MISSION STATEMENT

Special Care for Families and Children's Services, Inc. is a professional organization committed to the philosophy that every person, regardless of his/her level of ability, must be treated with the utmost dignity and respect accorded to all human beings. It is our belief that every person with intellectual and developmental challenges should be afforded the opportunity to maximize his/her potential, experience personal health and growth, and promote social and intellectual functioning. This is accomplished through appropriate individualized person centered programming. In addition, each person should be living in an atmosphere of acceptance, warmth, understanding, and security that upholds the rights of each individual and provides developmental opportunities both as an individual and as a member of the community.

Special Care for Families and Children's Services encourages and affirms the rights of persons with developmental disabilities and their families to secure the highest level of quality treatment, and habilitation services. It is our belief that personal consumer growth flows first from an improved sense of self-worth, and that our programming must be formulated toward this goal of self-actualization. All of our service environments will continually encourage consumer choice and expression.

We are committed to the training, enhancement, and growth of all Special Care for Families and Children's Services personnel in the implementation of our mission and goal in our continuing effort to provide a skilled workforce both knowledgeable and capable of enhancing the life opportunities of people with intellectual developmental challenges and their families. Staff will assume the responsibility to reflect the ideals of advancing person planning, consumer empowerment, individual choice, and basic human rights. Additionally, Special Care for Families and Children's Services is committed to help develop meaningful relationships with family, friends and others in their life, and to access community resources for as many basic and coordinating services as appropriate. Staff will be trained to reflect the above ideals when integrating consumers in all appropriate community activities so that they can fully participate in their communities.

Special Care for Families and Children's Services' programs and services are available to all regardless of race, color, or creed.

Individual Rights Promotion
And
Rights Protection

Statement of Policy

Concerning Rights of Individuals with Developmental Disabilities

Recognizing the need to ensure the human rights of individuals served by Special Care for Families and Children's Services, the following principles and policies are to be followed by staff:

A) Principles

1. Special needs individuals have the same rights as other human beings to the maximum degree feasible.
2. Special needs individuals have a right to proper medical care and to such education, training, rehabilitation, guidance, and counseling that will enable them to develop their ability and maximum potential regardless of level of functioning.
3. Special needs individuals have a right to perform productive work or to engage in any other meaningful work activity to the fullest extent of their capabilities.
4. Special needs individuals have a right to protection from exploitation, abuse, and degrading treatment.
5. Whenever special needs individuals are unable to exercise their rights in a meaningful way, or it becomes necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights will contain proper administrative and legal safeguards against every form of abuse. Limitations of rights would be only on an individual basis and for clinical reasons only. This clinical justification and the specific time the limitation would remain in effect would be discussed at an IDT meeting, and clinical justification would be contained within the individual's file. (633.4) (a) (3)
6. Special needs individuals have a right to freedom of choice in the selection of services, within their own capacity to make decisions.
7. Special needs individuals have the right, when participating in research, to be safeguarded from violations of human dignity and to be protected from physical and psychological harm.

B) Policies

1. No physical punishment is to be used against any individual.
2. Personal service records and data will be available to the individual, his or her parent, guardian, or legal representative.
3. Intervention strategies which minimize the degree of infringement on the individual's rights without sacrificing the likelihood of positive outcomes (least restrictive alternative) have priority.
4. All services must be individually tailored to meet the needs of each particular individual.
5. Individuals receiving Waiver services and their personal or legal representative will be given full opportunity to participate in the development of programs and in their review.

C) Procedures

1. Professional staff, student trainees, and paraprofessional staff are required to service each participant in a manner consistent with the principles and policies outline in this section.
2. When professional staff, student trainees, and paraprofessional staff see that individuals receiving Waiver services are not being related to in a manner consistent with the principles and policies, then that person should respond in a conscientious manner to remedy the situation by formal or informal process.
3. A response should be made by reporting to a supervisor or director for appropriate administrative action in instances of further non-compliance.
4. Parents or other concerned individuals (e.g. visitors, client escorts, etc.) should also report to agency staff or administration.
5. Staff will be made aware of individual's rights through training and mentoring.
6. A major infringement of these rights by a staff member (such as striking an individual) will be grounds for immediate dismissal of staff member.
7. Staff will be encouraged to appraise individuals of their rights in situations where the individuals are questioning a staff or managerial decision.

Individual Rights

No individual will be deprived of any civil or legal right solely because of a diagnosis of developmental disability. All individuals will be given the respect and dignity that is extended to every person regardless of race, religion, national origin, creed, age, sex, ethnic background, sexual orientation or health condition, such as one tested for or diagnosed as having an HIV infection or handicap. 633.4 (a) (1) and (2).

Specifically, each individual and correspondent, upon his/her admission to Waiver Services, and periodically thereafter, will be informed of his/her rights, which include, but are not limited to:

- Freedom from physical or psychological abuse 633.4 (a) (4)(ii)
- Freedom from any use of mechanical restraints or seclusion (the presence of the individual in a room alone with a closed door which is not possible for him/her to open from the inside). 633.4 (a) (4) (iii)
- Freedom from unnecessary or excessive medication 633.4 (a) (4) (iv)
- Protection from commercial or other exploitation 633.4 (a) (4) (v)
- Confidentiality with regard to all information contained in the individual's record, and access to such information, subject to the provisions of Article 33 of the mental hygiene law and the commissioner's regulations. 633.4 (a) (4) (vi)
- A written plan of services for each individual, its goal being to answer his/her ability to cope with their environment, to foster socialization, recreation, contact with non-handicapped persons, and encouraging independent living to as great an extent as possible, which right also includes: 633.4 (a) (4) (vii) (a-c)
    a) The opportunity to participate in the development and modification of an individualized plan of services, unless limited by the individual's capabilities to do so.
    b) The opportunity to object to any individual plan of services, and the right to appeal any decision with which the individual disagrees.
    c) The provision for normal, meaningful, and productive activities within the individual's interest and capabilities.
- Services including assistance and guidance from trained staff, with full respect for individual's dignity and personal integrity. 633.4 (a) (4) (viii)
- Advocacy for appropriate and humane health care services and the opportunity for the individual, parent, guardian, or correspondent to participate in choice of physician or dentist, and the right to obtain a second medical opinion. 633.4(a)(4) (ix)

- Observance and participation in religion of his/her choice, through the means of his/her choice, including the choice not to participate. 633.4 (a) (4) (xi)
- The opportunity to register and vote, and the opportunity to participate in activities that educate him or her in civic responsibilities. 633.4 (a) (4) (xii)
- The receipt of information prior to or upon starting services regarding supplies and services provided by Waiver or for which additional charges will be made, and timely notification of any changes thereafter. 633.4 (a) (4) (xiv)
- The use of his/her personal money and property, and the right to be regularly informed of his/her financial status, and of assistance in the use of his/her resources as appropriate. 633.4 (a) (4) (xv)
- Individually owned clothing, properly fitting and maintained appropriate for age, season, and activity, and the opportunity to be involved in choice of such clothing. 633.4 (a) (4) (xvii)
- Adequate, individually owned grooming and personal hygiene supplies. 633.4 (a) (4) (xviii)
- A reasonable degree of privacy in sleeping, bathing, and toileting areas. 633.4 (a) (4) (xix)
- A reasonable amount of safe, individual, accessible storage space for clothing and personal belongings. 633.4 (a) (4) (xx)
- The opportunity to request alternate residential settings, such as change of room or residence, and involvement in decisions regarding such changes. 633.4 (a) (4) (xxi)
- The opportunity personally or through parents, guardians, or correspondent to express grievances, concerns, or suggestions without fear of reprisal, to the chief executive officer of the facility, commissioner of OPWDD, and the Commission of Quality of Care. (The manner of expressing grievances is included in Resident's Rights Packet, signed upon admission). 633.4 (a) (4) (xxii)

Implementation of many of the above rights may entail inherent risks to the individuals. To the extent foreseeable, Special Care will describe risk to individuals, parents, guardians, or correspondents. However, the individual will assume responsibility for risks usually associated with participation in normal activities, if their abilities permit such participation.

<u>Limitations:</u>

Special Care will not limit any of the above mentioned rights as punitive or disciplinary measures, or for convenience of staff.

SPECIAL CARE FOR FAMILIES AND CHILDREN'S SERVICES

INDIVIDUAL's RIGHTS AND RESPONSIBILITIES PACKET

(signed by individual and /or correspondent)

An individual receiving Special Care Waiver Services will be ensured the following rights:

1. The right to be free from physical or psychological abuse
2. The right to be free from any use of mechanical restraining devices
3. The right to be free from unnecessary or excessive medication
4. The right to be protected from commercial or other exploitation
5. The right to confidentiality with regard to all information contained in his/her record, and access to such information, subject to the provisions of Article 33 of the Mental Hygiene Law and the Commissioner's regulations
6. The right to an individual program of services which will maximize his/her abilities to cope with his/her environment, will foster social and vocational competence, and will enable him/her to live as independently as possible
7. The right to be given the opportunity to participate in the development and modification of his/her individual plan of services unless constrained by his/her ability to do so
8. The right to object to any provision within his/her individualized plan of services, or to any form of care or treatment, and to appeal decisions with which he/she disagrees
9. The right to meaningful and productive activities, within his/her capacity, although some risk may be involved, and which take into account his/her interests
10. The right to receive services, assistance, and guidance from staff who are competent and of sufficient number to provide such services

11. The right to appropriate and humane medical and dental care and the right, either personally or through parents or guardians, to participate in the choice of physician and dentist, and the opportunity to obtain second medical opinions

12. The right to participate in the religion of his/her choice, through the means of his/her choice, including the right of choice not to participate
13. The right to vote, and the right to participate in activities that educate the person in civic responsibilities
14. The right to be treated in a way which acknowledges and respects his/her cultural identity
15. The right to receive information, on admission, in his/her primary language regarding the supplies and services Special Care will provide or for which additional changes will be made, and timely notification of any changes thereafter
16. The right to the use of his/her personal money and property
17. The right to be informed regularly of his/her financial status and to be provided assistance in the use of his/her resources, as appropriate
18. The right to a balanced and nutritious diet, which is not altered or denied for behavior management or disciplinary purposes
19. The right to individually owned clothing appropriate for age and season, and the right to be involved in the selection
20. The right to individually owned grooming and personal hygiene supplies
21. The right to a reasonable degree of privacy in sleeping, bathing, and toileting areas
22. The right to a reasonable amount of safe, individual, accessible storage space for clothing and other personal belongings used on a day-to-day basis
23. The right of the individuals, their parents or guardians to express grievances, concerns, and suggestions without fear of reprisal

24. The right of individuals, their parents, or correspondents to be informed of the individual's rights under law and regulation, and the guarantee that such rights will not be abridged
25. The right to participate with staff in the establishment of house rules
26. Each individual has the right to refuse participation in any training activity which is not an integral part of that individual's service plan
27. The right to refuse participation in any activity

28. The right to access meaningful recreation and community programs, and the right to participate in the planning of such activities
29. The right to a maximum amount of privacy consistent with the effective delivery of services. This includes, but is not restricted to, privacy of person, of personal belongings, and of communication.
30. The right to object to any form of care and treatment, and the right to appeal decisions with which he/she disagrees. Exception: Emergency treatment.
31. The right not to be human subjects involved in research if it interferes with regular daily activities in any way. Research which is purely statistical or observational may be allowed with the following conditions:
    a. The person conducting the research is known to the director of Special Care as a person who is conscientious and caring of the dignity and rights of developmentally disabled persons.
    b. The individuals are not subject to any kind of physical, emotional, or psychological stresses for the purpose of the research.
    c. Informed consent of individual and/or correspondent
    d. Permission of the director of Special Care
32. The right to object to Special Care Waiver Services that are not directly related to care and treatment by following the general procedures for objections and appeal set forth

33. The right to be informed by staff, to a reasonable extent, of inherent risks involved in the implementation of many of the above rights. However, individuals assume responsibility for those risks typically associated with participation in normal activities, to the extent of the individual's abilities permit such participation
34. The right not to have any of the foregoing rights limited for disciplinary purposes, retribution, or for the convenience of staff

Complaints and Grievance Process:

If an individual or other interested person objects to the application of or denial of previously stated rights or decisions made on the individual's behalf, a meeting will be set up between the individual and/or correspondent with the care manager of the program planning team to resolve said issues.

In the event of continued dissatisfaction of individual, he/she will be informed of his/her right to appeal to OPWDD and the Bureau of Quality Assurance at the following addresses:

Sheryl Minter-Brooks
Director BDDRO
888 Fountain Avenue
Brooklyn, NY 11208
718 642-6000

Mental Health Legal Services
888 Fountain Avenue
Brooklyn, NY 11208
718 277-5324

Doctor's Visit: The Prevention Checkup, What To Expect as well as your Rights & Choices

Depending on your age, sex, and family medical history, a checkup with your doctor may include:

- Blood, urine, vision, and hearing tests to evaluate your overall health
- Assessments of your blood pressure, cholesterol level, and weight
- A discussion about your diet and exercise habits and any tobacco, drug, and alcohol use
- Immunizations and booster shots
- Screenings to assess your risk of developing certain diseases, including diabetes (if you already have high blood pressure or high cholesterol) and cancer
- Depending on your age and sexual lifestyle, testing for STDs and possibly HIV
- Starting at age 50, or younger if you have a family history, a screening test for colorectal cancer
- A discussion about depression and stress to evaluate your mental health

Doctor's Visit: Concerns for Men

For men, in addition to checking weight, high blood pressure, and other basics, your doctor's visit may specifically include:

- Starting at age 50, or younger if you have a family history, a rectal exam to check for abnormal bumps in the prostate and a prostate specific antigen (PSA) blood test to screen for prostate cancer
- Between the ages of 65 and 75 if you have ever smoked cigarettes, an abdominal exam to check for an enlargement in your aorta; an abdominal aortic aneurysm, a weakness in the lining of the aorta (a large blood vessel in your chest and abdomen), can develop with age and become a life-threatening problem.

Doctor's Visit: Concerns for Women

For women, in addition to checking weight, high blood pressure, and other basics, your doctor's visit may specifically include:

- A test for cervical cancer, called a Pap smear, every one to three years
- A clinical breast exam to check for any unusual lumps or bumps in your breasts
- Starting at age 40 (or younger if you have a strong family history for breast cancer), a breast cancer screening with a mammogram every one to two years
- Starting at age 65, a referral for a bone density test to screen for osteoporosis, the disease that causes brittle, fragile bones and typically affects older women; women with more than one risk factor for osteoporosis may start earlier

Doctor's Visit: Preparation

It's important for you to play an active role to get the most out of your doctor's visit. Before your exam, review and update your family health history, be prepared to ask if you're due for any

general screenings or vaccinations, and come up with a list of questions if you have particular health concerns.

During your actual doctor's visit, don't be shy about getting your questions answered. Also, if your doctor gives you advice about specific health issues, don't hesitate to take notes. Time is often limited during these exams, but by coming prepared you're sure to get the most out of your checkup.

Rights & Choices

As a sovereign, independent individual, you are not bound by the original doctor you chose to consult, nor the doctor's diagnoses or treatment suggestion(s). Doctors should respect the patient's right to seek a second opinion. A healthcare professional will rarely refuse to refer you for one. It's important that you don't suffer in silence. If you know something isn't right – and no one knows your body better than you – then you should feel empowered to pursue the correct treatment. Even if you feel you could get better care elsewhere you're allowed to switch doctors.

If you would like a second opinion (or even a third) or are unhappy in any way in which the doctor is treating you, his bedside manner, or any other reason at all,

You have every right to:

a. Choose another doctor
b. Right to seek another opinion

Voting: What is it all about and how to do it

1. **Determine your eligibility to vote.** Your eligibility is determined both by state and federal laws. Federal law requires that you be a US citizen, by birth or by naturalization, and 18 years old at the time the election is held.
2. **Use the US Government's registration site to register in any state.** Some states even let you register completely online. If not, you can print these simple forms out online and mail them in to register without leaving your home. You'll need basic information with you, like an ID card (with ID number) and your social security number, but the forms are self-explanatory. You can also drop your registration off at a polling place or city hall. **Alternatively, register to vote at your local DMV.** To do so, you'll need 1-2 valid forms of ID (depends on state) and a few hours to wait in line. You will be given a simple form to fill out and your ID will be checked to make sure you're who you say you are. That is it!
3. **Think about the sorts of policies you support in a president.** While a person's personality and temperament are important to consider, you need to think about each candidate not just as a person but as a set of positions. This is your representative from America to the rest of the country and the world, so you need to vote with a clear idea of the sorts of ideas and policies they will implement. Some early considerations must include:

   Social Policy: Do you want a candidate who enforces a traditional social order, attempting to ground America where it is, or a candidate who wants to keep the government from interfering in social practices?

   Economic Policy: Do you believe taxes should be used to improve communal government infrastructure and services, or cut low, leaving these services to private businesses?

   Foreign Policy: What would it take a candidate to send American troops overseas? Do you want someone who willingly uses force or someone who prefers diplomacy?

   Domestic Policy: A big, big topic, this covers everything from immigration, renewable energy, gun rights, and more. Domestic policy varies even within the two major parties.

4. **Double check your voter registration a month or so before the election to prevent issues on Election Day.**
5. **Look up your local polling places ahead of time, as well as their open hours.**
6. **Bring a valid federal or state ID with you to the polling place.**

7. **Know how to differentiate, and work, the different types of voting when you step in the booth.** Voting can be done by paper and pencil, mechanically or electronically. The most common ways to vote are:

   Paper ballot. You simply mark your choices with a pencil (the ballot looks similar to the type of school test you used to take by filling in answer circles). You place your marked ballot in a locked box or put it through a scanner (someone will help you with this if you aren't comfortable doing it yourself) before you leave the polling room.

   Mechanical voting machines. Many localities still use mechanical voting machines. You step inside the "box" and the curtain automatically closes behind you so that you may vote in private. The candidates and issues are listed on the left side of the machine. Depress the small lever next to each name or ballot question—either "yes" or "no." When you have cast all your votes, you will slide a large lever (located at the base of the machine) all the way to the right. Your votes are registered in the machine and the lever opens the privacy curtains so that you can exit.

   Electronic voting systems. Even though most voters are computer savvy these days, each state that uses electronic voting provides an instructional tutorial to voters before they vote. If you can navigate your way around a computer or a smart phone, then voting electronically will pose no challenge to you. You simply look at the screen, make your selections (touch point screen) and when you have cast all your votes, you touch the "Cast my Vote" button that is located at the bottom of the screen.

Education About Rights

A) Principles

1. Special needs individuals have the same rights as other human beings to the maximum degree feasible.

2. Special needs individuals have a right to proper medical care and to such education, training, rehabilitation, guidance, and counseling that will enable them to develop their ability and maximum potential regardless of level of functioning.

3. Special needs individuals have a right to perform productive work or to engage in any other meaningful work activity to the fullest extent of their capabilities.

4. Special needs individuals have a right to protection from exploitation, abuse, and degrading treatment.

5. Whenever special needs individuals are unable to exercise their rights in a meaningful way, or it becomes necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights will contain proper administrative and legal safeguards against every form of abuse. Limitations of rights would be only on an individual basis and for clinical reasons only. This clinical justification and the specific time the limitation would remain in effect would be discussed at an IDT meeting, and clinical justification would be contained within the individual's file. (633.4) (a) (3)

6. Special needs individuals have a right to freedom of choice in the selection of services, within their own capacity to make decisions.

7. Special needs individuals have the right, when participating in research, to be safeguarded from violations of human dignity and to be protected from physical and psychological harm.

Special needs individuals have :

1. The right to be free from physical or psychological abuse

2. The right to be free from any use of mechanical restraining devices

3. The right to be free from unnecessary or excessive medication

4. The right to be protected from commercial or other exploitation

5. The right to confidentiality with regard to all information contained in his/her record, and access to such information, subject to the provisions

of Article 33 of the Mental Hygiene Law and the Commissioner's regulations

6. The right to an individual program of services which will maximize his/her abilities to cope with his/her environment, will foster social and vocational competence, and will enable him/her to live as independently as possible

7. The right to meaningful and productive activities, within his/her capacity, although some risk may be involved, and which take into account his/her interests

8. The right to appropriate and humane medical and dental care and the right, either personally or through parents or guardians, to participate in the choice of physician and dentist, and the opportunity to obtain second medical opinions

9. The right to participate in the religion of his/her choice, through the means of his/her choice, including the right of choice not to participate

10. The right to vote, and the right to participate in activities that educate the person in civic responsibilities

11. The right to be treated in a way which acknowledges and respects his/her cultural identity

12. The right of the individuals, their parents or guardians to express grievances, concerns, and suggestions without fear of reprisal

Education About Rights

A) Principles

1. Special needs individuals have the same rights as other human beings to the maximum degree feasible.
2. Special needs individuals have a right to proper medical care and to such education, training, rehabilitation, guidance, and counseling that will enable them to develop their ability and maximum potential regardless of level of functioning.
3. Special needs individuals have a right to perform productive work or to engage in any other meaningful work activity to the fullest extent of their capabilities.
4. Special needs individuals have a right to protection from exploitation, abuse, and degrading treatment.
5. Whenever special needs individuals are unable to exercise their rights in a meaningful way, or it becomes necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights will contain proper administrative and legal safeguards against every form of abuse. Limitations of rights would be only on an individual basis and for clinical reasons only. This clinical justification and the specific time the limitation would remain in effect would be discussed at an IDT meeting, and clinical justification would be contained within the individual's file. (633.4) (a) (3)
6. Special needs individuals have a right to freedom of choice in the selection of services, within their own capacity to make decisions.
7. Special needs individuals have the right, when participating in research, to be safeguarded from violations of human dignity and to be protected from physical and psychological harm.

Special needs individuals have :

1. The right to be free from physical or psychological abuse
2. The right to be free from any use of mechanical restraining devices
3. The right to be free from unnecessary or excessive medication
4. The right to be protected from commercial or other exploitation
5. The right to confidentiality with regard to all information contained in his/her record, and access to such information, subject to the provisions of Article 33 of the Mental Hygiene Law and the Commissioner's regulations

Education About Rights

6. The right to an individual program of services which will maximize his/her abilities to cope with his/her environment, will foster social and vocational competence, and will enable him/her to live as independently as possible
7. The right to meaningful and productive activities, within his/her capacity, although some risk may be involved, and which take into account his/her interests
8. The right to appropriate and humane medical and dental care and the right, either personally or through parents or guardians, to participate in the choice of physician and dentist, and the opportunity to obtain second medical opinions
9. The right to participate in the religion of his/her choice, through the means of his/her choice, including the right of choice not to participate
10. The right to vote, and the right to participate in activities that educate the person in civic responsibilities
11. The right to be treated in a way which acknowledges and respects his/her cultural identity
12. The right of the individuals, their parents or guardians to express grievances, concerns, and suggestions without fear of reprisal

INCIDENT REPORTING
AND
ABUSE PREVENTION

Revised 05/2019

The “Access to Records Law” was signed by Governor Spitzer on May 5, 2007, which makes new provisions to the Mental Hygiene Law. The new law changes existing regulations on how Special Care will notify you in the event an “Incident”, “Occurrences” or an allegation of abuse occurs. The following pages are an explanation of these changes and a description of changes made to Special Care policy resulting from these new requirements.

We are required by law to keep you informed of changes in our policies and procedures on how we notify families and advocates regarding incidents or abuse allegations. Please review the Information.

PRE AND POST EMPLOYMENT SCREENING

1. In addition to the checking of references and employment history as part of the routine screening of job applicants, NY State requires that all prospective employees undergo fingerprinting and background checks. No one may be employed without compliance with this provision and receiving full clearance.

2. All prospective applicants are given an "Applicant Consent Form". This form provides every applicant with the necessary information for the screening and background checks that they are required to consent to undergo.

3. It is Special Care policy to implement all Justice Center Criminal Background Check requirements. Regulations, Guidance and Policies can be found at the Justice Centers website:
   a. "Justice Center Regulation Requires Providers to Implement CBC Policy and Procedure"
      i. https://www.justicecenter.ny.gov/investigations-prosecutions/cbc/JusticeCenterRegulationRequiresProviders
   b. "Pre-Employment Checks"
      i. https://www.justicecenter.ny.gov/pre-employment-checks/home
   c. "CBC Determination Information"
      i. https://www.justicecenter.ny.gov/investigations-prosecutions/cbc/Determination_Information#
   d. "Custodians" (i.e. Direct Support Staff/ DSP)
      i. https://www.justicecenter.ny.gov/custodians

4. Any Staff person that is hired to work, will be put on a "Temporary Approval Status" until the background checks are completed and they are cleared by the Justice Center for approval. During this time, they must be under constant supervision by the supervising staff of that shift at all times.

5. In addition, NY state law requires that, only during the tenure of their employment, SPECIAL CARE will receive notification by the NYS Justice Center concerning the arrest of any employee. In the event that a current employee is arrested for any reason, SPECIAL CARE's Personnel Director will conduct an inquiry into the nature of the arrest and, in consultation with the Executive Director, make a determination as to whether the employee can continue to be employed by SPECIAL CARE.

EMPLOYEE TRAINING

6. As required by NY state law, every employee is required to read and sign a Code of Conduct, initially, at the time of being hired, and each year afterward, for the duration of their employment.

7. In addition, as required by NY state law, every employee must undergo training in:

   I. Abuse prevention, identification, reporting, and processing of allegations of abuse;

   II. Laws, regulations, policies and procedures governing protection from abuse; and,

   III. Incident reporting and processing procedures

8. This training is required for each employee within three months of being hired and is to be reviewed annually.

REPORTABLE INCIDENTS, AND SERIOUS NOTABLE OCCURRENCES, DEFINED

"Reportable Incidents, and Serious Notable Occurrences" are those events that may occur in programs licensed by OPWDD, which, in accordance with the requirements of New York State law, are required to be recorded, reviewed, investigated and reported to designated parties according to established procedures of the agency; reviewed by a standing committee; and acted upon in an appropriate manner to safeguard the well-being of persons receiving services and to bring the matter to closure.

"Reportable Incidents" are significant events or situations endangering a person's well-being. A "Serious Notable Occurrence" is an incident, which, due of the severity or sensitivity of the situation, must also be immediately reported to the OPWDD Incident Management Unit (IMU), in whose area of jurisdiction the incident occurred and followed up in writing on official reporting forms.

624.3 Reportable incidents, defined.

Definitions of Reportable Incidents:

Physical abuse. 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 is not limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting, or the use of corporal punishment. Physical abuse does not include reasonable emergency interventions necessary to protect the safety of any party.

Sexual abuse. 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 article 230 or 263 of the Penal Law. For purposes of this paragraph only, a person with a developmental disability who is or was receiving services and is also an employee or volunteer of an agency is not 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.

Psychological abuse. 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.

Deliberate inappropriate use of restraints. 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) /Life Plan 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 includes 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.

Use of aversive conditioning. 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.

Obstruction of reports of reportable incidents. 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 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 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.

Unlawful use or administration of a controlled substance. 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.

Neglect. 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 includes, 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, 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.

Significant incident. 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 includes but is not limited to:

(1) *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

Conduct on the part of a custodian, including:

(2) Seclusion. 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 of this Title, 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 timeout, or a failure to implement such a plan as designed, is considered to be “seclusion” and is prohibited.

(3) Unauthorized use of timeout. For the purposes of this sub clause only, means 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; Note: For the purposes of this provision "unauthorized use of timeout" includes any use of time out that is inconsistent with an individual's plan of services except as noted in sub clause (1) of this clause.

(4) Except as provided for in paragraph (7) of this subdivision, the administration of a prescribed or over the counter medication that is inconsistent with a prescription or order issued for a service recipient by a licensed qualified health care practitioner, and that has an adverse effect on an individual receiving services. For purposes of this sub clause, adverse effect means the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the wellbeing of a person receiving services;

(5) Inappropriate use of restraints. 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" includes 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

(6) Mistreatment. Other conduct on the part of a custodian, inconsistent with the individual’s plan of services, generally accepted treatment practices, and/or applicable Federal or State laws, regulations, or policies, and that impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare of an individual receiving services, except as described in any other provision of this subdivision;

(7) Missing person at risk for injury. 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;

(8) Choking, with known risk. The partial or complete blockage of the upper airway by an inhaled or swallowed foreign body, including food, which 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;

(9) 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 choking, with known risk, incident (see clause [e] of this subparagraph), involving an individual with a known risk for choking and a written directive addressing that risk;

(10) Self-abusive behavior, with injury. A self-inflicted injury to an individual receiving services that requires medical care beyond first aid;

(11) 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., 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, except as defined in clause (c) of this subparagraph, to the wellbeing of the person or others;

(12) Injury, with hospital admission. An injury that results in the admission of a service recipient to a hospital for treatment or observation, except as defined in clause (g) of this subparagraph;

(13) Theft and financial exploitation. 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; 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;

(14) Other significant incident. An incident that occurs under the auspices of an agency, but that does not involve conduct on the part of a custodian, and does not meet the definition of any other incident described in this subdivision, but 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.

624.4 Notable occurrences, defined.

Notable occurrences are events or situations that meet the definitions in subdivision (c) of this section and occur under the auspices of an agency. Notable occurrences do 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 definition of one of the categories in subdivision (c) of this section. An exception is that a death that also meets the definition of a reportable incident must be reported both as the reportable incident and as a notable occurrence.

Serious and minor notable occurrences are defined and categorized as follows:

Serious notable occurrences:

(1) Death. The death of any person receiving services, regardless of the cause of death. 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;

(2) Sensitive situations. Those situations involving a person receiving services that do not meet the definitions of other incidents in section 624.3 of this Part or in this subdivision, but that may be of a delicate nature to the agency, and are reported to ensure awareness of the circumstances. Sensitive situations must be defined in agency policies and procedures, and include, but not be limited to, possible criminal acts committed by an individual receiving services.

Minor notable occurrences:

(1) Injury, 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 assistant, or nurse practitioner, and such treatment is more than first aid.

(2) Theft or financial exploitation, 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 and less than or equal to $100, that does not involve a credit, debit, or public benefit card, and that is an isolated event; And

PROCEDURES FOR "REPORTABLE INCIDENTS AND SERIOUS NOTABLE OCCURRENCES"

Immediately:

a. Staff will provide the Person(s) with all needed care and protections. Call 911 and/ or Hatzolah in case of serious injury.

b. Staff will notify the supervisor. The process will be as follows: immediately, upon discovery of the Reportable Incidents and Serious Notable Occurrence, staff will inform their supervisor , who in turn will immediately inform the Executive Director. If the Executive Director is unavailable, then another designated administrator (e.g., the Associate Director, Clinical Director or designated agency personnel) will be immediately informed. The QA department is also notified to assist in meeting notification and reporting requirements and to initiate an investigation.

c. A designated personnel member will notify the Justice Center (JC)/ and IMU by telephone, fax or other appropriate means. (The numbers for contacting the IMU during and after business hours are posted in each residence).

d. Staff will call the police, in all cases where a crime may have been committed. Hospital personnel, EMS or volunteer paramedics will, in accordance with NYC law, automatically notify the coroner/medical examiner's office and NYPD for suicides, homicides, accidental deaths or deaths due to suspicious, unusual or unnatural circumstances.

e. In the case of a DEATH, a designated staff member will notify the JC special "DEATH Hotline" AND the IMU by telephone, fax or other appropriate means for the area in which the incident occurred. (The numbers for contacting IMU during and after business hours are posted in each residence).

a. Within 30 days of discharge from Agency services, the Agency is still required to all Part 624 and Part 625 reporting and investigating requirements.

i. ALL deaths of any individual who received services or certified by OPWDD within 30 days preceding death, shall be reported to the NYS JC, whether or not it occurred under the auspices of an Agency. The Death must be reported to the NYS JC "Death Hotline" and OPWDD IMU, within 24 hours.

ii. Submission of OPWDD Form 162-Report of Death is required within 5 working days.

Within 1 Working Day of the Occurrence or Discovery of a Reportable Incidents and Serious Notable Occurrence:

QA or authorized agency personnel will complete OPWDD form 147, electronically, via the Incident Reporting Management Application (IRMA). The successful entry of the required information onto IRMA will serve as providing the completed form 147 to the IMU. The personnel entering information on the application will also print a completed OPWDD form 147 for the purpose of maintaining internal records and for future review.

Within 1 Working Day of the Completion of the 147 for a Reportable Incidents and Serious Notable Occurrences:

a. A designated person, (depending on the nature of the relationships involved) will notify a guardian, parent, spouse, adult child, advocate or correspondent of the Incident.

b. The personnel member providing notification (in the event of a Reportable Incidents and Notable Occurrence will extend an offer to the party receiving notification to meet with an agency administrator to further discuss the incident.

1. If the party receiving the notification requests; QA will provide them with a redacted copy of the OPWDD Form 147, 149 and other documents, within 21 calendar days of the Incident Review Committee (IRC) meeting.

c. Staff will notify the person's Care Manager (CM) (as applicable) of the Incident.

d. In the case of a Reportable Incidents and Serious Notable Occurrence involving a Willowbrook Class Member, QA or designated personnel will also notify:

1. OPWDD Litigation Support
2. Willowbrook Attorney
3. Plaintiff Counsel

e. In the case of a Reportable Incidents and Serious Notable Occurrence involving a Willowbrook Class Member residing in a certified residential program or any individual represented by CAB, QA or administrative personnel will fax a completed, printed OPWDD form 147 to the Consumer Advisory Board main office.

Within 3 Working Day of the Occurrence or Discovery of a Reportable Incidents and Serious Notable

Occurrence:

In the case of a Reportable Incidents and Serious Notable Occurrence involving a Willowbrook Class Member, QA or administrative personnel will fax a completed, printed OPWDD form 147 to the Mental Hygiene Legal Service (MHLS).

Within 5 Working Days of the Occurrence or Discovery of a Reportable Incidents and Serious Notable Occurrence:

a. In the case of deaths, form OPWDD 162- REPORT OF DEATH will be completed electronically by the designated person via the Incident Reporting Management Application. The successful entry of the required information onto IRMA will also serve as the provision of the OPWDD 162- REPORT OF DEATH to the JC and IMU. The personnel entering information on the application will also print a completed form OPWDD 162- REPORT OF DEATH for the purpose of maintaining internal records and for future review.

b. In the case of deaths of Willowbrook Class Members, QA or designated personnel will send a paper printout of form OPWDD 162- REPORT OF DEATH to the Consumer Advisory Board, OPWDD Statewide Liaison, Plaintiff's Counsel, and MHLS.

c. QA or administrative personnel will monitor to ensure that a written report has been submitted to the coroner/medical examiner's office and law enforcement officials for suicides, homicides or other unexpected or accidental deaths.

Within 10 Days of the Occurrence or Discovery of a Reportable Incidents and Serious Notable Occurrence:

a. For "Reportable Incidents and Serious Notable Occurrence", the designated staff member will complete OPWDD form 148, "Report on Actions Taken" and provide it to the person's guardian, parent, spouse, adult child, or an advocate or correspondent. Required parties who received the notification will receive a copy of the completed form 148.

Within 30 Days of the Occurrence or Discovery of a Serious Notable Occurrence:

a. For all Reportable Incidents and Serious Notable Occurrences involving Persons residing in an IRA, investigations (OPWDD Form 149-Investigation, conducted by QA) will be completed and submitted to IRMA and the Associate Director within 30 calendar days of the occurrence or discovery of the event.
    i. W/in 10 after the completion of the Investigation;
        1. Send the CM a redacted summary (Conclusions and Recommendation sections only) of the OPWDD Form 149.

b. The agency's Incident Review Committee (IRC) will meet to review the incident within 1 month of the incident. Within two weeks of the meeting, the committee will forward its findings and recommendations to the Executive Director. Minutes of the IRC meeting must be submitted into IRMA within 21 calendar days of the meeting.

c. QA staff investigating the incident will provide updates to IRMA (and to the CAB main office in the case of a Willowbrook Class Member) through the IRMA site on the status of the incident investigation. Monthly updates will continue thereafter until the investigation is closed.

ADDITIONAL PROCEDURES FOR "REPORTABLE INCIDENTS"- SUB-CATEGORY "ALLEGATIONS OF ABUSE"

Immediately:

a. The Persons' safety will always be the primary concern of the Executive Director, who will ensure that whatever measures taken appear to be reasonable and prudent and are taken to ensure the protection of a person or persons from further harm, injury or abuse and to provide prompt treatment and care.

b. Staff or Supervisor will notify the JC/ IMU by telephone, fax or other appropriate means. (The numbers for contacting the JC/ IMU during and after business hours will be posted in each residence).

c. Staff will notify the supervisor . The process will be as follows: immediately, upon discovery of the allegation, residence staff will inform their supervisor , who, in turn, will immediately inform the Executive Director. If the Executive Director is unavailable, then another designated administrator (e.g., the Associate Director, Clinical Director or designee) will be immediately informed. The QA department is also notified to assist in meeting notification and reporting requirements and to initiate an investigation.

d. QA or designated personnel will call 911 to notify the Police in all cases of physical abuse or sexual abuse or any other situation where a crime may have been committed.

e. In the event that the alleged victim is a child under 18, the individual who alleged to have witnessed abuse or who reported having knowledge of abuse will be counseled by the supervisor or by QA to contact the New York State Central Register of Child Abuse and Maltreatment at 1-800-342-3720 to make a report personally, as required by law.

f. In the event there is a suspected or unconfirmed concern that physical or sexual abuse may have taken place, a health professional (doctor/nurse) will be contacted and asked to perform a physical examination of the person in question as soon as possible. This exam is intended to assist in determining whether there is physical evidence of abuse which will assist in communicating with the police and hospital personnel.

g. A Special Care employee, volunteer, consultant, contractor, etc. who is the target of an investigation concerning an abuse allegation will be removed from the proximity from the alleged victim, either by suspension, reassignment, or relocation, as required by state law. They will be provided a Letter of Notification of the alleged incident, by the investigating agency.

h. Other measures may be taken at the discretion of the Executive Director (or designee) to further protect the individual from additional harm, as appropriate for the circumstances:

i. Providing the Target of the investigation with counseling, training in abuse prevention, and an increased level of supervision at his or her work site

ii. Providing staff at the work site where the incident was alleged to have occurred with training in abuse prevention and increasing the level of staff supervision and support to restore a secure environment

iii. Removal or relocation of the person receiving services, consistent with the developmental needs of the person (or a court order, if applicable) when it is determined that there is a risk to the person if he or she continues to remain in the facility

iv. Provision of counseling to the alleged victim and to other Persons within the facility, as appropriate

v. All recommendations of the Incident Review Committee will be followed

PROCEDURES FOR "MINOR NOTABLE OCCURRENCE"

Immediately:

a. Staff will provide the Person with all needed care and protections.

As Soon as Possible but No Later than 48 Hours:

Special Care Executive Director (or a designee) will be advised of all reportable incidents within 48 hours of their discovery. The process will be as follows: immediately, upon discovery of a Reportable incident, staff will inform their supervisor , who in turn will inform the Executive Director (typically, immediately, but no later than 48 hours). If the Executive Director is unavailable, then another designated administrator (e.g., the Associate Director, Clinical Director or another designee) will be informed.

Within 24 hours of completing form 147 for MINOR NOTABLE OCCURRENCE:

a. Staff will notify the CM worker

b. For Minor Notable Occurrence classified as "Injury (requiring more than first aid- speak to QA for guidance)", the CM, supervisor will notify a guardian, parent, spouse, adult child, advocate or correspondent.

c. In the case of a Minor Notable Occurrence involving a Willowbrook Class Member, QA or designated personnel will also notify:
    1. OPWDD Litigation Support
    2. Willowbrook Attorney

d. In the case of a Minor Notable Occurrence involving a Willowbrook Class Member or any individual represented by CAB, QA or administrative personnel will fax a completed, printed OPWDD form 147 to the Consumer Advisory Board main office.

e. Paper (i.e., *not* via IRMA) OPWDD 147 forms will be completed by the supervisor or his or her

designee within 48 hours of the Reportable Incident and will be submitted to the Associate Director.

Within 3 Working Day of the Occurrence or Discovery of a Minor Notable Occurrence:

In the case of a Minor Notable Occurrence involving a Willowbrook Class Member, QA or designated personnel will also notify:

1. MHLS

Review of Investigation Report by QA

Upon completion of the investigation report (OPWDD 149), it will be sent to QA for review prior to being sent to the IRC.

OCCURRENCES:

1. Special Care , in conformance with Federal regulations, “Minor Occurrences" which do not meet the New York State’s regulatory-based criteria for “Serious Incident” or “Notable Occurrences",, nevertheless, will be documented on standardized forms specifically for this purpose. Injuries or occurrences of any description, whether their origin is known or unknown, will be investigated to the extent possible, reviewed, corrective actions will be taken and this process will be documented.

2. Minor Occurrences which do not meet the regulatory-based criteria for “Serious Incident” or “Notable Occurrences", which, nevertheless, may be potentially harmful, will be investigated and reviewed, and corrective actions will be taken. Any pertinent information will be documented in the Person’s records.

3. All occurrences will be reported to the IRC by each supervisors . Occurrences will be tracked and included in required periodic trend reports by the IRC.

INVESTIGATION PROCEDURES

1. Events meeting the criterion for “Minor Notable Occurrences” will be investigated by a specially trained designee. Events meeting the criterion for “Reportable Incidents or Serious Notable Occurrences,” will be thoroughly investigated by the Quality Assurance staff, if assigned to do so by the NYS JC.

2. Concerning investigations of any Reportable Incidents or Serious Notable Occurrences: no one will participate in or conduct an investigation, if he or she was directly involved in the incident, or if his or her testimony is incorporated, or if a spouse or immediate family member was directly involved.
3. Investigations conducted by SPECIAL CARE will be conducted and documented in a manner that meets standards set by OPWDD.

4. 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.

5. 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, will report this information to the agency. The agency will relieve the assigned investigator of the duty to investigate if it is determined that there is a conflict of interest in the assignment.

6. In that OPWDD has the right to review all investigation case files, all relevant records, and minutes of meetings at which the incident or alleged abuse was discussed will be made available to reviewers or investigators. OPWDD will ensure the confidentiality of all records and evidence reviewed.

7. Incident and investigation case files will be maintained so as to protect the privacy of the individuals receiving services, anyone else involved or others whose names may appear in the reports.

8. When investigating injuries of unknown origin that do not require treatment of more than first aid, the investigator will conduct inquiries on all prior shifts of staff, from 24 to 48 hours leading to the discovery of the injury.

FOLLOW UP ACTIVITIES IN RESPONSE TO AN ALLEGATION OF ABUSE

[483.420(d)(3)]

1. In general, as required by OPWDD regulation, a report to law enforcement is made in instances such as:

- Intentional hitting, slapping, pinching, kicking, hurling, strangling or shoving of an individual receiving service by a staff member;

- Any sexual contact the occurs between a person receiving services and an employee;

- Any sexual contact that occurs between two persons receiving services in which one person uses force or coercion;

- Any situation where a staff member knowingly fails to act or acts in a manner that is injurious to the physical or mental welfare of an individual unable to care for him or himself;

- Any instance where a person dies in a manner in which the cause of death is unknown, or, in which the individual is not under the care of a physician and the death is not due to natural causes; and

- Theft and property crimes against people receiving services.

2. In the event of an allegation of physical or sexual abuse, staff will call 911 to notify the police. In some cases, the police may instruct that a Person who is making a complaint to come to the precinct where the alleged crime took place and to file a complaint. In this event, QA or designated staff will accompany the individual to the appropriate location and assist the Person in completing a

police report.

3. As part of an initial inquiry into an allegation of physical or sexual abuse, to aid in communicating with police and hospital personnel, the supervisor may be asked to perform a physical examination.

4. In some circumstances the police may instruct that the Person be taken by ambulance to the closest available emergency room for a medical examination, under the supervision of the police. The purpose of this examination is to establish the existence of any forensic evidence, either physical or medical, to substantiate the person's claim. Concrete medical evidence, photographs, x-rays, test results, etc. gathered by the police in support of an abuse allegation will be handled in accordance with the laws governing confidentiality of medical records and HIV confidentiality.
5. Special Care will investigate any reported allegation of abuse, immediately, unless instructed otherwise by the OPWDD IMU or the NYS JC. Any physical evidence, if discovered, will be preserved. The investigation procedure will cause as little disruption as possible to the daily routine of the person, yet will ensure the person's health and safety.

6. Other appropriate actions will be taken, which will include, if appropriate:

   a. A Special care employee, volunteer, consultant, contractor, etc. who is alleged by the Person to have abused the person, will be removed from proximity from the person; either by suspension, reassignment, or relocation, as required by State law.

   b. Increasing the degree of supervision of the alleged abuser.

   c. Provision of counseling to the alleged abuser.

   d. Provision of increased training to the alleged abuser and staff pertinent to the prevention and remediation of Person abuse.

   e. Increasing supervision and providing additional support to restore a secure environment to the affected staff and Persons.

   f. Removal or relocation of the person receiving services, consistent with the developmental needs of the person (or any court order applicable) when it is determined that there is a risk to the person if he or she continues to remain in the facility.

   g. Provision of counseling to the person and to other Persons within the facility, as appropriate.

   h. All recommendations of the incident review committee will be followed.

   i. Based on the findings of the NYS JC

   ii. Submitted to OPWDD within 10 working days of the findings and need for such a plan;

   iii. Approved by OPWDD;

iv. Implemented within the time-frames specified in the plan. The plan of prevention and remediation will be a plan of action to be taken with respect to an individual employee or volunteer to assure the continued health and safety of children, and will include a plan of action to prevent further acts of abuse; and,

v. Once approved by the NYS JC, the QA investigator, who is the authorized person, will complete an Administrative Action Reporting Mechanism (AARM) for any administrative recommendations, and upload it into the NYS JC AARM application site.

7. In the event that the police and/or the district attorney conduct an investigation or prosecute a case involving the alleged abuse of a Person, every effort will be made b Special Care management and staff to cooperate.

8. When an allegation of abuse is determined to be unsubstantiated, immediate and appropriate action shall be taken to exonerate the party against whom the allegation was made. The supervisor will inform the staff person who was the target of the investigation that he or she was exonerated and the staff member will be reinstated to his or her position. In some cases, due to the sensitive nature of the relationships among staff, or staff and Persons, to avoid the potential for recrimination, the Executive Director (or their designee) may determine that it serves the best interests of quality of Person care to reassign the staff member in question to an equivalent position in another work site.

9. Unless deemed necessary by OPWDD or the NYS Justice Center (JC), multiple independent investigations of a single situation will not be conducted.

10. With regard to Reportable Incidents or Serious Notable Occurrence allegations, the Person's safety will always be the primary concern of the Executive Director. The Executive Director or Associate Director will take whatever measures appear to be reasonable and prudent to ensure the protection of a person from further harm, injury or abuse and to provide prompt treatment and care. When appropriate, the employee or volunteer alleged to have abused a person will be removed from immediate proximity to, or responsibility for the person.

11. On no less than an annual basis, the Incident Review Committee will review incidents of unknown origin and the overall corrective measures taken, as may be applicable. Trends will be analyzed and any appropriate actions will be taken.

12. In that, OPWDD and the JC has the right to review and/or investigate any Reportable Incidents or Serious Notable Occurrence allegations, regardless of the source of the information, all relevant records, reports and/or minutes of meetings at which the incident or alleged abuse was discussed will 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. Such reviews and/or investigations include those conducted by the IMU or JC. OPWDD and the JC will ensure confidentiality of all records and evidence reviewed.

13. All documentation relating to Reportable Incidents or Serious Notable Occurrence allegations will be maintained so as to protect the privacy of persons receiving services, anyone else involved or others whose names may appear in the report. Such reports will be retrievable by the person's name (or filing number or identification code, if used).

14. IRC – GENERAL REQUIREMENTS

The agency's IRC membership will meet regulatory and agency requirements. 624.7(f)(4) (i-viii)

The IRC will guard against conflicts of interest 624.7(f)(7) (a-d)

Members of the committee will be trained in confidentiality laws and regulations, and comply with section 74 of the Public Officers Law. 624.7(f)(8)

The IRC will monitor trends of other events or situations which may be potentially harmful, but do not meet the definition of a reportable incident or notable occurrence 624.7(c) (10)

The IRC will report at least annually to the chief executive officer, chief agency executives, the governing body concerning its monitoring functions, including trend analysis and response. 624.7(c) (11)

IRC – INCIDENT REVIEW REQUIREMENTS

The IRC will meet within one month of a report of a reportable incident or serious notable occurrence or (minimally) on a quarterly basis. 624.7(c)(1)

The IRC will review and monitor the minor notable occurrence, serious notable occurrence, or reportable incident. 624.7(c)(2)

The IRC will review and monitor investigatory procedures for the reportable incident or serious notable occurrences . 624.7(c)(4)

The IRC will make written recommendations to appropriate staff to improve processes and minimize the prevalence of a reportable incident or notable occurrence 624.7(c)(5)

The IRC will forward findings and recommendations to the CEO within two weeks of meeting. 624.7(c)(7)

The IRC will document their reviews and recommendations and tracks the conveyance of results and recommendations to appropriate parties within the Agency. 624.7(c)(8)

The IRC will monitor implementation of actions taken on recommendations made, including those made by OPWDD or the Justice Center. 624.7(c)(9) & 624.7(e)(3)

Within three weeks of the IRC meeting, the portion of the minutes addressing Reportable Incidents and Serious Notable Occurrences will be entered into IRMA. 624.7(g)(1)

IRC minutes will include all of the required information regarding Reportable Incidents and Serious Notable Occurrences. 624.7(g)(2) [See guide]

IRC – PART 624 REPORTING AND NOTIFICATION REQUIREMENTS

Minor Notable Occurrences will be reported to the CEO within 48 hours of occurrence or discovery. 624.5(b)(2)(i)

Minor Notable Occurrences will be either detailed in a written initial incident/occurrence report or entered into IRMA within 48 hours or by close of the next working day, whichever is later. 624.5(f)(2)(i)

Reportable Incidents and Serious Notable Occurrences will be reported to the CEO immediately upon occurrence or discovery. 624.5(b)(2)(ii)

Reporting updates requested by IMU, will be entered into IRMA . 624.5(M) (1-5)

For an individual residing in a facility certified or operated by OPWDD, MHLS is notified within three working days of all reportable incidents of abuse or neglect. 624.6(a)

For an individual in a State Operated or Sponsored site, the Board of Visitors will be notified within three working days of all reportable incidents of abuse or neglect.

Telephone notification of required information will be made to appropriate involved parties for the reportable incident and notable occurrence. 624.6(f) (1-4 & 6)

The Agency will provide a written report (OPWDD 148) to any party who received the telephone notification on initial actions taken to address the incident/notable occurrence, within 10 days of completion of the incident report (MNO) or entry into IRMA. 624.6(f)(7)(iii)

The Agency will provide the written incident/occurrence report (OPWDD 147) to eligible requestor(s) within 10 days of the request. 624.6 (f)(8)(i)-(iii)

The Agency will release records and documents pertaining to reportable incidents to eligible requestors in accordance with 624.8 (Jonathan's Law requirements). 624.8(a) & 624.8(c) & 624.8(d)

Deaths will be reported to the Justice Center as required. 624.5(e)(1)

Deaths will be reported to OPWDD . 624.5(e)(2)

The Coroner/Medical Examiner will be notified if the death was a suicide, homicide, accidental death, or death due to suspicious, unusual, or unnatural circumstances. In NYC, the NYC police are also notified. 624.6(c)

IRC – PART 625 REQUIREMENTS

All events and situations as defined in Part 625 will be reported to OPWDD through IRMA entry. 625.4(a)(1) & 625.5 (c)(2)

The Agency will take action to protect the individual when the event or situation meets Part 625 reporting definitions (non-death). 625.3(b)(1)- (6)

Subsequent information will be provided to OPWDD via IRMA entry. 625.4(a) (2-3)

Information regarding the death I will be submitted to the Justice Center as required. 625.5(a) (3-4)

IMU MEASURES

The Reportable Incident or Serious Notable Occurrence will be reported immediately to OPWDD. 624.5(c) (1-3)

Law Enforcement will be notified as required. 624.6(d) (1-2)

The Incident or occurrence will be closed in IRMA within acceptable time frames. 624.5(o) (1-2)

The agency will complete timely submission of an acceptable Reportable Abuse/Neglect investigation record via the WSIR. 624.5(p)(1)- (4)

INCIDENT REVIEW COMMITTEE (IRC) [624.7]

Composition of IRC

Member of the Board of Directors
At least two professional staff
Direct Support Professional
Individual receiving services
Care Manager
Administrative staff

For purposes of holding a meeting, a quorum will consist of four people.

IRC Meetings

The IRC must meet within 30 days of a reportable incident but no less than quarterly. It must also review and monitor all minor notable occurrences.

The IRC has to forward to the CEO its findings and recommendations within two weeks of the IRC meeting. For reportable incidents and serious notable incidents, the minutes of the IRC meeting must be input into IRMA within three weeks.

Training for IRC Members

The members of the IRC must be trained on the confidentially laws and regulations. This training must be done when a new member joins the IRC and must also be done on an annual basis. This can be documented in the IRC meeting minutes. The members of the committee must also be trained on what constitutes a conflict of interest which would require them to recuse themselves from participating in the discussion of an incident.

Monitoring

The IRC Monitors trends of other events or situations which may be potentially harmful , but do not meet the definition of a reportabale incident or notable occurrence

Annual Report (Trend Report)

The IRC reports to the CEO, the Board of Director and OPWDD annually on its activities during the previous year. It will summarize the IRC's general monitoring functions, trends, and corrective, preventive remedial and/or disciplinary action pertaining to identified trends.

ABUSE ALLEGATIONS THAT OCCUR IN NON-SITE BASED PROGRAMS (I.E.., CARE MANAGEMENT, COMMUNITY HABILITATION, RESPITE, DAYHAB WITHOUT WALLS)

[625.5(d)(1)(ii)]

Part 624:

1. All Medicaid CMs receive training in and are required to comply with Part 624 (for Persons living in certified residences and for those living in their own homes or with family).

2. If the Community Habilitation, respite or Day Hab without Walls program supervisor become aware of a situation that may constitute a Reportable Incident or a Serious Notable Occurrence allegation, the situation will be immediately reported to the CM Supervisor and Executive Director (or designee). The CM Supervisor will instruct QA to assist with the implementation of Part 624 requirements and to conduct an investigation.

Part 625:

1. Standards and requirements for reporting health and safety concerns for CM recipients who live independently or with family members are different from those individuals who receive residential services.

    a. In general, CMs must address suspected abuse, neglect and financial exploitation of children or adults, including situations where an individual cannot care for him or herself. In addition, CMs are responsible to inform the appropriate IMU of any dangerous situations involving a Person living in the community.

    b. Lastly, the CM must inform the IMU of any reports made to state (other than OPWDD) or law enforcement agencies. This includes reports made to the State Central Register of Child Abuse and Maltreatment or Protective Service for Adults.

    c. In any of the above situations, the CM will contact the CM Supervisor, who, in turn, will notify the Executive Director (or designee), and will instruct QA to assist with the implementation of notifications and investigation.

    d. See section below on "Applicability of Special Notifications ("Jonathan's Law") Requirement." An allegation of neglect which is based on conditions in a private home

(excluding a family care home) or workplace is not *"under the auspices"* of the agency. However, the agency is still responsible to take appropriate actions, i.e., to report and intervene appropriately. Since private settings are not under the jurisdiction of the agency, the Jonathan's Law notifications and document release requirements do not apply, as explained below.

2. Part 625 Events and Situations Category includes:

   a. Physical Abuse
   b. Sexual Abuse
   c. Emotional Abuse
   d. Active Neglect
   e. Passive Neglect
   f. Self-Neglect
   g. Financial Exploitation
   h. Death
   i. Other ("Other" include an individual being arrested of missing from their family home).

3. An incident that occurred *under the auspices* of another OPWDD Agency or non-OPWDD Agency shall be investigated by that Agency.

   a. Special Care is still required to report the incident to OPWDD IMU through the IRMA system;

   b. Fill out an OPWDD form 150;

   c. Ensure that all the proper notifications were completed;

   d. Ensure that all necessary protection were implemented to protect the individual.

4. Part 625 Events and Situations are reported to OPWDD IMU through the IRMA application and not to the NYS JC, except for DEATH.

   a. ALL deaths of any individual who received services or certified by OPWDD within 30 days preceding death, shall be reported to the NYS JC, whether or not it occurred under the auspices of an Agency. The Death must be reported to the NYS JC and OPWDD IMU "Death Hotlines", within 24 hours.

   b. Submission of required information is required within 5 working days.

5. An injury classified as a "Minor Notable Occurrence" under Part 624, would not meet the definition to be reported under Part 625.

6. ALL ICFs must also comply with the requirements of 42 CFR Part 483. Therefore, events and situations that meet the definition of abuse and other violations under the federal regulation, but do not occur under the auspices of the ICF, must be reported and thoroughly investigated to comply with federal requirements.

PART 624- INVESTIGATION UPDATES, CLOSING AND FINAL REPORTS:

1. When Quality Assurance staff conduct an investigation into a Reportable Incident or a Serious Notable Occurrence allegation, the local IMU will be kept informed, at least, monthly, on the progress of the investigation. Investigation updates may be in any form the agency chooses, such as a summary report, copies of investigation reports, or copies of minutes of review committee meetings, as long as the following information is included:

   a. Name or names of Persons/subjects of the report

   b. Incident/abuse report number (if applicable)

   c. Date of incident/allegation of abuse

   d. Classification of incident/allegation of abuse (as first reported)

   e. The name of the reporting agency and the name and address of any other agency/facility involved

   f. Name of the agency investigating the incident

   g. Corrections, changes (including reclassification of an original report), updates to the original report, if any

   h. Status (open or closed), and until closure, a brief review of findings of the investigation since submission of the last report to the IMU.

2. Investigations and investigation final reports will meet the requirements set forth by OPWDD Memorandum, dated 2/17/12, by Barbara Brundage, Leslie Fuld and Anthony Bruno, re: "Required Format for Investigative Reports." QA provides training for management and designees in completing investigations on an as needed basis.

3. Upon closure of an alleged abuse investigation, the final report will also include the concluding findings of the investigation; i.e., whether the allegations was found to be substantiated or unsubstantiated.

4. Upon closure of a Reportable Incident or a Serious Notable Occurrence investigations, the final report will also include concluding findings of the investigation, i.e., whether, evidence found to identify the cause of the incident.

5. For all investigations, the final report will identify corrective and/or preventative measures already taken and recommendations for additional, appropriate corrective and/or preventative actions.

6. When Special Care completes an abuse or neglect investigation it was assigned by the NYS JC and it is approved by the IRC, the QA investigator will upload the entire file to the NYS JC via the WSIR application site.

7. Following the NYS JC approval of the Agency's investigation or following the issuance of an

investigative report by the NYS JC or IMU investigators, the IRC must take note of the NYS JC/ IMU findings that is received in the Letter of Determination (LOD) sent to the Agency. The IRC must then create and approve a Corrective Action Plan (CAP) and submit it to the NYS JC/ IMU via IRMA.

8. In substantiated cases of abuse or neglect, once the Administrative Recommendation is approved by the NYS JC, the QA investigator, who is the authorized person, will complete an Administrative Action Reporting Mechanism (AARM) and upload into the NYS JC AARM application site.

"JONATHAN'S LAW": A MANDATED PROCEDURE FOR NOTIFICATION

[624.6 (f-g)]

Introduction:

OPWDD regulations classify different types of untoward events, in terms of severity, and mandates a specific notification and follow up protocol to be followed in each type of situation. These special procedures are required for incidents or abuse allegations which occur *"under the auspices"* of Special Care. A staff member will notify a *qualified* party or parties of the situation, offer information and the opportunity to meet and discuss the situation, send a Report on Actions Taken, send certain other records, if requested, and the various steps in this procedure are documented. This mandated process is known as "Jonathan's Law" and is required in the event of: Reportable Incidents and ALL Notable Occurrences. The following are the steps, procedures and requirements to be followed by the designated staff member.

1. A staff member will provide telephone notice to one of the following: a person's guardian, parent, spouse, or adult child.

2. However, the agency will not provide notice to any party in the following situations:

    a. When there is written advice from the guardian, parent, spouse, or adult child that he or she objects to such notification to him or herself (notice will then be provided to another party who is a guardian, parent spouse or adult child, if one exists); or

    b. 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 parent, guardian, spouse or adult child, that capable adult will be provided the notice described by regulations; or

    c. If the guardian, parent, spouse, or adult child is the alleged abuser.

3. Telephone notice will be provided as soon as reasonably possible, but no later than 24 hours after completion of the initial incident or initial allegation of abuse report.

4. Telephone notice will include:

    a. A description of the event or situation and a description of initial actions taken to address

the incident or alleged abuse, if any;

b. An offer to meet with the Executive Director or designee to further discuss the incident; and

c. For allegations of abuse, an offer to provide information on the status and/or resolution of the allegation. Information requested will be provided either verbally or in writing, unless the person is a capable adult and objects to the provision of this information. In providing such information as is requested, the agency will ensure the privacy rights of other parties.

5. Methods of notification can include:

a. Notification may be comprised of more than one call, so long as the initial call includes a description of the event or situation and within the required period of time or is attempted within the required period of time. Follow up calls with the additional information will be made within a reasonable time frame after the initial call.

b. Notice may be made in person

c. Notice may be provided by other methods at the request of the party receiving the 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 will provide notice to the following parties in the manner (and subject to the same limitations specified by regulation): the person receiving services, if the person is a capable adult; and, the person's advocate or correspondent (if one exists).

7. Process for Requesting the initial incident / abuse allegation report:

i. Requests for Report:

a. Requests may be made for a copy of the initial incident report by the person receiving services (or who formerly received services), guardian, parent(s), or correspondent/advocate.

b. Such requests will be in writing. However, at the discretion of the agency, documented verbal requests may be accepted in lieu of a written request.

c. If the person is a capable adult and objects to the provision of the initial incident / abuse allegation report, such report will not be provided to otherwise eligible requestors.

d. If an otherwise eligible requestor is the alleged abuser, the initial incident or abuse allegation report will not be provided to that requestor.

ii. Redaction of Records Sent:

a. The copy of the report sent will be redacted of the names of employees who were involved in the incident allegation or the investigation or who were interviewed as part of the investigation, persons receiving services (or who formerly received services), and any information tending to identify such employees or persons. Redaction will 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 not specified.

b. In addition, if the report identifies a particular party as having made a child abuse or maltreatment report to the Statewide Central Register, contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation, those names as well as any information tending to identify the party will be redacted.

c. For the purposes of redaction, the term "employee" means any party who is or formerly was directly employed by the agency; or

d. Was used to provide services substantially similar to those that are or that could be provided by someone who is directly employed by an agency (e.g., those who are employed by other entities on behalf of Special Care and/or for the care and treatment of the person receiving services; consultants; contractors; or volunteers); or

e. A party living in the home of the provider.

iii. Mandated Time Frame:

The copy of the initial incident / abuse allegation report will be provided to an eligible requestor as soon as reasonable, but in no event more than 10 days after the request.

iv. Mandated Disclaimer as to the Preliminary Nature of the Information:

The copy of the initial incident report will be accompanied by a statement that all contents are preliminary and have not been substantiated.

8. "Report on Actions Taken":

i. Staff Responsible for the release of the "Report of Actions Taken":

The staff member will complete OPWDD form 148, "Report on Actions Taken" to address the incident or abuse allegation. This report will include:

a. Any immediate steps taken in response to the incident / abuse allegation to safeguard the health and safety of the person receiving services;
b. A general description of any initial medical or dental treatment or counseling provided to the person in response to the incident / abuse allegation.

ii. Sending the "Report on Actions Taken":

The designated person will arrange to send or provide the completed form 148 to the party who received notice. Special Care will use OPWDD form 148 to complete the Report on Action Taken. The information written onto form 148 will comply with the same rules for **redaction** as described above in 7(ii).

iii. Time Frame for Sending the "Report on Actions Taken":

a. The completed form 148 will be provided within 10 days of the completion of the initial incident report.

iv. Conditions and Denials:

a. The materials disclosed to eligible requestors should not be re-disclosed by recipients to other parties. Documents provided will be accompanied with an advisory to this effect.

b. Requested records will not be sent to an eligible requestor via e-mail.

Should there be, in the view of Special Care, good cause to deny an eligible requestor their request for a copy of the completed Form 147, the party will be notified to this effect in writing. The letter will include notification that the requestor has the right to send a written appeal to the OPWDD, Incident Records Appeals Officer. The mailing address of the OPWDD Incident Records Appeals Officer is:
Office of Counsel, 44 Holland Avenue, 3rd Floor, Albany NY, 12229

9. Documentation of the Process:

During this process of mandated notifications, the following documentation will be maintained by the designated staff member:

a. The telephone notice and the responses received, including the identity and positions of the party providing the notice

b. The name of the party receiving the notice

c. The time of the original call or attempted call

d. The time of subsequent or attempted call if the initial call was not successful; and the time of follow up calls if the notice occurred in more than one call

e. Any requests for a meeting or the initial incident report

f. A copy of the minutes for meetings held in response to the request and the attendance sheet

g. The date the Report on Actions Taken and any requested initial incident report was provided

h. A copy of the Report on Actions Taken and any incident report (with redaction)

that was provided; and

I. Written 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.

Applicability of Special Notifications ("Jonathan's Law") Requirement

[624.20 (h) & (j)]

Special notification ("Jonathan's Law") procedures are only required for incidents which occur *under the auspices* of the Special Care. *"Under the Auspices"* is a term intended to distinguish between those events or situations in which Special Care has direct responsibility and oversight and those events or situations which occur in the lives of individuals outside the scope of the provision of services in the OPWDD system.

The question of whether a situation that occurred is *"under the auspices"* of Special Care is only a concern in so far as whether the requirements for "Jonathan's Law" apply. OPWDD regulations make clear [in Part 624.6 (h) & (j), as well as, in Appendices 8, 9, & 10, specifically, the Memo of Understanding between OPWDD–IMU, and OCFS–PSA] that Special Care (as an agency certified by OPWDD) in case of an incident or abuse that occurs to a person while not under the auspices of the agency, Special Care is, nevertheless, required to investigate per Part 625 regulations, intervene, and to take appropriate actions. The interventions described by these regulations include investigating (to the extent possible under the circumstances), calling 911 or the SCR (for children) or PSA (for adults), and notifying OPWDD IMU (via IRMA) of the situation. In some instances it may be necessary to contact individuals or family members in order to take appropriate actions. The point is that contacts under these circumstances are not required to conform to the "Jonathan's Law" requirements listed above.

"Under the Auspices" means, circumstances in which Special Care is providing services to a person (at the time the incident occurred), in which the services provided are operated, certified, authorized or funded through contract by OPWDD. These circumstances can occur whether or not the person is physically at a site owned, leased or operated by Special Care. [624.20 (j).]

1. Such circumstances are those in which Special Care personnel (contractors, volunteers, etc.) are, or should have been, physically present and providing services at that point in time (*not in a different Agency [e.g., DayHab]*); or

2. In addition, any circumstances involving physical conditions at the site provided by Special Care are under their auspices, even in the absence of agency personnel; or

3. The death of an individual that occurred while the person was receiving services *or* that was caused by or resulted from a Reportable Incident or Notable Occurrence; or

4. The death of an individual receiving services, within the last 30 days since their discharge, living in a Residential Facility certified by OPWDD, is always considered "*under the auspices"* of the Agency. Unless the person was admitted to a different Residential Facility within the OPWDD system (not including free-standing respite facilities).

5. An event or circumstances is not under the auspices of Special Care if it exclusively involves the person's family, friends, employers, or co-workers, whether or not in the presence of agency personnel. Situations in which staff are present but the incident or allegation of abuse exclusively involves the person's family, friends, employers or co-workers are not under the auspices of the agency.

6. An event or circumstance is not under the auspices of Special Care if it *occurs in the context of the provision of services which are subject to the oversight of a State Agency <u>other than OPWDD</u>* (e.g., School, special education, Article 28 clinic, hospital, and physician's office) whether or not in the presence of Special Care personnel.

7. Any event that *directly involves Special Care personnel during the time he or she was providing services which are subject to the oversight of a State Agency <u>other than OPWDD</u>* (e.g., where the Agency staff was on a second job in the hospital where the individual is, working with them, but as an employee of the hospital), the incident or allegation is not under the auspices of the agency or sponsoring agency.

8. An allegation of neglect which is based on conditions in a private home (excluding a family care home) or workplace is not under the auspices of the agency. (However, the agency is still responsible to take appropriate actions, i.e., to investigate and intervene appropriately. Since private settings are not under the jurisdiction of the agency, the Jonathan's Law notifications and document release requirements do not apply, as explained above). [624.20 (j) (6)].

<u>RECORDS THAT CAN BE REQUESTED FOR INVESTIGATION REPORTS REGARDING ALL REPORTABLE INCIDENTS:</u>

1. A person's guardian, parent, spouse or adult child can request release of records and documents pertaining to all reportable incidents under the auspices of Special Care. [See attached brochure on "Access to Mental Hygiene Records."]

2. If the otherwise eligible requestor is an alleged abuser, he or she is not eligible to receive these records.

3. If the Person is a capable adult and objects to the release of records, the otherwise eligible requestor is not eligible to receive these records.

4. Requests for records must be in writing.

5. Special Care will release requested investigation documents within 21 days after closure of the alleged abuse case, or 21 days after the request, if the request is made after the closure. Closure of the alleged abuse case occurs after review by the standing committee is complete and the allegation is found to be substantiated or unsubstantiated. This occurs after the LOD is received from the NYS JC.

6. Records sent must be redacted as described above.

7. Clinical records can be requested at any time. Records and documents pertaining to allegations

and investigations into abuse and mistreatment can be requested at any time for allegations of abuse or mistreatment which occurred or were discovered on or after May 5, 2007. Requests can also be made for records and documents pertaining to allegations of abuse or mistreatment which occurred or were discovered on or after January 1, 2003 if the request is made, in writing, on or before December 31, 2012.

PROCEDURE TO PROCESS REQUESTS FOR DOCUMENTS PERTAINING TO INCIDENTS OR ABUSE INVESTIGATIONS OR CLINICAL RECORDS

1. The qualified requestor contacts any of the listed personnel with whom they are already familiar, e.g., Residence Manager, Social Worker or CM.

2. The eligible requestor will be asked to send a request in writing.

3. When a request for documents is made, the Executive Director (or designee) or Clinical Director and the Quality Assurance Department will be notified of the request.

4.Special Care Clinical Director will determine whether to approve or deny the release of the records.

5. The agency's Quality Assurance staff will review the selection and redaction of requested documents and mail them within the required time frame.

6. Please see the brochure below for a summary on the rules for access to clinical records, incident report forms, Reports on Actions Taken and abuse allegation investigation records.

NEW YORK STATE OF OPPORTUNITY. Office for People With Developmental Disabilities

ADMINISTRATIVE DIRECTIVE

Transmittal:	18-ADM-08
To:	Executive Directors, Voluntary Providers Directors, Developmental Disabilities State Operated Offices Directors, Developmental Disabilities Regional Offices Provider Associations
Issuing OPWDD Office:	Office of Counsel
Date:	August 27, 2018
Subject:	Administrative Appeals Process for Denials of Records Requested Pursuant to 14 NYCRR Part 624
Suggested Distribution:	Incident Management Coordinators Quality Management Staff
Contact:	Office of Counsel (518) 474-7700
Attachments:	

Related ADMs/INFs	Releases Cancelled	Regulatory Authority	MHL & Other Statutory Authority	Records Retention
	ADM 2009-04	14 NYCRR Part 624	MHL §§ 33.23 &33.25	Six years

Purpose:

To define the Administrative Appeal Process for the denial of records requested pursuant to 14 NYCRR 624 Incident/Abuse Reporting, Notification and Investigation Process.

Background:

Chapter 24 of the Laws of 2007, also known as Jonathan's Law, created Mental Hygiene Law sections 33.23 and 33.25. These sections were amended in June 2012, with the implementation of the Protection of People with Special Needs Act (PPSNA), to reflect changes in reporting of incidents.

Section 33.23 requires a qualified person to be notified of a reportable incident and offered an opportunity to meet with the provider agency to discuss the reportable incident. The qualified person is also entitled to a written report of actions taken to address the incident, including a redacted copy of the incident report.

Section 33.25 provides for a qualified person to send a written request to the provider agency for copies of records and documents pertaining to reportable incidents. The names and any identifying information of staff or other individuals receiving services must be redacted.

With the implementation of the PPSNA, 14 NYCRR Part 624 was revised to reflect the new statutory requirements for incidents. These changes were first implemented in June 30, 2013, and revised on an emergency basis until final adoption on December 2, 2015. Two provisions, Subdivisions 624.6(j) and 624.8(i), outline the administrative appeal process when a request for records, pursuant to Part 624, has been denied by the provider agency.

Procedure:

A requestor denied access to the records and documents requested pertaining to a reportable incident may appeal the denial, in writing, to the Incident Records Appeals Officer (IRAO) designated by OPWDD. The appeal letter should be sent to the following address:

Incident Records Appeals Officer Office of Counsel
44 Holland Avenue 3rd Floor
Albany, New York 12229

The agency issuing the denial will be notified of the appeal and given an opportunity to submit relevant information to the IRAO, including the reasons for denial, within 10 business days of the receipt of such appeal.

The IRAO may also request additional information from the requestor as may be necessary to resolve the appeal.

Within 10 business days of the receipt of complete information, the IRAO will make a determination whether the requested records and/or documents should be released.

The IRAO 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 IRAO, the agency must provide the requested records and/or documents to the requestor.

For further information, or if there are any questions, please contact Counsel's Office at 518-474-7700.

Records Retention: Six years

Facilities and programs which provide services to individuals with disabilities are required to keep records about the care and treatment of the people they serve. To respect the dignity and rights of these individuals, the New York State Mental Hygiene Law (hereafter "MHL") establishes basic rules of confidentiality and provides for access to records by individuals receiving services and persons legally authorized to speak on their behalf. This pamphlet offers guidance for individuals receiving services, their families and other "qualified persons" interested in accessing records, in a question and answer format, together with references to the applicable provisions of the MHL.

What records are available?

Article 33 of the MHL provides access to three types of records: (1) clinical records, (2) incident reports and reports on actions taken, and (3) records and documents pertaining to allegations and investigations into abuse and mistreatment. All of these documents are available to qualified persons (See, Who can ask for records? for an explanation of the term "qualified person") with certain exceptions.

1. Clinical records include any information concerning or related to the examination or treatment of an individual who is receiving services or who has received services from a provider under the jurisdiction of the Office of Mental Health (OMH), the Office for Persons With Developmental Disabilities (OPWDD) or the Office of Alcoholism and Substance Abuse Services (OASAS) (MHL Section 33.16 (a) (1)). A qualified person may request that the provider permit him or her access to clinical records.

2. Incident reports and reports on actions taken are documents created by a provider following the occurrence or discovery of an event or situation concerning an individual who is receiving services, including any incident which affects the individual's health or safety. An incident report is created by the provider as an initial record of an incident very quickly after the incident occurs or is discovered. A qualified person who is notified of an incident may ask the provider, in writing, that he or she be given a copy of the incident report, and the provider must promptly comply with that request [MHL Section 33.23 (a)]. A report on actions taken is a report prepared by the provider relatively soon after the incident at issue to explain the actions immediately taken by the provider to address the incident. When a qualified person is notified of an incident concerning an individual who is receiving services, he or she will be provided with a report on actions taken within 10 days [MHL Section 33.23 (a)].

3. Records and documents pertaining to allegations and investigations into abuse and mistreatment include records or documents created and/or maintained by a provider under the jurisdiction of OMH, OPWDD or OASAS (including State-operated facilities) in response to an allegation of abuse or mistreatment. This will include an incident report and a report on actions taken and may also include an investigative report, which explains the steps taken by a provider to investigate alleged abuse or mistreatment and sets forth the conclusion of the investigation.

Who can ask for records?

Because of the personal and sensitive nature of mental hygiene records, the confidentiality of this information is strictly protected under Article 33 of the MHL. However, the law permits certain persons, known as "qualified persons," to access these records and documents. A qualified person includes an individual receiving services, his or her legal guardian, or a parent, spouse or adult child who has authority to provide consent for care and treatment (MHL Sections 33.16 (a) (6) and 33.16 (b) (4)). There are some restrictions on a qualified person's right to obtain records and documents. For example:

1. Access to certain records and documents may be limited if the information is expected to be harmful to the individual receiving services or others (See What happens if the request for records is denied?);

2. Agency regulations may limit access in situations where, for example, the person requesting records and documents is alleged to have abused the individual receiving services, or where the individual receiving services is a capable adult who objects to the release of records and documents to another qualified person;

3. Federal confidentiality provisions applicable to programs operated or certified by the Office of Alcoholism and Substance Abuse Services require the consent of the person receiving services for the release of any records regarding that individual's care and treatment (42 CFR Part 2); and

4. Other Federal laws, including the Health Insurance Portability and Accountability Act of 1996, ("HIPAA") may, in some cases, impose additional restrictions on the availability of records and documents sought under Article 33. While the general public may also request certain records from governmental or "public" agencies under the New York State Freedom of Information Law (FOIL), FOIL is not the appropriate way to seek information about an individual's care and treatment. Under FOIL, personally identifying information, as well as other information deemed confidential and protected from disclosure under other statutes, such as Article 33 of the MHL, cannot be released in response to a FOIL request.

If OPWDD conducted an investigation, requests for records and documents should be sent to the Director of the local Developmental Disabilities Services Office (IMU) responsible for oversight of services in the region in which the abuse or mistreatment is alleged to have taken place. Requests for records and documents pertaining to allegations and investigations into abuse and mistreatment must be made in writing.

When can records be requested?

Clinical records can be requested at any time. Records and documents pertaining to allegations and investigations into abuse and mistreatment can be requested at any time for allegations of abuse or mistreatment which occurred or were discovered on or after May 5, 2007. Requests can also be made for records and documents pertaining to allegations of abuse or mistreatment which occurred or were discovered on or after January 1, 2003 if the request is made, in writing, on or before December 31, 2012.

When will records be provided?

The provider must offer an opportunity for a qualified person to come to the facility or other designated location and read a clinical record within 10 days of receipt of the request [MHL Section 33.16 (b) (1)]. If copies are requested, they must be provided within a reasonable time (MHL Section 33.16 (b) (5)), and a reasonable charge, not to exceed $.75/page, can be imposed for inspections and copies (MHL Section 33.16 (b) (6)). If a request to review clinical records or obtain copies is denied, the denial can be appealed. (See, What happens if the request for records is denied?) Records and documents pertaining to allegations and investigations into abuse and mistreatment must be provided within 21 days of receipt of the request if an investigation has been concluded. If the investigation has not been concluded when the request is received, the records and documents must be provided within 21 days of the conclusion of the investigation [MHL Section 33.25 (a)].

Will the whole record be provided?

Clinical records may be "redacted" or edited to withhold or delete information determined by the facility to be harmful to the subject of the clinical record or others [MHL Section 33.16 (c)]. (See, What happens if the request for records is denied?) Records and documents pertaining to allegations and investigations into patient abuse and mistreatment will be redacted to delete the names and other personally identifying information of other individuals receiving services and employees unless such individuals authorize disclosure [MHL Section 33.25 (a)]. The MHL requires that records and documents regarding allegations and investigations into abuse and mistreatment provided in response to a request from a "qualified person" not be shared with other people [MHL Section 33.25 (b)].

Under what circumstances can a request for records be denied?

MHL Section 33.16 sets out rules for access to clinical records by individuals receiving services and other qualified persons. Generally, these individuals have a qualified right of access to the clinical record unless the treating practitioner primarily responsible for the care and treatment of the individual receiving services determines that the requested review of the clinical record can reasonably be expected to cause substantial and identifiable harm to the individual receiving services or others which outweighs the right of access [MHL Section 33.16 (c)].

If a clinical determination is made to deny access to a clinical record, in whole or in part, what can the qualified person do?

MHL Section 33.16 © (4) creates a Clinical record Access Review Committee (Committee) in OPWDD. The Committees must consist of three to five members, appointed by the appropriate commissioners. The review process works like this:

1. A provider must notify a qualified person of its decision in reply to a records access request.

2. If the decision is to deny access to the records, in whole or in part, the provider must notify the qualified person of its

decision, and it must inform the qualified person of his/her right to obtain a review of the denial, free of charge, by the Committee. This notice must explain how a qualified person can request a review by the Committee.

3. If the qualified person requests a review, the provider must send the clinical record to the Committee within 10 days, explaining the specific reasons for denying access to the record.

4. The Committee will conduct a review of the entire clinical record, and will offer the qualified person and other involved parties an opportunity to be heard. The Committee will issue a decision promptly, based upon its assessment of whether the risk of harm in releasing the information sought outweighs the qualified person's right of access. The Committee may decide to affirm the denial in whole or in part, or may decide to expand access. The Committee determination is binding on the provider.

5. If the Committee denies any part of the request for access, it must notify the qualified person of his/her right to seek judicial review. Within 30 days of the receipt of that decision, the qualified person may commence a special proceeding in New York State Supreme Court for a review of the provider's decision.
The Court will conduct a review of the record, give parties an opportunity to be heard, and issue its ruling. The Court may order the provider to make the record available to the qualified person for inspection or copying. (Note: in OASAS-operated or certified programs, Federal confidentiality requirements take precedence over New York State law and the courts will abide by the stricter rules on access published by the United States Department of Health and Human Services.)

RELEASE OF INFORMATION - COVER LETTER AND ADVISORY

Name of Person	
Name of Person Requesting Release of Records	
Requestor's Relationship to Person	
Requestor's Address	
Phone #	

Date: _____

Dear _____:

Please find enclosed, a copy of document(s) as per your request. Please be advised that, as per New York State Law, Incident or Allegation of Abuse documentation / records released may not be disseminated further by the qualified person receiving them. Except that it may be shared with a health care provider, a behavioral health care provider, law enforcement if you believe a crime has been committed or your attorney.

☐ Initial Incident/Allegation Report (Form OMR 147) - Please note that the information on the OMR 147 is preliminary and has not been substantiated

☐ Report on Actions Taken (Form OMR 148)

☐ Allegation of Abuse Investigation File

If you have any questions, please call:

---------- at ----------

Sincerely,

_____

cc: QA Dept.

REQUEST FOR RELEASE OF INCIDENT / ABUSE ALLEGATION RECORDS

Date: _____

Dear _____:

You have indicated that you would like Incident or Allegation of Abuse records to be released to you, as provided by New York State Law.

We request that you complete this form and return it to the address below or use the stamped, self-addressed envelope provided.

Name of Person	
Name of Person Requesting Release of Records	
Requestor's Relationship to Person	
Requestor's Address	
Phone #	
Indicate Below Which Documents / Records Are Being Requested ☐ Initial Incident / Allegation Report (Form OMR 147) - DATED _____ ☐ Allegation of Abuse Investigation File - DATED _____	

Please be advised of the following requirements under New York State Law concerning documents released under the Access to Records law:

- ☐ The request for Incident or Allegation of Abuse documentation / records must be from a person "Qualified" by law (*the person, parent, guardian, spouse, adult child, or correspondent*)
- ☐ Copies of documents released will be redacted
- ☐ Initial Incident / Allegation Report (Form OMR 147) will be sent within 10 days of request).
- ☐ Allegation of abuse investigation records, if requested, will be disclosed 21 days after the investigation has been officially determined to the "closed" or 21 days after the request, whichever is later.
- ☐ Documents and records released, in accordance with New York State law, may not be disseminated further by the qualified person receiving them.

If you have any questions or would like assistance, please call:

_____ at _____.

Sincerely,

Privacy Officer - Quality Assurance Department
Special Care Community Residences, Inc.
1556 38 St.
Brooklyn, NY 11218

_____ _____

Date of Request Signature of Requestor

Form OPWDD 147 (Revised 01/01/2016)
For additional guidance in completing this form please see line by line instructions.
NOTE: This form only contains the information available at the time of its completion.

REPORTING FORM: 14 NYCRR Part 624 - Reportable Incidents and Notable Occurrences

1. AGENCY COMPLETING FORM

2. FACILITY *(if applicable)*	3. PROGRAM TYPE
4. ADDRESS	5. PHONE

6. MASTER INCIDENT NUMBER	7. AGENCY INCIDENT NUMBER	8. WAS A RELATED INCIDENT PREVIOUSLY REPORTED? 1 ☐ YES 2 ☐ NO

TO BE COMPLETED BY STAFF DESIGNATED IN POLICY

9. NAME OF PERSON(S) RECEIVING SERVICES (Last, First)	10. DATE OF BIRTH	11. GENDER 1 ☐ MALE 2 ☐ FEMALE	12. TABS ID *(if applicable)*

13. RECEIVES MEDICATION: 1 ☐ YES 2 ☐ NO 3 ☐ UNKNOWN BY PERSON COMPLETING THIS FORM

14. DATE & TIME INCIDENT WAS 1 ☐ Observed 2 ☐ Discovered						15. DATE AND TIME INCIDENT OCCURRED *(if known)*						16. NUMBER OF PERSONS RECEIVING SERVICES PRESENT AT TIME OF INCIDENT: _____
MO.	DAY	YR.	HR.	MIN.	1☐ AM 2☐ PM	MO.	DAY	YR.	HR.	MIN	1☐ AM 2☐ PM	17. NUMBER OF EMPLOYEES PRESENT AT TIME OF INCIDENT:_____

18. PRELIMINARY CLASSIFICATION (X ONE)

In addition to other required notifications **REPORTABLE INCIDENTS <u>must</u>** be reported to the Justice Center if the program is certified or operated by OPWDD

REPORTABLE INCIDENT – Abuse/Neglect
1 ☐ Physical abuse
2 ☐ Sexual abuse
3 ☐ Psychological abuse
4 ☐ Deliberate inappropriate use of restraints
5 ☐ Use of aversive conditioning
6 ☐ Obstruction of reports of reportable incidents
7 ☐ Unlawful use or administration of a controlled substance
8 ☐ Neglect

NOTABLE OCCURRENCES

Serious Notable Occurrences
1 ☐ Death
2 ☐ Sensitive Situation

Minor Notable Occurrences
1 ☐ Injury
2 ☐ Theft/Financial Exploitation

REPORTABLE INCIDENT - Significant Incidents
1 ☐ Conduct between individuals receiving services
2 ☐ Seclusion
3 ☐ Unauthorized use of time out
4 ☐ Medication error with adverse effect
5 ☐ Inappropriate use of restraints
6 ☐ Mistreatment
7 ☐ Missing Person
8 ☐ Choking, with known risk
9 ☐ Self-abusive behavior with injury
10 ☐ Choking with no known risk
11 ☐ Unauthorized Absence
12 ☐ Injury, with hospital admission
13 ☐ Theft/Financial Exploitation
14 ☐ Other significant incident

19. SPECIFIC LOCATION WHERE INCIDENT OCCURRED

1 ☐ Living Room
2 ☐ Bedroom
3 ☐ Kitchen
4 ☐ Bathroom
5 ☐ Hallway
6 ☐ Staircase
7 ☐ Dining Room
8 ☐ Program Room
9 ☐ Recreation Area
10 ☐ Off-Facility Property
11 ☐ Unknown
12 ☐ Vehicle
13 ☐ Other (Specify)

20. BRIEF DESCRIPTION OF THE INCIDENT

(Continue on separate sheet if necessary)

21. LIST ALL THE IMMEDIATE CORRECTIVE/PROTECTIVE ACTIONS THAT HAVE BEEN TAKEN TO SAFEGUARD THE PERSON(S). THIS SHOULD INCLUDE, BUT IS NOT LIMITED TO, ANY FIRST AID, MEDICAL/DENTAL TREATMENT OR COUNSELING PROVIDED.

(Continue on separate sheet if necessary)

22. AS APPLICABLE, NOTIFICATION TO

JUSTICE CENTER 1 ☐ YES 2 ☐ N/A	DATE	TIME	JC IDENTIFIER	REPORTED BY
LAW ENFORCEMENT OFFICIALS 1 ☐ YES 2 ☐ N/A	DATE	TIME	LAW ENFORCEMENT AGENCY NAME	

23. PERMANENT RESIDENTIAL ADDRESS AND PHONE NUMBER *(of person listed in #9 above, if different than #4 and #5)*

24. TYPE OF RESIDENCE
1 ☐ SOIRA 2 ☐ VOIRA 3 ☐ SOICF 4 ☐ VOICF 5 ☐ FC 6 ☐ DC 7 ☐ CR 8 ☐ Other: (*Specify)* _____

25. PRINT NAME OF PARTY COMPLETING ITEMS 1-24	TITLE	DATE
26. PRINT NAME OF PARTY REVIEWING ITEMS 1-25	TITLE	DATE

27. NOTIFICATIONS *(as appropriate)*

CONTACT	DATE	TIME	PERSON CONTACTED	REPORTED BY	METHOD
OPWDD IMU *(applies to all providers)*					
IMUO Director/Agency CEO or Designee					
Family/Guardian/Advocate Notification					
Service Coordinator/Case Manager					
QIDP (*for ICF Resident*)					
Executive Director Consumer Advisory Board					
NYCLU Willowbrook Plaintiff Counsel					
NYPI Willowbrook Attorney (Death Only)					
Statewide OPWDD Willowbrook Liaison					
MHLS (Mental Hygiene Legal Service)					
Board of Visitors (*if applicable*)					
Coroner/Medical Examiner					
Other					
Other					
Other					
Other					

28. ADDITIONAL STEPS TAKEN TO ENSURE THE INDIVIDUAL'S SAFETY *(Use this section to explain any additions or modifications to immediate protections, item 21, or to add additional information.)*

29. PRINT NAME OF PARTY COMPLETING ITEM 28	TITLE	DATE

Form OPWDD 148 (6/2012)

Report on Actions Taken in Response to an Incident

NYS Office For People With
Developmental Disabilities

This report includes any immediate corrective/protective actions taken in response to an incident to safeguard the health or safety of the person receiving services. This should include, but is not limited to, a general description of any initial first aid, medical/dental treatment, or counseling provided. Please note that the investigation may still be ongoing and additional actions may be taken pending the results and recommendations of the investigation. Further actions may be taken by agency administration.

For additional information regarding this report, please contact by telephone:

_____ at _____

Name of person receiving services	
Date the incident occurred or was discovered	Preliminary classification of incident
Agency completing this form	Master incident number (N/A if none)
This report is being provided to (name)	Relationship to person receiving services
Phone number	Date initial notification was provided to person receiving this form

Immediate steps taken in response to the incident to safeguard the health or safety of the person receiving services (please use additional sheet if necessary). In the event of a death, N/A may be entered if appropriate.

Name of person completing this report	Date this report was completed
Signature	

1. All **OPWDD** forms as well as Regulations, Guidance and Policies can be found at the OPWDD website:

a) https://opwdd.ny.gov/

b) **Regulations** can be found at:
https://opwdd.ny.gov/regulations_guidance/opwdd_regulations

c) **OPWDD Incident Management** Guidance can be found at:
https://opwdd.ny.gov/opwdd_resources/incident_management/justice_center

d) "**Reportable Incident and Allegation of Abuse Forms**" can be found ¾ of the way down the page at:
https://opwdd.ny.gov/opwdd_resources/opwdd_forms/home

2. ALL these **forms** and others can also be found within the internal Special Care database at:
https://womensleague-my.sharepoint.com/:b:/g/personal/ydavis_womensleague_org/ER8yh3sX-0VCiT3WDf_kA08B29RFIgBx-4xJ08N9qxrdRg?e=u9wPAm

3. All **Justice Center Criminal Background Check** requirements. Regulations, Guidance and Policies can be found at the Justice Centers website:

a) https://www.justicecenter.ny.gov/

As well as these Sub-Headings:

b) "**Custodians**"
https://www.justicecenter.ny.gov/custodians

c) "**Service Providers**"
https://www.justicecenter.ny.gov/service-providers-portal

Miriam Kaufman
Executive Director

Person Centered Dispute Resolution Process

If there is a disagreement within the person centered process regarding a certain goal and skill, the rest of the goals and skills will be implemented so that the life plan can be created and services can be provided.

There will be a 1week period where individuals and their circle of support will rethink the goal and skill being disputed, to determine if another version or format of dealing with this particular skill or goal can be addressed.

After the week the provider and the individuals and their circle of support will reconvene to negotiate or compromise regarding the issue at hand.

If the dispute is not resolved, then the individuals and their circle of support will contact the clinical director of Special Care, Ari Weichselbaum @718-252-3365 x 105.

The clinical director will try his best to reach a conclusion and agreement in the matter at hand. If the matter is still not resolved the individuals and their families will contact the executive director, Miriam Kaufman @ 718-252-3365 x 108.

HIPAA Privacy Rules for the Protection of Health and Mental Health Information

(Note: ***The information provided below is a summary and intended for general informational purposes. Mental health providers and other covered entities should not rely on this summary as a source of legal information or advice and should consult with their own attorney or HIPAA Privacy Officer for specific guidance*****.)**

Introduction:

HIPAA required the federal Department of Health and Human Services (HHS) to develop regulations to implement privacy requirements, called the Privacy Rule, that would ensure the privacy of patient records and information. State statutes which provide more stringent protections of health care privacy remain in effect even after HIPAA. Relevant references to requirements in New York State's mental health confidentiality statute (section 33.13 of the Mental Hygiene Law) are include here.

General:

The HIPAA Privacy Rule establishes national standards to protect individuals' medical records and other individually identifiable health information (collectively defined as "protected health information") and applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically. The Rule requires appropriate safeguards to protect the privacy of protected health information and sets limits and conditions on the uses and disclosures that may be made of such information without an individual's authorization. The Rule also gives individuals rights over their protected health information, including rights to examine and obtain a copy of their health records, to direct a covered entity to transmit to a third party an electronic copy of their protected health information in an electronic health record, and to request corrections.

The Privacy Rule is located at 45 CFR Part 160 and Subparts A and E of Part 164.

Basic Principles of the Privacy Rule:

1. The Privacy Rule protects all "*protected health information"* **(PHI)**, including individually identifiable health or mental health information held or transmitted by a covered entity in any format, including electronic, paper, or oral statements.
2. A major purpose of the Privacy Rule is to define and limit the circumstances under which an individual's PHI may be used or disclosed by covered entities. Generally, a covered entity may not use or disclose PHI to others, except:
    1. as the Privacy Rule permits or requires; or
    2. as authorized by the person (or personal representative) who is the subject of the health information. A HIPAA-compliant Authorization must contain specific information required by the Privacy Rules.
3. A covered entity must provide individuals (or their personal representatives) with access to their own PHI (unless there are permitted grounds for denial), and must provide an accounting of the disclosures of their PHI to others, upon their request.
4. The Privacy Rule supersedes State law, but State laws which provide greater privacy protections or which give individuals greater access to their own PHI remain in effect.

(**Note:** One must consult not only HIPAA but also other relevant federal privacy laws (such as regulations pertaining to Medicaid and federally funded substance abuse treatment programs), as well as State privacy laws (including the Mental Hygiene Law-section 33.13, the Public Health Law, the Education Law licensing provisions, and the Civil Practice Laws and Rules), to determine whether a disclosure of medical information is permissible in a given circumstance.)

Permitted Uses or Disclosures of PHI Without Authorization:

Extensive provisions of the Privacy Rule describe circumstances under which covered entities are permitted to use or disclose PHI, without the authorization of the individual who is the subject of the protected information. These purposes include, but are not limited to, the following:

1. A covered entity may disclose PHI **to the individual who is the subject of the information.**

2. A covered entity may use and disclose protected health information for its own "**treatment, payment, and health care operations**."
    1. **Treatment** is the provision, coordination, or management of health care and related services for an individual, including consultation between providers and referral of an individual to another provider for health care.
    2. **Payment** includes activities of a health care provider to obtain payment or to receive reimbursement for the provision of health care to an individual.
    3. **Health care operations** include functions such as: (a) quality assessment and improvement; (b) competency assessment,, including performance evaluation, credentialing, and accreditation; (c) medical reviews, audits, or legal services; (d) specified insurance functions; and (e) business planning, management, and general administration.
3. **Permission may be obtained from the individual who is the subject of the information** or by circumstances that clearly indicate an individual with capacity has the opportunity to object to the disclosure but does not express an objection. Providers may also rely on an individual's informal permission to disclose health information to an individual's family, relatives, close personal friends, or to other persons identified by the individual, limited to information directly related to such person's involvement.
4. When an **individual is incapacitated** or **in an emergency**, providers sometimes may use or disclose PHI, without authorization, when it is in the best interests of the individual, as determined by health care provider in the exercise of clinical judgment. The PHI that may be disclosed under this provision includes the patient's name, location in a health care provider's facility, and limited and general information regarding the person's condition.
5. Providers may use and disclose PHI without a person's authorization when the use or disclosure of PHI is **required by law**, including State statute or court order.
6. Providers generally may disclose PHI to State and Federal **public health authorities** to prevent or control disease, injury, or disability, and to government authorities authorized to receive reports of child abuse and neglect.
7. Providers may disclose PHI to appropriate government authorities in limited circumstances regarding **victims of abuse, neglect, or domestic violence**.
8. Providers may disclose PHI to **health oversight agencies**, (e.g., the government agency which licenses the provider), for legally authorized health oversight activities, such as audits and investigations.
9. PHI may be disclosed in a **judicial or administrative proceeding** if the request is pursuant to a court order, subpoena, or other lawful process (note that "more stringent" NYS Mental Hygiene law requires a court order for disclosure of mental health information in these circumstances).
10. Providers may generally disclose PHI to **law enforcement** when:
    1. Required by law, or pursuant to a court order, subpoena, or an "administrative request," such as a subpoena or summons (Note: the "more stringent" NYS Mental Hygiene Law section 33.13 requires a court order for disclosure of mental health information in these circumstances**).** The information sought must be relevant and limited to the inquiry.
    2. To identify or locate a suspect, fugitive, material witness or missing person (Note: under Mental Hygiene Law section 33.13 this information is limited to "identifying data concerning hospitalization").
    3. In response to a law enforcement request for information about a victim of a crime (Note: under Mental Hygiene Law section 33.13 this information is limited to "identifying data concerning hospitalization").
    4. To alert law enforcement about criminal conduct on the premises of a HIPAA covered entity.
11. Providers may disclose PHI that they believe **necessary to prevent or lessen a**
    1. **serious and imminent physical threat** to a person or the public, when such disclosure is made to someone they believe can prevent or lessen the threat (including the target of the threat).
12. An authorization is not required to use or disclose PHI to **certain government**
    1. **programs providing public benefits** or for enrollment in government benefit
    2. programs if the sharing of information is required or expressly authorized by statute or regulation, or other limited circumstances

"Minimum Necessary" Rule:

The minimum necessary standard requires covered entities covered entities to take reasonable steps to limit the use or disclosure of, and requests for, protected health information (PHI) to the minimum necessary to accomplish the intended purpose. The minimum necessary standard does not apply to the following:

- Disclosures to or requests by a health care provider for treatment purposes.
- Disclosures to the individual who is the subject of the information.
- Uses or disclosures made pursuant to an individual's authorization.
- Uses or disclosures required for compliance with the Health Insurance Portability and Accountability Act (HIPAA) Administrative Simplification Rules.

- Disclosures to the Department of Health and Human Services (HHS) when disclosure of information is required under the Privacy Rule for enforcement purposes.
- Uses or disclosures that are required by other law.

Penalties for Violation of HIPAA:

Penalties for civil violations

- HIPAA violation: Unknowing Penalty range: $100 - $50,000 per violation, with an annual maximum of $25,000 for repeat violations
- HIPAA violation: Reasonable Cause Penalty range: $1,000 - $50,000 per violation, with an annual maximum of $100,000 for repeat violations
- HIPAA violation: Willful neglect but violation is corrected within the required time period Penalty range: $10,000 - $50,000 per violation, with an annual maximum of $250,000 for repeat violations
- HIPAA violation: Willful neglect and is not corrected within required time period Penalty range: $50,000 per violation, with an annual maximum of $1.5 million

Criminal penalties

- Criminal violations of HIPAA are handled by the DOJ. As with the HIPAA civil penalties, there are different levels of severity for criminal violations.
- Covered entities and specified individuals, as explained below, who "knowingly" obtain or disclose individually identifiable health information, in violation of the Administrative Simplification Regulations, face a fine of up to $50,000, as well as imprisonment up to 1 year.
- Offenses committed under false pretenses allow penalties to be increased to a $100,000 fine, with up to 5 years in prison
- Finally, offenses committed with the intent to sell, transfer or use individually identifiable health information for commercial advantage, personal gain or malicious harm permit fines of $250,000 and imprisonment up to 10 years.

To view the entire Privacy Rule, or for other information about how it applies, visit: https://www.hhs.gov/hipaa/for-professionals/privacy/index.html .

Provider name and address

LIABILITY NOTICE FOR INDIVIDUALS APPLYING FOR SERVICES

Services Requested for:_____ Date: _____
(Name of service recipient)

Fee(s) for requested services: $_____ per _____

You have received this notice because one of the following statements is true: (1) you are the above-named individual and are requesting services for yourself, (2) you are responsible for paying for the services for the above-named individual, or (3) you are responsible for managing the above-named individual's finances.

The services listed below are overseen by the New York State Office for People With Developmental Disabilities (OPWDD). Those services checked below have been requested by or on behalf of the above-named individual.

- □ residential habilitation in an individualized residential alternative (IRA) or community residence, or family care home
- □ intermediate care facility services for individuals with intellectual disabilities (ICF/IID)
- □ day habilitation
- □ day treatment
- □ care management
- □ community habilitation
- □ prevocational services
- □ respite
- □ supported employment services (SEMP)

Any individual receiving these services must either pay for the services or have Medicaid coverage that will pay for the services.

Providing Information

Before services begin, we must determine who is responsible for paying for the cost of the services. This could be Medicaid or another payor, such as the individual or the individual's legal guardian. You are required to provide us with the information we need to make this determination. We must make this determination even if you offer to pay for the services. If Medicaid is not responsible for the cost of the services, we will determine if another payor is responsible for the cost of services and whether that other payor can afford the payment.

If the individual already has Medicaid coverage, you must provide us with proof of coverage including the individual's Medicaid Client Identification Number. The individual must maintain Medicaid coverage in the future. If the individual loses coverage, you must inform us.

If the individual does not already have Medicaid coverage:

You must pay for the services if no other payor exists. If you are responsible for the individual's money, you are only required to use the individual's money to pay for the services.

OR

You must apply for *Medicaid* if no other payor can pay for the services. When applying for Medicaid, you must take all legal steps to qualify for and maintain Medicaid coverage. We can assist with the Medicaid application process or apply on your behalf with the information you provide to us.

While services are ongoing, you must inform us of the following:

- That you have received any notice from the Medicaid district regarding the loss of the individual's Medicaid coverage. You must inform us of this notice within five days from the date it was received.
- That changes have occurred in the individual's Medicaid coverage.
- That changes have occurred that may affect the individual's Medicaid coverage including but not limited to changes in income, savings or other resources, living situation, or immigration status.
- That you can no longer afford to pay for the cost of services, you believe you are no longer responsible for the cost of services, or you believe another payor is responsible for the cost of services.

We must protect the confidentiality of your information. We will provide access to your information only to those who require it to perform their job. This includes New York State employees and employees of other agencies as necessary to apply for benefits such as Medicaid, Supplemental Security Income, Medicare, Social Security and Supplemental Nutrition Assistance Program (SNAP) benefits.

If the individual is requesting Home and Community Based Services (HCBS) Waiver services, you must take the necessary steps to enroll the individual in the HCBS Waiver. Services that are <u>not</u> HCBS Waiver services are ICF/IID, day treatment and/or care management. Medicaid will not pay for HCBS Waiver services if the individual is not enrolled in the HCBS Waiver.

The full fee for the requested services appears on the front of this notice or on a sheet attached to this notice. If we reduce the fee, you will be required to pay the reduced fee. If we reduce the fee and we later determine that you are able to pay the full fee, you will be required to pay the full fee. We will provide you with 30 days' written notice if the fee reduction changes. You will still be liable to pay for your services even if the following circumstances occur: you have failed to pay for services that you are liable for and the State has paid for those services, the law requires us to provide services notwithstanding your non-payment, or legal proceedings to stop services are pending. You will still be liable for fees and we will still bill you for services rendered under these circumstances.

We will send you bills if you are paying for the services. We will send you a monthly bill by the 30th of the month following service. For example, we will send you a bill for April services by May 30th. If you do not pay the bills, we will try to collect payment from you. We cannot interfere with services, or harass or threaten you or anyone else about your bills. If you still do not pay the bills, and OPWDD agrees, we must assign our claim for payment to New York State.

We can deny or discontinue services. We can deny your request for services if all the following are true: Medicaid will not pay for the services and we do not have reasonable assurances that another payor will pay for the services. If we begin services, in some cases, we can discontinue those services in the event that the payor has stopped paying for the services. If we discontinue services for non-payment, we are required to follow the normal rules for discontinuing services. We cannot deny or discontinue services if the law forbids it.

The limited exception

If the individual receives respite services only OR the individual received supported employment services only prior to July 1, 2015 and continues to receive supported employment services only, the individual may be eligible for a limited exception to payment liability. This means that the individual could continue to receive respite services or supported employment (but not both) without being billed for the service and without applying for Medicaid and the HCBS Waiver. To learn more about the limited exception, you can request these publications: "Information About the Limited Exception for Respite" and "Information About the Limited Exception for Supported Employment for Individuals Eligible to be Grandfathered".