

ASPIRE OF WNY POLICY AND PROCEDURE

ASPIRE POLICY MANUAL _X_ Agency ___ Multi-Division ___ Division	TOPIC: Incident Reporting Original By: Agency Date Approved: 12/2014	SECTION: Incident Reporting PAGE 1 of 10 Revision Dates: Regulatory Reference: Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management; and Amendments to Parts 624, 633, 687, 33:16 MHL
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POLICY STATEMENT: The Agency will timely and appropriately report all Reportable Incidents of Abuse and Neglect, Reportable Significant Incidents, Serious Notable Occurrences and Minor Notable Occurrences in order 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. All employees and volunteers will be trained in the reporting of Reportable Incidents of Abuse and Neglect, Reportable Significant Incidents, Serious Notable Occurrences and Minor Notable Occurrences. The 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 NYS Justice Center Vulnerable Persons Central Registry (JC), OPWDD, and/or the Agency. Immediate Protections, Management, Training Investigations, and Incident Review Committee are addressed in separate policies.

Incidents are to be reported and recorded according to their definition.

DEFINITIONS:

A. Reportable Incidents

Reportable incidents are events or situations that meet the definitions in this section and occur under the auspices of the Agency.

1. *Physical abuse shall mean conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury 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.*

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*

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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, 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.*

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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*
 - 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:*
 - 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;*
 - 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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- c. *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;*
 - 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; and*
 - e. *other mistreatment, which shall mean other 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, except as described in clauses (a) through (d) of this subparagraph;*
- 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;*
 - 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.*

B. Notable Occurrences

Notable occurrences are events or situations that meet the definitions of this section and occur under the auspices of the Agency.

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 by a physician, dentist, physician's*

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- 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:

- “Requiring medical or dental treatment” means that a person who, because of the severity of an injury and the resulting care, **MUST** be treated by a physician, physician’s assistant, nurse Practitioner, or dentist in order to care for the injury.
- If it is medically acceptable to treat the injury solely with first aid procedures, the injury is not a Notable Occurrence in relation to Part 624, even if the first aid is provided by a nurse, physician, or other health care professional.
- For the purposes of incident management, the administration of any over-the-counter medications, are considered “first aid” even if the physician or dentist writes a prescription and the dosage prescribed is available over the counter.
- The administration of a tetanus booster is not considered “more than first aid.”
- If diagnostic procedures (e.g., x-rays) are performed and an additional positive finding for an injury is revealed, regardless of whether it requires or does not require medical or dental treatment, it must be reported as a Notable Occurrence. If a diagnostic procedure is performed and does not result in an additional positive finding for an injury or require more than first aid treatment, then a Notable Occurrence is not indicated. Here are some scenarios:
 - ✓ Scenario #1: The individual has a soft tissue injury (contusion, bruise) and is examined by a health care professional. The diagnosis is sprain and the treatment is no more than first aid. This **is not** a Notable Occurrence; a Form OPWDD 147 **is not** required.
 - ✓ Scenario #2: Same situation as specified in Scenario 1. The health care professional orders an x-ray which is negative for fracture. Since it is already known that the individual has a sprain and no treatment beyond first aid is given, this **is not** a Notable Occurrence; a Form OPWDD 147 **is not** required.
 - ✓ Scenario #3: Same situation as specified in scenarios 1 and 2. The x-ray is positive for a fracture. This **is** a Notable Occurrence; a Form OPWDD 147 **is** required.
 - ✓ Scenario #4: The individual falls and is examined by a health care professional. A diagnostic procedure reveals a broken rib. This is a Notable Occurrence; a Form OPWDD 147 **is** required.

Note: An injury that due to self-injurious behavior that requires medical care beyond first aid is a “Reportable Incident.”

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2. *Unauthorized absence. The unexpected or unauthorized absence of a person after formal search procedures 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: 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.*
Note: Deaths that also meet the definition of a Reportable Incident shall be reported both as a Reportable Incident and as a Serious Notable Occurrence.

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. Any choking with no known risk event is considered a serious notable occurrence.*
Note: Choking involving an individual with a known risk for choking and a written directive addressing that risk is a “Reportable” choking with known risk incident.

5. *Theft and financial exploitation.*
 - 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*

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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.

REPORTING REQUIREMENTS and IMMEDIATE CORRECTIVE ACTIONS

- A. **Reportable Incidents** are incidents that occur in certified settings, such as: Individual Residential Alternatives (Supervised and Supportive), Free Standing Respite, Certified Day Habilitation, Article 16 clinic.

REPORTABLE INCIDENTS IN CERTIFIED SETTINGS	
RESPONSIBILITY	PROCEDURE
All Board of Directors, employees, interns, volunteers, consultants, and contractors	<ol style="list-style-type: none"> 1. Takes immediate action to ensure the safety and well being of persons served. 2. Immediately upon witnessing or discovery, reports Reportable Incidents to the Justice Center Vulnerable Persons Central Registry (JC.) 3. Immediately notifies a program supervisor or Aspire Incident Management (AIM) of the Reportable Incident, immediate actions taken and that a report was made to the JC. <p>Note: Refer to Aspire’s Keep People Safe Poster and AIM Poster.</p>
Program Supervisor/Designee	<ol style="list-style-type: none"> 1. Ensures further corrective actions are taken to ensure safety and prevent reoccurrence. 2. Notifies the Designated Program Administrator immediately 3. Notifies AIM (CEO’s designee) immediately 4. Notifies OPWDD Incident Management Unit (IMU) immediately <p>Note: Refer to 147 Instructions and Guidelines 6/2013 for telephone numbers.</p>

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B. Reportable Incidents are incidents that occur in non-certified settings, including: Non-Certified Day Habilitation, MSC, PCSS, SEMP, Prevocational Services, HCBS waiver respite (except for Free-Standing Respite), hourly Community Habilitation, and Family Support Services.

REPORTABLE INCIDENTS IN NON-CERTIFIED SETTINGS	
RESPONSIBILITY	PROCEDURE
All Board of Directors, employees, interns, volunteers, consultants, and contractors	<ol style="list-style-type: none"> 1. Takes immediate action to ensure the safety and well being of persons served. 2. Immediately upon witnessing or discovery, reports to a program supervisor or Aspire Incident Management (AIM).
Program Supervisor/Designee	<ol style="list-style-type: none"> 1. Ensures further corrective actions are taken to ensure safety and prevent reoccurrence. 2. Notifies the Designated Program Administrator immediately (By phone or e-mail) 3. Notifies AIM (CEO's designee) immediately (by phone followed by an e-mail.) 4. Notifies OPWDD Incident Management Unit (IMU) immediately (by phone.) <p>Note: Refer to 147 Instructions and Guidelines 6/2013 for telephone numbers.</p>

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C. **Notable Occurrences**-Reporting is the same for both certified and non-certified programs.

SERIOUS NOTABLE OCCURRENCES	
RESPONSIBILITY	PROCEDURE
All directors, employees, interns, volunteers, consultants, and contractors	<ol style="list-style-type: none"> 1. Takes immediate action to ensure the safety and well being of persons served. 2. Immediately upon witnessing or discovery, reports to a program supervisor or Aspire Incident Management (AIM).
Program Supervisor/Designee	<ol style="list-style-type: none"> 1. Ensures further corrective actions are taken to ensure safety and prevent reoccurrence. 2. Notifies the Designated Program Administrator immediately 3. Notifies AIM (CEO's designee) immediately 4. Notifies OPWDD Incident Management Unit (IMU) immediately <p>Note: Refer to 147 Instructions and Guidelines 6/2013 for telephone numbers.</p>
<p>Note: All Deaths must be reported to the Justice Center within 24 hours of occurrence or discovery of the death. Reporting Line: 1-855-373-2124</p> <p>All deaths of any individual who received services operated or certified by OPWDD within thirty days preceding death shall be reported to OPWDD and the Justice Center. This reporting is required regardless of whether the death did or did not occur under the auspices of an agency.</p>	

