this handbook for a discussion on the ability to consent to sexual contact.

**624.20(q) Correspondent – Someone (not on the staff of the facility) who assists a person in obtaining necessary services, who participates in the person’s program planning process, and who receives notification of certain significant events in the life of the person. The fact that a correspondent is providing advocacy for a person as a “correspondent” does not endow that individual with any legal authority over a person’s affairs.**

Commentary:

- Correspondents are to be notified of incidents and allegations of abuse – see notification requirements in subdivision 624.6(f) and 624.6(g).
- Correspondents must be provided a redacted copy of the OPWDD 147 upon request.
- In general, correspondents are not “eligible requestors” concerning requests for records and documents pertaining to an allegation of abuse. Only correspondents who are “qualified persons” as defined in the Mental Hygiene Law are eligible requestors. See subdivision 624.8(b) for guidance on whether a correspondent is an eligible requestor.

**624.20(r) CQCAPD – See “Disabled, Commission on Quality of Care & Advocacy for Persons with Disabilities.”**

**624.20(s) Crime – An act that is forbidden by law that makes the offender liable to punishment pursuant to that law. In New York State, the Penal Law defines a crime as a “Misdemeanor” or a “Felony,” but does not include a “traffic infraction.” Examples of crimes are: homicide, homicide attempt (see Glossary), rape, public lewdness, robbery, and assault (see Glossary).**

Commentary:

- If there is any question as to whether or not a crime has been committed, a legal advisor, or the local law enforcement authority should be contacted.

**624.20(t) DDSO – See “Office, Developmental Disabilities Services.”**

**624.20(u) Disabilities, Commission on Quality of Care and Advocacy for Persons with (CQCAPD) – A commission, appointed by the Governor of New York State in conformance with Article 45 of the Mental Hygiene Law, whose primary function is to review the organization, administration and delivery of services of the Office For People With Developmental Disabilities (OPWDD) and the Office of Mental Health (OMH) to ensure that the quality of care provided to persons who with mental disabilities is of a uniformly high standard. Included in this responsibility is the investigation of complaints of persons receiving services, employees, or others, of allegations of abuse or mistreatment and the review of all deaths of persons/patients in all OPWDD and OMH operated or licensed facilities.**

Commentary:

- The Commission is more commonly referred to as the “CQCAPD.”
- The CQCAPD is located at:  
  
401 State St.  
Schenectady, NY 12305
- Also see paragraph 624.5(b)(4) and subdivision 624.6(b).

**624.20(v) Disability, developmental – A disability of a person, which:**

**(1)**

**(i) is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia, or autism;**

**(ii) is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons; or**

**(iii) is attributable to dyslexia resulting from a disability described in subparagraph (i) or (ii) of this paragraph;**

**(2) originates before such person attains age twenty-two;**

**(3) has continued or can be expected to continue indefinitely; and**

**(4) constitutes a substantial handicap to such person's ability to function normally in society.**

Commentary:

- The definition is from Section 1.03(22) of the Mental Hygiene Law.

**624.20(w)      Disconfirmed – An allegation of abuse was established as being untrue, based on available information.**

Commentary:

- If the preponderance of the evidence supports that the event did not occur, the appropriate conclusion is “disconfirmed.”

Note: A “preponderance” of the evidence indicates the likelihood that the abuse either did occur or did not occur.

**624.20(x) Emergency – As used in this Part, a situation that is unexpected, unforeseen or unanticipated and thus, no provision has been made in a person’s plan of services through the development of a behavior management plan to address how it is to be handled by staff.**

Commentary:

- If a behavior erupts from time to time, but it is known to occur and the management of the behavior is addressed in a person’s plan of care, when it does happen, it would not be considered as an “emergency,” even though crisis intervention techniques may need to be employed.

**624.20(y) Facility – Unless otherwise defined or modified, facility means a developmental center or any other site certified by OPWDD in which either residential or non-residential services are provided to persons with developmental disabilities (e.g., community residence, including an individualized residential alternative [IRA], intermediate care facility [ICF/DD], day treatment; workshop, clinic, family care home; or a day habilitation site).**

**624.20(z)**

**Form, Standardized – For purposes of this Part, a document or documents specifically designed or designated by an agency for the purpose of recording reports of reportable incidents, serious reportable incidents, and alleged abuse (as defined herein and by agency policy) for use within that agency in such a manner that there will be consistency of information to facilitate the investigation, review and monitoring of those events or situations and the corrective actions taken, as well as the identification and analysis of trends. A standardized form may be used to report other situations or events an agency wants to record, monitor and/or trend, in addition to reportable incidents, serious reportable incidents or abuse allegations.**

**624.20(aa) Immobilizes, Totally – The use of a restraining sheet or the complete curbing of the movement of the arms, legs, or torso through the use of (but not limited to):**

- (1) Securing of arms and legs directly to another object (e.g., straps/shackles on a chair);**
- (2) Four point restraint; or**
- (3) A bed sheet, towel, or similar item wrapped around a person.**

**624.20(ab) Inconclusive – It is impossible to capture sufficient information which would support or disprove an abuse allegation.**

Commentary:

- If upon investigation, there is insufficient information to substantiate or disconfirm that an alleged abuse took place, the allegations would be categorized as “inconclusive.”

**624.20(ac) Investigate/Investigation – That systematic process whereby information about the circumstances surrounding an event/situation are examined and scrutinized, whether by a chief executive officer, designated staff, or a trained investigator (see Glossary). The intensity of any “investigation” is decided by the event/situation under study.**

**624.20(ad) Investigator – That party or parties, designated by agency policy, responsible for collecting information to establish the facts relative to an event/situation, whether immediately following or subsequent to that event/situation. While an “investigator” need not be a person appointed to a position bearing that title or have highly specialized training in investigatory techniques, it is recommended that the investigation of allegations of abuse be conducted by an individual skilled, by virtue of training or experience, in the appropriate techniques necessary to bring such allegations to a satisfactory conclusion.**

**624.20(ae) Member, Senior Staff – As used in this Part, that staff member, by whatever title he or she may be known, who is designated as a senior member of the administrative structure of an agency, and, as such, may carry out designated responsibilities delegated to the chief executive officer. This may be someone who is responsible for a group of facilities (e.g., program administrator), or who is immediately in charge of a facility or of a designated area (e.g., residence manager, head of shift, unit supervisor). In conformance with the Mental Hygiene Law, section 33.04, such senior staff members may also be designated by the chief executive officer as having the authority to impose a mechanical restraining device in an emergency, when appropriately trained in their use and application.**

Commentary:

- Section 33.04 of the Mental Hygiene Law permits the application of a “restraint” (as defined in such law) in an emergency under the direction of the “senior staff member,” prior to the arrival of a physician.

**624.20(af) Office, Developmental Disabilities Services (DDSO) – The local administrative unit of OPWDD responsible for coordinating the service delivery system within a particular service area.**

**624.20(ag) Officer, Chief Executive – Someone (by whatever name or title known) designated by the governing body (see Glossary) with overall and ultimate responsibility for the operation of one or more classes of facility, for the delivery of other services to persons with developmental disabilities, and with control over any and all equipment used in the care and treatment of such persons; or a designee with specific responsibilities, as specified in agency policy/procedure. In a developmental center and/or DDSO, this party is referred to as the director.**

Commentary:

- The chief executive officer is frequently referred to as the “executive director.”

**624.20(ah) Person/Persons – For purposes of this Part, a child/adult with a diagnosis of developmental disability, who has been or is being served by a state, private, or voluntary operated facility certified by OPWDD.**

**624.20(ai) Procedures, Formal Search – A systematic process involving employees with specific responsibilities (e.g., security personnel), law enforcement agencies, and any others designated by agency policy and which is initiated for the purpose of locating a person who has not been found in response to an informal search.**

Commentary:

- If staff check places they might usually expect a person receiving services to be located, this would not normally be a formal search procedure.
- Every agency should have written formal search procedures for each of its facilities.
- The determination of when formal search procedures for a person receiving services are initiated is defined by each agency using knowledge of that person's risks, capabilities, and supervision needs.

**624.20(aj) Provider, Family Care – One or more adults age 21 or over to whom an operating certificate has been issued by OPWDD to operate a family care home. A family care provider is an independent contractor.**

Commentary:

- The definition is derived from Part 687 of 14NYCRR – the regulation governing family care homes.

**624.20(ak) Purposes, (device for) Medical – A mechanical restraining device which controls movement and which is prescribed by a physician or dentist to facilitate a specific medically necessary procedure; or for time limited periods for explicit medical reasons during healing. Examples of devices used during healing would include a brace to keep a limb in place, splints or braces to provide stability for broken bones, devices to prevent or avoid irritation or further injury of a skin ailment or burn, and traction equipment.**

**624.20(a) Services, Mental Hygiene Legal (MHLS) – A service of the appellate division of the State Supreme Court established pursuant to Article 47 of the Mental Hygiene Law (formerly “Mental Health Information Service” -- MHIS).**

Commentary:

- Also see paragraph 624.5(b)(5).

**624.20(am) Services, Plan of – An individualized record system, (by whatever name known), which documents the process of developing, implementing, coordinating, reviewing and modifying a person’s total plan of care. It is maintained as the functional record indicating all planning as well as services and interventions provided to the person. It contains, at a minimum, identification data, diagnostic reports, assessments, service plans, medical data, activity schedules, program planning team minutes and reports, staff action records and information on efforts to place people in a less-restrictive level of programming. Such record is known as the “clinical record” in 14NYCRR Part 636.**

Commentary:

- Other frequently used names for a Plan of Service are: individual program plan (IPP), plan of care, program plan, and individual treatment plan (ITP), service plan, and individualized service plan (ISP), which includes Residential Habilitation Plans, Day Habilitation Plans, etc.
- Part 636 has been repealed and the definition of plan of services as part of the clinical record is described in Section 33.13 of the Mental Hygiene Law.

**624.20(an) Substantiated – An alleged abuse was confirmed.**

Commentary:

- If the investigation indicates that the preponderance of the evidence supports that the abuse did occur, it would be recorded as “substantiated.”

Note: A “preponderance” of the evidence indicates the likelihood that the abuse either did occur or did not occur.

**624.20(ao) Supports – Those mechanical restraining devices, ordered on at least an annual basis by a physician in consultation with a person’s program planning team, needed to assist the person in his or her comfort, functioning, and/or safety. Supports approved by the Commissioner are:**

- (1) Devices which maintain a person’s body in good alignment.**
- (2) Devices which maintain a person in a safe and/or appropriate position when a person is not capable of self-support or self-ambulation.**
- (3) Devices (such as helmets), which protect the head of a person with a health problem (e.g., seizures) that necessitates such a safeguard.**

**624.20(ap) Team, Program Planning – Those, (by whatever name known), acting as a unit, responsible for identifying a person’s needs; for developing, implementing and evaluating the plan of services for that person; and ensuring that the current setting and/or services currently being received continue to be appropriate. Regulations for a specific class of facility are to be referenced for specific details. For those enrolled in the Home and Community-Based waiver (HCBS), the program planning team is defined as the person (consumer) and the MSC, and the advocate (if appropriate), as well as any other party or parties considered, at any given time, as being appropriate for participation by that group.**

Commentary:

- Other frequently used terms are: individual treatment team (ITT), individualized team (IT), and treatment team (TT), and “the team.”

**624.20(aq) Time-Out – A behavior management intervention in which a person is temporarily removed from or denied the opportunity to obtain reinforcement and during which the person is under visual contact and supervision. When a room is used for time-out purposes, normal egress from that room can only be prevented by the direct physical action of appropriately trained staff and when such action is designated in a written plan. The placement of a person in a secured room or area from which he/she cannot leave at will, for other than the purpose of time-out, is prohibited and is considered to be a form of abuse. Time-out is not considered to be a form of aversive conditioning (see Glossary).**

**624.20(ar) *Treatment, requiring medical or dental.* That situation where by a person who, by virtue of his or her condition as a result of a reportable incident or serious reportable incident, must see a physician, dentist, physician's assistant, or nurse practitioner to have the condition controlled and/or attended to with more than first-aid procedures. While individual agency policy/procedure may direct that a person who is in anyway injured or has suffered any ill effects to see a medical professional even though first-aid has adequately addressed the situation, this does not always constitute requiring medical or dental treatment in terms of defining a reportable incident or serious reportable incident. If a person is retained in a hospital overnight for observation, this would be a situation that required medical treatment, and be reported as a serious reportable incident.**

Commentary:

- The phrase “requiring medical or dental treatment,” means that a person who, because of the severity of an injury and the resulting care, **MUST** be treated by a physician, physician's assistant, nurse practitioner or dentist in order to care for the injury.
- If it is medically acceptable to treat an injury solely with first aid procedures, the injury is not a reportable incident in relation to Part 624, even if the first aid is provided by a nurse, physician or other health care professional. For the purpose of incident management, the administration of over-the-counter drugs, the application of commonly used over-the-counter topical medications and the use of antiseptic cleansers are considered “first aid,” even if a physician or dentist writes a prescription for such.
- Even if the person goes to an emergency room/urgent care facility, HMO or clinic, if only first aid is provided by or recommended by health care professionals, the incident is not a reportable incident. These occurrences may be agency reportable incidents and should be managed accordingly. They may also be of particular concern if they are injuries of unknown origin.
- If diagnostic procedures (e.g., x-rays) are performed and a positive finding is revealed, regardless of whether it requires or does not require medical or dental treatment, it must be reported as a reportable or serious reportable incident. If a diagnostic procedure is performed and does not result in a positive finding or require more than first aid treatment then a reportable or serious reportable incident is not indicated. Note: A positive finding, for the purpose of this section regarding diagnostic procedures, is defined as a medical term indicating evidence of an injury.
- The agency must notify the individual's parent, guardian or correspondent/advocate every time a health problem results in emergency room/urgent care services or admission to a hospital pursuant to Section 633.10(a)(4).

## **SECTION III---OPWDD 147 Form and Instructions**

This information can be found at the following link:

<http://www.opwdd.ny.gov/wt/forms/ir/index.jsp>

## **SECTION IV---OPWDD 148 Form**

This information can be found at the following link:

[http://www.opwdd.ny.gov/wt/manuals/part624/incident\\_management.jsp](http://www.opwdd.ny.gov/wt/manuals/part624/incident_management.jsp)

## **SECTION V-----Role of the DDSO**

## **ROLE OF THE (DEVELOPMENTAL DISABILITIES SERVICES OFFICE) DDSO AS AN OVERSIGHT ENTITY**

DDSOs have an important role in providing oversight of incident management in both state-operated and voluntary-operated programs. In this role, DDSOs are responsible for ensuring that incident management of serious reportable incidents and allegations of abuse is effective and in accordance with regulatory requirements.

DDSOs have the authority to determine the most appropriate way to conduct their oversight of incident management, whether by staff with expertise or through a committee process. DDSOs may utilize the same system for oversight of the state and voluntary programs or may utilize different systems.

DDSOs are not generally responsible for oversight of reportable incidents (as they are for serious reportable incidents and abuse) but they may choose to become involved at their discretion.

To decide which DDSO is responsible in unclear situations, determine the catchment area of the location of the reporting facility, or the administrative offices of the staff (or staff supervisor, if the staff does not have an office location) for non-certified services.

The following steps can be taken by DDSOs for serious reportable incidents or allegations of abuse that come to its attention. DDSOs have the discretion to determine the appropriate level of involvement in each incident, depending on the seriousness and complexity, the quality of reports received, and the availability of DDSO staff. DDSOs may find it helpful to establish general guidelines or policies on determining appropriate steps in particular situations.

To fulfill its oversight responsibility, the DDSO:

Receives reports for every serious reportable incident and allegation of abuse.

- for every incident, receives immediate notification.
- for every incident, receives a copy of the OPWDD 147 (within 24 hours).
- for every incident, receives monthly status reports until closure.

Ensures that incident reporting to the DDSO is timely, complete and accurate

- reviews reports for completeness, timeliness and accuracy.
- if information is incomplete or inaccurate, requests missing information or corrections.
- Seeks additional information/clarifications as necessary to evaluate whether appropriate actions have occurred or will occur.
- if actions are inappropriate or insufficient, advises the agency regarding steps that should be taken.
- ensures that required notifications occurred in a timely fashion, including notifications to Willowbrook parties for members of the Willowbrook Class as detailed in the attached document.
- if it appears that a crime may have been committed, ensures that law enforcement officials are notified, and ascertains whether they will be investigating the possible crime.
- develops a system to monitor whether the completed OPWDD 147 and updates have been received within the required timeframes, and notifies providers to request missing reports if timeframes are exceeded.
- takes steps as appropriate to obtain the necessary information if timeframes for reporting are significantly exceeded. It is suggested that DDSOs develop internal procedures to determine appropriate steps, based on the extent of the delay.

Ensures that the rights, health and safety of persons receiving services are protected:

- at the point of initial contact, evaluates the effectiveness of immediate actions taken to protect persons receiving services and provide necessary health care, and notifies the provider if such actions are insufficient. This may involve contacting the provider to gain sufficient information to evaluate the immediate actions.
- reviews protective/corrective actions to ensure that they are appropriate to the situation. Additional reviews may occur when monthly reports are received, and upon closure of the incident. Depending on the circumstances, the DDSO may request information to monitor protective/corrective actions more frequently.

Ensures that investigations are timely, thorough and complete.

- ensures that the provider conducts a comprehensive investigation, the extent of which is commensurate with the seriousness and complexity of the situation.
- ensures that agencies bring each incident to a timely and appropriate closure.
- ensures that investigations are conducted in a thorough and timely manner by exercising the authority of the DDSO to take steps, at its discretion, in situations that warrant special attention.
- monitors the efforts of the provider in preserving evidence that might be important, and in gathering evidence (such as a sexual assault examination by an appropriate professional or photographs taken).
- requests and reviews preliminary investigation reports.
- requests and reviews full investigation reports.
- conducts investigations of incidents at voluntary agencies.
- requests the assistance of the OPWDD Office of Investigations and Internal Affairs when necessary because of the seriousness, complexity or sensitivity of a situation.
- refers concerns to the OPWDD Division of Quality Management (DQM) regarding the capacity of the agency to protect persons receiving services and complete effective investigations.

Ensures that records are maintained and that information is accessible when needed.

- maintains incident records, including a copy of all written information received from the agency (the Form OPWDD 147 and monthly status reports received at a minimum), a notation of the initial notification to the DDSO and notation of any other DDSO contact with the agency regarding the incident. All incident records should be kept confidential and should be available and shared only with appropriate OPWDD staff and others with a need to know. Records should be maintained so that the relevant statistical information can be extracted. DDSOs are encouraged to utilize electronic records, in addition to paper files.

Provides assistance to agencies.

- on at least an annual basis, receives a report from the agency's standing committee(s) "concerning the committee's general monitoring functions; general identified trends in reportable incidents, serious reportable incidents, and allegations of abuse; and corrective, preventive and/or disciplinary action pertaining to "identified trends" (Paragraph 624.7 (c)(11)). Analysis of this report may highlight areas in which assistance could be beneficial.
- identifies providers who may have difficulty conducting effective investigations or complying with other requirements and helps the provider plan to address problem areas
- upon request, or as needed, acts as a resource to agencies for all aspects of the incident/abuse process, including providing technical or other assistance.
- provides training opportunities or helps agencies access training in requested or needed aspects of incident management including basic Part 624 training and investigations training.

Provides assistance to persons receiving services, families, advocates, service coordinators and others.

- answers questions about events or circumstances that may be an incident or abuse from persons, family members, advocates, service coordinators and others. The DDSO may direct a provider to file an incident report and conduct an investigation for a particular event or situation that comes to its attention.
- is available to discuss concerns from persons receiving services, advocates, service coordinators, agency staff or other agencies that an incident or allegation is not being managed effectively. Appropriate action should be taken based on the information received.

Mediates conflicts.

- upon request, mediates conflicts concerning incident management issues. Possible conflicts may arise regarding determining which agency is responsible for incident management in unclear situations.

Provides information to Central Office on a routine basis and upon request. Voluntary agencies are required to report information to the DDSO that is necessary to fulfill routine information requests. DDSO procedures will determine staff responsibility for sending routine information, which is sent by the DDSO to Central Office for events occurring in both state-operated and voluntary-operated agencies.

*A copy of any information transmitted to Central Office must also be sent to the appropriate Associate Commissioner.*

- Reports *critical* events that may indicate a serious breakdown in our system's obligations to ensure the safety, health, and well-being of people receiving services that are of a nature that could require the Commissioner's personal awareness and/or may suggest the need to transmit to the Governor's Office, pursuant to the memorandum titled, "Critical and Significant Event Notification Protocol" from the Executive Deputy Commissioner dated January 15, 2008, which can be found in Appendix 12.
- Reports *significant* events to the appropriate Regional Associate Commissioner, pursuant to the memorandum titled, "Critical and Significant Event Notification Protocol" from the Executive Deputy Commissioner dated January 15, 2008, which can be found in Appendix 12.
- provides information to the Division of Quality Management (DQM) in the requested form and format on a quarterly basis so that DQM can aggregate information statewide.
- provides information on individual incidents/types of incidents upon request by Central Office.

Contact Information:

Office of Investigations and  
Internal Affairs  
OPWDD 44 Holland Avenue  
Albany NY, 12229

NYS Commission on Quality of Care  
401 State Street  
Schenectady, NY 12305-2397  
(QCC 100 Forms should be sent to:  
Executive Secretary, Mental Hygiene  
Medical Review Board)

## **SECTION VI----Role of Central Office**

## ROLE OF CENTRAL OFFICE

### Commissioner's Office

The Commissioner's Office is not directly involved in the incident/abuse process. However, the Commissioner and Executive Deputy Commissioner may suggest strategies to address overall statewide trends. In addition, the Commissioner and Executive Deputy Commissioner are kept aware of significant events (including serious reportable incidents or abuse allegations) that occur with people with developmental disabilities.

### Central Office Leadership Team

As with the Commissioner's Office, the Central Office Leadership Team, as a group, is not directly involved in incident/abuse reporting and investigation process. It is their role, however to bring egregious concerns relative to the overall process to the attention of the Executive Deputy Commissioner and to make recommendations for correcting any systemic or pervasive conditions.

### Support Regions

There are two support regions for the DDSOs as follows:

#### Upstate:

Broome DDSO  
Capital District DDSO  
Central New York DDSO  
Finger Lakes DDSO  
Sunmount DDSO  
Western DDSO

#### Downstate:

Bernard Fineson DDSO  
Brooklyn DDSO  
Hudson Valley DDSO  
Long Island DDSO  
Metro New York DDSO  
Staten Island DDSO  
Taconic DDSO

These regional offices are notified by DDSOs of the more egregious situations and monitor their outcomes.

### Division of Quality Management

The Division of Quality Management is responsible for receiving quarterly data from each DDSO and issuing the statewide quarterly report. This report is intended to facilitate management oversight of statewide reporting and to assist in the identification of trends. Quality Management also has the responsibility to monitor agency adherence to the requirements of Part 624 and to respond to any complaints brought to its attention.

### Statewide Standing Committee on Incident Review

OPWDD has established a Statewide Committee on Incident Review (SCIR). Members are appointed by OPWDD leadership to include individuals who perform a variety of functions in OPWDD, at Central Office and Developmental Disabilities Services Offices (DDSOs). Membership also includes representation from not-for-profit providers statewide and provider organizations.

The goal of the SCIR is to prevent harm and abuse of persons with developmental disabilities in New York State who receive services operated, funded or authorized by OPWDD. Toward this purpose:

- SCIR develops information on best practices in safeguarding through trend analysis and research, and disseminates this information to providers of services in the OPWDD system.
- SCIR works to improve quality and uniformity in the incident management process required by OPWDD, which enhances safeguarding by ensuring that appropriate protective and corrective actions are taken each time an incident occurs, and that relevant information is reported for oversight and trending purposes. To improve the incident management process, SCIR develops recommendations for revisions in regulations and policy, interprets current OPWDD regulations, conducts training sessions across the state, and facilitates networking and sharing of incident management information among DDSO incident coordinators, Central Office staff and providers of services.

SCIR has issued a series of Safeguarding Alerts on the following topics: Choking, Lead Alert, Helmet Safety, Drowning Alert, Carbon Monoxide, Bowel Management, Dryer Safety, Safe Bathing Practices and Incidents of Inflicted Injury (Abuse.) The Alerts may be found on OPWDD's website.

To get in touch with SCIR send an email to [opwdd.scir@opwdd.ny.gov](mailto:opwdd.scir@opwdd.ny.gov), or contact the Division of Quality Management or DDSO incident coordinators.

### Office of Investigations and Internal Affairs

Investigations and Internal Affairs may become involved in the investigation of any incident or allegation of abuse, or any other situation that warrants investigation, at the request of the Commissioner or a DDSO Director; or as the result of a situation brought directly to its attention. The Office also provides training and training material on investigatory procedures.

# **SECTION VII---Role of Outside State Agencies**

## ROLE OF OUTSIDE STATE AGENCIES

Commission on Quality of Care & Advocacy for Persons with Disabilities (CQCAPD)

Abuse allegations (all persons receiving services):

Part 624 requires that CQCAPD receive a report of every allegation of abuse to a person receiving services. The basis for this is Section 45.19 of the Mental Hygiene Law, which states,

*“Every director or other person in charge of a mental hygiene facility shall promptly report to the Commission any allegations of abuse or mistreatment of a patient or resident of such facility in accordance with procedures established by the Commission.”*

This is done by forwarding a copy of the OPWDD 147, to the CQCAPD by the reporting facility. No further follow-up material needs to be routinely forwarded to the CQCAPD. However, the CQCAPD may investigate any matter affecting persons receiving supports, and, in accordance with Section 45.09(a) of the Mental Hygiene Law:

*“The commission, any member or any employee designated by the commission, must be granted access at any and all times to any mental hygiene facility of part thereof, and to all books, records, and data pertaining to any such facility deemed necessary for carrying out the commission’s functions, powers, and duties. The commission, any members or any employee designated by the chairman may require from the officers or employees of such facility or from the commissioners of the offices of the department of mental hygiene any information deemed necessary for the purpose of carrying out the commission’s functions, powers, and duties. The commission or any member may require from any hospital, as defined under article twenty-eight of the public health law, any information, report or record necessary for the purpose of carrying out the functions, powers, and duties of the commission related to the investigation of deaths and complaints of abuse or mistreatment concerning patients or former patients of mental hygiene facilities who have been treated at such hospitals. Information, books, records, or data which are confidential as provided by law shall be kept confidential by the commission and any limitations on the release thereof imposed by law upon the party furnishing the information, books, records or data shall apply to the commission.”*

Child Abuse

With regard to allegations of abuse to children residing in OPWDD facilities (other than family care) which are reported to the New York State Office of Children and Family Services (OCFS) Statewide Central Register of Child Abuse and Maltreatment, the CQCAPD is mandated by Section 45.07-2 of the Mental Hygiene Law to:

- a. *receive from the state central register of child abuse and maltreatment on a twenty-four hour, seven day a week basis all reports of suspected child abuse or maltreatment;*
- b. *maintain and keep up-to-date a child abuse and maltreatment record of all cases reported together with any additional information obtained and a record of the*

*final disposition of the report, including recommendations by the commission and action taken with respect to the residential care facility or the subject of a report of child abuse or maltreatment pursuant to section 29.29 of this chapter;*

- c. not later than seven days after receipt of such report, send a preliminary written report of the initial investigation, including evaluation and actions taken or contemplated, to the state central register of child abuse and maltreatment;*
- d. give telephone notice and forward immediately a copy of reports made which involve death of a child to the appropriate district attorney. In addition, telephone notice shall be given and a copy of all reports made shall be forwarded immediately by the commission to the appropriate district attorney if a prior request in writing for such notice and copies has been made to the commission by the district attorney. Such request shall specify the kinds of allegations concerning which the district attorney requires such notice and copies;*
- e. upon receipt of such report, commence within twenty-four hours, an appropriate investigation which shall include but not be limited to an evaluation of the residential care facility in which the child resides who is named in the report and a determination of the risk to such child if he or she continues to remain in the existing residential care facility as well as determination of the nature, extent, and cause of any condition enumerated in such report, and after seeing to the safety of the child forthwith notify the subject of the report and other persons named in the report in writing of the existence of the report and their respective rights pursuant to title six or article six of the social services law in regard to amendment or expungement, and notify the director or operator of the residential facility and the Office of Mental Health of the office For People With Developmental Disabilities of the existence of such report including only the name of any child alleged to be abused or maltreated;*
- f. comply with the terms and conditions for maintenance of confidential records and due process rights of the subject of the report of child abuse or maltreatment pursuant to sections four hundred twenty two and four hundred twenty-four-a of the social services law;*
- g. determine within ninety days, whether the report is “indicated” or “unfounded; and*
- h. assist the criminal court during all stages of the court proceeding in accordance with the purposes of title six of article six of the social services law and other applicable provisions of law.”*

When a facility receives an allegation of abuse to a child, it has two responsibilities:

1. To complete an OPWDD 147 and process the report in conformance with Part 624 - which means that a copy of the report form is sent to the Commission.
2. To report the allegation to the Statewide Central Register; whether or not the allegation is accepted is up to the Register.

While it is quite probable that the Commission may have received a copy of an OPWDD 147 from a facility reporting an allegation of abuse, the fact that it has received such a report does not trigger an investigation in conformance with Section 45.07-2 of the Mental Hygiene Law. Such investigations are triggered by the Statewide Central Register advising the Commission of an allegation which has been accepted.

Any child abuse of which any provider is aware is to be reported to the Statewide Central Register of Child Abuse and Maltreatment.

### Reporting of Deaths

Another report that is made to the Commission is a separate report of all deaths, as required in Part 624 in subdivision 624.6(b). This requirement is based on Section 45.19 of the Mental Hygiene Law,

*“Every director or other person in charge of a mental hygiene facility shall immediately report to the commission and the medical review board the death of a patient or resident of any such facility in such manner and such forms as the commission shall prescribe, together with an autopsy report, if any.”*

The form to use to comply with this requirement is the QCC 100, Report of Death to the Commission on Quality of Care & Advocacy for Persons with Disabilities. For those residential facilities reporting the death of a resident, the form is to be completed in detail. For those agencies which had provided day services to a deceased person with developmental disabilities who did not reside in an OPWDD operated or certified facility, the facility should report the death on the QCC 100 and include as much information as is known. The agency should not disturb or further upset the family of the deceased person in an effort to complete the form in detail. See Appendix 4 *Reporting Deaths* for additional information.

## Statewide Central Register of Child Abuse and Maltreatment

The Statewide Central Register of Child Abuse and Maltreatment is operated by the New York State Office of Children and Family Services. It was established in response to federal legislation requiring every state to set up a mechanism whereby allegations of child abuse could be brought to the attention of one central administrative entity. The original focus of child abuse reports was on abuse in the home. For a number of years, the responsibility for investigating child abuse in OPWDD facilities rested with OPWDD. However, in 1985 the “Child Abuse Prevention Act” (CAPA) was passed in the New York State Legislature. The primary concern of this act was to ensure that children residing in institutions throughout the state received the same protection as children living in a familial situation. It also provided for a separate investigatory unit for the Office For People with Developmental Disabilities and Office of Mental Health by designating the CQCAPD as being responsible for investigations into child abuse in residential facilities (other than family care). Since inception of this act/law, there have been updates in 2007 and 2008 related to mandated reporting and child abuse definitions, which can be found in Appendix 5 and Appendix 6 of this handbook.

It is the responsibility of the Statewide Central Register of Child Abuse and Maltreatment to determine if the allegation of abuse meets the definition of abuse in Social Services Law. Therefore, it may not accept every allegation of abuse brought to its attention. Staff in OPWDD facilities should be aware that the definition of abuse in OPWDD regulations is broader than that in Social Services Law. If an agency is of the opinion that the situation should be considered as child abuse, it is suggested that another call be placed to the Central Register.

After the Register accepts an allegation of abuse to a child in the OPWDD system, it will either contact:

1. The CQCAPD For allegations of abuse to children residing in OPWDD residential facilities, other than family care homes.
2. The DDSO For allegations of abuse to children residing in OPWDD certified family care homes.

The information obtained by the investigator (the CQCAPD or the DDSO) is forwarded to the Register on OCFS forms for a determination as to whether abuse did or did not occur (founded/unfounded). In addition, the Register is responsible for advising a person that is the subject of an investigation that such an investigation is taking place, the outcome of the investigation and the opportunity to be heard.

Mental Hygiene Legal Services (MHLS)

In accordance with Section 47.01 of the Mental Hygiene Law, a Mental Hygiene Legal Service is established in each judicial department in New York State. The purpose of these services is to provide legal assistance to developmentally disabled persons residing in developmental centers and OPWDD certified residential facilities (as well as persons in psychiatric and alcoholism facilities).

Section 47.03 of the Mental Hygiene Law empowers the MHLS to initiate or take any legal action it deems necessary to safeguard the rights of persons in these facilities to protection from abuse or mistreatment, and to investigate any such allegations. Part 624, subdivision 624.5(b)(5), therefore, requires that a copy of the OPWDD 147 be sent to the appropriate MHLS and that they also receive the final results of the facility's investigation of any allegation of abuse to a resident of an OPWDD certified private facility, or a developmental center. The addresses of the four mail offices are:

First Judicial Department  
60 Madison Avenue 2<sup>nd</sup> Floor  
New York, NY 10010

Third Judicial Department  
40 Steuben Street Suite 501  
Albany, NY 12207

Second Judicial Department  
170 Old Country Road.  
Mineola, NY 11501

Fourth Judicial Department  
50 East Avenue Suite 402  
Rochester, NY 14604

# **SECTION VIII--Application for Non-Certified Programs or Services**

## **APPLICATION FOR NON-CERTIFIED PROGRAMS SERVICES**

There are many services provided to persons with developmental disabilities through DDSO or voluntary agency operated programs that are funded or authorized by OPWDD, but which are not certified facilities (e.g., family support services, respite, service coordination [case management], At Home Residential Habilitation, day habilitation without walls, etc.). Part 624 regulates all of these programs and services. It is expected that an agency operating non-certified programs or services will manage and monitor all untoward events that meet the definition of serious reportable incidents or allegations of abuse (as defined in 14NYCRR 624.4) which occur to a person receiving those services in a manner that is consistent with the process used for certified facilities.

When non-certified services are provided to the persons who do not live in a certified residential facility, it is suggested that:

- At the time of “intake,” the person, family, or other involved parties should be advised that untoward events of which it is aware will be recorded, assessed, and possibly, investigated; of the requirement that any child abuse be reported to the Statewide Central Register of Child Abuse and Maltreatment; and of the requirement that any crime committed against a person receiving supports be reported to the local law enforcement authority (Mental Hygiene Law Section 16.13).
- The person, family, or other involved parties should be provided with information as to the policies and procedures that will be followed when an untoward event is known to the service provider.

The agency providing such non-certified programs/services should ensure the following:

- There are agency wide and program specific policies and procedures for the reporting, recording, assessing, investigating (when appropriate), reviewing and monitoring of untoward events of which the Service Provider is aware.
- If staff, volunteers, interns or contractors are directly involved in a situation in which a person receiving services has come to harm or has been abused, the agency should pursue the situation in the same manner it would, had it happened in a facility.
- Any untoward event (that meets the definition of a serious reportable incident or alleged abuse, as defined in 14NYCRR 624.4), of which the provider of services is aware, should be documented in the person’s record and should be reported on the OPWDD 147.
- All untoward events that are known to a provider of services should be recorded in a uniform manner as established by the agency receiving the reports and acted upon as the situation dictates For instance:
  - Assess the situation (e.g., is there an indication of a pattern of inappropriate care at home, inability of a person living alone to cope with demands of daily living, possible abuse, unsafe physical environment?).

- Report possible crimes committed against a person receiving supports to appropriate law enforcement authorities.
- Report alleged child abuse to the New York Statewide Central Register of Child Abuse and Maltreatment by telephone.
- For allegations of abuse of individuals age 18 and older, investigate and intervene as necessary. The primary responsibility for intervention in these situations rests with the provider and not with the Local Department of Social Services – Protective Services for Adults program. Please refer to Appendix 7 of this handbook for more information. If services are being provided by more than one agency, see paragraph 624.5(d)(2) for help with determining which agency is responsible.
- Advise the advocate and service coordinator (case manager) of the situation.
- Determine, with input from the service coordinator, if support services or other assistance (e.g., counseling, sexuality counseling or education, psychiatric or psychological services, education on positive care giving) should be provided to the person, his or her family, or others, whether by the agency or arranged for through the case manager.
- Advise other providers of services of the situation.
- Immediately notify the DDSO of any situation reported to law enforcement authorities or Local Department of Social Services Child Protective Services or Protective Services for Adults.
- Notify the DDSO of any potentially sensitive situations.

Note: If the provider of services does not have the administrative structure to facilitate the necessary monitoring of the situation and review by a standing committee, the situation should be brought to the attention of the DDSO for technical assistance and guidance.

- Necessary and appropriate corrective, preventive and/or disciplinary action (to service provider or contractor employees) should be taken to protect persons who are disabled from further harm and to safeguard against the recurrence of similar reportable incidents or alleged abuse.

The safety of a person who is disabled must always be the primary concern of the provider of services, which should take whatever measures appear to be reasonable and prudent to ensure the protection of that person from further harm, injury, or abuse. When appropriate, any staff member or contractor alleged to have abused a person who is disabled should be removed from serving such persons in the future until such times as the allegation of abuse has been cleared; or, if confirmed, corrective actions have been implemented, including providing or securing counseling and training for the abuser.

The DDSO should set up a system to process all such reports while at the same time ensuring that all pertinent data is kept separate and distinct from that of OPWDD operated or certified facilities.

# **APPENDIX 1---Timeline for Reporting Incidents and Abuse**

## **TIMELINES FOR MANAGING REPORTABLE INCIDENTS**

### **IMMEDIATELY**

<i>WHO</i>	<i>WHAT</i>
Agency Staff/Family Care Provider	Provide consumer with needed care and protections.

### **WITHIN 48 HOURS OF THE OCCURRENCE OR DISCOVERY OF THE INCIDENT**

<i>WHO</i>	<i>WHAT</i>
Agency Staff/Family Care Provider	Notify the CEO or designee.
Agency Staff	Complete the Form OPWDD 147 and submit to CEO or designee.

### **WITHIN 24 HOURS OF THE COMPLETION OF THE OPWDD 147**

<i>WHO</i>	<i>WHAT</i>
Agency (or DDSO staff, if Family Care)	Notify the service coordinator (if applicable) of all reportable incidents.
Agency (or DDSO staff, if Family Care)	For reportable incidents classified as “injury”, “death”, or “medication error” notify a guardian, parent, spouse, adult child or an advocate or correspondent.
Agency (or DDSO staff, if Family Care)	For reportable incidents classified as “injury”, “death”, or “medication error” extend an offer to the guardian, parent, spouse, adult child, advocate or correspondent notified to meet with the CEO or designee to further discuss the incident.
Agency Staff	Submit Form OPWDD 147 to the Consumer Advisory Board (CAB) main office if the CAB is a correspondent or co-correspondent for reportable incidents classified as “injury”, “missing person”, “death”, or “medication error” involving Willowbrook Class Members.

### **WITHIN THREE WORKING DAYS OF THE OCCURRENCE OR DISCOVERY**

<i>WHO</i>	<i>WHAT</i>
Agency Staff	For all deaths, provide Form QCC 100 to the DDSO, CQC and, for Willowbrook Class Members, to the Plaintiff’s Counsel, the CAB main office and Litigation Support.

### **WITHIN FIVE WORKING DAYS OF THE OCCURRENCE OR DISCOVERY**

<i>WHO</i>	<i>WHAT</i>
Agency Staff	For all incidents involving consumers residing in an ICF, investigations must be completed and submitted to the administrator within five working days of the occurrence or discovery of the event.

### **WITHIN 10 DAYS OF THE COMPLETION OF THE OPWDD 147**

<i>WHO</i>	<i>WHAT</i>
Agency	For reportable incidents classified as “injury”, “death”, or “medication error” provide the OPWDD 148 (or equivalent) to the guardian, parent, spouse, adult child or an advocate or correspondent who received the notification.

### **WITHIN THREE MONTHS OF THE OCCURRENCE OR DISCOVERY**

<i>WHO</i>	<i>WHAT</i>
Agency/IRC	Must meet to review the event.
Agency/IRC	Within two weeks of meeting date, forward findings and recommendations to the CEO.

## **TIMELINES FOR MANAGING SERIOUS REPORTABLE INCIDENTS**

### **IMMEDIATELY**

<i>WHO</i>	<i>WHAT</i>
Agency Staff/Family Care Provider	Provide consumer with needed care and protections.
Agency Staff/Family Care Provider	Notify CEO or designee.
Agency Staff	Notify DDSO by telephone, fax or other appropriate means (includes all deaths).
Agency Staff	Notify law enforcement officials, if appropriate.
Agency Staff	Notify coroner, medical examiner and police for suicides, homicides, accidental deaths or deaths due to suspicious, unusual or unnatural circumstances.

### **WITHIN 24 HOURS OF THE OCCURRENCE OR DISCOVERY**

<i>WHO</i>	<i>WHAT</i>
Agency Staff	Submit completed Form 147 to DDSO.

### **WITHIN 24 HOURS OF THE COMPLETION OF THE OPWDD 147**

<i>WHO</i>	<i>WHAT</i>
Agency (or DDSO staff, if Family Care)	Notify a guardian, parent, spouse or adult child or an advocate or correspondent.
Agency (or DDSO staff, if Family Care)	Notify the service coordinator (if applicable).
Agency (or DDSO staff, if Family Care)	For Willowbrook Class Members <u>only</u> notify Litigation Support.
Agency (or DDSO staff, if Family Care)	For serious reportable incidents classified as “injury”, “missing person”, “death”, or “medication error” extend an offer to the guardian, parent, spouse, adult child, advocate or correspondent notified to meet with the CEO or designee to further discuss the incident.

### **WITHIN 72 HOURS OF THE OCCURRENCE OR DISCOVERY**

<i>WHO</i>	<i>WHAT</i>
Agency Staff	Submit Form OPWDD 147 to the CAB main office for serious reportable incidents involving Willowbrook Class Members.

### **WITHIN THREE WORKING DAYS OF THE OCCURRENCE OR DISCOVERY**

<i>WHO</i>	<i>WHAT</i>
Agency Staff	Submit written report to coroner/medical examiner and law enforcement officials for suicides, homicides or other unexpected or accidental deaths.
Agency Staff	For all deaths, provide Form QCC 100 to the DDSO, CQC and, for Willowbrook Class Members, to the Plaintiff’s Counsel, the CAB main office and Litigation Support.

### **WITHIN FIVE WORKING DAYS OF THE OCCURRENCE OR DISCOVERY**

<i>WHO</i>	<i>WHAT</i>
Agency Staff	For all incidents involving consumers residing in ICFs, investigations must be completed and submitted to the agency administrator within five working days of the occurrence or discovery of the event.

### **WITHIN 10 DAYS OF THE COMPLETION OF THE OPWDD 147**

<i>WHO</i>	<i>WHAT</i>
Agency	For serious reportable incidents classified as “injury”, “missing person”, “death”, or “medication error” provide the OPWDD 148 (or equivalent) to the guardian, parent, spouse, adult child or an advocate or correspondent who received the notification.

### **WITHIN 30 DAYS OF THE OCCURRENCE OR DISCOVERY**

<i>WHO</i>	<i>WHAT</i>
Agency/IRC	Meet to review event.
Agency/IRC	Within two weeks of meeting, forward findings and recommendations to CEO.
Agency Staff	Update DDSO and CAB main office (if Willowbrook Class Member) on status and monthly thereafter.

**TIMELINES FOR MANAGING ALLEGATIONS OF ABUSE**  
**IMMEDIATELY**

<i>WHO</i>	<i>WHAT</i>
Agency Staff/Family Care Provider	Provide consumer with needed care and protections.
Agency Staff/Family Care Provider	Notify Chief Executive Officer (CEO) or designee
Agency Staff	Notify DDSO by telephone, fax or other appropriate means.
Agency Staff	Notify law enforcement officials, if appropriate.
Agency Staff	Notify New York State Central Register of Child Abuse and Maltreatment at 1-800-342-3720, if victim is a child under 18.

**WITHIN 24 HOURS OF THE OCCURRENCE OR DISCOVERY**

<i>WHO</i>	<i>WHAT</i>
Agency Staff	Submit completed Form 147 to DDSO.

**WITHIN 24 HOURS OF THE COMPLETION OF THE OPWDD 147**

<i>WHO</i>	<i>WHAT</i>
Agency (or DDSO staff, if Family Care)	Notify a guardian, parent, spouse or adult child or an advocate or correspondent.
Agency (or DDSO staff, if Family Care)	Notify the service coordinator (if applicable).
Agency (or DDSO staff, if Family Care)	For Willowbrook Class Members <u>only</u> notify Litigation Support.
Agency (or DDSO staff, if Family Care)	Extend an offer to the guardian, parent, spouse, adult child, advocate or correspondent notified above to meet with the CEO or designee to further discuss the allegation of abuse.
Agency (or DDSO staff, if Family Care)	Extend an offer to the guardian, parent, spouse, adult child, advocate or correspondent notified to provide information on the status and/or resolution of the allegation.

**WITHIN 48 HOURS OF THE OCCURRENCE OR DISCOVERY**

<i>WHO</i>	<i>WHAT</i>
Agency Staff	Submit Form OPWDD 147 to Commission on Quality of Care (CQC) and, for Willowbrook Class Members, to the CAB main office and Plaintiff's Counsel.

**WITHIN THREE WORKING DAYS OF THE OCCURRENCE OR DISCOVERY**

<i>WHO</i>	<i>WHAT</i>
Agency Staff	Submit Form OPWDD 147 to the Board of Visitors (for state-operated facilities) and Mental Hygiene Legal Services (MHLS) (for residences only).
Agency Staff	Notify law enforcement officials of abuse, which may be a crime (e.g., sexual abuse, assault).

**WITHIN FIVE WORKING DAYS OF THE OCCURRENCE OR DISCOVERY**

<i>WHO</i>	<i>WHAT</i>
Agency Staff	For all allegations of abuse involving consumers residing in ICFs, investigations must be completed and submitted to the administrator within five working days of the occurrence or discovery of the event.

**WITHIN 10 DAYS OF THE COMPLETION OF THE OPWDD 147**

<i>WHO</i>	<i>WHAT</i>
Agency	Provide the OPWDD 148 (or equivalent) to the guardian, parent, spouse, adult child or an advocate or correspondent who received the notification.

**WITHIN 30 DAYS OF THE OCCURRENCE OR DISCOVERY**

<i>WHO</i>	<i>WHAT</i>
Agency/Incident Review Committee (IRC)	Must meet to review event.
Agency/IRC	Within two weeks of meeting, forward findings and recommendations to CEO or designee.
Agency	Update DDSO and CAB main office (if Willowbrook Class Member) on status and monthly thereafter.

## **Information Sharing with Outside Agencies**

- Other facilities or places which a person receiving services regularly attends, or the place of residence, are to be notified when there is a reportable incident, serious reportable incident, or an abuse allegation whenever it may affect the person receiving services or another provider of services. See commentary under subdivision 624.6(1) for more guidance.
- Notify the CEO of another agency if a crime may have been committed against a person while at a program operated by that agency immediately upon discovery.

## **CONTACT INFORMATION FOR NOTIFICATIONS**

Litigation Support Office  
NYS OPWDD  
44 Holland Avenue, 3<sup>rd</sup> Floor  
Albany, NY 12229

Willowbrook Attorney  
New York Civil Liberties Union  
125 Broad Street, 17<sup>th</sup> Floor  
New York, NY 10004  
(212) 607-3300

Willowbrook Attorney  
New York Lawyers for the Public Interest  
151 West 30<sup>th</sup> Street, 11<sup>th</sup> Floor  
New York, NY 10001-4007  
(212) 224-4664

Executive Director  
Consumer Advisory Board (CAB) Main Office  
1050 Forest Hill Road  
Staten Island, NY 10314  
(718) 477-8800

*\* Note: The CAB main office is not the same as the Staten Island DDSO*

New York State Commission on Quality of Care and Advocacy for  
Persons with Disabilities  
401 State Street  
Schenectady, NY 12305

# **APPENDIX 2---Statewide Committee on Incident Review Standards of Excellence for Standing Committee**

**STANDARD #1:**        *The standing committee is recognized throughout the agency as being autonomous.*

To ensure the autonomy of the standing committee:

1.        The Chief Executive Officer evidences support of the standing committee through his or her accessibility to the standing committee.
2.        The Chief Executive Officer ensures consistent response by agency administrators to the standing committee's recommendations and/or actions.
3.        The Chief Executive Officer is actively involved in the process of determining membership.
4.        Membership requirements, responsibilities, and functions are clearly set forth in agency policy, and are made known to staff.
5.        Membership is diverse with regard to experience, clinical expertise, roles within the agency, and sensitivity to the needs of persons receiving services.
6.        At least one member of the board of governors/Board of Visitors is a member of the standing committee.
7.        The standing committee has the authority to request and receive further information on any reports or investigatory summaries received.
8.        The standing committee has the authority, in selected instances, to review the accuracy of reports or investigatory summaries received.
9.        All members of the standing committee attend on a regular basis.

**STANDARD #2:**        *The standing committee reviews events from the aspect of both the individual event and broader related systemic problems or issues, and, when necessary, makes recommendations in either or both areas.*

To ensure that the standing committee can make recommendations to prevent future incidents or abuse from occurring:

1.        The standing committee receives information on previous similar events in which the involved person and/or others were included.
2.        The standing committee receives information on the involved person's previous history with respect to incidents or abuse allegations.
3.        The standing committee is made aware of and reviews recommendations made by or acted upon by others (e.g., the person's team, administrators)

**STANDARD #3:**      *Agency administrators and staff respond to the recommendations of the standing committee.*

Agency follow-through on standing committee recommendations is evidenced by:

1.      The presence of an agency system:
  - a.      Documenting standing committee recommendations which reflect consideration of both the individual event and broader systemic actions or issues, and, thereby, could prevent similar occurrences in the future.
  - b.      Documenting the response to the recommendations.
  - c.      Documenting corrective actions taken.
  - d.      Providing information to the standing committee that its recommendations have been addressed and/or corrective actions have been taken.
2.      Spot checks are made by standing committee members on reported completed corrective action.

**STANDARD #4:**      *Each member of the standing committee is knowledgeable as to the purpose and function of the standing committee, and of his or her role and responsibilities as a member of that committee.*

To demonstrate that all members of the standing committee are knowledgeable about the purpose and function of the standing committee, and of their role and responsibilities, there is documentation that:

1.      Orientation has been provided to each member prior to becoming active on the standing committee.
2.      Each member receives a copy of Part 624 and Part 633, and any applicable agency policies or procedures, with updates as they occur.
3.      Periodic reorientation is provided to all members.

**STANDARD #5:**        *The agency is committed to the effective investigation of reported incidents and allegations of abuse.*

To demonstrate agency commitment to the effective investigation of reported incidents and allegations of abuse:

1.        There is a system in place to ensure that there are enough people trained and available to investigate incidents and abuse allegations, including those situations that occur evenings, weekends, holidays, and during peak vacation periods.
2.        There is a system in place to ensure that an investigation can commence immediately when it has been determined that such promptness is necessary.
3.        Periodic retraining on investigatory techniques is provided to investigators.
4.        Members of the standing committee:
  - a.        Are aware of and understand the formal training for investigators.
  - b.        Assume the responsibility for recognizing that an investigation is incomplete and for posing the appropriate follow-up questions to bring the investigation to a satisfactory conclusion.

**STANDARD #6:**        *The management and review of incidents and abuse allegations is complete.*

To ensure that the management and review of incidents and abuse allegations is complete:

1.        Each case remains open and is monitored by the standing committee until such time as all actions within the purview of the agency have been taken.
2.        The minutes of the standing committee reflect the committee's monitoring activities.
3.        The standing committee monitors closed cases which are awaiting further information beyond the agency's purview, such as the results of an employee's disciplinary hearing, police action, autopsy or coroner reports.
4.        The standing committee reopens closed cases when it receives further information requiring such action.

**STANDARD #7:**        *The agency does trend analysis that will be beneficial to those to whom it provides services and to the staff.*

To ensure that maximum benefit is obtained from trend analysis:

1.     The agency makes a commitment to provide the data to appropriate staff to enable trend analysis to be done.
2.     The agency makes a commitment for appropriate staff to review data so as to arrive at useful trend analyses.
3.     The agency acknowledges that trend analysis is a multi-level process, and there is input from all levels within the agency.
4.     Appropriate staff throughout the agency are aware that trend analysis occurs.
5.     It is done with sufficient frequency and regularity so that hypotheses suggested by previous data are demonstrated as accurate.
6.     “Non-reportable” occurrences are included in trend analysis.
7.     Data are examined to identify variables which appear to influence the frequency and severity of incidents and abuse.
8.     It is used to identify breakdowns in the system (e.g., non-reporting, under reporting, reporting of events that do not meet the definition of an incident/abuse and should be monitored elsewhere within the agency).
9.     The standing committee ascertains that the trend analysis is accurate.
10.    The standing committee reviews trend analyses and utilizes this information to make recommendations aimed at reducing both the risk and potential harm of incidents and abuse.

# **APPENDIX 3---Considerations for Consent to Sexual Contact**

## New York State Office of Mental Retardation and Developmental Disabilities

### Considerations for the Development of Agency Policies Concerning Sexual Contact and Consent

1993

#### PREAMBLE

Providers of services to people with developmental disabilities have a difficult mission. They must provide care, habilitation, and support services to enable persons in their care to lead as normal lives as possible; and they must **ensure that these persons are not denied the rights accorded to others. However, providers also have a responsibility to protect these same persons from harm, particularly when there is reason to question their ability to make choices and/or decisions.** The purpose of this document is to assist providers in carrying out their responsibilities. These "considerations" are not intended to serve as regulation or policy.

#### FREEDOM TO EXPRESS SEXUALITY

**People with developmental disabilities are presumed to have the ability to make decisions about some or all aspects of their lives.** However, some people with developmental disabilities may, in fact, not have the ability to make decisions regarding some or all aspects of their lives, including sexuality. Providers are expected to both respect the decisions and choices made by persons with the ability to do so (even when they disagree with those decisions or choices) and to ensure that protection is afforded to those persons who do not have the ability to make some decisions.

Every person should have the opportunity to make choices regarding social relationships, sexual expression, contraception, and decisions concerning pregnancy. Every person also has the right to privacy, confidentiality, and freedom of association. All persons in facilities operated or certified by OMRDD have the right to develop self identity, self esteem and self respect; to this end, every person should have the opportunity to access individualized education and counseling regarding sexuality, throughout his or her life. In addition, every person's religious and/or other beliefs need to be respected.

No person shall be denied the right to access clinically sound instructions on the topic of sexuality and family planning services and information about the existence of these services, including access to medication or devices to regulate conception. A person's rights also include the freedom to express sexuality as limited by one's consensual ability to do so, provided such expressions do not infringe on the rights of others; and the right to make decisions regarding conception and pregnancy pursuant to the mandates of applicable State and Federal Law.

#### SEXUAL CONTACT

As used throughout this document, "sexual contact" means ...any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party." (PL 130.00(3), emphasis added). Sexual contact does not include hand-holding, as hands are not considered to be "intimate parts." Nor would it include accidental touching, or touching of sexual or intimate parts when necessary as part of an employee's job requirements, as such touching is not for the purpose of sexual gratification. The "touching" of another person for the purpose of expressing closeness, friendship, or the need for reassurance or support should not be considered to be "sexual contact."

### **Ability to Consent to Sexual Contact:**

As used in these guidelines, the term “ability to consent” means that an adult person (generally defined as a person who is 18 years of age or older) is capable of making a decision to engage in the type of sexual contact under consideration, with knowledge and understanding of the activity, and of conveying this decision. Thus, the evaluation of a person's ability to consent should include consideration of the following:

- The person's awareness of having the choice to engage in or to abstain from the type of sexual contact under consideration.
- The person's ability to make a choice as to whether or not to engage in the type of sexual contact under consideration.
- The person's awareness of the nature of the activity and its risks and consequences. This “awareness” relates to the type of sexual contact involved. A person's awareness may be different for different types of sexual contact. For example, a person may have an awareness of the nature of touching but not of intercourse.
- The person's understanding of what constitutes sexual expression, and the possible need for restrictions as to time, place, or behavior.
- The person's understanding that certain sexual behaviors may be regarded as unacceptable or immoral by others in the community in which he or she resides, and that if a person chooses to engage in such behaviors certain social consequences may occur.

The person's understanding of how to prevent pregnancy and diseases which are sexually transmitted.

- The person's understanding that sexually assaultive behavior is prohibited; and sexually exploitative behavior is inappropriate.

A person, with the ability to consent to sexual contact, may be unable to verbalize this. In this situation, a determination needs to be made as to whether the person can do so through other means of communication.

### **Evaluation of Consensual Ability**

Evaluations are an essential foundation for developing individualized program plans designed to maximize the person's independence and autonomy in decision-making in those aspects of life where the person is able to do so; to identify needs for training or assistance in decision-making; and to identify areas of life where the person needs to be protected from harm or exploitation because of a lack of ability to make informed decisions.

The evaluation of a person is a highly individualized process that is based on clinical expertise; upon staff's knowledge of the person and personal observation; and the input of significant others, including family members and guardians. If an adult has the ability to make decisions concerning his or her plan, such input shall only be with the person's approval. The final evaluation is a professional process involving professional judgments. An evaluation of a person's ability to consent to sexual contact should

consider those factors listed above in the section, “Ability to Consent to Sexual Contact.” **It is not a “test” with right and wrong answers, and, therefore one need not necessarily “pass” each of the factors.** In reviewing a person’s ability to consent, the ability of appraising the nature of this [sexual contact] conduct (PL 130.00(5)) must be reviewed in the context of the type of sexual contact being considered. There are people in facilities who, very clearly can or do understand the nature of a personal relationship and should be permitted to pursue a relationship. There are also people in facilities who, very clearly, cannot or do not have the ability to understand what sexual contact is or the possible negative consequences of such contact, even though they may evidence pleasurable reactions from such contact. There is no question that this group of persons cannot consent to sexual contact and that facilities are mandated to protect them from exploitation and/or harm. However, there is an even larger segment of the population in facilities for whom a more formal evaluation process is necessary. Evaluation of such persons must be very individualized and take into consideration the factors listed above, and others, including long term relationships which are clearly beneficial to both parties. All information leading up to a determination must be documented in their records. This includes documentation any time a person’s behavior and/or abilities provide staff with reason to believe that his or her decision-making ability related to sexual contact may have changed, along with the outcome of the assessment of the situation.

In conducting these evaluations, there are two things providers should remember. First, “the principle which underlies all law is that an adult citizen is presumptively entitled to all his or her rights, privileges and immunities unless limited by a court of law (‘judicial competency’) or by a professional judgment made under standards authorized by or otherwise acceptable under the laws (‘clinical or functional competency’).” (“Quality of Care Newsletter”, Counsel’s Corner, N.Y.S. Commission on Quality of Care, Issue 50, November-December, 1991, p.3). Second, when making professional judgments, providers are expected to apply accepted professional standards and considerations. This means that, when making a professional judgment concerning a person’s ability to consent to sexual contact, decisions made by appropriate qualified professionals in a competent and thorough manner are entitled to a presumption of correctness (see *Youngberg v. Romeo* 457 US 307 at 322).

## **PRIVACY, EDUCATION, RESTRICTIONS AND APPEALS:**

### **Privacy:**

All persons have the right to privacy, and should also have the opportunity to discuss their sexuality on a formal, informal, and private basis with anyone of their choice, provided others are willing to participate. Sexual expression and choices of partners are private and subject to the same rules of confidentiality as other matters, subject to the requirement to report incidents, alleged abuse and possible crimes in accordance with applicable laws and regulations.

### **Education and Training:**

Education, training and specialized services should be available on an ongoing basis, and provided to meet each person’s changing needs and changing level of understanding. Sexuality education may not be limited to biological issues. It should also include, but not be limited to:

- Relationship-building, support and assistance to couples, social skills, decision making (including whether or not to abstain from sexual contact), values clarification, dating, grooming, hygiene, sexually transmitted diseases, birth control and family planning, parenting, premarital and marital counseling, and childbirth education.
- Training in self-protection and how to avoid being exploited should be available. This should

include assertiveness training, learning how to say “no”, reporting abuse and exploitation, and may include self-defense training.

- Providing information regarding sexually transmitted diseases, including prevention, consent for testing, treatment, and rights to confidentiality.

Persons with disabilities who also have maladaptive sexual behavior, sexual disorders, or sexual dysfunctions should have access to appropriate treatment.

Assistance and support should be made available to persons in addressing sexuality issues with parents, guardians, family members, and other providers. This may include obtaining an advocate.

### **Restrictions and Appeals:**

A parent, a legal guardian (appointed in conformance with Article 17-A of the Surrogate’s Court Procedure Act or Article 81 of the Mental Hygiene Law), or a committee (appointed by the court in conformance with Article 78 of the Mental Hygiene Law), cannot limit an adult person’s sexual activity. However, limitations which are in a person’s best interest are permissible where the court has given the guardian or committee the authority to make such decisions. A provider of service should seek court review of such authority where it is considered that such a decision is not in a person’s best interest or where it is considered that a person has the ability to make his or her own decisions. Further, those limitations which lead to the appointment of a guardian or committee may indicate the need for an evaluation of the person’s ability to consent to contact.

The expression of sexuality can also be reasonably limited or restricted, including the time and location, in accordance with a plan necessary for the health and well being of the individual or for effective facility management (14 NYCRR Section 633.4). If limitations or restrictions are necessary, it must be remembered that this cannot be done for disciplinary purposes, retribution, or the convenience of staff. In addition, any limitation of a person’s rights must be on an individual basis, for a specific period of time, and for clinical purposes only. Objection to any part of a person’s plan can be made by the person or other parties in accordance with 14 NYCRR Section 633.12, Objection to and Appeal of Care and Treatment. During the period that an objection is being reviewed or appealed, the person is to participate in programming and activities mutually agreeable to the person, the objecting party, the service provider, and the person’s parent or guardian (unless the person is capable of objecting to their participation, and does so object). However, the chief executive officer of the agency/facility should enforce the recommendation of the program planning team if necessary to avoid serious harm to life or limb of the person or others.

### **STAFF ISSUES**

#### **Additional Responsibilities:**

Intervening in a manner which preserves the dignity of the person or persons involved when sexual behavior is considered to be inappropriate.

Preventing and immediately intervening in situations which are considered to be sexual abuse.

Prohibiting the staff, volunteers, and interns of an agency/facility from any sexual contact or exploitation of any person receiving services from that agency/facility.

Ensuring, to the extent possible, that relationships between persons in facilities and anyone who is not disabled does not subject the person to exploitation. However, such relationships are not to be discouraged or prohibited unless there is a danger of exploitation.

Ensuring, to the extent possible, that staff do not project their feelings and reaction into the choices made by a person with disabilities.

**Training:**

Staff, volunteers, and interns should be provided orientation and on-going, comprehensive education, training, and instruction in human relationships, sexuality, the rights of persons with disabilities to sexual expression, and in the laws, regulations, and policies regarding consent to sexual contact, and in techniques to impart such knowledge to persons with disabilities.

Staff, volunteers, and interns should be trained to understand the difference between legal and illegal sexual activities. They should also be trained to recognize potentially harmful abusive and exploitative sexual behavior and to obtain resources to determine degree and type of intervention.

**APPLICATION TO MARRIED PERSONS:**

The principles expressed in these guidelines generally apply to persons who are married as well as to those who are not married. For persons who are married, there is the assumption that they have the ability to consent to sexual contact and, therefore, the section entitled “**SEXUAL CONTACT**” would not generally apply. However, sexual abuse is not permissible under any circumstance and appropriate action must be taken to address any such situation.

Dated: July 30, 1993

## **APPENDIX 4---Reporting Deaths**



## Quality Management

Sheila McBain, Ph.D., Deputy Commissioner

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### MEMORANDUM

TO: DDSO Directors  
Executive Directors, Voluntary Agencies

FROM: Sheila McBain, Ph.D. *Sheila M. McBain*  
Deputy Commissioner  
Division of Quality Management

DATE: July 9, 2009

SUBJECT: Reporting Deaths

**SUPERCEDE:** The following information supersedes that contained in the June 11<sup>th</sup>, 1999 memorandum from Richard Johnson

As part of the Office of Mental Retardation and Developmental Disabilities' (OMRDD) commitment to ensure quality services to people with developmental disabilities, all deaths of individuals receiving services from both state-operated and voluntary agency operated programs must be reported to the local Developmental Disabilities Services Office (DDSO) and to the Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD). Providers of services must submit the OMR 147 to the appropriate DDSO within 24 hours of the discovery of the death. The form QCC-100 must be submitted to the CQCAPD and the DDSO within three working days of the discovery of the death.

All deaths must be investigated. However, in every instance following the death of someone receiving services, those who were involved with the individual (e.g., staff, roommates, etc.) must feel supported and valued. It is important to acknowledge the feelings of staff and individuals receiving services and to consider their needs throughout the investigation process.

A death classified as "reportable" is a death due to natural and expected causes. In these cases a mortality review may substitute for a formal investigation. A mortality review is a process in which the care and treatment provided to the individual receiving services is examined with a focus on improving the quality of care provided to individuals during end of life events. Mortality review results must be reviewed by the Incident Review Committee.

A death classified as a "serious reportable" is a death due to circumstances unrelated to the natural course of an illness/disease or proper treatment in accordance with acceptable medical standards; an apparent homicide or suicide; or an unexplained or accidental death. Serious reportable deaths must be investigated according to the provider's policies and procedures for investigation of incidents.

In those instances wherein a provider does not have overall responsibility for the medical care of the individual receiving services, (a day service provider, a Family Support Services provider, an

We help people with developmental disabilities live richer lives.

Article 16 provider, an MSC provider, a respite service provider) an OMR 147 and a QCC 100 must be completed to the best of that provider's ability. Deaths must be reviewed to the extent possible; however, it is not necessary for the provider to intrude on a family's mourning in an effort to obtain information to complete the forms. For example, in such cases, it is not generally necessary to request that an autopsy report be provided.

Designated DDSO personnel are responsible for reviewing the submitted OMR 147s and QCC100s for thoroughness and in each case take any follow-up actions deemed necessary. Upon receipt, the DDSO is responsible for submitting a copy of the QCC 100 and the OMR 147 to OMRDD Office of Internal Affairs.

Thank you for your attention to this matter. If you have any questions, please contact the appropriate DDSO Incident Review Coordinator.

cc: Ms. Ritter  
Mr. Chmura  
Mr. Lind  
Ms. Broderick  
Ms. Ohoro  
Mr. Smits  
SCIR

# **APPENDIX 5---Update on Child Abuse Reporting and Investigations**



NEW YORK STATE  
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES  
OFFICE OF COUNSEL

## Update on Child Abuse Reporting and Investigations November, 2008

Governor Paterson recently signed a new law which strengthens the provisions of law related to protecting children in residential care from abuse and neglect (Chapter 323 of the Laws of 2008). Last year, the Governor signed a law requiring direct reporting of child abuse by mandated reporters to the Statewide Central Register (Chapter 193 of the Laws of 2007). Together these new laws enhance our efforts to protect children from harm and to provide accountability for reporting and investigating child abuse in residential care.

This article describes the important changes resulting from the new laws, as well as the general reporting and investigation requirements for child abuse under the Social Services Law and Mental Hygiene Law. Child abuse reports and investigations are done in addition to the incident reporting and investigation requirements of OMRDD regulations, 14 NYCRR Part 624. For purposes of child abuse reporting and investigations under Social Services Law article 6, a child is someone under age 18.

### 1. Investigations of Child Abuse and Neglect

Child abuse and neglect (or “maltreatment”) that occurs in a child’s home and is caused by the child’s parent, guardian or other custodian is reported to the New York State Statewide Central Register. Local County Child Protective Services (or ACS in NYC) will investigate these cases. Social Services Law Section 412 describes what acts or omissions constitute “familial” child abuse or neglect.

Child abuse or neglect can also occur while a child is in residential care, including those residential facilities certified or operated by OMRDD (except family care homes). In these cases, the Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD) is authorized by both the Social Services Law and the Mental Hygiene Law to investigate reports. New section 412-a of the Social Services Law describes what acts or omissions constitute child abuse or neglect in “residential care.”

Finally, child abuse or neglect can also occur in a family care home. In these cases, the standards of child abuse and neglect under Social Services Law Section 412 are used, and OMRDD (the appropriate DDSO) is authorized by section 424-b of the Social Services Law to investigate the report.

The definitions in Social Services Law Section 412 are not exactly the same as the definitions in new Social Services Law Section 412-a. Some acts that may not be considered “child abuse” if committed by a family member (such as the withholding of nutrition or hydration as punishment) would constitute “child abuse” if committed in a residential facility. However, in all of these

cases, if the investigation concludes that child abuse or neglect is founded, (or “indicated”), the person found to have committed the act will be listed on the Statewide Central Register of Child Abuse and Maltreatment (SCR). Subjects listed on the SCR will likely face employment and other consequences.

## **2. Mandated Reporters**

Social Services Law Section 413 lists numerous professionals and officials who are “mandated reporters.” Mandated reporters are required to report to the SCR when, in their professional or official capacities, they have reasonable cause to suspect child abuse or maltreatment. Mandated reporters can be held liable by both the civil and criminal legal systems for intentionally failing to make a report.

It is important to note that **all** employees and volunteers of residential care facilities, including all staff of OMRDD operated and certified residential facilities that serve children, are mandated reporters.

## **3. Additional reporting of child abuse or neglect**

All OMRDD providers are required to report incidents in accordance with 14 NYCRR Part 624. Part 624 defines abuse more broadly than the definitions of “child abuse or neglect” in the Social Services Law. All cases of abuse or neglect, as they are more broadly defined in OMRDD regulations or policy, must be reported in accordance with these OMRDD standards, even when a separate child abuse report is made to the SCR under the Social Services Law.

## **4. Chapter 193 of the Laws of 2007 – Direct Reporting**

Prior to October 1, 2007, a mandated reporter could fulfill his or her responsibility to report suspected child abuse by immediately notifying the person in charge of the facility where the reporter worked, or the designated agent for the facility. As a result, many mandated reporters could discharge their responsibilities by notifying the person “in charge.” It then became the responsibility of that person to make the report to the SCR.

Chapter 193 amended this section of law. Mandated reporters, who must report child abuse in their capacity as a staff member of certain facilities, institutions, programs, or schools, including all OMRDD facilities and programs, must now *personally* make the report to the State Central Register. Following the report, the mandated reporter must immediately notify the person in charge of the facility, or the designated agent, that the report has been made.

The mandated reporter must provide the Statewide Register (to the best of his or her knowledge) the name, title, and contact information for each staff person of the facility believed to have direct knowledge regarding the allegations in the report. Once a mandated reporter has made the report, other mandated reporters with direct knowledge of the incident, who know that the report was made, are not required to make a separate, additional report. Following the first report, the person in charge of the facility is responsible for subsequent activities related to the investigation (such as providing follow-up information to the investigators and completing required forms).

## **5. Chapter 323 of the Laws of 2008**

A number of changes to the Social Services Law and the Mental Hygiene Law were made as a result of Chapter 323. *These changes become effective January 17, 2009.* For OMRDD providers, the most significant changes are amendments to the definitions regarding abuse and neglect of children who reside in a residential facility, including OMRDD operated or certified facilities such as developmental centers, ICFs/MR, or IRAs.

New definitions of child abuse and neglect in residential care:

Prior to the amendments, a child would have to suffer serious harm or death, be put in substantial risk of same, or be the victim of a sex offense, before a finding of abuse or neglect could be made. While those provisions of law are preserved, the law has been expanded to provide additional protections to children in residential care.

The definitional changes represent a shift from focusing only on the degree of harm suffered by a child to certain actions, so egregious and inappropriate when committed by a staff person in a residential care setting, that they constitute abuse. These acts (all of which already constitute “abuse” as defined in 14 NYCRR Part 624) include:

- Throwing, shoving, kicking, burning, striking, choking, smothering, pinching, punching, shaking, cutting or biting a child;
- Displaying a weapon or other object that could reasonably be perceived by the child as a means for inflicting pain or injury;
- Using corporal punishment;
- Withholding nutrition or hydration as punishment; or
- Unlawfully administering any controlled substance or alcoholic beverage to a child.

A child is considered to be a “neglected child in residential care” if he or she experiences an impairment of his or her physical, mental, or emotional condition or is subjected to same because he or she has not received:

- adequate food, clothing, shelter, medical, dental, optometric, or surgical care;
- access to educational instruction; or
- proper supervision or guardianship.

A child could also be considered a “neglected child in residential care” if he or she is:

- inflicted with a physical, mental, or emotional injury, excluding a minor injury, by other than accidental means, or risk of same, if the injury or risk was reasonably foreseeable; or
- inflicted with a physical, mental, or emotional injury, excluding a minor injury, by other than accidental means, or risk of same, if the injury or risk was the result of the failure to implement an agreed-upon plan of correction; or
- subjected to the intentional administration or any prescription or non-prescription drug other than in substantial compliance with a lawful prescription.

Chapter 323 also contains new definitions of “physical injury or impairment,” which means “any confirmed harm, hurt, or damage resulting in a significant worsening or diminution of a child’s physical condition.” The law also defines “mental or emotional injury or impairment” to mean “a substantial diminution of a child’s psychological or intellectual functioning which is determined by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker, or licensed mental health counselor.”

### Clarification of CQCAPD role:

The new law also clarifies the role of the Commission on Quality of Care and Advocacy for Persons with Disabilities which investigates reports of child abuse in OMRDD residential facilities. Within 60 days of the report, CQCAPD must determine whether:

- to recommend to the Office of Children and Family Services that a report be “indicated” or “unfounded;”
- it appears that a child was abused by his parent or other person legally responsible and file a separate report to the SCR;
- it appears likely that a crime may have been committed against a child and report to law enforcement;
- it appears that there has been a violation of applicable statutory, regulatory, or other requirements regarding the child’s care and treatment and if so, the provider and OMRDD must be notified and corrective actions taken.

### Other changes:

In addition, the standard of proof needed to sustain an indicated report of abuse or neglect of a child in residential care at an administrative review is changed to reflect the fair preponderance of the evidence, rather than credible evidence (the standard for indication) to conform with the standard required by court decisions.

Finally, the new law expands the list of residential facilities subject to the provisions of Social Services Law Section 412-a to include certain programs of the Office of Alcoholism and Substance Abuse Services. Also included in this list are co-located facilities separately licensed by the Office of Children and Family Services and the Office of Mental Health.

More information concerning child abuse and maltreatment also is available on other agency websites: Commission on Quality Care and Advocacy for Persons with Disabilities -- [www.cqcapd.state.ny.us](http://www.cqcapd.state.ny.us); Office of Children and Family Services -- [www.ocfs.state.ny.us](http://www.ocfs.state.ny.us); Office of Mental Health -- [www.omh.state.ny.us](http://www.omh.state.ny.us); State Education Department -- [www.nysed.gov](http://www.nysed.gov); Office of Alcoholism and Substance Abuse – [www.oasas.state.ny.us](http://www.oasas.state.ny.us).

# **APPENDIX 6---Mandated Reporting of Suspected Child Abuse**

*Note: This Memorandum Has Been Redacted To Remove/Replace Outdated Material.*

## MEMORANDUM

TO: DDSO Directors  
Executive Directors Voluntary Agencies

FROM: Patricia Martinelli  
Deputy Commissioner and Counsel

SUBJECT: Mandated Reporting of Suspected Child Abuse – New Requirements

DATE: October 12, 2007

New legislation was enacted (Chapter 193 of the Laws of 2007) that changes certain aspects of New York State Social Services Law regarding reports of suspected child abuse or maltreatment to the Statewide Central Register for Child Abuse and Maltreatment. The new law affects staff who work in medical or other public or private institutions, schools, facilities or agencies, including OMRDD licensed or operated programs, and who are “mandated reporters.”

Chapter 193 provides that mandated reporters must make the required reports of child abuse or maltreatment to the Central Register directly, by themselves, and immediately notify the person in charge or the designated agent of the institution. The previous law, in effect only until October 1, 2007, authorized the mandated reporter to notify the person in charge of the facility who then was required to report allegations of abuse or mistreatment. Under the new law, after a report of child abuse is made, the designated agent of the facility may then conduct follow-up activities related to the initial report from the mandated reporter. The provider agency may not require staff to provide prior notification or seek prior approval of supervisors before making the report to the Central Register. The new law is effective October 1, 2007.

Chapter 193 also requires that any report submitted shall include the name, title and contact information for every staff person of the institution believed to have direct knowledge of the allegations. Finally, the legislation also expressly prohibits an institution, facility or agency from retaliating against or imposing conditions upon employees in regard to required reporting, including requiring prior approval or notification.

Attached is a copy of the Informational Letter that the New York State Office of Children and Family Services (OCFS) recently issued that highlights provisions of this law. OCFS staff is working on revising the curriculum for mandated reporter training classes, and updating both the Summary Guide for Mandated Reporters on its website and written resource materials on mandated reporting, to reflect the changes in this law. The revised versions will be available in the future.

Cc: Leadership Team  
Attachment

**Informational Letter**

<b>Transmittal:</b>	07-OCFS-INF-07
<b>To:</b>	Commissioners of Social Services, Executive Directors of Voluntary Authorized Agencies, Directors of Day Care Centers, and Directors of Residential & Non-Residential Domestic Violence Programs
<b>Issuing Division/Office:</b>	Strategic Planning and Policy Development
<b>Date:</b>	September 12, 2007
<b>Subject:</b>	Mandated Reporters; Chapter 193 of the Laws of 2007
<b>Suggested Distribution:</b>	Directors of Services and Child Protective Services Supervisors
<b>Contact Person(s):</b>	See Page 3
<b>Attachments:</b>	No
<b>Attachment Available Online:</b>	n/a

**Filing References, if applicable**

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
18 NYCRR 414.10 ( c ), 418-1.10 ( c ), 441.8 ( c )		NYS SSL 413		CPS Program Manual, Section VII A. Mandated Reporters	

**I. Purpose**

The purpose of this Informational Letter (INF) is to advise commissioners of local departments of social services (LDSS), executive directors of voluntary authorized agencies (Vas), directors of OCFS-licensed day care centers and directors of residential and non-residential domestic violence (DV) programs and their respective staff of the provisions contained in Chapter 193 of the Laws of 2007, modifying section 413 of the New York State Social Services 07-OCFS-INF-07 September 12, 2007 2 Law (SSL). This act became law on July 3, 2007, and is effective ninety (90) days thereafter on October 1, 2007.

**II. Background**

Section 413 of the SSL required that “whenever such person is required to report under this title in his or her capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, he or she shall immediately notify the person in charge of such institution, school, facility or agency, or his or her designated agent, who then also shall become responsible to report or cause reports to be made.” Problems cited with that current requirement included the questionable accuracy of second- or third- hand information

being reported to the Statewide Central Register of Child Abuse and Maltreatment (SCR), as well as the questionable timeliness of such reports, and subsequent ability of the child protective services (CPS) worker to follow up with the original source of the report and his or her designee in a timely manner. Chapter 193 addresses these issues as outlined below.

### **III. Program Implications**

Beginning October 1, 2007, those mandated reporters who work for a school, child care provider, foster care facility, residential care facility, hospital, medical institution or mental health facility, and who have direct knowledge of any allegation(s) of suspected child abuse or maltreatment, must personally make a report to the SCR and then notify the person in charge of the institution or his/her designated agent that a report has been made. The person in charge, or the designated agent of such person, is then responsible for all subsequent internal administration necessitated by the report. This may include providing follow-up information (ex., relevant information contained in the child's educational record) to CPS.

Note: Notification to the person in charge or designated agent of the medical or other public or private institution, school, facility or agency does not absolve the original mandated reporter of his or her responsibility to personally make a report to the SCR.

Further, all initial or subsequent reports made to the SCR shall include the name, title and contact information for every staff person of an institution that is believed to have direct knowledge of the allegations contained in the report. Nothing in Chapter 193, however, is intended to *require* that more than one report from any such institution, school or agency be made to the SCR.

No medical or other public or private institution, school, facility or agency shall take retaliatory personnel action against an employee who made a report to the SCR. Furthermore, no school, school official, child care provider, residential care facility provider, hospital, medical institution provider or 07-OCFS-INF-07 September 12, 2007 3

mental health facility provider shall impose any conditions, including prior approval or prior notification, upon a member of their staff mandated to report suspected child abuse or maltreatment.

Chapter 193 also amends section 413 of the social services law to specifically include school teachers, guidance counselors, school nurses and school social workers on the list of individuals classified as mandated reporters and therefore required to report cases of suspected child abuse or maltreatment to the SCR.

Residential and non-residential DV programs may employ staff that are explicitly listed as mandated reporters under section 413 of the SSL. Additionally, employees working at residential and non-residential programs are required to report cases of suspected child abuse or maltreatment pursuant to OCFS regulations. As such, the provisions of Chapter 193 would be applicable in residential and non-residential DV programs.

LDSS commissioners, executive directors of Vas, directors of OCFS- licensed day care centers and directors of residential and non-residential DV programs should notify their respective staff of the provisions contained in Chapter 193 of the Laws of 2007, as outlined above.

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Issued By: Nancy W. Martinez, Director  
Division/Office: Strategic Planning & Policy Development  
New York State Office of Children & Family Services

## **APPENDIX 7---Report of Suspected Child Abuse or Maltreatment DSS 2221-A Form**

This information can be found at the following link:

<http://198.22.236.25/main/forms/cps/>

# **APPENDIX 8---Requirements Related to Interventions in Alleged Abuse/Neglect Situations Outside the Scope of Service Provision**

*Note: This Memorandum Has Been Redacted To Remove/Replace Outdated Material.*



STATE OF NEW YORK  
**OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

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**M E M O R A N D U M**

**TO:** Executive Directors of Voluntary Agencies  
DDSO Directors

**FROM:** Kathy Broderick, Associate Commissioner  
Steve Smits, Associate Commissioner

**DATE:** November 14, 2007

**RE:** Requirements related to intervention in alleged abuse/neglect situations outside the scope of service provision

**Suggested distribution:**

Administrators  
Quality/compliance managers and staff  
Incident/abuse investigators  
Members of standing committees to review and monitor reportable incidents, serious reportable incidents and allegations of abuse  
Medicaid Service Coordinators and MSC supervisors  
DDSO incident coordinators and incident management staff

**Background:** Chapter 536 of the Laws of 2005, as amended by Chapter 356 of the Laws of 2006, revised requirements related to reporting and the responsibility to intervene when abuse to adults is alleged outside the scope of service provision.

**Purpose:** This memorandum explains the effect of the referenced laws on provider responsibilities and reiterates OMRDD requirements in this area.

**Requirements for intervention:** Longstanding OMRDD regulations and policy have required providers (including DDSOs) to investigate and intervene concerning allegations of abuse of adults who currently receive services from the provider, in situations involving familial abuse or other situations outside the scope of service provision. These requirements can be found in 14 NYCRR Part 624 and the OMRDD Part 624 Handbook.

The recent change in the law referenced in the background section above establishes that the primary responsibility for intervention in these situations rests with the provider agency or DDSO and not with the Local Departments of Social Services (LDSS) -- Protective Services for Adults (PSA) program (sometimes referred to as Adult Protective Services). This has necessitated some changes in how providers intervene in particular situations.

In accordance with a specific requirement in the new law, OMRDD and the New York State Office of Children and Family Services (OCFS) developed the attached Memorandum of Understanding (MOU), which details the respective responsibilities of OMRDD and its providers; and LDSS -- PSA. All of the LDSS and DDSOs have already signed the MOU or will sign the MOU in the near future.

Please refer to the MOU to determine the responsibilities of the provider, DDSO and PSA in various situations. A few of the highlights are detailed in this memorandum.

In situations involving alleged abuse of an adult who is currently receiving services, referrals to PSA should only occur when effective investigation or intervention requires specific actions by the PSA related to legal actions or services which are unavailable in the OMRDD system. These include petitioning the court for an order to gain access or a short term involuntary protective services order. Occasionally services not generally available in the OMRDD system, such as housekeeping, may be accessed through the PSA.

A provision of the new law [Mental Hygiene Law Sec. 16.19(d)(2)] enables DDSOs to access records maintained by PSA in certain circumstances. If a voluntary provider needs to access information in these records to effectively investigate or intervene, the provider should request that the DDSO seek to obtain the records from PSA.

Similarly, a provision of the Mental Hygiene Law (MHL Sec. 16.01) allows DDSOs to seek hospital records related to abuse allegations. If it is necessary to access hospital records for the investigation of an abuse allegation (whether or not related to service provision), the voluntary provider should contact the DDSO for assistance.

Furthermore, each DDSO has been directed to establish a liaison with each LDSS – PSA. If problems are encountered in interactions with PSA, this person may be able to assist in their resolution.

Providers must fulfill the responsibilities for reporting and intervention that are specified in the MOU in order to be in compliance with the law and OMRDD regulations/policy.

Please refer to 624.5(d)(2) to help determine which agency is responsible, if individuals are receiving services from more than one agency.

The MOU also specifies that OMRDD is primarily responsible for intervening in situations involving alleged abuse of individuals who are not currently receiving services in the OMRDD system, but who have received any service in the OMRDD system on or after January 1, 2005. If voluntary agencies become aware of such situations, a referral should be made to the DDSO. If it is unclear whether the person has received services in the OMRDD system or when he or she stopped receiving services, a referral should be made to the DDSO so that it can check relevant records. If the person has not received services, even if the person has or may have a developmental disability, the referral should be made to PSA. The DDSO should be informed when such a referral is made.

If you have any questions regarding the topics discussed in this memo, or need a copy of the Part 624 Handbook, please contact the Regulatory Affairs Unit.

In addition to the other requirements, the new statute requires OMRDD and OCFS to report to the Governor and Legislature annually regarding implementation of the law and associated topics. The required topics include: a description of systemic issues; a summary of strategies used for intervening in such cases; an evaluation of the success of such strategies; and recommendations to protect adults from abuse or mistreatment. Please contact the Regulatory Affairs Unit if you have any suggestions for inclusion in the report.

For your information, the recent law described above, MOU and Part 624 Handbook revision are attached.

Thank you.

Cc: Barbara Brundage  
Max Chmura  
Helene DeSanto  
Patricia Martinelli  
Deb VanExel  
Janis Steven  
Statewide Standing Committee on Incident Review  
Central Office Leadership Team  
Provider Associations

Attachments  
RAU Ref: 11-13-07

# **APPENDIX 9---Abuse Reporting Law**

## Abuse Reporting Law - Adults with Mental Retardation and Developmental Disabilities

Prepared by OPWDD Regulatory Affairs Unit

### Chapter 536 of the Laws of 2005 as amended by Chapter 356 of the Laws of 2006

Section 1. Section 16.19 of the mental hygiene law is amended by adding a new subdivision (d) to read as follows:

(d)(1) If, upon receiving a report that any adult thought to have mental retardation or another developmental disability has been subjected to physical, sexual, or emotional abuse, or active, passive or self neglect, and the commissioner has reason to believe that such adult is known by the commissioner to have received services from providers duly authorized by the commissioner and has been subjected to such abuse or neglect, the commissioner shall intervene pursuant to this section or, if such adult has not received services from said authorized providers, the commissioner shall, immediately or as soon as practicable, notify adult protective services established pursuant to section four hundred seventy-three of the social services law. The commissioner shall, within forty-eight hours, forward copies of reports made pursuant to this subdivision to the state commission of quality of care and advocacy for persons with disabilities and indicate if such report was referred to adult protective services.

(2) In order to carry out the provisions of this subdivision, the commissioner and the commissioner of the office of children and family services shall develop a model memorandum of understanding which shall be entered into between each developmental disability services office and each local department of social services within its jurisdiction. Such agreement shall define the responsibilities of each developmental disability services office and social services district with respect to reports pursuant to paragraph one of this subdivision and reasonable time frames for implementing such responsibilities. Such agreement entered into a record with such memorandum of understanding shall be finalized between all developmental disability services offices and all local department of social services no later than ninety days after the effective date of this subdivision. A developmental disabilities services office shall be deemed a provider of services for the purposes of access to adult protective records under section four hundred seventy-three-e of the social services law.

Note: New material is underlined.

(3) The commissioner and the commissioner of children and family services shall submit a report on the physical, sexual, or emotional abuse, or active, passive or self neglect of adults with mental retardation or other developmental disabilities to the governor, temporary president of the senate and speaker of the assembly by January first, two thousand seven, and annually thereafter. In consultation with the commission on quality of care and advocacy for persons with disabilities, the commissioner and the commissioner of children and family services shall include in such report a description of systemic issues; a summary of strategies used for intervening in such cases; an evaluation of the success of such strategies; an evaluation of the implementation of the memorandum of understanding developed pursuant to paragraph two of this subdivision and the specific status of developmental disabilities services offices and local departments of social services, with respect to entering into an agreement as required by paragraph two of this subdivision; and any recommendations the commissioner believes are necessary to protect adults from abuse or mistreatment. The report shall also include the number of reports and a summary of common situations and trends contained in such reports which were:

- a. made to the commissioner pursuant to paragraph one of this subdivision;
- b. not referred to adult protective services, but in response to which the commissioner intervened; and the outcome of such intervention; and
- c. referred to adult protective services pursuant to paragraph one of this subdivision and the outcome of such referral.

Section 2. Subdivision (c) of section 16.19 of the mental hygiene law is amended to read as follows:

(c) In addition to any other remedies available under this article, the commissioner may bring an action to the supreme court to enjoin any person from unlawfully subjecting a mentally retarded or developmentally disabled person to physical, sexual, or emotional abuse, or active, passive or self neglect, or detaining a mentally retarded or developmentally disabled person or providing inadequate, unskillful, cruel or unsafe care or supervision for such a person.

Section 3. Section 45.07 of the mental hygiene law is amended by adding a new subdivision (w) to read as follows:

(w) Receive and review reports required pursuant to section 16.19 of this chapter and take any action as required by law. The commission shall also assist the commissioner of the office of mental retardation and developmental disabilities in developing and preparing recommendations required by paragraph four of subdivision (d) of section 16.19 of this chapter for submission to the governor, temporary president of the senate and speaker of the assembly.

Note: New material is underlined.

Section 4.Paragraph a of subdivision 3 of section 6507 of the education law is amended to read as follows:

a. Establish standards for pre-professional and professional education, experience and licensing examinations as required to implement the article for each professional. Notwithstanding any other provision of law, the commissioner shall establish standards requiring that all persons applying, on or after January first, nineteen hundred ninety-one, initially, or for the renewal of, a license, registration or limited permit to be a physician, chiropractor, dentist, registered nurse, podiatrist, optometrist, psychiatrist, psychologist, licensed master social worker, licensed clinical social worker, licensed creative arts therapist , licensed master social worker, licensed clinical social worker, licensed creative arts therapist, licensed marriage and family therapist, licensed mental health counselor, licensed psychoanalyst, or dental hygienist shall, in addition to all other licensure, certification or permit requirements, have completed two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment. The coursework or training shall be obtained from an institution or provider which has been approved by the department to provide such coursework or training. The coursework or training shall include information regarding the physical and behavioral indicators of child abuse and maltreatment and the statutory reporting requirements set out in sections four hundred thirteen through four hundred twenty of the social services law, including but not limited to, when and how a report must be made, what other actions the reporter is mandated or authorized to take, the legal protections afforded reporters, and the consequences for failing to report. Such coursework or training may also include information regarding the physical and behavioral indicators of the abuse of individuals with mental retardation and other developmental disabilities and voluntary reporting of abused or neglected adults to the office of mental retardation and developmental disabilities or the local adult protective services unit. Each applicant shall provide the department with documentation showing that he or she has completed the required training. The department shall provide an exemption from the child abuse and maltreatment training requirements to any applicant who requests such an exemption and who shows, to the department=s satisfaction, that there would be no need because of the nature of his or her practice for him or her to complete such training;

Section 5. The commissioner of the office of mental retardation and developmental disabilities shall promulgate any necessary rules and regulations.

Section 6. This act shall take effect immediately, and shall be deemed to have in full force and effect on and after February 12, 2006.

Note: New material is underlined.

# **APPENDIX 10--OMRDD-DDSO/OCFS-PSA Memorandum of Understanding**

## OMRDD-DDSO / OCFS-PSA MEMORANDUM OF UNDERSTANDING

### I. PURPOSE

This agreement is between \_\_\_\_\_ Developmental Disabilities Services Office (DDSO) and the \_\_\_\_\_ County/Local Department of Social Services (LDSS). The agreement sets forth the joint responsibilities of the DDSO and the LDSS pertaining to the abuse reporting for individuals with mental retardation or developmental disabilities. The DDSO provides services to such persons as defined in Section 1.03(22) of the Mental Hygiene Law (MHL). The LDSS through its Protective Services for Adults program (PSA) provides protective services to impaired individuals over 18 years of age as defined in Article 9-B of the Social Services Law (SSL). Pursuant to Chapter 536 of the Laws of 2005, which amended Section 16.19 MHL, each DDSO and LDSS must enter into a Memorandum of Understanding (MOU) to ensure the appropriate reporting and investigation of suspected cases of abuse of adults with mental retardation or developmental disabilities.

Both entities recognize that each has a unique role in service provision to adults with mental retardation or developmental disabilities. Both entities also recognize that the needs and interests of said adults will be better served with a clear delineation of the roles and responsibilities of each entity with regard to such adults who are subjected to abuse, neglect or exploitation. Both the DDSO and the LDSS/PSA enter into this agreement in a spirit of interagency collaboration to facilitate the coordination of appropriate and necessary services to adults with mental retardation or developmental disabilities.

### II. PSA ELIGIBILITY CRITERIA AND SERVICES

All adults 18 years of age or older who meet all of the following three criteria are eligible for intervention:

1. are incapable of meeting their own basic needs or protecting themselves from harm due to mental and/or physical incapacity; and
2. are in need of protection from actual or threatened harm, neglect or hazardous conditions caused by the action or inaction of either themselves or other individuals; and
3. have no one else available who is willing and able to assist them responsibly.

Services available under PSA include counseling, locating social services, medical care and other resources in the community, advocacy, homemaker, housekeeper/chore services, money management, assistance in finding alternative living arrangements, and pursuing appropriate actions on behalf of adults with mental retardation or developmental disabilities who require involuntary intervention. These actions may include pursuing court orders to: (1) obtain access to the person in accordance with SSL 473-c; (2) provide short-term involuntary protective services in accordance with SSL 473-a; (3) request the appointment of a guardian; (4) obtain an Order of Protection under Article 8, Family Court Act.

### III. OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES (OMRDD) ELIGIBILITY CRITERIA AND SERVICES

OMRDD provides services to persons with diagnoses of developmental disabilities. Developmental disability is defined in Article 1, Section 1.03(22) of the Mental Hygiene Law as a disability of a person which:

1. is attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, familial dysautonomia or autism;
2. is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of persons with mental retardation or requires treatment and services similar to those required for such persons; or
3. is attributable to dyslexia resulting from a disability described in subparagraph (1) or (2) of this paragraph; and
4. originates before such person attains age twenty-two; and
5. has continued or can be expected to continue indefinitely; and
6. constitutes a substantial handicap to such person's ability to function normally in society.

Services provided by OMRDD directly or via an authorized or certified OMRDD voluntary provider include various day and residential services, service coordination and clinical services.

#### **IV. REFERRAL PROCESS**

##### **A. DDSO to LDSS/PSA**

When a report of suspected abuse of an adult who may have mental retardation or developmental disabilities is made to the DDSO, the DDSO shall determine by whatever means it may have available, if OMRDD or one of its voluntary providers has, as of January 1, 2005 or later: (1) provided residential or day program services to the person; or (2) if the person has received Medicaid Service Coordination or home and community-based waiver services. If the DDSO cannot reasonably determine that such person has received services from OMRDD or one of its duly authorized providers then the DDSO shall immediately, or as soon as practicable, make a referral to LDSS/PSA of the suspected adult abuse case.

If the DDSO finds that either (1) or (2) above are met, then the DDSO or the voluntary provider shall investigate the reported case pursuant to OMRDD regulations at 14 NYCRR Part 624. If the DDSO or the voluntary provider, after making reasonable efforts, cannot gain access to the adult to investigate and/or finds that the adult needs protective services that the DDSO or voluntary provider cannot provide, then the DDSO or the voluntary provider shall make a referral to the LDSS/PSA unit responsible for Intake. The DDSO or voluntary provider will clearly state the reasons for the referral and outline the risks to the adult in his/her situation. The phone referral will be followed-up by the DDSO or voluntary provider giving LDSS/PSA any available relevant written or oral information that the DDSO or its voluntary providers may have regarding the individual's developmental and psychosocial history. The DDSO or the voluntary provider shall assist in the preparation of the affidavit establishing the factual basis for pursuing any necessary order by providing all relevant and available documentation in support that it may have as required by the County Attorney. The County Attorney that represents the LDSS/PSA shall determine if there are sufficient grounds to proceed with the order. If granted, the DDSO or the voluntary provider shall accompany LDSS/PSA upon execution of the order. The DDSO must forward

reports of the suspected adult abuse case to the Commission on Quality of Care and Advocacy for Persons with Disabilities within 48 hours of receipt and indicate if such report was referred to LDSS/PSA.

Upon receipt of a PSA referral from the DDSO, the LDSS/PSA will determine whether to accept or reject the case for a PSA assessment or request additional information as needed. If additional information is needed which is pertinent to the person's potential eligibility for PSA, the LDSS/PSA will request information from appropriate sources to enable a decision to be made as to whether the case will be accepted for a PSA assessment. In any case, a decision will be made whether to accept the case for assessment within 24 hours after the referral is received. If, on the basis of information supplied by the DDSO or voluntary provider and any additional information obtained by the LDSS/PSA, it appears that the person may be eligible for PSA, the case must be accepted for assessment.

A case will be rejected for assessment only if PSA eligibility can be conclusively ruled out. If any doubt remains about a person's PSA eligibility, the case will be accepted for assessment. LDSS/PSA will notify the DDSO or the voluntary provider of its decision to accept or reject a case immediately.

Upon acceptance of a referral for PSA assessment, the assigned LDSS/PSA caseworker will visit the referred individual within three working days of the referral (or 24 hours if the situation is life threatening) in accordance with the regulations set forth at 18 NYCRR Section 457.1 (c) (2). Either agency will perform joint visits when requested by the other agency.

## **B. LDSS/PSA ASSESSMENT PROCESS**

During the 60 day period between the acceptance of a referral and the determination of PSA eligibility, LDSS/PSA will assess the person's needs and provide or arrange for services, as indicated in 18 NYCRR Section 457.1 (c) to meet the needs of the person receiving services which have been identified in the assessment/investigation process.

As soon as reasonably possible, but no later than 60 calendar days after the referral date, a determination will be made whether the case will be opened for PSA beyond the assessment period. Cases which do not meet the "PSA Client Characteristics" will not be opened for ongoing PSA services (i.e. cases in which the identified risk factors have been resolved during the 60 day assessment process or cases in which there is no indication of abuse, neglect or exploitation, or the adult has a responsible person(s) or entity(ies) willing and able to meet their needs). Upon making such a decision LDSS/PSA will inform the DDSO within 7 days. For those cases which will be opened for PSA beyond the 60 day assessment period, the DDSO and LDSS/PSA will work collaboratively, as necessary, on a written case plan which outlines service goals, services to be rendered, the role of each agency and a schedule of treatment conferences including frequency, site and participants. The written case plan will be made part of the case record of each agency.

## **C. PSA TO DDSO**

Based upon information obtained at referral or any subsequent investigation of a suspected adult abuse case conducted by LDSS/PSA, it will refer adults with mental retardation or developmental disabilities who may need services to the appropriate DDSO. However, a referral by LDSS/PSA to a DDSO does not negate LDSS/PSA's responsibilities on behalf of persons who are eligible for PSA as specified in this agreement and in 18 NYCRR Section 457.1 (b). For those cases which require PSA involvement beyond

the 60 day assessment period, within two weeks of receipt of a referral from LDSS/PSA, the DDSO and LDSS/PSA will participate in joint case management visit by both agencies with the client. The visit will be arranged and coordinated by LDSS/PSA in cooperation with the DDSO. The DDSO will, within 7 days of the joint visit or as soon as possible thereafter, advise LDSS/PSA as to whether or not the adult referred is eligible for OMRDD services, whether or not the DDSO can provide or arrange for services to the individual, and the nature of such services to be provided.

For persons with mental retardation or developmental disabilities who are not eligible for PSA services, the DDSO will assume responsibility for providing or arranging for the provision of necessary services to these individuals. Upon receipt of a referral from LDSS/PSA, the DDSO will assess the nature and extent of the person's disabilities, their need for services, and, if found eligible by the DDSO, will plan for services that are appropriate and available.

In cases of dually diagnosed individuals (developmental disability and mental illness) in which there is uncertainty about which service system (OMRDD or OMH) has primary responsibility, OMRDD will work with the Office of Mental Health to ascertain the primary diagnosis of the adult. OMRDD will notify LDSS/PSA as to which agency (OMRDD or OMH) is assuming primary responsibility for the case.

Within 30 days of acceptance of a case by the DDSO in which LDSS/PSA will be involved beyond the 60 day assessment period, both agencies will jointly develop a written case plan which will outline service goals, services to be rendered, the specific service provider, the anticipated date services will begin, and the roles of each agency, including which agency will act as primary case manager. The primary case manager will be determined on a case by case basis, depending on the needs of the person. To the extent possible, the joint case plan shall be consistent with the PSA service plan which must be completed within 60 days of the PSA referral date in accordance with 18 NYCRR Section 457.2(b)(4). The written plan must be made part of the individual's record at each agency.

#### **D. SERVICE DELIVERY**

In mutually served cases where both LDSS/PSA and OMRDD are involved, each agency will take responsibility for those activities assigned to them in the written case plan.

When a need is identified for placement specifically within the OMRDD system, particularly emergency placement of a person with mental retardation or developmental disabilities, the DDSO will be responsible for seeking a placement within their system.

Each agency will notify the other of significant changes in the shared case's condition or situation (e.g., changes in medical status, living situation, and loss of benefits) as soon as practicable after a change is identified.

Any activity or decision by either agency which would have the effect of discontinuing services or otherwise significantly changing the service plan must be communicated in writing to the other agency at least 30 days prior to the changes or as soon as practicable if 30 days' notification is not possible. Verbal communication may appropriately preface the written communication.

Each agency may at any point call a case conference involving both agencies and other service providers if it is felt that a conference is needed to review significant changes in the person's situation or to devise an appropriate service plan.

## **V. PROCEDURES FOR INVESTIGATING ABUSE, NEGLECT OR EXPLOITATION**

### **A. PERSONS WHO THE DDSO REASONABLY BELIEVES HAVE MENTAL RETARDATION OR DEVELOPMENTAL DISABILITIES AND WHO HAVE RECEIVED SERVICES FROM OMRDD CERTIFIED, AUTHORIZED OR FUNDED PROGRAMS**

The investigation of alleged abuse or neglect of persons receiving services while under the auspices of an OMRDD certified, authorized or funded program is the responsibility of the agency staff (the DDSO is the "agency" for state-operated programs). Requirements concerning the review and reporting of incidents of alleged abuse or neglect by OMRDD certified or authorized programs are stated in OMRDD regulations at 14 NYCRR Part 624. Agencies are also required to take such action as is necessary to protect the safety and welfare of the person receiving services and develop recommendations for protective/corrective actions of the alleged abuse or neglect.

The agency is also responsible for intervening when abuse or neglect is suspected when the person receiving services is not under the auspices of the agency (e.g., at home) or involves people who are not affiliated with the agency. The agency may also make a referral to LDSS/PSA when the remedies of the agency are insufficient. The agency may request a joint visit with LDSS/PSA staff or other specific PSA involvement, such as assistance in obtaining a court order to access the person. LDSS/PSA will accept the referral in accordance with its standard procedures and will collaborate with the agency as needed.

### **B. PERSONS WHO THE DDSO REASONABLY BELIEVES DO NOT HAVE MENTAL RETARDATION OR DEVELOPMENTAL DISABILITIES**

In the event that a report is made to the DDSO or to one of its voluntary providers alleging abuse, neglect or exploitation concerning such a person, the DDSO or the voluntary provider shall make a referral to LDSS/PSA. The DDSO or the voluntary provider shall provide any relevant information it may have available regarding the person's developmental and psychosocial history to LDSS/PSA. LDSS/PSA will accept the referral in accordance with its standard procedures, and will assume initial responsibility for the investigation of such reports and intervention in the situation.

If during the investigation of the referral, LDSS/PSA becomes aware that the person may have a developmental disability and that resolution of the abuse may be facilitated by the provision of services through OMRDD, LDSS/PSA may make a referral to the DDSO for an eligibility determination and assessment for potential services. The DDSO will utilize its standard intake procedures upon receiving the referral. Either agency will perform joint visits when requested by the other agency.

### **C. HIGH RISK CASES**

The following protocol will be followed by the DDSO and LDSS/PSA in cases identified by either agency to be a high risk situation (imminent risk to the person's health, safety or stability of living arrangement).

### Existing Cases Being Mutually Served by LDSS/PSA/DDSO

In cases already being mutually served by both agencies, the agency which first identifies the high risk situation will immediately notify the other agency. The purpose of the notification will be to arrive at an immediate plan to address the crisis situation using the resources available to both agencies. If joint consultation is not possible, the agency which identified the high risk situation must take action to resolve the crisis and notify the other agency after the fact.

The primary focus in high risk cases is the resolution of the crisis. When determined feasible, LDSS/PSA and the DDSO will make every effort to arrange a joint home visit as soon as possible to assess the crisis situation (within 24 hours if the situation is life threatening) but no later than three (3) working days following the identification of the situation.

If determined necessary, either agency may call an immediate case conference to devise a plan to address the crisis situation. The plan will come from the meeting and will specify services to be provided and the role of each agency.

### New Cases

In new cases, the supervisor of the agency which identifies the high risk situation will notify, when possible, the supervisor of the other agency by telephone if it is felt that the assistance of the other agency is necessary and appropriate to address the situation. The referring agency will clearly explain the high risk factors in the person's situation and the need for priority attention. When determined feasible, LDSS/PSA and the DDSO will make every effort to arrange a joint home visit as soon as possible to assess and resolve the crisis situation (within 24 hours if the situation is life threatening) but no later than three (3) working days following the identification of the situation.

## **D. NOTIFICATION TO LAW ENFORCEMENT**

In cases of alleged abuse, neglect or exploitation in which it is suspected that a crime has been committed, both parties recognize that law enforcement must be involved and will cooperate in this process. OMRDD regulations at 14 NYCRR Sec. 624.6 (d) require that in the case of any reportable incident or allegation of abuse where a crime may have been committed, it is the responsibility of the program administrator or designee of an OMRDD operated or certified program to notify law enforcement officials. For abuse occurring in the community in which it is suspected that a crime has been committed, a referral must be made to law enforcement. Additionally, the LDSS/PSA is mandated to report to law enforcement pursuant to Section 473-5 SSL when they have reason to believe a criminal offense has been committed against a client. Such notification may be made by the individual, LDSS/PSA or OMRDD/program staff, preferably through consultation of all three parties and it shall be documented in the individual's case record at each agency

## **VI. INFORMATION SHARING**

Both agencies agree to share that information concerning the referred or mutually served person which is necessary to develop and implement service plans, to the extent permitted by applicable laws and regulations including Title 18 NYCRR Part 357 and Section 33.13 MHL. Information may be disclosed where such disclosure is reasonably necessary to assess an individual or to provide protective services to

an individual. Pursuant to Chapter 536 of the Laws of 2005, the DDSO shall be deemed a provider of services for the purposes of access to adult protective records under Section 473-e SSL.

Both agencies agree to orient their staffs concerning the implementation of this agreement. Both agencies agree to participate in training of each other's staff regarding the mission and operation of each program.

## VII. CONFLICT RESOLUTION

The DDSO and LDSS/PSA each retain responsibility for making eligibility decisions regarding their own programs and/or services and determining the type, duration and scope of services they will provide to eligible persons. However, in order to promote coordination and collaboration, each entity shall seek to resolve any conflicts in accordance with the process described below.

In cases of disagreement between the DDSO or its voluntary providers and LDSS/PSA staff about a person's eligibility for services or the appropriateness of a services plan, every effort shall be made to resolve the conflict at the staff/practitioner level. If resolution cannot be achieved at that level, supervisory staff in each agency will confer to reach an acceptable resolution. If a dispute cannot be resolved at the supervisory level, the dispute will be referred to the administrative level at each agency (i.e., the DDSO Director or his/her designee and the Commissioner of the Local Dept. of Social Services or his/her designee) for resolution. Both parties agree to make every effort to resolve disputes through the internal conflict resolution process discussed above. If a dispute cannot be resolved by the two parties, each party reserves the right to pursue an equitable resolution of the matter, including requesting guidance from OCFS or OMRDD administrative staff.

## VIII. TERMS OF AGREEMENT

OMRDD and OCFS will review the terms of this agreement at least annually. Changes to the agreement may be made at any time by mutual consent.

Nothing in this agreement shall substitute, or represent a change in, either agency's legally mandated responsibilities.

\_\_\_\_\_  
COMMISSIONER \_\_\_\_\_ County  
Department of Social Services

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DIRECTOR OF \_\_\_\_\_  
DDSO

\_\_\_\_\_  
DATE

1/24/07

# **APPENDIX 11--Mental Hygiene Law Section 33.04 Restraint of Patients**

### Section 33.04 Restraint of patients

Current through L.2008, chapters 1 to 39 and 52.

Historical Notes    References    Annotations

(a) As used in this section, "restraint" means the use of an apparatus on a patient which prevents the free movement of both arms or both legs or which totally immobilizes such patient, and which the patient is unable to remove easily.

(b) Restraint shall be employed only when necessary to prevent a patient from seriously injuring himself or others. It may be applied only if less restrictive techniques have been clinically determined to be inappropriate or insufficient to avoid such injury. It may not be employed as punishment, for the convenience of staff, or as a substitute for treatment programs.

(c) The "camisole" and the "full or partial restraining sheet", or such other less restrictive restraints authorized by the commissioner, shall be the only permissible forms of restraint.

(d) Restraint shall be effected only by written order of a physician after a personal examination of the patient except in an emergency situation, as provided by subdivision (e) of this section. The order shall set forth the facts justifying the restraint and shall specify the nature of the restraint and any conditions for maintaining the restraint. The order shall also set forth the time of expiration of the authorization, with such order to apply for a period of no more than four hours, provided, however, that any such order imposing restraint after nine o'clock p.m. may extend until nine o'clock a.m. of the next day. A full record of restraint, including all signed orders of physicians, shall be kept in the patient's file and shall be subject to inspection by authorized persons.

(e) If an emergency situation exists in which the patient is engaging in activity that presents an immediate danger to himself or others and a physician is not immediately available, restraint may be effected only to the extent necessary to prevent the patient from injuring himself or others at the direction of the senior member of the staff who is present. The senior staff member shall cause a physician to be immediately summoned and shall record the time of the call and the person contacted. Pending the arrival of a physician, the patient shall be kept under constant supervision. If a physician does not arrive within thirty minutes of being summoned, the senior staff member shall record any such delay in the patient's clinical record and also place into the patient's clinical record a written description of the facts justifying the emergency restraint which shall specify the nature of the restraint and any conditions for maintaining the restraint until the arrival of a physician, the reasons why less restrictive forms of restraint were not used, and a description of the steps taken to assure that the patient's needs, comfort and safety were properly cared for. Such physician shall place in the clinical record an explanation for any such delay.

(f) During the time that a patient is in restraint, he shall be monitored to see that his physical needs, comfort, and safety are properly cared for. An assessment of the patient's condition shall be made at least once every thirty minutes or at more frequent intervals as directed by a physician. The assessment shall be recorded and placed in the patient's file. A patient in restraint shall be released from restraint at least every two hours, except when asleep. If at any time a patient upon being released from restraint makes no overt gestures that would threaten serious harm or injury to him-self or others, restraints shall not be reimposed and a physician shall be immediately notified. Restraint shall not be reimposed in such situation unless in the physician's professional judgment release would be harmful to the patient or others.

(g) A record of all restraints shall be kept by the director of the facility.

(h) Nothing in this section shall prevent the use of mechanical supports necessary to keep an infirm or disabled patient in a safe or comfortable position or to provide stability necessary for therapeutic measures such as immobilization of fractures, administration of intravenous or other medically necessary procedures.

CREDIT(S)

(Formerly Section 15.04, added L.1977, c. 779, Section 1; renumbered Section 33.04 and amended L.1980, c. 334, Sections 1, 2.)

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

2006 Main Volume

L.1980, c. 334 legislation

Subd. (e). L.1980, c. 334, Section 2, eff. June 19, 1980, substituted sentence beginning "The senior staff" for sentence which read "A physician shall be immediately summoned." and added sentences beginning "If a physician" and "Such physician shall".

REFERENCES

LEGISLATIVE HISTORIES

L.1980, c. 334: For memorandum of the Commission on Quality of Care for the Mentally Disabled, see McKinney's 1980 Session Laws of New York, p. 1761.

REFERENCES

CROSS REFERENCES

Local and unified services, rights of mentally retarded and developmentally disabled, see Mental Hygiene Law Section 41.41.

REFERENCES

LIBRARY REFERENCES

2006 Main Volume

Mental Health 51.

Westlaw Topic No. 257A.

C.J.S. Mental Health Sections 86 to 87.

REFERENCES

RESEARCH REFERENCES

ALR Library

19 ALR 4th 7, Liability of Mental Care Facility for Suicide of Patient or Former Patient.

Encyclopedias

NY Jur. 2d, Government Tort Liability Section 177, Medical Services.

NY Jur. 2d, Hosp. & Related Hlth. Care Facil. Section 47, Scope of Rights Protected.

NY Jur. 2d, Hosp. & Related Hlth. Care Facil. Section 62, Physical Restraint and Seclusion.

ANNOTATIONS

NOTES OF DECISIONS

Supervision of restrained patient 1

1. Supervision of restrained patient

In action seeking damages for injuries that patient sustained when he jumped from a balcony at medical center, county had duty to provide constant supervision for patient, who was being held in restraints in emergency situation, as set forth in Mental Hygiene Law and county health center's standards manual. *Marvel v. County of Erie* (4 Dept. 2003) 307 A.D.2d 732, 762 N.Y.S.2d 753. Health 703(2)

Jury's finding that county health center failed to provide constant supervision to patient in restraints was not against weight of evidence, in patient's action seeking damages for injuries he sustained when he jumped from balcony; patient was involuntarily committed because he was believed to be danger to himself or others, county had information available to it that he was suffering from depression, and nurse testified patient was not continually kept in view of staff. *Marvel v. County of Erie* (4 Dept. 2003) 307 A.D.2d 732, 762 N.Y.S.2d 753. Health 703(2)

# **APPENDIX 12--Critical and Significant Event Notification Protocol Memorandum**

*NOTE: This memorandum applies to the DDSOs only.*

## MEMORANDUM

**TO:** DDSO Directors/IBR Director

**FROM:** James Moran, Acting Executive Deputy Commissioner

**DATE:** February 15, 2011

**RE:** *Revised Critical and Significant Event Notification Protocol*

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This memorandum is intended to reiterate the important role the Districts play in safeguarding individuals' health and well-being by managing critical and significant events in accordance with NYSCRR Part 624, CFR 483 and policies and procedures that ensure immediate notification of such events and the protective measures and systemic corrective actions that prevent recurrence. Each District, in conjunction with the Division of Service Delivery and Integrated Solutions (SDIS) and Division of Quality Management (DQM), must have an effective system of communication in order to provide timely notification to all appropriate entities thereby ensuring assistance should additional resources become necessary allowing for an enterprise-wide response to those events having state-wide impact.

The following protocols provide an **update** to the existing practice of communicating critical and significant event notifications:

1. **MOST CRITICAL EVENTS:** Requires *immediate* notification, i.e. by telephone within two hours of District's awareness of those critical events that suggest a **serious** breakdown of our system's obligations to protect the well-being of individuals. These are the most serious events of which OPWDD should be aware and may require a reaction and/or statement from the Commissioner. Moreover, these events may require OPWDD leadership to notify the Governor's Office. Within 48 hours of telephone notification, the electronic report should also be submitted.
2. **HIGHLY SIGNIFICANT EVENTS:** This second tier of notifications may be made electronically to the appropriate Regional Associate Commissioner or Suzanne Sennett for IBR within 48 hours of awareness of the event.

Definitions and examples of the above are provided in the information that follows. These updates are effective immediately.

In addition, we have further streamlined this communication process and have worked with staff from Information Management Solutions (IMS) to create a more consistent and efficient means of transmitting a *new Critical and Significant Event Report* form (see attached), previously known as "Appendix B" or the "14-Point" Report.

This new form, which must be utilized immediately, provides the Districts with an electronic template that employs a fillable PDF format for greater ease of use. District staff who are completing this form are asked to attach it and submit via email using the new system distribution list addresses below:

- **OPWDD.DL.COF.UPSTATE.EVENT** for all events occurring in the upstate districts
- **OPWDD.DL.COF.DOWNSTATE.EVENT** for downstate districts, and

- **OPWDD.DL.IBR.EVENT** for IBR.

### **Category 1: MOST CRITICAL Events**

Within two hours of awareness of the event, report by telephone (see Contact Information) for both state and voluntary operated agencies, **critical** events that may indicate a serious breakdown in our system's obligations to ensure the safety, health, and well-being of people with developmental disabilities. These events result in substantial harm or risk of harm to individuals that require immediate and significant interventions by OPWDD providers and/or outside agencies. This telephone notification should be followed by electronic submission (see Matrix). **It is also requested that follow-up information or disposition of the event be received for any Category 1 events. Please send these updates via email to either the UPSTATE, DOWNSTATE or IBR EVENT distribution lists indicated above.**

Events in this category include, but are not limited to:

- **Sudden and untoward deaths.** Example: A person with a developmental disability dies due to accident, neglect, wrongful act, or suicide.
- **Events with potential for public or media attention.** Example: A residence catches fire and the persons with developmental disabilities who reside there must be relocated.
- **Disappearance of a person** who is considered at risk based on age or survival abilities or who may pose a risk to the community. Example: A person with a developmental disability who has a history of sexually offending behavior elopes or who has no community survival skills goes missing.
- **Serious criminal acts against or by a person with a developmental disability or staff.** Example: Major felony involvement - rape, homicide, assaults requiring hospitalization or similar events likely to attract press coverage.

### **Category 2: HIGHLY SIGNIFICANT Events**

Within 48 hours of awareness report electronically state and voluntary agency **significant** events that may warrant OPWDD Leadership awareness.

Events in this category include, but are not limited to:

- **Notable or significant neglect or physical abuse** of a person with a developmental disability that is particularly egregious in nature or that result in significant harm requiring medical attention beyond first aid. Example: Events that endanger someone's safety or allegation of serious assault (generally not a single slap, push, kick, etc.).
- **Serious sexual abuse of a person** with a developmental disability. Example: Persons with developmental disabilities, one or both of whom are non-consenting, are found engaging in sexual intercourse. This does not include person to person touching while clothed.
- **Serious injuries resulting in inpatient hospitalization** to a person with a developmental disability or staff. Example: A person with a developmental disability falls from a shower chair resulting in a broken hip or a staff is assaulted by a person with a developmental disability resulting in inpatient treatment.
- **SCIP-R interventions that result in injuries that require medical attention beyond first aid.** Example: A SCIP-R technique is used and the person with a developmental disability is taken for an x-ray which reveals a fractured rib.
- **Criminal acts against or by a person with a developmental disability that result in police involvement.** Example: A person with a developmental disability is the victim

of armed robbery, which the police are investigating, but the individual was not physically harmed. Incidents involving lesser, non-felony events would not typically need to be reported; i.e., an individual given an appearance ticket for shoplifting.

- **Criminal charges against employees.** Example: An allegation of assault with police involvement or off duty charges, such as felony assault or child abuse. Minor crimes such as a small amount of cash missing from petty cash need not be reported here.

TYPE OF EVENT	NOTIFICATION
<p style="text-align: center;"><b>Category 1</b> <b>Most Critical Events</b></p>	<p>Immediate notification <i>by telephone</i> within two hours of the awareness of the event to:</p> <p style="text-align: center;"><b>Suzanne Sennett, Deputy Commissioner for IBR;</b> <b>Jim Whitehead, Associate Commissioner for Upstate DDSOs;</b> <b>Jill Gentile, Associate Commissioner for Downstate DDSOs</b></p> <p>If unavailable, see attached <b><u>Contact Information for Critical and Significant Events</u></b> and electronically submit reporting form by close of business that day or, if after hours, at the beginning of the next business day to:</p> <p><b>IBR: OPWDD.DL.IBR.EVENT</b> <b>Upstate: OPWDD.DL.COF.UPSTATE.EVENT</b> <b>Downstate: OPWDD.DL.COF.DOWNSTATE.EVENT</b></p>
<p style="text-align: center;"><b>Category 2</b> <b>Highly Significant Events</b></p>	<p>Electronically submit reporting form within 48 hours of awareness of the event to:</p> <p><b>IBR: OPWDD.DL.IBR.EVENT</b> <b>Upstate: OPWDD.DL.COF.UPSTATE.EVENT</b> <b>Downstate: OPWDD.DL.COF.DOWNSTATE.EVENT</b></p>

**Attachments:**

cc: **Acting Commissioner Chmura**  
**COLT Members**  
**DDSO Incident Management Liaisons**  
**Virginia Leone**  
**Kelly McGuirk**  
**Sara Mangan**  
**Don Martin**  
**Chris Nemeth**  
**Lisa Stegeland**

## **APPENDIX 13--Learning About Incidents Brochure**

This information can be found at the following link:

[http://www.opwdd.ny.gov/wt/manuals/part624/incident\\_management.jsp](http://www.opwdd.ny.gov/wt/manuals/part624/incident_management.jsp)

## **APPENDIX 14--Access to Mental Hygiene Records in New York State Brochure**

This information can be found at the following link:

<http://cqc.ny.gov/media-publications/brochures>

## **APPENDIX 15--Willowbrook Reference Material**

This information can be found at the following links:

[http://www.opwdd.ny.gov/willowbrook/hp\\_willowbrook\\_incidentmanagement.jsp](http://www.opwdd.ny.gov/willowbrook/hp_willowbrook_incidentmanagement.jsp)

# **APPENDIX 16--Administrative Appeal Process for Denial of Records**

This information can be found at the following links:

<http://www.opwdd.ny.gov/wt/memoranda/index.jsp>

# **APPENDIX 17--Dating of Bruises Memorandum**

**To:** DDSO Directors  
Chief Executive Officers

**From:** Barbara Brundage *BB*  
Director of Regulatory Affairs  
Chair of Statewide Committee on Incident Review

Kathleen Keating, RN, MSN, CPNP-PC, CNS/DD  
Director of Nursing and Health Services

**Date:** September 9, 2010

**Re:** Re-issuance of *Dating of Bruises* memo (originally issued March 28, 2007)

Physicians and nurses are frequently requested to “date a bruise” for the purpose of an investigation. Bruises are dated visually, by looking at the color of the bruise using the naked eye. This method is subjective because it is based on the person who is making the determination’s experience and knowledge. Charts indicating the date of bruises according to their color are unreliable. Many of these bruising charts arose from anecdotal evidence and are often at variance with each other (*Contemporary Pediatrics* Nov 2003).

Numerous studies on the dating of bruises report that any color could be present in fresh, intermediate and old bruises. International studies show that forensic pathologists on average date one out of every two bruises incorrectly, and that the error margin for the date can be one week or more (*Archives of Disease in Childhood*, 2005).

Two studies have been performed comparing colors and known age of bruising. The first of these by Langlois and Gresham studied eighty-nine adults and photographs of bruises of known ages were obtained. The second by Stephenson and Bialas studied twenty-three children having traumatic injuries. The following conclusions were made by these authors:

- Red is not a good indicator for acute bruising and may appear at any time during the evolution of a bruise.
- Blue and black cannot be used to estimate time of aging.
- Yellow, which has been classically considered a late color, may occur as early as one day.
- Green may occur as early as two days.
- Bruises of identical age and cause on the same person may not appear as the same color and do not change at the same rate.

The rate of color change is influenced by a number of variables including the size of the bruise, the depth of the tissue affected, the age of the person, the person's ethnic origin, the force of the impact, the location of the bruise, the vascularity of the area, as well as any acute and/or chronic medical conditions and medications. Bruises sustained at the same time in different types of tissue can look quite different and will "age" in different patterns. Estimating injury age by the color of bruising is not scientific and the use of standard color chart tables can result in inaccurate conclusions (State of Alabama Department of Forensic Science, 2006).

**Given the preponderance of evidence, it is the conclusion of the Statewide Standing Committee on Incident Review (SCIR) that all providers should refrain from "dating a bruise" for the purpose of an investigation.**

If you have any questions, please contact SCIR by email at [opwdd.scir@opwdd.ny.gov](mailto:opwdd.scir@opwdd.ny.gov).

cc: SCIR membership

Ref: 9-5-10

# **APPENDIX 18--Requesting Autopsy Reports Memorandum**

**To:** DDSO Directors  
Executive Directors, Voluntary Agencies

**From:** Fred Wetzel, Ph.D.  
Barbara Brundage  
Co-chairs of OPWDD Statewide Committee on Incident Review (SCIR)

**Date:** July 22, 2010

**Re:** Requesting Autopsy Reports

**Suggested Distribution:**

DDSO Incident Coordinators  
Quality Assurance Directors

**Purpose:**

An autopsy report includes information that may be useful to agencies when investigating a death of an individual. However, agencies may encounter difficulties obtaining an autopsy report. The purpose of this memorandum is to inform agencies that New York State law requires that a coroner, coroner's physician or medical examiner provide copies of autopsy reports to the Executive Director (or designee) upon written request. The requested reports are those that concern individuals who were residents of facilities certified by OPWDD. It is not necessary for the DDSO to act as an intermediary for such requests.

**New York State Law**

New York County Law Section 677 (7) (a) states:

*“Upon the written request of the commissioner of mental health, the commissioner of mental retardation and developmental disabilities, the director of the mental hygiene legal service, the chairman of the commission on quality of care for the mentally disabled or the director of a mental hygiene facility, as defined in section 45.01 of the mental hygiene law, at which the deceased was a patient or resident, the coroner, coroner's physician or medical examiner shall provide such person with a copy of all reports and records, including, but not limited to, autopsy reports and toxicological reports related to the deceased prepared by a person, partnership, corporation or governmental agency pursuant to any agreement or contract with the coroner or medical examiner with respect to the death of a patient or resident receiving services for a mental disability at such a mental hygiene facility.”*

We help people with developmental disabilities live richer lives.

Memo: Requesting Autopsy Reports

July 22, 2010

Page 2

Please contact SCIR with any questions related to this guidance via email at [omrdd.scir@opwdd.ny.gov](mailto:omrdd.scir@opwdd.ny.gov).

Thank you.

cc: SCIR membership

Ref: 7-5-10

# **APPENDIX 19--Medical/Immobilization Protective Stabilization (MIPS) Memorandum**

This information can be found at the following link:

[http://www.opwdd.ny.gov/health/hp\\_health\\_nursing.jsp](http://www.opwdd.ny.gov/health/hp_health_nursing.jsp)