

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

Effective: Wednesday, December 25, 2013

AMENDMENTS TO 14 NYCRR PART 624

NOTE: *This is an unofficial version of 14 NYCRR Part 624 as amended by the emergency regulations effective December 25, 2013. This version replaces the previous unofficial versions of Part 624 that were prepared at the request of the field and were effective from June 30, 2013 through September 25, 2013 and September 26, 2013 through December 24, 2013. The unofficial version consists of the full text of Part 624 as it appears after the amendments are incorporated into the pre-existing text that has not changed.*

Please note that the changes to Parts 633 and 687 that were also part of the emergency regulation are NOT included in this version.

PART 624 REPORTABLE INCIDENTS AND NOTABLE OCCURRENCES

624.1 Applicability.

- (a) This Part is applicable to all facilities and programs that are operated, certified, sponsored, or funded by OPWDD for the provision of services to persons with developmental disabilities.

Note: Use of the term “agency” throughout the regulation refers to OPWDD Developmental Disabilities State Operations Offices (DDSOOs, see glossary, section 624.20) as well as other non-state agencies (see glossary, section 624.20) and sponsoring agencies (see glossary, section 624.20) that sponsor family care homes.

- (b) Intermediate Care Facilities (see Part 681 of this Title), including state operated developmental centers, must also comply with the requirements of 42 CFR 483. In some instances, these federal requirements are more stringent than the requirements of this Part.
- (c) The requirements of this Part apply to events and situations that are under the auspices (see glossary, section 624.20) of an agency. Note that requirements concerning events and situations that are not under the auspices of an agency are set forth in Part 625 of this Title.
- (d) The requirements of Part 624 as revised effective June 30, 2013 are applicable to incidents that occur on and after June 30, 2013. Incidents that occurred prior to June 30, 2013 are subject to the

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requirements of Part 624 that were in effect at the time the incidents occurred. Exceptions are the timeframe for completion of the investigation established by subparagraph 624.5(l) and the requirement for release of records in section 624.8.

624.2 Background and intent.

- (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, to protect them (to the extent possible) from harm, and to ensure that such persons are free from abuse and neglect.
- (b) A primary function of the reporting of certain events or situations is to enable a governing body (see glossary, section 624.20), 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 these events and situations can ensure that immediate steps are taken to protect persons receiving services from being exposed to the same or similar risk.
- (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.
- (d) It is the intent of this Part to require a process whereby those events or situations that endanger a person's wellbeing while under the auspices of an agency, which are defined in section 624.3 of this Part as "reportable incidents," and in section 624.4 as "notable occurrences," are reported, investigated, and reviewed, and protective, corrective, and remedial actions are taken as necessary.
- (e) It is not the intent of this Part to mandate that every potentially harmful event or situation attributable to or involving a person receiving services while under the auspices of an agency, such as an aggressive behavior problem (including the need for psychiatric services elsewhere), illness, medication problem, inappropriate living arrangements or conditions, or inappropriate social behavior, be recorded as a reportable incident or notable occurrence in accordance with this Part. It shall be the responsibility of the agency to determine how events or situations involving persons receiving services that are under the auspices of the agency or sponsoring agency, other than reportable incidents and notable occurrences (as defined in sections 624.3 and 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, and 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.

Note: Custodians (see glossary) with regular and direct contact with persons receiving services are required to adhere to a code of conduct developed by the Justice Center in accordance with section 633.7 of this Title. Violations of the code of conduct do not necessarily meet the criteria in the definitions of reportable incidents and notable occurrences in sections 624.3 and 624.4 of this Part.

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- (f) 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 incident review committee and periodic attendance at that committee's meetings.
- (g) It is the intent of this Part to hold the governing body and the chief executive officer (see glossary, section 624.20) responsible for the management of incidents. However, the chief executive officer may designate staff members to assume specified responsibilities to facilitate the day to day process, and these designations shall be set forth in writing in agency policies and procedures and made known to all staff and others with a need to know.
- (h) Though failure on the part of an agency to provide appropriate services may not meet the definition of an incident or notable occurrence as defined in sections 624.3 or 624.4 of this Part, OPWDD has, pursuant to statute, the authority to investigate or cause the investigation of conduct, performance, and/or alleged neglect of duty.
- (i) 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.
- (j) Programs that are certified or operated by OPWDD are required to comply with relevant provisions of Article 20 of the Executive Law (Protection of People with Special Needs) and Article 11 of the Social Services Law (Protection of People with Special Needs), and to implement regulations promulgated by the Justice Center for the Protection of People with Special Needs (Justice Center).

624.3 Reportable incidents, defined.

- (a) Reportable incidents are events or situations that meet the definitions in subdivision (b) of this section and occur under the auspices (see glossary, section 624.20) of an agency.
- (b) Definitions of reportable incidents.
 - (1) *Physical abuse* shall mean conduct by a custodian (see glossary, section 624.20) intentionally (see glossary, section 624.20) or recklessly (see glossary, section 624.20) causing, by physical contact, physical injury (see glossary, section 624.20) or serious or protracted impairment of the physical, mental, or emotional condition of the individual receiving services, or causing the likelihood of such injury or impairment. Such conduct may include, but shall not be limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting, or the use of corporal punishment. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any party.

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- (2) *Sexual abuse* shall mean:
- (i) any conduct by a custodian that subjects a person receiving services to any offense defined in article 130 or section 255.25, 255.26, or 255.27 of the penal law, or any conduct or communication by such custodian that allows, permits, uses, or encourages a person receiving services to engage in any act described in articles 230 or 263 of the penal law; and/or
 - (ii) any sexual contact between an individual receiving services and a custodian of the program or facility which provides services to that individual whether or not the sexual contact would constitute a crime (see especially section 130.05(i) of the penal law). However, if the individual receiving services is married to the custodian the sexual contact shall not be considered sexual abuse. Further, for purposes of this subparagraph only, a person with a developmental disability who is or was receiving services and is also an employee or volunteer of an agency shall not be considered a custodian if he or she has sexual contact with another individual receiving services who is a consenting adult who has consented to such contact.
- (3) *Psychological Abuse* includes any verbal or nonverbal conduct that may cause significant emotional distress to an individual receiving services.
- (i) Examples include, but are not limited to, taunts, derogatory comments or ridicule, intimidation, threats, or the display of a weapon or other object that could reasonably be perceived by an individual receiving services as a means for infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury.
 - (ii) In order for a case of psychological abuse to be substantiated after it has been reported, the conduct must be shown to intentionally or recklessly cause, or be likely to cause, a substantial diminution of the emotional, social or behavioral development or condition of the individual receiving services. Evidence of such an effect must be supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor.
- (4) *Deliberate inappropriate use of restraints* shall mean the use of a restraint when the technique that is used, the amount of force that is used, or the situation in which the restraint is used is deliberately inconsistent with an individual's plan of services (e.g. individualized service plan (ISP) or a habilitation plan), or behavior support plan, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, except when the restraint is used as a reasonable emergency intervention to prevent imminent risk of harm to a person receiving services or to any other party. For purposes of this paragraph, a restraint shall include the use of any manual,

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pharmacological, or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body.

- (5) *Use of aversive conditioning* shall mean the application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change the behavior of a person receiving services. Aversive conditioning may include, but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, blindfolds, and the withholding of meals and the provision of substitute foods in an unpalatable form. The use of aversive conditioning is prohibited by OPWDD.
- (6) *Obstruction of reports of reportable incidents* shall mean conduct by a custodian that impedes the discovery, reporting, or investigation of the treatment of a service recipient by falsifying records related to the safety, treatment, or supervision of an individual receiving services; actively persuading a custodian or other mandated reporter (as defined in section 488 of the Social Services Law) from making a report of a reportable incident to the statewide vulnerable persons' central register (VPCR) or OPWDD with the intent to suppress the reporting of the investigation of such incident; intentionally making a false statement, or intentionally withholding material information during an investigation into such a report; intentional failure of a supervisor or manager to act upon such a report in accordance with OPWDD regulations, policies or procedures; or, for a custodian, failing to report a reportable incident upon discovery.
- (7) *Unlawful use or administration of a controlled substance* shall mean any administration by a custodian to a service recipient of a controlled substance as defined by article 33 of the public health law, without a prescription, or other medication not approved for any use by the federal food and drug administration. It also shall include a custodian unlawfully using or distributing a controlled substance as defined by article 33 of the public health law, at the workplace or while on duty.
- (8) *Neglect* shall mean any action, inaction, or lack of attention that breaches a custodian's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental, or emotional condition of a service recipient. Neglect shall include, but is not limited to:
 - (i) failure to provide proper supervision, including a lack of proper supervision that results in conduct between persons receiving services that would constitute abuse as described in paragraphs (1) through (7) of this subdivision if committed by a custodian;
 - (ii) failure to provide adequate food, clothing, shelter, or medical, dental, optometric or surgical care, consistent with Parts 633, 635, and 686, of this Title (and 42 CFR Part 483, applicable to Intermediate Care Facilities), and provided that the agency has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric, or surgical treatment have been sought and obtained from the appropriate parties; or

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- (iii) failure to provide access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction in accordance with the provisions of part one of article 65 of the education law and/or the individual's individualized education program.
- (9) *Significant incident* shall mean an incident, other than an incident of abuse or neglect, that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety, or welfare of a person receiving services, and shall include but shall not be limited to:
- (i) *conduct between persons receiving services that would constitute abuse* as described in paragraphs (1) through (7) of this subdivision if committed by a custodian, except sexual activity involving adults who are capable of consenting and consent to the activity; or
 - (ii) *conduct on the part of a custodian, that is inconsistent with the individual's plan of services*, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, and which impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare of an individual receiving services, including but not limited to:
 - (a) *seclusion*, which shall mean the placement of an individual receiving services in a room or area from which he or she cannot, or perceives that he or she cannot, leave at will except when such placement is specifically permitted by section 633.16 of this Title. Unless permitted by Section 633.16, the use of seclusion is prohibited.

Note: Section 633.16 of this Title (*Person-Centered Behavioral Intervention*) identifies a form of "exclusionary time out," which prevents egress from a time out room by a custodian's direct and continuous action, and requires constant visual and auditory monitoring. Use of exclusionary time out may be included in a formal behavior support plan and implemented in accordance with the conditions and limits set forth in paragraph 633.16(j)(3) of this Title. The use of exclusionary time out in the *absence* of an approved behavior support plan that incorporates the use of exclusionary time-out, or a failure to implement such a plan as designed, is considered to be "seclusion" and is prohibited.

- (b) *unauthorized use of time-out*, which (for the purposes of this clause only) shall mean the use of a procedure in which a person receiving services is removed from regular programming and isolated in a room or area for the convenience of a custodian, for disciplinary purposes, or as a substitute for programming;

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Note: For the purposes of this provision “unauthorized use of time out” includes any use of time out that is inconsistent with an individual's plan of services except as noted in clause (a) of this subparagraph.

- (c) except as provided for in paragraph (7) of this subdivision, the *administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription* or order issued for a service recipient by a licensed, qualified health care practitioner, and which has an adverse effect on an individual receiving services. For purposes of this clause, “adverse effect” shall mean the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the wellbeing of a person receiving services; and
- (d) *inappropriate use of restraints*, which shall mean the use of a restraint when the technique that is used, the amount of force that is used, or the situation in which the restraint is used is inconsistent with an individual’s plan of services (including a behavior support plan), generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies. For the purposes of this subdivision, a “restraint” shall include the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body; or
- (iii) *missing person* which shall mean the unexpected absence of an individual receiving services that based on the person's history and current condition exposes him or her to risk of injury; or
- (iv) *choking, with known risk* which shall mean partial or complete blockage of the upper airway by an inhaled or swallowed foreign body, including food, that leads to a partial or complete inability to breathe, involving an individual with a known risk for choking and a written directive addressing that risk; or
- (v) *self-abusive behavior, with injury*, which shall mean a self inflicted injury to an individual receiving services that requires medical care beyond first aid.

624.4 Notable occurrences, defined.

- (a) Notable occurrences are events or situations that meet the definitions in subdivision (c) of this section and occur under the auspices of an agency.
- (b) Notable occurrences shall not include events and situations that meet the definition of a reportable incident in section 624.3 of this Part even if the event or situation otherwise meets the definitions of one of the categories in subdivision (c) of this section. An exception is that deaths that also meet the definition of a reportable incident shall be reported both as the reportable incident and as a notable occurrence.

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(c) Minor and serious notable occurrences are defined and categorized as follows:

(1) *Injury.*

(i) *Minor notable occurrence.* Any suspected or confirmed harm, hurt, or damage to an individual receiving services, caused by an act of that individual or another, whether or not by accident, and whether or not the cause can be identified, that results in an individual requiring medical or dental treatment (see glossary, section 624.20) by a physician, dentist, physician's assistant, or nurse practitioner, and such treatment is more than first aid. Illness in itself shall not be reported as an injury or any other type of incident or occurrence.

(ii) *Serious notable occurrence.* Any injury that results in the admission of a person to a hospital for treatment or observation because of injury.

Note: In accordance with subparagraph 624.3(b)(9)(v) of this Part, an injury due to self-injurious behavior that requires medical care beyond first aid is a “reportable incident.”

(2) *Unauthorized absence.* The unexpected or unauthorized absence of a person after formal search procedures (see glossary, section 624.20) have been initiated by the agency. Reasoned judgments, taking into consideration the person's habits, deficits, capabilities, health problems, etc., shall determine when formal search procedures need to be implemented. It is required that formal search procedures must be initiated immediately upon discovery of an absence involving a person whose absence constitutes a recognized potential danger to the wellbeing of the person or others. Any unauthorized absence event is considered a serious notable occurrence.

Note: In accordance with subparagraph 624.3(b)(9)(iii) of this Part, an unauthorized absence that results in exposure to risk of injury to the person receiving services is a “reportable” missing person incident.

(3) *Death.* The death of any person receiving services, regardless of the cause of death, is a serious notable occurrence. This includes all deaths of individuals who live in residential facilities operated or certified by OPWDD and other deaths that occur under the auspices of an agency.

(4) *Choking, with no known risk.* For the purposes of this paragraph, partial or complete blockage of the upper airway by an inhaled or swallowed foreign body, including food, that leads to a partial or complete inability to breathe, other than a “reportable” choking, with known risk, incident (see subparagraph 624.3(b)(9)(iv) of this Part), involving an individual with a known risk for choking and a written directive addressing that risk. Any choking with no known risk event is considered a serious notable occurrence.

(5) *Theft and financial exploitation.*

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- (i) *Minor notable occurrence.* Any suspected theft of a service recipient's personal property (including personal funds or belongings) or financial exploitation, involving values of more than \$15.00 and less than or equal to \$100.00, that does not involve a credit, debit, or public benefit card, and that is an isolated event.
 - (ii) *Serious notable occurrence.* Any suspected theft of a service recipient's personal property (including personal funds or belongings) or financial exploitation, involving a value of more than \$100.00; theft involving a service recipient's credit, debit, or public benefit card (regardless of the amount involved); or a pattern of theft or financial exploitation involving the property of one or more individuals receiving services.
- (6) *Sensitive situations.* Those situations involving a person receiving services that do not meet the criteria of the definitions in paragraphs (1) – (5) of this subdivision or the definitions of reportable incidents as defined in section 624.3 of this Part, that may be of a delicate nature to the agency, and are reported to ensure awareness of the circumstances. Sensitive situations shall be defined in agency policies and procedures, and shall include, but not be limited to, possible criminal acts committed by an individual receiving services. Sensitive situations are serious notable occurrences.
- (7) *ICF Violations.* Events and situations concerning residents of Intermediate Care Facilities (ICFs) that are identified as violations in federal regulation applicable to ICFs and do not meet the definitions of reportable incidents as specified in section 624.3 of this Part or other notable occurrences as specified in this section. ICF violations are serious notable occurrences.

624.5 Reporting, recording and investigation.

- (a) *Policies and Procedures.*
- (1) Every agency shall develop policies and procedures that are in conformance with this Part to address:
 - (i) reporting, recording, investigation, review, and monitoring of reportable incidents and notable occurrences;
 - (ii) identification of reporting responsibilities of employees, interns, volunteers, consultants, contractors, and family care providers; and
 - (iii) providing notice to all employees which states that:
 - (a) all reportable incidents, including reports of abuse and neglect, shall be investigated; and

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- (b) if an employee leaves employment prior to the conclusion of a pending investigation, the investigation shall continue until it is completed and (for reports of abuse and neglect) a finding is made of substantiated or unsubstantiated.
- (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.
- (3) *Notification of policies and procedures.*
 - (i) Upon commencement of service provision, and annually thereafter, an agency shall offer to make available written information, developed by OPWDD in collaboration with the Justice Center for the Protection of People with Special Needs (Justice Center), and a copy of the agency's policies and procedures, to persons receiving services who have the capacity to understand the information and to their parents, guardians, correspondents (see glossary, section 624.20) or advocates (see glossary, section 624.20), unless a person is a capable adult who objects to their notification. The agency shall also offer to make available a copy of OPWDD's Part 624 regulations. In order to satisfy this requirement the agency shall:
 - (a) provide instructions on how to access such information in electronic format and;
 - (b) upon written request, provide paper copies of such information.
 - (ii) Upon employment or initial volunteer, contract, or sponsorship arrangements, and annually thereafter, an agency shall make the agency's policies and procedures on incident management known to agency employees, interns, volunteers, consultants, contractors, and family care providers. For parties who are required to be trained, this information shall be provided in conjunction with training conducted in accordance with section 633.8 of this Title.
 - (iii) In accordance with section 633.7 of this Title, custodians with regular and direct contact in facilities and programs operated or certified by OPWDD shall be provided with the code of conduct adopted by the Justice Center.
- (b) *General reporting requirements.*
 - (1) All agency employees, interns, volunteers, consultants, contractors, and family care providers are required to report any event or situation that meets the criteria of a reportable incident or notable occurrence as defined in this Part. Custodians of programs and facilities certified or operated by OPWDD are mandated reporters and are also required to report reportable incidents pursuant to section 491 of the Social Services Law. Reports shall be made in accordance with agency policies/procedures.

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- (2) Internal agency reporting.
 - (i) All minor notable occurrences, as defined in section 624.4 of this Part, shall be reported to the agency's chief executive officer (or designee) within 48 hours upon occurrence or discovery.
 - (ii) All reportable incidents, as defined in section 624.3 of this Part, and serious notable occurrences, as defined in section 624.4 of this Part, shall be reported to the agency's chief executive officer (or designee) immediately upon occurrence or discovery.
- (3) Immediate reporting to OPWDD. All reportable incidents and serious notable occurrences shall be reported immediately to OPWDD in the manner specified by OPWDD. Immediate entry of initial information into the OPWDD Incident Report and Management Application (IRMA) shall not be sufficient to satisfy this requirement.
- (c) *Reporting of reportable incidents to the Vulnerable Persons' Central Register (VPCR).*
 - (1) Facilities and programs that are operated or certified by OPWDD shall report all reportable incidents to the VPCR.
 - (i) Non-certified programs that are not state operated are not required to report to the VPCR.
 - (ii) Only reportable incidents are required to be reported to the VPCR (not notable occurrences).
 - (2) All custodians (see glossary, section 624.20) in programs or facilities operated or certified by OPWDD are "mandated reporters" and are required to report reportable incidents to the VPCR.
 - (3) All custodians in programs or facilities operated or certified by OPWDD shall submit reports of reportable incidents to the VPCR immediately upon discovery of the reportable incident.
 - (i) For purposes of this Part, "discovery" occurs when the mandated reporter witnesses a suspected reportable incident or when another party, including an individual receiving services, comes before the mandated reporter in the mandated reporter's professional or official capacity and provides the mandated reporter with reasonable cause to suspect that the individual has been subjected to a reportable incident.

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- (ii) Reports shall be submitted by a statewide, toll-free telephone number (a “hotline”) or by electronic transmission, in a manner and on forms prescribed by the Justice Center.
 - (iii) A report to the VPCR shall include the name, title, and contact information of every person known to the mandated reporter to have the same information as the mandated reporter concerning the reportable incident.
 - (iv) Mandated reporters shall have the rights and responsibilities established by section 491 of the social services law.
 - (v) Pursuant to section 491 of the social services law, the obligation of mandated reporters to report reportable incidents to the VPCR is not limited to reportable incidents occurring at the agency with which the mandated reporter is associated. If the mandated reporter becomes aware that an individual has been subjected to a reportable incident at a different facility or program subject to the requirements of Article 11 of the social services law, the mandated reporter is also required to report the incident to the VPCR. Facilities and programs subject to Article 11 include but are not limited to facilities and programs certified or operated by OPWDD, facilities under the oversight of the Office of Mental Health (OMH), specified residential schools (e.g. “853 schools” and “4201” schools), and summer camp.
- (d) *Reporting deaths.*
- (1) In accordance with New York State Law and guidance issued by the Justice Center, the death of any individual who had received services operated or certified by OPWDD, within thirty days preceding his or her death, shall be reported to the Justice Center. This reporting is required regardless of whether the death did or did not occur under the auspices of an agency. Specifics of the reporting requirement are as follows:
 - (i) The initial report shall be submitted, by the agency's chief executive officer or designee, through a statewide, toll-free telephone number, in a manner specified by the Justice Center.
 - (ii) The initial report shall be submitted immediately upon discovery and in no case more than twenty-four hours after discovery.
 - (iii) Subsequent information shall be submitted to the Justice Center, in a manner and on forms specified by the Justice Center, within five working days of discovery of the death.
 - (iv) The results of an autopsy, if performed and if available to the agency, shall be submitted to the Justice Center, in a manner specified by the Justice Center, within

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sixty working days of discovery of the death. (The Justice Center may extend the timeframe for good cause.)

- (2) All deaths that are reported to the Justice Center shall also be reported to OPWDD.
 - (i) A death that occurred under the auspices of an agency (see paragraph (4) of this subdivision) shall be reported as a serious notable occurrence in accordance with this Part (see also paragraph (3) of this subdivision).
 - (ii) A death that did not occur under the auspices of an agency (e.g., the death of a person who received certified day habilitation services, but died at his or her private home of causes not associated with the day services) shall be reported in accordance with Part 625 of this Title.
- (3) The death of any individual who had received services certified, operated, or funded by OPWDD, and the death occurred under the auspices of the agency (see paragraph (4) of this subdivision), shall be classified as a serious notable occurrence, and reported and managed as such, in accordance with the requirements of this Part.
- (4) A death is considered to have occurred under the auspices of an agency if:
 - (i) the individual was living in a residential facility operated or certified by OPWDD, including a family care home (but excluding free standing respite facilities), at the time of his or her death, or if the death occurred up to thirty days after the individual was discharged from the residential facility (unless the person was admitted to a different residential facility in the OPWDD system in the meantime);
 - (ii) the individual's death occurred during a stay at an OPWDD certified or operated free standing respite facility or was caused by a reportable incident or notable occurrence, defined in sections 624.3 and 624.4 of this Part, that occurred at the facility within thirty days of discovery of the death; or
 - (iii) the individual had received non-residential services operated, certified, or funded by OPWDD, and
 - (a) the death occurred while the individual was receiving services; or
 - (b) the death was caused by a reportable incident or notable occurrence, defined in sections 624.3 and 624.4 of this Part, that occurred during the provision of services within thirty days of discovery of the death.
- (5) If more than one agency provided services to the individual, there shall be one responsible agency that is designated to report the death of the individual to the Justice Center and/or OPWDD. The agency responsible for reporting in accordance with this paragraph shall be the provider of the services to the individual (or sponsoring agency) in the order stated:

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- (i) OPWDD certified or operated residential facility, including a family care home, but not a free-standing respite facility;
 - (ii) OPWDD certified or operated free standing respite facility, if the death occurred during the individual's stay at the facility, or was caused by a reportable incident or notable occurrence defined in sections 624.3 and 624.4 of this Part, that occurred during a stay at the facility within thirty days of discovery of the death;
 - (iii) OPWDD certified or operated day program (if the individual received services from more than one certified day program, the responsible agency shall be the agency that provided the greater duration of service on a regular basis);
 - (iv) MSC or PCSS (only OPWDD operated services report to the Justice Center);
 - (v) HCBS Waiver services (only OPWDD operated services report to the Justice Center);
 - (vi) Care at Home Waiver services (only OPWDD operated services report to the Justice Center);
 - (vii) Article 16 clinic services;
 - (viii) FSS or ISS (only OPWDD operated services report to the Justice Center);
 - (ix) Any other service operated by OPWDD.
 - (x) Notwithstanding any other requirement in this paragraph, there may be circumstances in which the death of an individual who resided at a certified residential facility, was staying at a certified free-standing respite facility, or attended a certified day program was caused by a reportable incident or notable occurrence that occurred under the auspices of another OPWDD certified, operated, or funded program or service within thirty days of discovery of the death; under these circumstances the provider of services where the incident or occurrence happened shall be responsible for reporting the death to the Justice Center (as applicable) and/or to OPWDD .
- (e) *Reporting to OPWDD - Required Reporting Formats.*
- (1) Reporting using the OPWDD Incident Report and Management Application (IRMA; see glossary, section 624.20).
 - (i) Information shall be entered into IRMA for the following:
 - (a) reportable incidents; and

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- (b) serious notable occurrences.
- (ii) Reporting initial information in IRMA.
 - (a) Initial information is information about the incident or occurrence that is required to create a new incident report in IRMA and any other information available at the time when information is first entered into IRMA.
 - (b) When a report of a reportable incident or a serious notable occurrence is made to the VPCR:
 - (1) initial information is automatically entered into IRMA; however,
 - (2) agencies are required to review the information within 24 hours of occurrence or discovery of the incident or by close of the next working day, whichever is later, and to report missing or discrepant information to OPWDD.
 - (c) When a report of a reportable incident or a serious notable occurrence is not made to the VPCR, initial information shall be entered into IRMA within 24 hours of occurrence or discovery or by close of the next working day, whichever is later.
- (iii) Reporting subsequent information in IRMA.
 - (a) Subsequent information is information concerning the incident or occurrence that is not included in the initial information entered in IRMA. This includes, but is not limited to, information about required notifications that was not reported as part of the initial information and any updates to information related to deaths (e.g. autopsy reports).
 - (b) Subsequent information shall be entered by the close of the fifth working day after the action is taken or the information becomes available, except as follows:
 - (1) Subsequent information about immediate protections shall be entered into IRMA within 24 hours after the action is taken or by the close of the next working day, whichever is later.
 - (2) Subsequent information about a death shall be entered in IRMA within five working days of the discovery of the death, in the manner and form specified by OPWDD.

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- (3) If another provision of this Part identifies a different timeframe for the entry of specific information, agencies must comply with that timeframe requirement instead. Specific timeframes are identified in provisions concerning:
 - (i) reporting updates (see subdivision (k) of this section);
 - (ii) notification of law enforcement officials (see section 624.6); and
 - (iii) minutes of incident review committee (IRC) meetings (see section 624.7).
 - (4) Agencies are not required to enter information about investigatory activities into IRMA until the investigative report is completed.
 - (c) Agencies shall comply with all requests by OPWDD for the entry of specific subsequent information.
- (2) Written initial incident/occurrence report.
 - (i) Minor notable occurrences. Agencies may enter information about minor notable occurrences into IRMA in lieu of completing a written initial incident/occurrence report. Within 48 hours of occurrence or discovery or by close of the next working day, whichever is later, the agency shall either:
 - (a) complete a written initial incident/occurrence report in the form and format specified by OPWDD; or
 - (b) enter initial information into IRMA.
 - (ii) To comply with any requirement that the agency send or disclose a copy of the written initial incident/occurrence report (e.g. in section 624.6 of this Part), the agency shall send or disclose either:
 - (a) a copy of the written initial incident/occurrence report completed by the agency pursuant to this paragraph (if one was completed; with redaction if required); or
 - (b) a written initial incident/occurrence report printed from IRMA (with redaction if required).

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(f) *Immediate protections.*

- (1) A person's safety must always be the primary concern of the chief executive officer (or designee). He or she shall take necessary and reasonable steps to ensure that a person receiving services who has been harmed receives any necessary treatment or care and, to the extent possible, take reasonable and prudent measures to immediately protect individuals receiving services from harm and abuse.
- (2) When appropriate, an employee, intern, volunteer, consultant, or contractor alleged to have abused or neglected a person shall be removed from direct contact with, or responsibility for, all persons receiving services from the agency.
- (3) When appropriate, an individual receiving services shall be removed from a facility when it is determined that there is a risk to such individual if he or she continues to remain in the facility.

(g) *General investigation requirements.*

- (1) Any report of a reportable incident or notable occurrence (both serious and minor) shall be thoroughly investigated by the chief executive officer or an investigator designated by the chief executive officer, unless OPWDD or the Justice Center advises the chief executive officer that the incident or occurrence will be investigated by OPWDD or the Justice Center and specifically relieves the agency of the obligation to investigate (see subdivision (h) of this section).
- (2) Investigations of all reportable incidents and notable occurrences shall be initiated immediately, with further investigation undertaken commensurate with the seriousness and circumstances of the situation.
 - (i) The agency shall commence an investigation immediately even when it anticipates that the Justice Center or Central Office of OPWDD will assume the responsibility for the investigation. However, if the agency can reasonably anticipate that the Justice Center or the Central Office of OPWDD is likely to investigate the incident, the actions taken by the agency are restricted to:
 - (a) securing and/or documenting (e.g. photographing) the scene as appropriate;
 - (b) collecting and securing physical evidence;
 - (c) taking preliminary statements from witnesses and involved parties; and
 - (d) performing such other actions as specified by the Justice Center or OPWDD.

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- (ii) In the event that law enforcement directs that the agency forgo any of the actions specified in subparagraph (i) of this paragraph, the agency shall comply with such direction.
 - (iii) The agency is responsible for monitoring IRMA to ascertain whether the Justice Center, the Central Office of OPWDD, or the agency is responsible for the investigation.
 - (iv) If the Justice Center or the Central Office of OPWDD is responsible for the investigation, the agency shall fully cooperate with the assigned investigator but shall not conduct an independent investigation.
 - (v) Notwithstanding any other provision in this subdivision, Intermediate Care Facilities shall take steps as needed to comply with federal requirements for the completion of investigations within specified timeframes, including assuming the responsibility for conducting the investigation if necessary.
- (3) Investigations conducted by agencies or the Central Office of OPWDD shall incorporate the following:
- (i) If a person is physically injured, an appropriate medical examination of the injured person shall be obtained. The name of the examiner shall be recorded and his or her written findings shall be retained.
 - (ii) Witnesses to the incident or occurrence shall be identified and shall be interviewed in as private an environment as possible.
 - (iii) Interviews should be conducted separately by qualified, objective parties. Interviews of individuals receiving services should be conducted by parties with an understanding of the persons' unique needs and/or capabilities.
 - (iv) Pertinent information shall be reviewed (e.g., records, photos, observations of incident scene, expert assessments).
 - (v) Physical evidence, if any, shall be identified and appropriate steps shall be taken to safeguard and preserve physical evidence.
- (4) An agency may become aware of additional information concerning an incident that may warrant its reclassification.
- (i) If the incident was classified as a reportable incident by the VPCR, or the additional information may warrant its classification as a reportable incident, a program certified or operated by OPWDD shall report the additional information to the VPCR. At its discretion, the VPCR may reclassify the incident based on the additional information.

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- (ii) In other cases (e.g. incidents in non-certified programs which are not operated by OPWDD), the agency shall determine whether the incident is to be reclassified and shall report any reclassification in IRMA.
 - (iii) In the event that the incident is reclassified, the agency shall make all additional reports and notifications that may be warranted by the reclassification.
- (5) When an agency is responsible for the investigation, the investigation shall be documented. Such documentation shall include an investigative report.
- (i) For all reportable incidents and notable occurrences, investigative reports shall be in the form and format specified by OPWDD or in a similar format approved by the Central Office of OPWDD. At a minimum, the report shall contain the following information:
 - (a) identifying data, such as the name(s) of person(s) receiving services involved in the incident or occurrence; the date the incident/occurrence was reported and/or discovered; the classification of the incident; and the incident/occurrence number. For incidents/occurrences entered into IRMA, this includes the master incident number assigned by IRMA;
 - (b) a description of the incident or notable occurrence;
 - (c) immediate protections provided to person(s) receiving services;
 - (d) investigatory question(s);
 - (e) a description of the investigative process and specific evidence obtained;
 - (f) a summary of the evidence obtained in the investigation;
 - (g) conclusions, including the findings (see subdivision (i) of this section) in the case of a report of abuse or neglect; and
 - (h) recommendations, including recommendations for remedial actions.
 - (ii) For reportable incidents and serious notable occurrences, the full text of the investigative report shall be entered into IRMA pursuant to subparagraph 624.5(e)(1)(iii). (Note: In the event that the Central Office of OPWDD conducts an investigation of an incident or notable occurrence, the Central Office of OPWDD will enter the investigative report into IRMA.)

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- (6) The investigation shall continue through completion regardless of whether an employee or other custodian who is directly involved leaves employment (or contact with individuals receiving services) before the investigation is complete.
- (7) An agency shall maintain the confidentiality of information regarding the identities of reporters, witnesses, and subjects of reportable incidents and notable occurrences, and limit access to such information to parties who need to know, including, but not limited to, personnel administrators and assigned investigators.
- (8) Restrictions on situations that may compromise the independence of investigators.
 - (i) Any party who has been assigned to investigate a reportable incident, or notable occurrence in which he or she recognizes a potential conflict of interest in the assignment, shall report this information to the agency. The agency shall relieve the assigned investigator of the duty to investigate if it is determined that there is a conflict of interest in the assignment.
 - (ii) No one may conduct an investigation of any reportable incident or serious notable occurrence in which he or she was directly involved, in which his or her testimony is incorporated, or in which a spouse, domestic partner, or immediate family member was directly involved.
 - (iii) No one may conduct an investigation in which his or her spouse, domestic partner, or immediate family member provides supervision to the program where the incident took place or provides supervision to directly involved parties.
 - (iv) Members of an incident review committee (IRC) shall not routinely be assigned the responsibility of investigating incidents or occurrences. In the event that an IRC member conducts an investigation of an incident or occurrence, the agency shall comply with subparagraph 624.7(d)(7)(ii).
 - (v) For reportable incidents and serious notable occurrences:
 - (a) The agency shall assign an investigator whose work function is at arm's length from staff who are directly involved in the reportable incident or serious notable occurrence. The requirements identified in clauses (b) and (c) of this subparagraph reflect the minimum expectation regarding independence concerning the investigator's work function.
 - (b) No party in the direct line of supervision of staff who are directly involved in the reportable incident or serious notable occurrence may conduct the investigation of such an incident or occurrence, except for the chief executive officer.

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- (c) Although the chief executive officer is in the direct line of supervision of all staff, the chief executive officer (not a designee) may conduct the investigation of a reportable incident or serious notable occurrence unless he or she is the immediate supervisor of any staff who are directly involved in the reportable incident or serious notable occurrence.
- (9) For reports of abuse or neglect in programs certified or operated by OPWDD, the agency conducting the investigation shall notify each subject of the report that an investigation is being conducted, unless notifying the subject of the report would impede the investigation.
 - (i) Such notification shall be made in the manner specified by the Justice Center.
 - (ii) Such notification or the reason a notification was not made shall be reported to OPWDD in the manner specified by OPWDD.
- (10) For reports of abuse or neglect in programs certified or operated by OPWDD, the agency conducting the investigation shall submit a request for a check of the Statewide Central Register of Child Abuse and Maltreatment (SCR) concerning each subject of the report.
 - (i) Such request shall be submitted to the Justice Center in the form and manner specified by the Justice Center as soon as the information required to make the request is known or discovered.
 - (ii) As a result of the check, the agency may receive information that one or more indicated reports exist concerning the subject of the report. If this occurs, the agency shall take appropriate steps to gather information contained in the report as specified by the Justice Center.
 - (iii) Information obtained pursuant to this paragraph shall be included in the investigation records submitted to OPWDD in accordance with subdivision (o) of this section.
- (h) *Review/investigation by OPWDD and the Justice Center.*
 - (1) OPWDD and the Justice Center have the right to review and/or investigate any reportable incident and/or notable occurrence regardless of the source of the information. All relevant records, reports, and/or minutes of meetings at which the incident or occurrence 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 or investigation.
 - (2) When an incident or occurrence is investigated or reviewed by OPWDD and OPWDD makes recommendations to the agency concerning any matter related to the incident or occurrence (except during survey activities), the agency shall either:

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- (i) implement each recommendation in a timely fashion and submit documentation of the implementation to OPWDD; or
 - (ii) in the event that the agency does not implement a particular recommendation, submit written justification to OPWDD, within a month after the recommendation is made, and identify the alternative means that will be undertaken to address the issue, or explain why no action is needed.
- (3) When the Justice Center makes findings concerning matters referred to its attention and the Justice Center issues a report and recommendations to the agency regarding such matters, the agency shall make a written response, within ninety days of receipt of such report, of action taken regarding each of the recommendations in the report.
- (4) In the event that OPWDD or the Justice Center conducts an investigation, the agency may be responsible to conduct some investigatory activities. In these instances, the agency must comply with pertinent requirements in subdivision (g) of this section. Note that when the Justice Center conducts the investigation, the Justice Center is not required to adhere to the requirements of such subdivision (g).
- (i) *Findings of reports of abuse or neglect.*
 - (1) For every report of abuse or neglect, a finding shall be made. The agency shall make the finding or, in the event that the Central Office of OPWDD or the Justice Center conducted the investigation, the Central Office of OPWDD or the Justice Center shall make the finding. A finding shall be based on a preponderance of the evidence and shall indicate whether:
 - (i) the report of abuse or neglect is *substantiated* because it is determined that the incident occurred and the subject of the report was responsible or, if no subject can be identified and an incident occurred, that the agency was responsible; or
 - (ii) the report of abuse or neglect is *unsubstantiated* because it is determined not to have occurred or the subject of the report was not responsible, or because it cannot be determined that the incident occurred or that the subject of the report was responsible.
 - (2) Concurrent finding. In conjunction with the possible findings identified in paragraph (1) of this subdivision, a concurrent finding may be made that a systemic problem caused or contributed to the occurrence of the incident.
- (j) *Plans for prevention and remediation for substantiated reports of abuse or neglect.*
 - (1) Within 10 days of the completion of the investigation, if the report of abuse or neglect has been substantiated, the agency shall develop and implement a plan of prevention and

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remediation to be taken to assure the continued health, safety, and welfare of individuals receiving services and to provide for the prevention of future acts of reportable incidents.

- (2) The plan shall include written endorsement by the CEO or designee.
 - (3) The plan shall specify by title agency staff who are responsible for monitoring the implementation of each remedial action identified and for assessing the efficacy of the remedial action.
 - (4) Such plan shall be entered into IRMA by the close of the fifth working day after the development of the plan (see subparagraph 624.5(e)(1)(iii)).
 - (5) OPWDD will inform the Justice Center about plans developed pursuant to this subdivision.
- (k) *Reporting updates.*
- (1) For reportable incidents and serious notable occurrences, agencies shall enter reporting updates into IRMA on at least a monthly basis or more frequently as requested by OPWDD, until closure of the incident or occurrence.
 - (2) Agencies shall complete required fields in IRMA for the reporting update. Among other required information, the reporting update shall include:
 - (i) a brief review of additions to the summary of evidence and specific investigatory actions taken since the last update was entered into IRMA, if any; and
 - (ii) if there have been no additions to the summary of evidence or investigatory actions taken since the last report, an explanation of why no progress has been made.
 - (3) If the agency is not responsible for conducting the investigation, the agency shall complete the required fields to the extent possible given information provided to the agency.
 - (4) Effective July 29, 2013, if the agency is responsible for conducting the investigation and if the investigation has not been completed within the timeframe specified in subdivision (l) of this section, the agency shall inform OPWDD of the reason for extending the timeframe of the investigation and shall continue to keep OPWDD informed on at least a monthly basis of the progress of the investigation and other actions taken.
- (l) *Timeframe for completion of the investigation.* Effective June 30, 2013, when the agency is responsible for the investigation of an incident or notable occurrence, such investigation shall be completed no later than 30 days after the incident or notable occurrence is reported to the Justice Center and/or OPWDD, or, in the case of a minor notable occurrence, no later than 30 days after completion of the written initial occurrence report or entry of initial information in IRMA. An investigation shall be considered complete upon completion of the investigative report.

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- (1) Investigations that were initiated for incidents that occurred before June 30, 2013 shall be completed no later than July 29, 2013. However, this does not apply to incidents that occurred before June 30, 2013 but were not discovered until on or after June 30, 2013.
 - (2) The agency may extend the timeframe for completion of a specific investigation beyond 30 days if there is adequate justification to do so. The agency shall document its justification for the extension. Circumstances that may justify an extension include (but are not limited to):
 - (i) whether a related investigation is being conducted by an outside entity (e.g. law enforcement) that has requested that the agency delay necessary investigatory actions; and
 - (ii) whether there are delays in obtaining necessary evidence that are beyond the control of the agency (e.g. an essential witness is temporarily unavailable to be interviewed and/or provide a written statement).
- (m) *Closure of an incident or occurrence.* An incident or occurrence shall be considered closed:
- (1) for incidents and occurrences that are not subject to VPCR oversight (i.e. notable occurrences or incidents/occurrences in programs that are not certified or operated by OPWDD):
 - (i) if the agency conducts the investigation, when the IRC has ascertained that no further investigation is necessary; or
 - (ii) if the investigation is conducted by the Central Office of OPWDD, when the Central Office of OPWDD notifies the agency of the results of the investigation; or
 - (2) for incidents that are subject to VPCR oversight (i.e. reportable incidents in programs certified or operated by OPWDD):
 - (i) if the agency conducts the investigation, when the Justice Center notifies the agency that it has accepted the results of the investigation; or
 - (ii) if the Central Office of OPWDD conducts the investigation, when the Justice Center notifies the agency that it has accepted the results of the investigation; or
 - (iii) if the Justice Center conducts the investigation, when the Justice Center notifies the agency that the incident is closed.
- (n) *Final reports to the Justice Center.*
- (1) Agencies shall submit a final report to OPWDD for all reportable incidents that were accepted by the VPCR.

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- (2) Final reports must be submitted in the manner, form, and format specified by the Justice Center.
 - (3) Final reports must be submitted within 50 days of the VPCR accepting a report of abuse or neglect, and within 60 days of the VPCR accepting a report of a significant incident.
 - (4) Notwithstanding the timeframes specified in paragraph (3) of this subdivision, the agency may take additional time to submit its final report provided, however, that the reasons for any delay must be for good cause and must be documented. The report must be submitted as soon thereafter as practicably possible.
 - (5) Notwithstanding the requirements in paragraphs (1) – (4) of this subdivision, in the event that the Justice Center or OPWDD conducts the investigation in lieu of the agency, the agency is not required to submit the final report to the Justice Center. In the event that OPWDD conducts the investigation, OPWDD will submit the final report to the Justice Center. However, agencies shall provide information as requested by the Justice Center or OPWDD as may be necessary for the completion of the final report.
- (o) *Submission of investigation records.* If an agency conducts the investigation of a report of abuse or neglect that was reported to the Justice Center, the agency shall submit the entirety of the investigation records to OPWDD in the manner and within the timeframe specified by OPWDD.
- (p) *Cooperation with the Justice Center.* In the event that the Justice Center requests additional information from the agency or OPWDD, in accordance with law or regulation, the agency or OPWDD shall provide such requested information in a timely manner.
- (q) *Duty to report events or situations under the auspices of another agency.*
- (1) If a reportable incident or notable occurrence is alleged to have occurred while a person was under the auspices of another agency (e.g., day habilitation staff allege that a situation occurred at a residence), the discovering agency shall document the situation and shall report the situation to the agency under whose auspices the event or situation occurred.
 - (2) Note that mandated reporters (e.g. custodians) are required to make reports to the VPCR pursuant to section 491 of the social services law. This means that mandated reporters at the discovering agency must report to the VPCR upon discovery of a reportable incident that occurred in another program or facility which is certified or operated by OPWDD.
 - (3) It shall be the responsibility of the agency under whose auspices the situation is alleged to have occurred to report, investigate, review, correct, and monitor the situation.

Note: Similarly, when a person receives two or more services from the same provider agency, and one program or service environment discovers an incident that is alleged to have occurred under the supervision of another program or service environment operated

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by the same agency, the discovering program/service environment must document the situation and report it to the program/service environment where the situation or event is alleged to have occurred. The program or service environment where the incident is alleged to have occurred is responsible for reporting and managing the incident, in accordance with this Part and agency policy.

- (4) If the agency suspecting or alleging the incident or occurrence is not satisfied that the situation will be or is being investigated or handled appropriately, it shall bring the situation to the attention of OPWDD.

(r) *Records and statistics.*

- (1) Record retention. Agencies shall retain records pertaining to incidents and occurrences as follows:

- (i) Records that must be retained include but are not limited to evidence and materials obtained or accessed during the investigative process, copies of all documents generated in accordance with requirements of this Part, and documentation regarding compliance with the requirements of this Part.
- (ii) Records shall be retained for a minimum period of seven years from the date that the incident or occurrence is closed (see subdivision (m) of this section). However, when there is a pending audit or litigation concerning an incident or occurrence, agencies shall retain the pertinent records during the pendency of the audit or litigation.

- (2) Records, reports, and documentation shall be retrievable by the person's name and filing number or identification code assigned by the agency. For incidents and occurrences that are reported in IRMA, such information shall be retrievable by the master incident number in IRMA.

- (3) When there is an incident or occurrence reported involving more than one person receiving services:

- (i) From a statistical point of view, the situation shall be considered as one event and shall be recorded as such.
- (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.

- (s) *Confidentiality of records.* All records generated in accordance with the requirements of this Part shall be kept confidential and shall not be disclosed except as otherwise authorized by law or

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regulation. Records of reportable incidents that are reported to the Justice Center are to be kept confidential pursuant to section 496 of the Social Services Law.

(t) *Retaliation.*

- (1) An agency shall not take any retaliatory action against an employee or agent who believes that he or she has reasonable cause to suspect that a person receiving services has been subjected to a reportable incident or notable occurrence, and the employee or agent makes a report to the VPCR and/or OPWDD in accordance with this section and/or if the employee or agent cooperates with the investigation of a report made to the VPCR or OPWDD.
- (2) Effective January 1, 2014, when an agency enters into a new contract or renews a contract for the provision of services that are provided by one or more employees or agents who have regular and substantial physical contact with persons receiving services, the contract shall include a provision concerning retaliation by the contractor. The provision shall require the contractor not to take any retaliatory action against an employee or agent of the contractor when:
 - (i) the employee or agent believes that he or she has reasonable cause to suspect a person receiving services has been subjected to a reportable incident or notable occurrence, and the employee or agent makes a report to the VPCR and/or OPWDD in accordance with this section; and/or
 - (ii) if the employee or agent of the contractor cooperates with the investigation of a report to the VPCR and/or OPWDD.

624.6 Notifications.

- (a) For a report of abuse or neglect involving a person who resides in a facility certified or operated by OPWDD, the agency under whose auspices the event occurred and/or that is responsible for the person shall send the written initial incident/occurrence report to the Mental Hygiene Legal Service (MHLS; see glossary, section 624.20) within three working days of occurrence or discovery. The responsible agency or program shall inform MHLS of the results of the investigation.
- (b) For reports of abuse or neglect that occur when a person receiving services is under the auspices of a residential facility operated by OPWDD, a family care home sponsored by OPWDD, or a certified day program operated by OPWDD, OPWDD shall send the written initial incident report to the appropriate board of visitors within three working days of occurrence or discovery. OPWDD shall also inform the board of visitors of the results of the investigation.
- (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.

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- (d) Reporting to law enforcement.
 - (1) An appropriate law enforcement official must be contacted immediately in the event that an emergency response by law enforcement is needed.
 - (2) Agencies shall report to an appropriate law enforcement official anytime a crime may have been committed against an individual by a custodian. This is in addition to reporting to the Justice Center when the event or situation is a reportable incident (if the services are certified or operated by OPWDD).
 - (i) The report to the appropriate law enforcement official shall be made as soon as practicable, but in no event later than 24 hours after occurrence or discovery.
 - (ii) Information about the report to the appropriate law enforcement official shall be entered into IRMA within 24 hours of the report being made.
- (e) In a case where a subject (see glossary, section 624.20) of a report of abuse or neglect in a program certified or operated by OPWDD resigns from his or her position or is terminated while under investigation, the agency shall promptly report such resignation or termination to the Justice Center.
- (f) For all reportable incidents and notable occurrences:
 - (1) The agency shall provide telephone notice to one of the following: a person's guardian, a parent, spouse or adult child.
 - (2) However, the agency shall not provide such notice to a 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.
 - (3) The telephone notice shall be provided as soon as reasonably possible, but no later than 24 hours after completion of the written initial incident/occurrence report (for minor notable occurrences) or entry of initial information in IRMA by the agency.
 - (4) The telephone notice shall include:

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- (i) a description of the event or situation and a description of initial actions taken to address the incident or occurrence, if any;
 - (ii) an offer to meet with the chief executive officer (or designee) to further discuss the incident or occurrence; and
 - (iii) for reports of abuse and neglect, an offer to provide information on the status and/or finding of the report. 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, the agency shall protect the privacy rights of other parties.
- (5) Methods of notification.
- (i) The complete telephone 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 required 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 notice.
- (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) provided 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).
- (7) Requests for the written initial incident/occurrence report.
- (i) Process for requests.
 - (a) Requests may be made for a copy of the written initial incident/occurrence 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.

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- (c) If the person is a capable adult and objects to the provision of the written initial incident/occurrence report, such report shall not be provided to otherwise eligible requestors.
 - (d) If an otherwise eligible requestor is the alleged abuser, the written initial incident/occurrence report shall not be provided to that requestor.
 - (ii) Redaction.
 - (a) The copy of the report shall incorporate redaction of the names of employees who are involved in the incident or occurrence 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.
 - (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, that name as well as any information tending to identify the party shall be redacted.
 - (iii) The copy of the written initial incident/occurrence report shall be provided to an eligible requestor as soon as reasonable, but in no event more than 10 days after the request is made.
 - (iv) The copy of the written initial incident/occurrence report shall be accompanied by a statement that all contents are preliminary and have not been substantiated.
- (8) Report on actions taken.
 - (i) The agency shall provide a report on initial actions taken to address the incident or notable occurrence. Such report shall include:
 - (a) any immediate steps taken in response to the incident or occurrence to safeguard the health or 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 occurrence.

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- (ii) The agency shall provide the report on actions taken to any party specified in paragraph (1) or (6) of this subdivision who received the notification.
 - (iii) The report shall be provided within 10 days of the completion of the written initial incident/occurrence report (for minor notable occurrences) or entry of initial information in IRMA by the agency.
 - (iv) The report that is provided shall be in the form and format specified by OPWDD or in a similar format developed by the agency.
 - (v) The report that is provided shall not include names of anyone who is involved in the incident or occurrence or the investigation, or who is interviewed as a part of the investigation, or any information tending to identify such parties. Names of any such parties as well as any information tending to identify those parties shall be excluded or redacted.
- (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 written initial incident/occurrence report ;
 - (iii) meetings held in response to the request, and those present;
 - (iv) when the report on actions taken and any requested written initial incident/occurrence report was provided;
 - (v) a copy of the report on actions taken and any written initial incident/occurrence 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.
- (10) For the purpose of redaction as specified in this subdivision and section 624.8 of this Part 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

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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.
- (g) For the Willowbrook class, agencies shall comply with the incident reporting requirements of the Willowbrook Permanent Injunction, dated March 11, 1993.
- (h) The individual's service coordinator (e.g. a Medicaid Service Coordinator or Plan of Care Support Services Service Coordinator, or Willowbrook Service Coordinator) must be notified by the agency of all reportable incidents and notable occurrences involving any individual receiving non-ICF services that are certified, funded, or operated by OPWDD and must be provided with subsequent information, as follows:
 - (1) The service coordinator must be notified within 24 hours of the completion of the written initial incident/occurrence report (for minor notable occurrences) or entry of initial information in IRMA by the agency. The notification must include a description of immediate protections.
 - (2) The service coordinator must be provided with subsequent information that may be needed to update an individual's plan of services and to monitor protective, corrective, and other actions taken following a reportable incident or occurrence. Specifically:
 - (i) The service coordinator must be provided with written information identifying investigative conclusions (including the findings of a report of abuse or neglect) and recommendations pertaining to the individual's care, protection, and treatment. The information provided must exclude information that directly or indirectly identifies agency employees, consultants, contractors, volunteers, or other individuals receiving services. This information must be provided to the service coordinator within 10 days following completion of the investigation.
 - (ii) If the IRC review results in additional findings, conclusions, or recommendations regarding the individual's care, protection, and/or treatment, this information must be provided to the service coordinator, in written form, within 3 weeks following committee review.
 - (iii) The service coordinator may request additional information concerning the incident or occurrence in order to monitor protective, corrective, and/or other actions taken. In the event that an agency receives a request for this information from a service coordinator, the agency shall provide information that it deems appropriate. In providing this information, the agency must exclude information that directly or indirectly identifies agency employees, consultants, contractors, volunteers, and other individuals receiving services. If an agency determines that it would be

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inappropriate to disclose specific information requested, the agency must advise the service coordinator of this determination and its justification, in writing, within 10 days following the request. If the agency does not have specific information requested by the service coordinator (e.g. if the Justice Center conducted the investigation and it has not provided that information to the agency) the agency shall advise the service coordinator that it does not have the requested information. If the information may be available from the Justice Center the agency shall so advise the service coordinator.

- (3) If the service coordinator is identified as the subject of a report of abuse or neglect or as a witness to a reportable incident or occurrence, the agency shall not provide information to that party. In such a case, notifications and written information identified in paragraphs (1) and (2) of this subdivision must be provided to the service coordinator's supervisor or the administrator of the agency providing service coordination in lieu of the service coordinator.

Note: A service coordinator may be permitted to access information related to substantiated reports in accordance with section 496(2)(n) of the Social Services Law.

- (i) The individual's Qualified Intellectual Disabilities Professional (QIDP) and (if the person is a Willowbrook class member), the Willowbrook Case Services Coordinator (WCSC) must also be notified by the agency of all reportable incidents and occurrences involving any individual who resides in an Intermediate Care Facility that is operated or certified by OPWDD. The QIDP and WCSC must also be provided with subsequent information. Information to the QIDP and WCSC shall be provided in the same manner that the information is provided to the Non-ICF service coordinator, in accordance with paragraphs 624.6(h)(1) and (2). If the QIDP or WCSC is identified as the alleged abuser, or is a witness to an incident or alleged abuse, the required notifications and subsequent information must be provided to the QIDP's or WCSC's supervisor or the administrator of the agency providing the residential or WCSC services, in lieu of the QIDP or WCSC.

Note: A service coordinator (including a QIDP performing that function) may be permitted to access information related to substantiated reports in accordance with Section 496(2)(n) of the Social Services Law.

- (j) Administrative appeal process - denial of requested records/documents.
 - (1) A requestor denied access to the initial incident/occurrence 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 10 business days of the receipt of such appeal. The

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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.
- (k) It is the responsibility of a designated staff member of the agency where a report on a reportable incident or notable occurrence is received or made out, to notify any other agency where the person receives services of that reportable incident or notable occurrence if the incident or occurrence 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 provided by another agency.
- (l) Notwithstanding any other provision in this Part, reports of *Obstruction of reports of reportable incidents* (see paragraph 624.3(b)(6)) that are reported to the Justice Center and/or OPWDD are not subject to the notification requirements in this section.

Section 624.7 Incident Review Committee (IRC).

- (a) Every agency shall have one or more incident review committees to review and monitor reportable incidents and notable occurrences that occur to people receiving services from the agency. The agency's organizational structure and its own policies shall determine the number of committees needed.
- (b) An IRC shall review reportable incidents and notable occurrences to:
 - (1) ascertain that reportable incidents and notable occurrences were reported, managed, investigated, and documented consistent with the provisions of this Part and with agency policies and procedures and to make written recommendations to the appropriate staff and/or the chief executive officer to correct, improve, or eliminate inconsistencies;
 - (2) ascertain that necessary and appropriate corrective, preventive, remedial, and/or disciplinary action has been taken to protect persons receiving services from further harm, to safeguard against the recurrence of similar reportable incidents and notable occurrences, and to make written recommendations to the chief executive officer to correct, improve, or eliminate inconsistencies;
 - (3) ascertain if further investigation or if additional corrective, preventive, remedial, and/or disciplinary action is necessary, and if so, to make appropriate written recommendations to the chief executive officer relative to the reportable incident or notable occurrence;

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- (4) identify trends in reportable incidents and notable occurrences (e.g., by type, person, site, employee involvement, time, date, circumstances, etc.), and to recommend appropriate corrective, preventive, remedial, and/or disciplinary action to the chief executive officer to safeguard against such recurring situations or reportable incidents and notable occurrences; and
 - (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, preventive, and remedial action.
- (c) An IRC 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 reportable incident or serious notable occurrence, or sooner should the circumstances so warrant. The IRC shall meet as necessary to meet the timeframes established for submission of a final report to the Justice Center for reportable incidents, if required;
 - (2) review and monitor all minor notable occurrences that are reported, which may be done by a sub-committee of the IRC or by individual assignment to members of the IRC, and maintain a record of such incident/occurrence review, recommendations, and/or actions taken in such a manner as to provide for tracking and trending;
 - (3) review and monitor all reportable incidents and/or serious notable occurrences that are reported;
 - (4) review and monitor investigatory procedures, but shall not perform the routine investigation of reportable incidents or notable occurrences;
 - (5) make written recommendations to appropriate staff to eliminate or minimize similar reportable incidents and/or notable occurrences in the future, and/or to improve investigatory or other procedures;
 - (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 and/or notable occurrences reviewed;
 - (7) forward findings and recommendations to the chief executive officer within two weeks of meeting;
 - (8) provide documentation that all reports of reportable incidents and serious notable occurrences 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;

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- (9) monitor actions taken on any and all recommendations made and advise the chief executive officer when there is a problem;
 - (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 incident or notable occurrence. This may be done by the full committee or a member of a subcommittee reporting to the full committee;
 - (11) in accordance with agency policy, report periodically, but at least annually, to the chief executive officer, chief agency executives, the governing body, and OPWDD concerning the committee's general monitoring functions; general identified trends in reportable incidents and notable occurrences; and corrective, preventive, remedial and/or disciplinary action pertaining to identified trends; and
 - (12) interact with the governing body and comply with the policies in relation to the review and monitoring of all reportable incidents and notable occurrences.
- (d) Organization and membership of the IRC.
- (1) A committee or committees may be established to meet the organizational needs of an agency (e.g., on an agency-wide basis, for a certified class of facilities, for a grouping of certified classes of facilities, by types of services provided, etc.). An agency may establish its own committee or committees and/or may meet the requirements of this section in several other ways, either concerning all operations of the committee or for specific incidents/occurrences or types of incidents/occurrences.
 - (i) An agency may coordinate with other agencies in the establishment of a shared committee.
 - (ii) An agency may also coordinate with a different agency to use the other agency's IRC.
 - (iii) An alternate acceptable committee review arrangement may be established with the approval of OPWDD.
 - (2) Committee members shall be appointed by the chief executive officer. In the case of a shared committee, each chief executive officer shall appoint committee members and shall approve the shared committee membership arrangement.
 - (3) An IRC may have other responsibilities in addition to specified responsibilities related to reportable incidents and notable occurrences.
 - (4) Membership of an IRC shall include:
 - (i) except for state-operated services, a member of the governing body;

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- (ii) for state-operated services, a high-level administrator (note: this cannot be the Director);
 - (iii) at least two professional staff, including but not limited to, licensed clinicians, such as occupational, physical, and speech therapists, social workers, psychologists, and nurses; a behavioral intervention specialist (BIS, see subdivision 633.16(b)); and others with primary responsibility for developing and/or monitoring individuals' plans of care, such as developmental and habilitation specialists or a QIDP. At least one of the professional staff must be a licensed health care practitioner (e.g. physician, physician's assistant, nurse practitioner or registered nurse).
 - (iv) other staff, including administrative staff, as deemed necessary by the agency to achieve the purposes of the committee pursuant to this section;
 - (v) at least one direct support professional (except for agencies that do not have direct support professionals);
 - (vi) at least one individual receiving services;
 - (vii) at least one representative of advocacy organizations (e.g. self-advocacy, family or other advocacy organizations); and
 - (viii) the participation of a psychologist on the committee is recommended.
- (5) In the event that an agency is unable to obtain the members required by subparagraphs (i) and (v) – (viii), the agency shall document its periodic efforts to obtain the specified members.
- (6) 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.
 - (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 agency-wide or multi-program committee. If he or she is not a member, an administrator may be consulted by the committee in its deliberations.
- (7) Case-specific requirements.
- (i) There shall be representation by someone from or with knowledge of the agency's own organizational entity where the event under discussion occurred, or by someone who is familiar with the person(s) involved.

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- (ii) Restrictions on review of specific incidents or allegations of abuse.
 - (a) Any committee member who recognizes a potential conflict of interest in his or her assignment shall report this information to the committee and recuse him or herself from participating in committee review of the incident or occurrence in question.
 - (b) No committee member may participate in the review of any reportable incident or notable occurrence in which he or she was directly involved, in which his or her testimony is incorporated, in which his or her spouse, domestic partner, 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, preventive, or remedial action.
 - (c) For reportable incidents and serious notable occurrences, no committee member may participate in the review of an investigation in which his or her spouse, domestic partner, or immediate family member provides supervision to the program where the incident took place or supervised directly involved parties.
 - (d) No committee member may participate in the review of a reportable incident or serious notable occurrence, if such committee member is the immediate supervisor of staff directly involved in the event or situation. Such member may, however, participate in committee deliberation regarding appropriate corrective, preventive or remedial action.
- (8) Members of the committee shall be trained in confidentiality laws and regulations, and shall comply with section 74 of the public officers law.
- (e) Minutes. The chairperson of an incident review committee shall ensure that minutes are kept for all meetings.
 - (1) For reportable incidents and serious notable occurrences, the portion of the minutes that discuss matters concerning the specific event or situation shall be entered into IRMA within three weeks of the meeting.
 - (2) Minutes addressing the review of specific reportable incidents and/or serious notable occurrences shall clearly state the filing number or 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).

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- (f) Role of the IRC when investigations are conducted by the Central Office of OPWDD or the Justice Center. Notwithstanding any other provision of this Part, when an investigation of an incident or occurrence is conducted by the Central Office of OPWDD or the Justice Center:
 - (1) The IRC role in reviewing and monitoring the particular incident or occurrence is limited to matters involving compliance with the reporting and notification requirements of this Part, protective and remedial actions taken (except disciplinary actions concerning services operated by OPWDD), operational concerns, and the quality of services provided.
 - (2) The finding (of the report of abuse or neglect) of substantiated or unsubstantiated shall be made by the Central Office of OPWDD or the Justice Center.
 - (3) Concerning services operated by OPWDD:
 - (i) The IRC shall monitor all actions taken to implement recommendations made by the Central Office of OPWDD or the Justice Center, except recommendations for disciplinary action.
 - (ii) The IRC for state-operated services shall not review or monitor disciplinary action recommendations made by the Central Office of OPWDD or the Justice Center.
 - (4) Concerning facilities and programs that are not operated by OPWDD, the IRC shall monitor all actions taken to implement recommendations made by the Central Office of OPWDD or the Justice Center.

Section 624.8 Release of records.

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

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- (c) Records subject to release concerning reports of abuse that occurred prior to June 30, 2013.
 - (1) Agencies are required to release all records and documents pertaining to allegations and investigations into abuse as defined in applicable OPWDD regulations in effect at the time the allegation occurred under the auspices (see section 624.20 of this Part) of the agency or sponsoring agency to eligible requestors who make a request in accordance with the provisions of this section.
 - (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.
 - (3) Agencies are required to release records and documents pertaining to allegations of abuse which occurred or were discovered on or after January 1, 2003 but prior to May 5, 2007, if the written request is submitted on or before December 31, 2015.
- (d) Records subject to release concerning reportable incidents that occurred on or after June 30, 2013. Agencies are required to release all records and documents pertaining to reportable incidents to eligible requestors who make a request in accordance with the provisions of this section.
- (e) Procedures. Eligible requestors shall submit a written request to staff designated by agency policy/procedures. If the request is made prior to the closure of the incident, the parties specified by agency policy/procedures shall provide the requested records no later than 21 days after the closure of the incident. If the request is made at or subsequent to the closure of the incident, 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.
- (f) Redaction of records.
 - (1) Prior to the release of records, agencies shall redact the names of employees who are involved in the incident 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 in section 624.6(f)(10) of this Part. 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.
 - (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, that name as well as any information tending to identify the party shall be redacted.

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- (g) Cover letter and dissemination restrictions. The release of records to recipients shall be in accordance with the following:
 - (1) The release of records shall be accompanied by a cover letter to the recipient which includes the following statement: “pursuant to section 33.25 of the Mental Hygiene Law, the enclosed records and reports shall not be further disseminated, EXCEPT that you may share the report with:
 - (i) a health care provider;
 - (ii) a behavioral health care provider;
 - (iii) law enforcement, if you believe a crime has been committed; or
 - (iv) your attorney.”
 - (2) Pursuant to New York State law, the recipient, parties with whom the recipient shared records, or the individual receiving services may use records and documents released in accordance with this section in any legal action or proceeding brought by or on behalf of the individual receiving services.
- (h) 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.
- (i) Administrative appeal process - denial of requested records/documents.
 - (1) A requestor denied access to the records and documents requested pursuant to this section may appeal, in writing, such denial to the incident records appeals officer designated by 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 10 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

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the agency. If so directed by the incident records appeals officer, the agency shall provide the requested records and/or documents to the requestor.

- (j) Note that records maintained by the agency may also be available under section 496 of the social services law to “other persons named in the report” as defined in section 488 of the social services law.

624.20 Glossary.

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

- (a) *Abuse or neglect.* Those reportable incidents defined in paragraphs 624.3(b)(1)–(8).
- (b) *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 services provided by an agency (e.g., ICF program, community residence program, residential habilitation program, respite program, family support program).
- (c) *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 and 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 section 681.13 of this Title 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.
- (d) *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.
- (e) *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 Developmental Disabilities State Operations Office (DDSOO) is considered to be the agency. Family care

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providers are not considered to be an agency (also see agency, sponsoring). The term “agency” as used in this Part includes sponsoring agencies.

- (f) *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 DDSOO is considered to be the sponsoring agency.
- (g) *Agency, State.* A New York State governmental unit created for the management/ delivery of services to the citizens of the State.
- (h) *Allegation (of abuse or neglect).* For purposes of this Part, the implication that abuse or neglect 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 or neglect.
- (i) *Application, Incident Report and Management (IRMA).* A secure web-based statewide database for incident reporting that is used by providers in the OPWDD system.
- (j) *Auspices, under the.* For the purposes of this Part and Part 625 of this Title, an event or situation in which the agency or family care provider is providing services to a person. The event or situation can occur whether or not the person is physically at a site owned, leased, or operated by the agency or family care provider.
 - (1) Events or situations that are under the auspices of the agency or family care provider include but are not limited to:
 - (i) An event or situation in which agency personnel (staff, interns, contractors, consultants, and/or volunteers) or a family care provider (or respite/substitute provider) are, or should have been, physically present and providing services at that point in time.
 - (ii) Any situation involving physical conditions at the site provided by the agency or family care home, even in the absence of agency personnel or the family care provider.
 - (iii) The death of an individual that occurred while the individual was receiving services or that was caused by or resulted from a reportable incident or notable occurrence defined in sections 624.3 and 624.4 of this Title.
 - (iv) Notwithstanding any other requirement in this subdivision, the death of an individual receiving services who lives in a residential facility operated or certified by OPWDD, including a family care home, is always under the auspices of the agency. The death is also under the auspices of the agency if the death occurred up to 30 days after the discharge of the individual from the residential facility (unless the person was admitted to a different residential facility in the OPWDD system). (Note: this does not include free-standing respite facilities.)

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- (v) Related to reportable incidents and notable occurrences as defined in sections 624.3 and 624.4 of this Part, any event that directly involves or may have involved agency personnel or a family care provider (or respite/substitute provider) or someone who lives in the home of the family care provider.
- (2) Events or situations that are not under the auspices of an agency include:
- (i) Any event or situation that directly involves or may have involved agency personnel or a family care provider (or respite/substitute provider) during the time he or she was acting under the supervision of a State agency other than OPWDD (e.g. an agency employee has a second job at a hospital and an incident occurred while he or she was providing care to an individual receiving services during the individual's hospitalization).
 - (ii) Any event or situation that exclusively involves the family, friends, employers, or co-workers of an individual receiving services (other than a custodian or another individual receiving services), whether or not in the presence of agency personnel or a family care provider or at a certified site.
 - (iii) Any event or situation that occurs in the context of the provision of services that are subject to the oversight of a State agency other than OPWDD (e.g. special education, article 28 clinic, hospital, physician's office), whether or not in the presence of agency personnel or a family care provider.
 - (iv) Any report of neglect that is based on conditions in a private home (excluding a family care home).
 - (v) The death of an individual who received OPWDD operated, certified, or funded services, except deaths that occurred under the auspices of an agency as specified in paragraph (1) of this subdivision.
- (k) *Board, capability review.* Those designated by OPWDD 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.
- (l) *Body, governing.* The over-all 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 state-operated services, the governing body shall be the Central Office of OPWDD. For purposes of this Part, a family care home does not have a governing body.
- (m) *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

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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.

- (n) *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.
- (o) *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.
- (p) *Custodian*. A party that meets one of the following criteria:
 - (1) a director, operator, employee, or volunteer of an agency; or
 - (2) a consultant or an employee or volunteer of a corporation, partnership, organization, or governmental entity that provides goods or services to an agency pursuant to contract or other arrangement that permits such party to have regular and substantial contact with individuals receiving services; or
 - (3) a family care provider; or
 - (4) a family care respite/substitute provider.
- (q) *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 22;
 - (3) has continued or can be expected to continue indefinitely; and

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- (4) constitutes a substantial handicap to such person's ability to function normally in society.
- (r) *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).
- (s) *Injury, physical and "impairment of physical condition."* Any confirmed harm, hurt, or damage resulting in a significant worsening or diminution of an individual's physical condition.
- (t) *Intentionally*. This term shall have the same meaning as provided in subdivision one of section 15.05 of the penal law which states: "A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct."
- (u) *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.
- (v) *Investigator*. That party or parties, designated by the chief executive officer (or designee), by the Central Office of OPWDD, or by the Justice Center, responsible for collecting information to establish the facts relative to an event/situation, whether immediately following or subsequent to that event/situation. Investigators may be required to have training as specified by OPWDD or the Justice Center.
- (w) *Justice Center for the Protection of People with Special Needs (Justice Center)*. An entity established by Article 20 of the Executive Law for the protection of people who are vulnerable because of their reliance on professional caregivers to help them overcome physical, cognitive, and other challenges. The Justice Center contains the Vulnerable Persons' Central Register (VPCR) as established by Article 11 of the Social Services Law and receives requests for criminal history record checks pursuant to section 16.33 of the Mental Hygiene Law.
- (x) *Office, Developmental Disabilities State Operations (DDSOO)*. The local administrative unit of OPWDD responsible for the provision of state-operated services within a particular geographic area.
- (y) *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 DDSOO, this party is referred to as the Director.

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- (z) *Person/persons.* For purposes of this Part, a child or adult with a developmental disability, who has been or is receiving services that are operated, certified, sponsored, or funded by OPWDD.
- (aa) *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.
- (ab) *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.
- (ac) *Recklessly.* This term shall have the same meaning as provided in subdivision three of section 15.05 of the penal law, which states: “A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.”
- (ad) *Report, investigative.* A comprehensive written record of a completed investigation of an event or situation. The purpose of this report is to formalize an investigator’s methodology, findings, conclusions, and recommendations upon the completion of an investigation.
- (ae) *Report, written initial incident/occurrence.* The document that records initial information about a reportable incident or notable occurrence, in conformance with this Part.
- (af) *Service, 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.)
- (ag) *Services, plan of.* An individualized record system, by whatever name known, which documents the process of developing, implementing, coordinating, reviewing, and modifying an individual's total plan of care, including, but not limited to, health care, clinical, and habilitation services (as applicable) to address the individual's needs.
- (ah) *Subject (of a report).* A custodian who is reported to the VPCR for the alleged abuse or neglect of a person receiving services.
- (ai) *Substantiated.* A finding concerning a report of abuse or neglect based on a preponderance of the evidence. The report of abuse or neglect is *substantiated* when it is determined that the incident occurred and the subject of the report was responsible or, if no subject can be identified and an incident occurred, that, the facility or provider agency was responsible.

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- (aj) *Treatment, requiring medical or dental.* That situation in which a person who, by virtue of his or her condition as a result of a minor or serious notable occurrence, 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 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 notable occurrence. 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 notable occurrence.
- (ak) *Unsubstantiated.* A finding concerning a report of abuse or neglect based on a preponderance of the evidence. The report of abuse or neglect is *unsubstantiated* because it is determined not to have occurred or the subject of the report was not responsible, or because it cannot be determined that the incident occurred or that the subject of the report was responsible.
- (al) *Vulnerable Persons' Central Register (VPCR).* An entity established in the Justice Center by section 492 of the Social Services Law. The VPCR shall:
- (1) receive reports of reportable incidents involving persons receiving services in programs operated or certified by OPWDD (and specified programs subject to the oversight of other state agencies);
 - (2) as warranted, refer reports alleging crimes to appropriate law enforcement authorities;
 - (3) notify appropriate parties and officials of received and accepted reports; and
 - (4) maintain an electronic database of each report and the finding associated with each report.