

# LEARNING ABOUT INCIDENTS

## OPWDD'S COMMITMENT TO PROTECTION FROM HARM

OPWDD's mission is to help people with developmental disabilities live richer lives.

In order to support this mission, OPWDD and its provider agencies adhere to Title 14 of New York Codes, Rules and Regulations Part 624 (14 NYCRR Part 624), a regulation designed to protect people receiving OPWDD services. This regulation identifies steps to be taken when a person receiving services experiences an untoward event or situation, as described on page 2, Types of Incidents. As a result of this regulation, all providers of services must do the following:



- Ensure that staff report untoward events or situations;
- Give immediate care and protection and protect the dignity of people with developmental disabilities involved in an incident or allegation of abuse;
- Investigate why incidents and abuse occur and take steps to prevent a similar incident from happening again;
- Establish a Standing Committee on Incident Review to review specific incidents and allegations of abuse and examine trends; and
- Develop procedures and provide staff training to prevent similar incidents in the future.

This brochure gives an overview of OPWDD's expectations regarding incidents and explains the role of *qualified persons and advocates* in advocating on behalf of the people we serve. Please refer to 14 NYCRR Part 624 for complete requirements of this regulation.

## IS THE INCIDENT REVIEW PROCESS CREDIBLE?

- Part 624 provides the standards for incident reporting; expectations for timely investigations independent of those directly serving the person; and a Standing Committee on Incident Review within agencies.
- Members of the Standing Committee include professional staff and others, i.e., those providing direct support, and families/members of the governing body of the agency, to review incidents and investigations. If not a member, a physician or health care professional must be available on call.
- The director of the agency is not on the Standing Committee.
- The Standing Committee confirms that the agency has taken necessary corrective and protective actions; whether additional measures are necessary; whether the agency reporting/review was adequate; identifies trends and makes recommendations to the director of the agency for improvements in services and the incident process.

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### WHO IS ABLE TO RECEIVE NOTICE AND ASK FOR INCIDENT INFORMATION?

Jonathan's Law permits certain persons, known as *qualified persons*, to access records and documents pertaining to an allegation of abuse. *Qualified persons* include an individual receiving services, his or her legal guardian; or involved parent, spouse or adult child who has authority to provide consent for care and treatment. A family member who is not a *qualified person* but serves as an advocate will receive notice and may ask for information, i.e., the OPWDD 147 and a summary of the incident.

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Willowbrook access to records is unchanged by Jonathan's Law. Please reference OPWDD directives for reporting on behalf of class members.

## HOW DO AGENCIES HANDLE INCIDENT REPORTS?

Reportable incidents, serious reportable incidents and allegations of abuse are events that must be recorded, investigated, reported to designated parties, reviewed by a Standing Committee and acted upon to safeguard the well being of people receiving services.

Providers must have a process to handle the following situations:

- *Minor Occurrence/Agency Reportable (or similar term)*, a situation that requires follow up;
- *Reportable Incident*, a significant event or situation that endangers a person's well being.

Providers must report the following situations to OPWDD via the local Developmental Disabilities Services Office (DDSO) in writing on form OPWDD 147:

- *Serious Reportable Incident*, a significant event or situation deemed to be severe;
- *Allegation of Abuse*, when a person receiving services is believed to have been mistreated or neglected regardless of whether the person seems to be injured or harmed. Failure of staff to stop a person from being abused is also abuse.

## TYPES OF INCIDENTS...

The following incidents are either reportable incidents or serious reportable incidents depending on how severe the incidents are:

- Injury (which requires more than first aid);
- Medication Error (if resulting in adverse effects); and
- Death

Note: An Injury or Medication Error is always serious reportable if, as a result, the person is admitted to the hospital.

Note: all Deaths, whether expected or unexpected, must be reported to the DDSO.

The following incidents are always serious reportable incidents:

- Missing Person;
- Restraint, including the authorized use of medication or mechanical devices to immobilize the person (not manual holds); and
- Possible Criminal Act (by the person with disabilities).

The following incident may be either a reportable or serious reportable incident as determined by each agency:

- Sensitive Situations, those not covered by other categories but need to be addressed.

The following are the different types of abuse:

- Mistreatment;
- Neglect;
- Physical abuse;
- Sexual abuse;
- Psychological abuse;
- Seclusion;
- Unauthorized or inappropriate use of restraint, aversive conditioning or time out; or
- Violation of a person's civil rights

Based on the facts from the investigation, the designation of an incident may be changed or upgraded.

When sharing the OPWDD 147, OPWDD 148 and other records/documents pertaining to allegations of abuse, providers are required by law to "redact" or edit to delete the names and identifying information regarding other individuals receiving services and employees.

## WHO WILL BE NOTIFIED AND WHEN?

A *qualified person or the advocate* will receive telephone notice within 24 hours of the completion of the incident report (OPWDD 147), and an offer to hold a meeting with the Director of the agency or their designee, for the following categories of incidents:

- Reportable incidents deemed to be injury, medication error and death;
- Serious reportable incidents in the same categories and missing persons; and
- All allegations of abuse.

[Notification will also be made for all other serious reportable incidents but it is not required that this notice include either the telephone notification or an offer for a meeting with the director of the agency or their designee]

## HOW AND WHEN IS THIS INFORMATION ACCESSED?

- A *qualified person or advocate* notified of an incident may request in writing a copy of the incident report (OPWDD 147) for the categories of incidents referenced in the above section and the provider will promptly send a “redacted” copy of the OPWDD 147. He or she will automatically receive a report on actions taken (OPWDD 148) within 10 days of completion of the OPWDD 147.
- For situations deemed to be allegations of abuse, a *qualified person* may request copies of records and documents from the provider of service, such as an investigative report or investigation summary. Requests must be in writing and can be made at any time for an allegation of abuse that occurred on or after 5/5/2007. Requests for an allegation of abuse that occurred between 1/1/2003-5/5/2007 must be submitted by 12/31/2012. A response is required within 21 days of receipt of the request if an investigation is completed and approved by the agency; OR within 21 days once the investigation is completed. These materials will be “redacted.”
- The *qualified person or advocate* may request additional documents related to allegations of abuse generated by OPWDD or the Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD). If OPWDD or CQCAPD conducted an investigation, written requests for records or documents from that investigation should be directed to the Developmental Disabilities Services Office (DDSO) or the Records Access Officer of CQCAPD, located at 401 State Street, Schenectady, NY 12305.

## HOW IS AN INVESTIGATION CONDUCTED?

- Whenever an incident is reported, the agency assigns an investigator to complete an investigation. The investigator will not have been directly involved in the incident. The investigator will typically get statements from witnesses, use photographs or diagrams, identify gaps in reporting, and interview witnesses to determine a credible account of events.
- The investigator will prepare a report that includes corrective actions taken and recommendations for further action. For an allegation of abuse, a determination will also be made as follows: Substantiated; Disconfirmed; or Inconclusive.
- The investigative report is submitted to the agency’s Standing Committee for Incident Review. The Standing Committee may recommend further investigation, propose additional actions and even propose a different determination.
- Once the Standing Committee has finished its review, its findings and recommendations are submitted to the director of the agency.



### WHO CAN AN ADVOCATE SPEAK TO FOR FOLLOW UP?

He or she should feel free to ask questions when receiving notice of an incident, or ask to speak with a supervisor for more information. He or she may also accept the offer for a meeting with the director of the agency or their designee.

If not satisfied, he or she may direct questions or concerns to the director of the agency or other high level administrators.

For allegations of abuse that occur in a certified program, Mental Hygiene Legal Services (MHLS) may also be a resource. The local DDSO Incident Coordinator or DDSO Director may also help resolve outstanding issues.

There is an administrative appeal process for individuals who have been denied incident records requested from a provider agency or DDSO. Contact the OPWDD Incident Records Appeals Officer, 44 Holland Avenue, Albany, NY 12229 for more information.

Courtney Burke, Commissioner  
New York State  
Office for People With Developmental Disabilities  
Standing Committee on Incident Review  
44 Holland Avenue  
Albany, NY 12229

For clarification on the  
information contained in this  
brochure, please contact:

OPWDD's  
Standing Committee  
on Incident Review.  
opwdd.scir@opwdd.ny.gov

If you are a member of the public who wants to report abuse of an individual who receives services in the OPWDD system, there are several ways to do so:

- If you are aware of the name of the service provider providing services to the individual, you may contact the service provider directly to report abuse. You can access the provider's contact information on OPWDD's website ([www.opwdd.ny.gov](http://www.opwdd.ny.gov)) on its Provider Directory webpage.
- If information on the service provider of an individual is unknown, you may report abuse to the DDSO incident coordinator assigned to the service area of which the individual receives services. You can access the contact information for each DDSO incident coordinator on OPWDD's website on its Incident Management webpage.
- Abuse may also be reported to OPWDD's toll free Information Line by telephone at 1-866-946-9733 or online on OPWDD's website on its Information Line webpage.

## HOW TO ADVOCATE AND PROTECT INDIVIDUALS FROM HARM

The *qualified person or advocate* and service provider should work together to ensure that the person is well served and safe. The partnership can begin at a team meeting, where the person's individualized plan for services and supports is reviewed; at that time, the team, including the *qualified person or advocate*, can discuss safeguards or interventions that may be required. Such safeguards often need to be individualized and specific to the person.

Particularly when unexplained injuries recur, the *qualified person or advocate* might ask what steps are being taken to protect the person from being exposed to the same or similar circumstances. While it is not always possible to anticipate the steps required, as they may be specific to the incident, some possible areas for discussion include:

- changes in the person's behavior;
- the rhythm of the person's day and week;
- use of/possible need for or change in adaptive equipment;
- any physical care, health or hygiene problems needing attention;
- clinical/medical evaluation and/or intervention that may be helpful;
- level of supervision;
- staff training and re-training efforts; and/or
- conditions in the living or service environment.



*Team meetings provide an invaluable forum for the qualified person or advocate and other members to advocate for protection from injuries, especially those that are unexplained and recurrent.*