



# Putting People First

## Memorandum

**To:** Provider Associations  
Voluntary Provider Agency Executive Directors  
DDSO Directors  
IBR Director  
Commissioner's Advisory Council  
DDPC Consumer Caucus  
OPWDD Required Regulations Mailing List

**From:** Barbara Brundage  
Leslie Fuld  
Co-Chairs of the OPWDD Statewide Committee on Incident Review

**Date:** June 13, 2012

**Re:** Reporting Suspected Theft of Personal Property and/or Financial Exploitation

**Effective: July 15, 2012**

**Suggested distribution:**

- Agency administrators
- Agency quality/compliance administrators
- Agency incident coordinators
- Agency financial officers

**Background:**

OPWDD recognizes that any loss from theft or financial exploitation, regardless of the item's value, could be a significant loss to an individual receiving services and could have significant negative consequences, both materially and emotionally. Existing OPWDD regulations in 14 NYCRR Part 624 do not specifically include theft or financial exploitation among the definitions of reportable incidents, serious reportable incidents or allegations of abuse. Currently, OPWDD guidance in the Part 624 Handbook suggests that crimes committed against a person which do not meet other definitions (such as thefts) could be reported as an incident in the category of "Sensitive Situation," and many agencies have policies to this effect. Further, some instances of thefts and financial exploitation do meet the definitions of some of the categories of incidents/abuse in Part 624 regulations.

In addition, regulations in subparagraph 633.7(a)(2)(v) of 14 NYCRR prohibit personal financial transactions between employees, volunteers or family care providers and individuals receiving services which may be construed as exploitation of that individual or result in greater benefit to the employee, volunteer or family care provider than to the individual. However, the regulations do not require that these situations be classified as an incident, should they occur.

Because of the lack of a requirement that all thefts and financial exploitation be reported as an incident, the response to thefts and financial exploitation against individuals receiving services throughout the OPWDD system has been inconsistent.

*(Note: The term "individuals" as used in this document refers to individuals receiving services.)*

**Purpose:**

In order to ensure that all instances of theft and financial exploitation against individuals receiving services are reported and investigated consistently throughout the OPWDD system, all instances of suspected theft of an individual's personal property (including personal funds and other personal belongings) and financial exploitation of an individual receiving services must be reported as either an occurrence (also referred to as an agency reportable incident, notable event, etc.), a reportable incident, a serious reportable incident or an allegation of abuse in accordance with Part 624 regulations and this directive.

Theft of an individual's personal property and financial exploitation of an individual must be reported as a "Sensitive Situation," (either as a serious reportable incident or reportable incident) or as an occurrence. In addition, theft of an individual's personal property and financial exploitation of an individual, that is suspected to have been committed by another individual receiving services, would also be reported as a "Possible Criminal Act" (if appropriate), using the same master incident number in OPWDD's Incident Report and Management Application (IRMA).

This requirement is applicable for instances of theft or financial exploitation which occur or are discovered on or after July 15, 2012.

- Any suspected theft or financial exploitation that meets the following criteria must be reported as a serious reportable incident:
  - The theft is more than \$100.00; or
  - The theft is of a debit, credit, or public benefit card, regardless of any specific amount involved; or
  - A pattern of theft is evident.
- Any suspected theft or financial exploitation that is more than \$15.00 and less than or equal to \$100.00 in value, that does not involve a debit, credit, or benefit card, and that is an isolated occurrence, must be reported as a reportable incident.
- Any suspected theft or financial exploitation that is less than or equal to \$15.00 in value, that does not involve a debit, credit, or benefit card, and that is an isolated occurrence, must be reported as an occurrence.

*Requirement for reporting to OPWDD:*

Sections 13.21(b) and 16.13(b) of the New York State Mental Hygiene Law require that agencies notify law enforcement officials if it appears that a crime may have been committed against an individual who receives services from the agency. In accordance with the Mental Hygiene Law and as noted in the *OPWDD Protocol for Reporting Potential Crimes to Law Enforcement* (August 18, 2011), potential crimes against individuals receiving services must be reported to law enforcement. This includes suspected theft of an individual's personal property and/or financial exploitation.

Section 16.13 of the Mental Hygiene Law also requires agencies to notify the Commissioner of OPWDD if it appears that a crime may have been committed against an individual receiving services. OPWDD recognizes that incidents that do not rise to the level of a serious reportable incident or allegation of abuse are currently not required to be reported to OPWDD through the Part 624 process. However, in order to facilitate compliance with this statutory requirement, on and after July 15, 2012, agencies are directed to report all instances of suspected theft and financial exploitation that meet the criteria for an occurrence or reportable incident to OPWDD by entering information about the event into IRMA within 48 hours of occurrence or discovery or by close of the next working day, whichever is later. Pursuant to previous OPWDD directives and Part 624 regulations, agencies are already required to enter information about serious reportable incidents and allegations of abuse, including those that concern thefts or financial exploitation, within 24 hours or by close of the next working day, whichever is later.

*Loss of personal allowance funds:*

Agencies are reminded of the existing OPWDD regulation in 14 NYCRR Section 633.15(h)(4)(iv) pertaining to the management of personal allowance funds, which requires the following:

*The agency/sponsoring agency is responsible in all instances for any loss of cash maintained at the residence or at the non-residential program until the cash is properly disbursed to the person.*

If you have any questions about the information contained in this memorandum, please contact OPWDD's Incident Management Unit at [incident.management@opwdd.ny.gov](mailto:incident.management@opwdd.ny.gov).

Thank you.

cc: SCIR Membership  
COLT