NEW YORK STATE

Office for People With Developmental Disabilities

Basic Facts About Incidents and Investigations

(866) 946-9733 | NY Relay System 711

www.opwdd.ny.gov

Basic Facts About Incidents and Investigations

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OPWDD's Commitment to Protection

OPWDD's mission is to help people with developmental disabilities live richer lives. An important part of fulfilling that mission is to protect people from harm. OPWDD has extensive regulations governing the safe provision of supports and services to New Yorkers with developmental disabilities and regular oversight activities to continually examine and improve the quality of services. Should a concern arise, however, OPWDD and the NYS Justice Center for the Protection of People with Special Needs administer a rigorous program of incident review, investigation and corrective action that helps to correct unsafe situations and improve people's experience and safety.

Title 14 of New York Codes, Rules and Regulations Part 624 requires steps to be taken when someone experiences a concerning event such as abuse, neglect, mistreatment, injuries or medication errors. It requires:

- Reporting of certain incidents to the NYS Justice Center
- Reporting of the incident to OPWDD
- Providing immediate care and protection
- Investigating the occurrence
- Taking steps to prevent similar events from happening again
- Establishment of procedures and staff training to prevent future similar events

Four Kinds of Incidents

OPWDD has established the following four kinds of incidents:

Reportable Incidents of Abuse and Neglect
Occurrences of physical, sexual and psychological abuse, and other prohibited conduct such as deliberate inappropriate use of restraint and neglect

Reportable Significant Incidents
Occurrences of events such as medication errors that result in adverse effects, use of seclusion, mistreatment, missing persons and choking

Serious Notable Occurrences
Occurrences of sensitive situations and deaths

Minor Notable Occurrences
Occurrences such as injuries that require medical or dental treatment beyond first aid, including theft and financial exploitation

Note: *Occasionally an incident may be re-classified as additional information about the situation is discovered.*

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Reporting

All service providers must report the following to OPWDD:

- Reportable Incidents of Abuse and Neglect
- Reportable Significant Incidents
- Serious Notable Occurrences

Providers must also be able to learn about and respond to Minor Notable Occurrences and any potentially harmful situations that do not rise to the level of a Reportable Incident or a Serious Notable Occurrence.

Reportable Incidents of Abuse and Neglect and Reportable Significant Incidents that occur in programs and services certified or operated by OPWDD must be reported to the Justice Center as well as to OPWDD.

Reporting Abuse or Neglect

To report situations of abuse or neglect, you may contact the:

- Service providing agency that is supporting the person, or
- OPWDD's Incident Management Unit at 518-473-7032 during regular business hours or off hours at 1-888-479-6763, or
- The NYS Justice Center 24-hour hotline for reporting Abuse, Neglect and Significant Incidents at 1-855-373-2122

Notifying Family and Advocates

Both Jonathan's Law and OPWDD's Part 624 regulations require that **qualified parties receive telephone notification** of all incidents as soon as possible after they occur. Qualified parties include:

- The person receiving services
- Their legal guardian or parent, spouse, adult child or adult sibling who have authority to access clinical records. (Mental Hygiene Law Section 33.16)

These parties must also be offered a meeting with the director of the agency or their designee to discuss the incident.

Part 624 regulations also require that a person who does not meet the definition of a qualified party, but who serves as an advocate (sometimes referred to as a correspondent) for a person receiving services, is to be notified of all incidents.

An advocate may also be a qualified person, but only if they meet the criteria above for qualified person.

Additional procedures are in place for notifications involving Willowbrook class members.

Requesting Information

A qualified person and advocates who receive notice of an incident will automatically receive a Report on Actions Taken (OPWDD Form 148) within 10 days of completion of the initial report.

A qualified person and advocates who receive notice of an incident may request the initial incident report (OPWDD 147) by submitting a written request (letter or email) to the service provider that reported the incident.

Who Can Request	Information They Can Request	When Provided
Qualified Person, Advocate	Redacted copy of the Incident Report (Form OPWDD 147)	Upon written (letter or email) request
Qualified Person, Advocate	Redacted copy of the Report on Actions Taken (Form OPWDD 148)	Within 10 days from completion of the initial report
Qualified Person	Redacted copy of additional information: • the investigative report or • the full investigative record	Upon written request (letter or email) : Within 21 days from closure of the incident or Within 21 days of the request if the incident is already closed

Under Jonathan's Law (Mental Hygiene Law 33.25), a qualified person may request additional records concerning Reportable Incidents of Abuse and Neglect and Significant Incidents. This request must be made in writing to the agency providing services. Advocates are not entitled to this information. All service providers must redact or delete the names and identifying information about any people receiving services (other than the person(s) directly involved in the event) and employees.

Note: *If an incident is reclassified from its original classification, information is provided based on the final classification of the incident.*

If a qualified person has been denied records related to an investigation of a reportable incident (Abuse and Neglect, Significant Incident) they can contact:

OPWDD Incident Records Appeals Officer
44 Holland Avenue
Albany, NY 12229

Investigating Incidents

Every incident (including occurrences) must be thoroughly investigated.

The investigation will gather information from a variety of sources and prepare a report.

Investigations into allegations of Abuse and Neglect will also conclude whether the allegation is "substantiated" or "unsubstantiated" based on the preponderance of evidence.

The agency's Incident Review Committee reviews the incident, ensures the investigation is thorough and, if necessary, determines additional actions that must be taken to prevent further incidents.

Being an Efective Advocate When an Incident Occurs

Advocacy from family and friends is vital to ensuring that people with developmental disabilities have a voice in their lives. Concerns about incidents should be discussed with the agency director or their designee. When an investigation of Abuse or Neglect within an OPWDD-certified program is occurring, advocates may find support through the Mental Hygiene Legal Services (MHLS). Advocates may also contact OPWDD's Incident Management Unit with questions about the process, however there are limitations on the specific information that can be provided when the investigation is still underway.

Who to Contact with Questions or Concerns About an Investigation

- Director of the agency providing services
- Mental Hygiene Legal Services – https://nycourts.gov/ad3/mhls
- OPWDD's Incident Management Unit – 518-473-7032

Working Together to Prevent Future Incidents

Qualified parties, advocates, care managers, people who receive services and service providers must work together to put in place service plans that serve people well and keep them safe. They should discuss safeguards or specific interventions that may be needed. These discussions should occur as part of the person-centered planning process or any time concerns arise. The discussions should review possible contributing factors such as:

- The person's regular daily and weekly schedule
- Any changes occurring in the person's behavior or demeanor
- Any physical health or hygiene concern
- Clinical or medical evaluations or interventions that may be helpful
- The person's level of supervision
- Staff training
- Conditions in the living environment or situation

For more information on Incidents and Investigations please see OPWDD's website
www.opwdd.ny.gov/providers/incident-management

Notes

Office for People With Developmental Disabilities

For further information, please check the OPWDD Website:

www.opwdd.ny.gov

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