



## **INCIDENT MANAGEMENT PROCEDURES**

### **Procedures**

**For Definitions of Abuse, Neglect Significant Incidents, Serious Notable Occurrences and Minor Notable Occurrences please see attached Appendix 1.**

### **Education and Training:**

This policy and relevant training documents, some developed by OPWDD in conjunction with the Justice Center, will be made available on ACLD's website. Paper versions of these documents will be made available upon request. The information will include instructions on how to access a copy of OPWDD's 624 regulations. All applicable forms may be found on ACLD Today Top Docs, or by emailing the Regulatory Affairs department at [ACLD Incident Management@aclid.org](mailto:ACLD Incident Management@aclid.org).

### **People Supported**

In line with ACLD's mission to assist people to pursue an enviable life, ACLD is committed to providing education and training tailored to people's abilities and needs. Through the CQL initiative ACLD has developed a training manual to facilitate training for people supported in the area of abuse prevention and reporting. Employees tasked with providing training to people supported will receive training on how to conduct an effective training session. People supported will receive training and information on abuse prevention and reporting upon commencement of services and annually thereafter. ACLD is committed to ensure resolution for people supported who have made an allegation.

### **Employees**

Upon hire and annually thereafter all employees of ACLD will receive training on ACLD's Incident Management process. This training will encompass Abuse/Neglect identification, prevention and reporting. ACLD employees will also be required to sign the Code of Ethics, designed by the National Alliance for Direct Support Professionals and the Justice Center Code of Conduct which includes an acknowledgement of the obligation of a mandated reporter to report all abuse to the Justice Center's Vulnerable Persons Central Register under Social Services Law 491.

## **Employee Screening**

ACLD's Human Resources Department will ensure employees, volunteers and contractors (as required by regulation/law) are subject to a Criminal Background Check upon hire. ACLD's Human Resources Department will also ensure employees, volunteers and contractors (as required by regulation/law) are screened against all applicable registries.

## **Immediate protections**

The safety of people supported is the primary concern of ACLD. The Chief Executive Officer (or designee) shall take necessary and reasonable steps to ensure that people supported who have or may have been harmed receive any necessary treatment or care and, to the extent possible, take reasonable and prudent measures to immediately protect people supported from harm. If a person is injured, The Chief executive officer or his/her designee shall ensure the person(s) has received appropriate medical examination.

The emotional status of the person supported will be addressed. When deemed appropriate and necessary by the clinical team the person will be referred for counseling to mitigate the effects of the incident/abuse. Behavior Intervention Specialists and Social Work services will be utilized on a case by case basis. This will occur regardless where or when the abuse occurred.

When appropriate, a person supported must be removed from a facility when it is determined that there is a risk to the person if he or she continues to remain in the facility.

## **Removal of target from direct contact**

For all allegations of Physical and Sexual Abuse the target of the report shall be removed from direct contact with, or responsibility for, all persons receiving services from the agency. For all other allegations the applicable program Director(s) and the Chief Executive Officer (or designee) will determine the appropriate course of action. For all other allegations where the program decides not to suspend a suspect, the program will complete a Determination Not to Suspend Form which will become part of the Investigatory 149 report.

Should a situation arise which is outside the established Incident Management procedures for immediate protections the applicable program Director(s) and the Chief Executive Officer (or designee) will meet and determine the appropriate steps to be taken to remedy said situation. These steps will include an assessment of all potential risks and strategies to mitigate such risks. The agreed upon steps shall be documented and kept in the case file.

## **Reporting:**

ACLD prohibits any form of retribution and/or retaliation against persons who make a report in good faith. Additionally, under section 491 Social Services law, mandated reporters have the following protections and liabilities:

- Immunity From Liability – The law grants immunity to mandated Reporters and other reporters from any legal claims which may arise from a good faith act of providing information to the VPCR.
- Protection From Retaliatory Personnel Action – The law prohibits an employer or agency from taking any retaliatory personnel action against a person as a result of a good faith act of providing information to the VPCR.
- Confidentiality – The law provides protections against the disclosure of the reporter's identity, subject to limited exceptions (reporter's consent, court order)

ACLD will ensure accurate and timely reporting of all allegations Reportable Incidents and Notable Occurrences as defined in part 624.3 and 624.4 of New York State Regulations, to both the Justice Center and OPWDD, by providing training and education to all applicable parties. ACLD will ensure contact information for the Justice Center, OPWDD and ACLD's Regulatory Affairs Department is readily available to all applicable parties. Mandated Reporters are also required to report these incidents to their supervisor.

As per the Justice Center – If you are a mandated reporter and have reasonable cause to suspect that a reportable incident has occurred and that it was committed by a custodian, you must report it to the VPCR immediately upon discovery. The service recipient does not have to suffer harm for an incident to be reportable. The *potential* for harm must also be reported. Even if the reportable incident occurred at a different facility or program from where you are employed, once you become aware that something reportable has occurred, you are required to report the incident to the VPCR.

As per the Justice Center – Failure by a mandated reporter to report suspected abuse or neglect to the VPCR is a serious matter and possible consequences include administrative discipline, termination, civil liability and criminal prosecution.

An ACLD employee who fails to carry out his/her duties as a mandated reported will be subject to disciplinary action up to and including termination.

## **Notifications:**

The agency Executive Director and/or Director of Regulatory Affairs shall be notified of all Reportable Incidents and Serious Notable Occurrences, as defined in section 624.3, immediately upon their discovery.

The agency Executive Director and/or Director of Regulatory Affairs shall be notified of all minor notable occurrences, as defined in section 624.4, within 48 hours upon occurrence or discovery.

The Qualified Person shall be informed of all Reportable Incidents and Notable Occurrences immediately but no later than 24 hours from occurrence or discovery in accordance with Jonathan'

ACLD shall not provide such notice to a Qualified Person in the following situations:

- there is written advice from the guardian, parent, adult sibling, spouse or adult child that he or she objects to such notification to himself or herself (notice shall then be provided to another party who is a guardian, parent, spouse or adult child, if one exists); or
- if the person receiving services is a capable adult who objects to such notification being made. If the capable adult objects to notification of all parties who are a guardian, parent, adult sibling, spouse or adult child, the capable adult shall be provided the notice described in this subdivision; or
- if the guardian, parent, adult sibling, spouse or adult child is the alleged abuser.

The person's Service Coordinator/ Care Coordinator shall be notified of all incidents within 24 hours. This notification will include a description of immediate protections provided to the person. When an investigation is completed and concluded, the assigned investigator will forward the Service Coordinator written information of the outcome of the investigation and recommendation.

Any Reportable or Serious Notable Occurrence will be immediately upon occurrence or discovery be reported to OPWDD by telephone by Regulatory Affairs. Initial information regarding reportable incidents or serious occurrences will be entered into IRMA by Regulatory Affairs staff within 24 hours of discovery or occurrence, or by the close of the next business day.

ACLD will notify law enforcement immediately in the event an emergency response is needed and any time a crime may have been committed against a person receiving services. This report will be made as soon as practical and no later than 24 hours after occurrence or discovery.

When a Reportable Incident or Serious Occurrence is reported on behalf of a Willowbrook Class Member, ACLD staff will follow the guidelines for Willowbrook Incident Reporting.

For Allegations of Abuse and Neglect, ACLD will notify Mental Hygiene Legal Services within 72 hours.

When ACLD is delegated to investigate abuse or neglect, the Regulatory Affairs Department will send to the target of the allegation the "Notice to Subject of Abuse or Neglect that an investigation has been initiated."

When a person receiving services makes an allegation, and when deemed appropriate by the interdisciplinary team, the person will be notified of the outcome of the investigation and actions taken in response. Supports, such as BIS, Program Staff or SW, will be utilized when necessary on a case by case basis.

## **Investigation of reports**

ACLD will ensure all Reportable Incidents and Notable Occurrences assigned to ACLD are thoroughly investigated. Investigations will be completed and documented as per OPWDD and Justice Center requirements. Minor Notable occurrences will not be uploaded into IRMA.

Investigations into Reportable Incidents will be completed by a Regulatory Affairs investigator. Investigations into Minor Notable Occurrences will be completed by the applicable program however Regulatory Affairs can choose to complete an investigation when necessary. All investigators are trained according to OPWDD and JC requirements prior to completing investigations.

Investigations of all reportable incidents and notable occurrences shall be initiated immediately even when the agency anticipates that the Justice Center or OPWDD will assume responsibility for the investigation. When the Justice Center or OPWDD is likely to assume responsibility agency investigative activities are limited to securing and documenting the scene; collecting and securing physical evidence; taking preliminary statements from witnesses and involved parties and; performing other such actions as specified by the Justice Center or OPWDD.

In the event law enforcement directs that ACLD forgo any investigatory actions, ACLD will comply with such directive.

ACLD will monitor IRMA to ascertain whether the Justice Center, OPWDD or the agency is responsible for the investigation. ACLD will fully cooperate with investigations conducted by the Justice Center or OPWDD.

ACLD's Regulatory Affairs Department shall be responsible for the management of all IRMA related duties required by regulation. This department shall also be responsible for all WSIR duties as required.

No one may participate in the investigation of any reportable incident or serious notable occurrence in which he or she was directly involved, in which his or her testimony is incorporated, or in which a spouse or immediate family member was directly involved. When a reportable incident or serious notable occurrence is to be investigated, every effort is to be made to have someone conduct or review the investigation who is not an immediate supervisor of staff directly involved with the situation or event so as to be as disinterested and objective a party as possible. Those who are members of a standing committee to review and monitor reportable incidents and serious notable occurrences shall not routinely be assigned the responsibility of investigating such events.

## **Sensitive Situations**

To determine whether or not an incident should be filed with the Justice Center and/or OPWDD as a Sensitive Situation, the applicable program Director (or designee) and a representative of the Regulatory Affairs department will assess any situations which may be of a delicate nature to the agency. These may include, but not be limited to, possible criminal acts committed by a Person Supported and other incidents involving law enforcement. The assessment will include a review

of all available information including background/history of Person Supported, previous investigations, police reports, statements, etc.

## **ICF**

For all incidents involving persons living in an ICF, all reasonable steps will be taken to complete all interviews within five working days of the occurrence or discovery of the event. At minimum, the Person(s) Supported will be interviewed and available documentary evidence obtained. Regardless of the stage of completion of the investigation, a Five day report will be generated which includes:

- All investigatory activities completed up to that point
- What remains to be completed
- Recommends immediate protections and determines whether immediate protections already in place are still appropriate
- Makes recommendations based on evidence gathered thus far (to prevent recurrence or address issues found)

Regarding allegations of Psychological Abuse. ACLD will advocate for proper classification and/or substantiation based on federal regulations (see below). The final report will include the language in federal regulation (see below) to support substantiation. ACLD will maintain a record of all communications related to advocacy efforts regarding substantiation.

- 42 CFR 483.420(a)(c): "Psychological Abuse includes, but is not limited to, humiliation, and threats of punishment or deprivation, sexual coercion, and intimidation (e.g. living in fear in one's own home). Since many clients residing in ICF/IID's are unable to communicate feelings of fear, humiliation, etc. associated with abusive episodes, the assumption is made that any actions that would usually be viewed as psychologically or verbally abusive by a member of the general public would also be viewed as abusive by the clients residing in the ICF/IID, regardless of that client's perceived ability to comprehend the nature of the incident."

Investigations will continue through completion regardless of whether an employee who is directly involved is no longer employed.

## **Part 625**

ACLD will ensure incidents alleged to have taken place while a person is under the supervision of another agency are investigated by:

- Notifying the agency and making a written record of the report
- The agency in whose facility or under whose auspices the reportable incident or serious notable occurrence is alleged to have occurred shall report the situation to OPWDD and the Justice Center



- If ACLD is not satisfied that the situation will be or is being investigated or handled appropriately, it shall bring the situation to the attention of OPWDD. OPWDD will follow up and take necessary steps to ensure appropriate action by the other agency.

ACLD will ensure incidents which have occurred while a person is not under the auspice of an ACLD certified program (i.e. visiting family, friends, etc.) are reported by:

- Reporting all situations or events meeting the definitions that fall within Part 625 regulations, by completing an incident report OPWDD Form 150 and notifying the IRC committee.
- Submit an initial report OPWDD Form 150 about the event or situation into the IRMA system within 24 hours of discovery or by the close of the next working day.
- The information will be evaluated and a determination made as to the appropriate action taken, immediately or subsequently.
- Provide updates to OPWDD via IRMA, until the situation is resolved.
- All deaths, even when they do not occur under the auspice of a certified program will be reported to the Justice Center Death Reporting Hotline. The OPWDD Form 162 must be completed by a healthcare professional.

### **Injuries of Unknown Origin**

Investigations into Injuries of Unknown Origin, which do not rise to the level of a Reportable Incident or Notable Occurrence, will be completed by the program.

### **Kramer and Spiegel Educational Centers**

Investigations which fall under the jurisdiction of the Kraemer and Spiegel Education Centers will be investigated following the Office of Children and Family Services. OPWDD funded programs such as the after school programs will be handled as per Part 624 regulations with no Justice Center notification.

### **Corrective Actions**

#### **Reportable Incidents – Abuse/Neglect**

Plan for Prevention and Remediation – Within 10 days of the IRC review of a completed investigation, the applicable program must develop a plan of prevention and remediation to be taken to assure the continued health, safety, and welfare of people supported and to provide for the prevention of future acts of Abuse and Neglect. The plan must include written endorsement by the CEO or designee. The plan must identify projected implementation dates and specify by title agency staff who are responsible for monitoring the implementation of each remedial action identified and for assessing the efficacy of the remedial action. Such plan must be entered into IRMA by the close of the fifth working day after the development of the plan.

Corrective Action Plan – Within 65 days of receipt of a report of findings and/or recommendations from the Justice Center or OPWDD the applicable program must develop a Corrective Action Plan (CAP) to address all recommendations made by the ACLD investigator as well as any recommendations made by the Justice Center and/or OPWDD. The applicable program shall provide Regulatory Affairs with supporting documents for each recommendation. Regulatory Affairs shall prepare the required forms and upload to IRMA as required.

Regulatory Affairs will track the submission of CAPs. Regulatory Affairs will also track the completion of recommendations for Significant Incidents and Notable Occurrences. The information will be routinely reviewed at IRC.

## **Closure of an incident or occurrence**

An incident or occurrence is considered closed:

1. for reportable incidents of abuse and neglect in programs that are not certified or operated by OPWDD, or are certified under paragraph 16.03(a)(4) of the Mental Hygiene Law and not operated by OPWDD, and for reportable significant incidents and notable occurrences in all facilities and programs certified, operated, or funded by OPWDD:
  - a. if ACLD conducts the investigation, when the IRC has ascertained that no further investigation is necessary; or
  - b. if the investigation is conducted by the Central Office of OPWDD, when the Central Office of OPWDD notifies ACLD of the results of the investigation; or
2. for reportable incidents of abuse and neglect in facilities and programs that are certified or operated by OPWDD:
  - a. if ACLD conducts the investigation, when the Justice Center provides written notice to ACLD of the Justice Center's review of the investigation; or
  - b. if the Central Office of OPWDD conducts the investigation, when the Justice Center provides written notice to ACLD of the Justice Center's review of the investigation; or
  - c. if the Justice Center conducts the investigation, when the Justice Center provides written notice to ACLD that the investigation is completed.

## **Confidentiality**

All incident documentation shall 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 shall be retrievable by the person's name and incident report number.

All records generated in accordance with the requirements of this Part must be kept confidential and must not be disclosed except as otherwise authorized by law or regulation. Records of reportable incidents that are reported to the Justice Center are to be kept confidential pursuant to section 496 of the Social Services Law.

## **Release of Records**

In order to obtain records related to investigations of Reportable Incidents, Qualified Persons must submit a written request to the Director of Regulatory Affairs. The written request must specify the records that are requested. Qualified Persons include a person receiving services who is the subject of the reportable incident; and any guardian, parent, spouse, adult child, or adult sibling of the person receiving services who is the subject of the reportable incident (pursuant to paragraph (a)(6) of section 33.16 of the Mental Hygiene Law).

The Director of Regulatory Affairs will take steps to verify the identity of the requestor and the validity of the request.

Documents released will be redacted to exclude information which identifies employees or persons served, in accordance with part 624.8(f) and of section 33.25 of the Mental Hygiene Law. Copies of the redacted report will be kept in the investigatory record. In addition, if any records that are subject to release identify a particular party as having made a child abuse or maltreatment report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation, that name as well as any information tending to identify the party must be redacted. Redacted reports will be accompanied by a cover letter which describes restrictions on further dissemination pursuant to section 33.25 of the Mental Hygiene Law.

Every effort will be made to fulfill the request as soon as possible. All request will be fulfilled no later than:

- If the request is made prior to the closure of the incident, the parties specified by agency policy/procedures must provide the requested records no later than 21 days after the closure of the incident. (see “closure of an incident” section for details)
- If the request is made at or subsequent to the closure of the incident, the agency must provide the requested records no later than 21 days after the request is made.

Records will not be released if:

- If the requestor is the alleged abuser, regardless of the conclusion
- If the person receiving services or who formerly received services is a capable adult and objects to the provision of records and/or documents to an otherwise eligible requestor

The following records will not be released:

- Records related to investigations of Serious Notable Occurrences and Minor Notable Occurrences will not be released.
- Employee personnel files or disciplinary procedures are not to be considered part of the investigation documents and records.
- Events and situation reported under Part 625 do not occur under the auspices of the agency, therefore, are not subject to release

Records may also be available under section 496 of the Social Services Law to *other persons named in the report* as defined in section 488 of the Social Services Law. Records requests under

Social Services Law 496 are to be directed to the NYS Justice Center. These requests cannot be fulfilled by OPWDD or by an OPWDD provider.

**Appeal process - denial of requested records/documents**

When request for records and documents is denied, the Director of Regulatory Affairs will inform the requestor in writing of the opportunity to appeal the denial to the OPWDD Incident Records Appeals Officer at Office of Counsel, 44 Holland Avenue, Albany, NY 12229.

## **Oversight – Incident Review Committee**

The primary purposes of the Incident Review committee shall include the review of all-reportable incidents and notable occurrences:

- Ascertain that reportable incidents and notable occurrences were reported, managed, investigated and documented consistent with the provisions of New York State regulations and ACLD policies and procedures and to make written recommendations to the program administration and/or Executive Director to correct, improve or eliminate inconsistencies.
- Ascertain that necessary and appropriate corrective, preventive, and/or disciplinary action has been taken to protect persons receiving services from further harm and to safeguard against the recurrence of similar reportable incidents and notable occurrences and to make written recommendations to the program administration and/or Executive Director to correct, improve or eliminate inconsistencies.
- Ascertain if further investigation or if additional corrective, preventive, and/or disciplinary action is necessary, and if so, to make appropriate written recommendations to the program administration and/or Executive Director relative to the reportable incident, serious reportable incident or alleged abuse.
- Identify trends in reportable incidents and notable occurrences (by type, person, site, employee involvement, time, date, circumstances, etc.), and to recommend appropriate corrective preventive, and/or disciplinary action to the program administration and/or Executive Director to safeguard against such recurring situations or reportable incidents and notable occurrences.
- Ascertain and ensure the adequacy of the agency's reporting and review practices, including the monitoring of the implementation of approved recommendations for corrective and preventive action.
- Reportable Abuse /Neglect incidents under the authority of the JC (programs certified or operated by OPWDD) cannot be closed until the agency receives a letter of determination from the Justice Center. This applies for investigations completed by ACLD, OPWDD or the Justice Center. The Justice Center may amend findings made by ACLD or OPWDD. Findings made by the Justice Center are considered final. A Review of LOD must be included in the IRC minutes.

## **Membership**

1. No committee member may participate in the review of any reportable incident or notable occurrence which he/she was directly involved, in which his/her testimony is incorporated, in which his/her spouse or other immediate family member was directly involved, or which he/she investigated or participated in the investigation. Such member may, however, participate in committee deliberation regarding appropriate corrective

action or preventive action. Additionally, no Committee member may participate in the review of an investigation in which his or her spouse or domestic partner or immediate family member provides supervision to the program where the incident took place.

2. Committee members are appointed by the chief executive officer however, the chief executive officer may not serve as a member but may be consulted in the Committee's deliberations. Membership shall include:
  - a. A member of the governing body
  - b. At least two professional staff
  - c. At least one licensed health care practitioner
  - d. At least one direct support professional
  - e. At least one individual receiving services
  - f. At least one representative of advocacy organizations
  - g. Other staff as deemed necessary by the agency
3. Any Committee member recognizing a potential conflict of interest is to report this to the Committee and recuse him or herself from Committee review of the incident in question.
4. ACLD's IRC committee will meet on a biweekly basis to review Reportable Incidents and Notable Occurrences. The committee will review and monitor all situations reported and maintain a record of such incident review, recommendations and /or actions taken in such a manner as to provide tracking and trending.
5. ACLD's IRC committee will ensure the emotional needs of the victim have been addressed, if not addressed by Immediate Protective /Corrective Measures or Investigative Recommendations. Recommendations may include referrals for clinical services or counseling to mitigate the effect of the incident/abuse.

## **Minutes**

1. Chairperson of ACLD's IRC committee shall ensure that minutes are kept for all meetings.
2. Minutes addressing the review of specific serious reportable incidents and/ notable occurrences shall clearly state the filing number or identification code of the report (if used), the person's full name and provide a brief summary of the situation (including date, location and type), that caused the report to be generated, committee findings (including reclassification of event, if applicable) and recommendations, and actions taken on the part of the agency as a result of such recommendations. Full names of all parties involved are to be recorded (not initials).



3. Minutes are to be maintained in a manner that ensures confidentiality.
4. For reportable incidents and serious notable occurrences minutes are to be entered into IRMA within a timely fashion.

## **Trend Analysis**

### **Agency Level (Incident Management)**

Reportable incidents and notable occurrences are those events which in accordance with the requirements of section 624.5 of New York State regulations, 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.

As per section 624.7(b)(4) of New York State regulations, the Incident Review Committee is responsible to identify trends in reportable incidents and notable occurrences. The Incident Review Committee is also responsible to ascertain and ensure the adequacy of the agency's reporting and review practices, including the monitoring of the implementation of approved recommendations for corrective and preventive action.

- ACLD will complete a trend report on a biannual basis which comprises information on Reportable Incidents, Notable Occurrence's and Part 625 incidents as well.
- A trend report is comprised of data collected by the Regulatory Affairs Department throughout the year utilizing the ACLD Incident Management database and the IRMA system. Data comparison is also conducted across programs and against data from previous years.

### **Program Level (Internal Incidents)**

Individual Programs will meet on a monthly basis and review internal incidents. All non-reportable sensitive situations, falls, injuries requiring first aid and injuries of unknown origin will fall under this category. Individual programs are expected to complete a trend analysis which highlights recurrences and concerns.

On an annual basis trends will be reviewed by the agencies Quality Services Committee and a designee of the CEO (Chief Operating Officer, Director of Regulatory Affairs or Senior Director of Adult Services).

# Appendix 1

## **SECTION II – Definitions and Commentary**



624.3. Reportable incidents, defined.

624.3(a) Reportable incidents are events or situations that meet the definitions in subdivision (b) of this section and occur under the auspices (see glossary, section 624.20) of an agency.

Commentary:

- The following pages explain those incidents that must be reported in accordance with OPWDD’s regulations.
- All reportable incidents that occur under the auspices of facilities and programs certified or operated by OPWDD must be reported to the New York State Justice Center for the Protection of People with Special Needs (Justice Center) Vulnerable Person’s Central Register (VPCR) at 1-855-373-2122 in accordance with reporting requirements in section 624.5.
- All reportable incidents that occur under the auspices of facilities and programs certified, operated, or funded by OPWDD must be reported to OPWDD in accordance with reporting requirements in section 624.5. <https://opwdd.ny.gov/sites/default/files/documents/OPWDD-EmergencyRegs120215Text.pdf>



## Part 624 Commentary; Reportable Incidents of Abuse/Neglect, Defined

### 624.3(b)(1) Physical abuse

Conduct by a custodian (see glossary, section 624.20) intentionally (see glossary, section 624.20) or recklessly (see glossary, section 624.20) causing, by physical contact, physical injury (see glossary, section 624.20) or serious or protracted impairment of the physical, mental, or emotional condition of the individual receiving services, or causing the likelihood of such injury or impairment. Such conduct may include, but 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.

#### Definitions from Section 624.20 and Section 15.05 of NYS Penal Law:

***Intentionally.*** A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his or her conscious objective is to cause such result or to engage in such conduct.

***Recklessly.*** A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

***Injury, physical and "impairment of physical condition."*** Any confirmed harm, hurt or damage resulting in a significant worsening or diminution of an individual's physical condition.

#### Commentary:

- It is not the reporter's role or responsibility to determine if the conduct he or she witnessed or heard about was intentional or reckless. All ***suspected*** cases of physical abuse must be reported, investigated, and reviewed in accordance with sections 624.5, 624.6, and 624.7 of this Part.
- In order for physical abuse to be substantiated, after the suspected abuse is reported, it must be determined through investigation that the conduct was intentional or reckless in accordance with applicable definitions of these terms.
- In order for physical abuse to be substantiated, the physical contact must cause physical injury or serious or protracted impairment of the physical, mental or emotional condition of a service recipient or cause the likelihood of such injury or impairment. This is defined as any confirmed harm, hurt or damage resulting in a significant worsening or diminution of an individual's physical condition. Improper physical contact may occur that does not meet this standard and therefore does not rise to the level of physical abuse.
- Improper physical contact that does not rise to the level of physical abuse (does not cause physical injury or the likelihood of physical injury) may still be considered employee misconduct and may result in disciplinary action.
- There can be a fine line between proper and improper physical conduct with persons receiving services. It is necessary for staff to be educated in order to distinguish that line and the differences between proper and improper conduct. This can be done through formal training in approved interventions, ongoing discussions and supervision, and the example provided by the appropriate behavior of those in positions of authority and role models.



- A physical altercation between persons receiving services may be reported as a significant incident to the Justice Center (where applicable) and OPWDD if the altercation meets the definition of Conduct between individuals receiving services. These situations do not constitute physical abuse. Staff failure to intervene in these situations could, however, constitute neglect.
- Use of a restraint, when the technique, the amount of force that is used, or the situation in which the restraint is used is inconsistent with a service recipient's individual treatment or behavioral support plan, inconsistent with the techniques and interventions taught through OPWDD approved trainings, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies would be reported as “deliberate inappropriate use of restraints” or “inappropriate use of restraints”, not as physical abuse. Refer to 14 NYCRR Section 633.16 Person-Centered Behavioral Intervention, the OPWDD PROMOTE curriculum and the commentary within this handbook about “deliberate inappropriate use of restraints” for more information.
- An action that might otherwise be considered physical abuse but necessary to ensure the safety of any individual would not be filed as physical abuse. For example, an individual is running toward the road where there is traffic and a custodian “grabs” the individual to prevent him or her from running into traffic. If there is any question whether the action taken by the custodian was necessary to ensure the safety of the individual (e.g. a witness to the event reports that he or she did not feel the action was necessary) then a report of physical abuse must be made and investigated in accordance with Part 624.



## 624.3(b)(2) 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 articles 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.

Note: Links to provisions of the State Penal Law referenced in the definition of "sexual abuse" follow the commentary below.

Commentary:

- Physical contact with sexual or other intimate parts of a person is sometimes necessary dependent upon the level of assistance a person requires. Contact that is not for the purpose of gratifying personal sexual desires of either the custodian or the person receiving services is not considered sexual abuse. Sexual abuse is limited to conduct defined in the Penal Law provisions noted above.
- Sexual contact between individuals receiving services when one of the individuals is not capable of consenting or does not consent to the contact must be reported as a "significant incident" under the category of "conduct between individuals receiving services".
- When sexual contact involves a person receiving services who is not capable of consenting or does not consent to the activity and the contact does not occur under the auspices of the agency (e.g., a person is sexually abused by a family member), the situation must be reported in accordance with Part 625 if it meets the criteria established in that Part.
- In situations reported as "sexual abuse," the agency must notify local law enforcement authorities, in addition to reporting to the Justice Center (where applicable) and OPWDD.
- Allowing, permitting, using or encouraging any individual receiving services to engage in prostitution or in a sexual performance (if the individual is a child) should be reported as sexual abuse. Other non-contact conduct such as exhibitionism or verbal sexual harassment should be reported as psychological abuse when the conduct involves a custodian or as a "significant incident" when conduct only involves individuals receiving services.
- See Section III of this handbook for links to the section of the NYS Penal Law referred to above.



## 624.3(b)(3) 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.

Definitions from Section 624.20 and Section 15.05 of NYS Penal Law:

***Intentionally.*** A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his or her conscious objective is to cause such result or to engage in such conduct.

***Recklessly.*** A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

Commentary:

- Please see *OPWDD Guidelines for the Completion for the Assessment used to determine the effect of Psychological Abuse* (Appendix 1).
- It is not the reporter's role or responsibility to determine if the conduct he or she witnessed or heard about was intentional or reckless. All suspected cases of psychological abuse must be reported, investigated, and reviewed in accordance with sections 624.5, 624.6, and 624.7 of this Part. In order for abuse to be substantiated, after the suspected abuse is reported, it must be determined through investigation that the conduct was intentional or reckless in accordance with applicable definitions of these terms, and there must be an assessment supporting the conclusion that the conduct caused a substantial diminution of the emotional, social, or behavioral development or condition of a person receiving services.
- If it is determined that the conduct did not cause a substantial diminution of the emotional, social or behavioral development or condition of the individual receiving services, the incident would be unsubstantiated as psychological abuse. However, if the conduct constituted a breach of the custodian's duty and resulted in or was likely to result in serious or protracted impairment of the physical, mental or emotional condition of an individual receiving services the incident may be substantiated as neglect.
- Exhibitionism or voyeurism by a custodian may be reported as psychological abuse if it meets the definition.





- The title “Behavior Intervention Specialist” applies only to Part 633.16 and the development of behavior support plans or behavioral interventions. Part 624 requires that the clinical assessment of substantial diminution, necessary to substantiate/unsubstantiated psychological abuse, be completed by a “*physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker, or licensed mental health counselor.*” Within the SO sector, professionals working under the title of “psychologist” may complete a clinical assessment of substantial diminution independently although all non-licensed staff do practice under the supervision of a chief psych who is licensed. Within the voluntary sector, the person completing the assessment must function as a “psychologist.” In NYS it is required that anyone using the title “psychologist” must be licensed by NYS with the exception of state employed psychologists functioning in a civil service item.
- Within the voluntary sector, the regulation does not prohibit a licensed psychologist from using non-licensed staff, including a BIS, to assist with completing the assessment. The degree of involvement should be determined by the licensed psychologist as any non-licensed staff are practicing under his/her license. For example, a BIS or non-licensed psychologist could assist with data collection, record review, etc. under the direction of a licensed psychologist. The licensed psychologist may have the non-licensed staff draft the assessment findings, however, the actual assessment must be completed and signed by the licensed psychologist as required by the regulation.

## 624.3(b)(4) Deliberate inappropriate use of restraint

The use of a restraint when the technique that is used, the amount of force that is used, or the situation in which the restraint is used is deliberately inconsistent with an individual's plan of services (e.g., individualized service plan (ISP) or a habilitation plan), or behavior support plan, generally accepted treatment practices, and/or applicable federal or state laws, regulations, or policies, except when the restraint is used as a reasonable emergency intervention to prevent imminent risk of harm to a person receiving services or to any other party. For purposes of this paragraph, a restraint 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.

Commentary:

- ***Deliberate inappropriate use of restraints*** and ***Inappropriate use of restraints*** are two separate categories of reportable incidents that must be reported to the Justice Center (where applicable) and to OPWDD. *Deliberate inappropriate use of restraints* is a reportable incident of abuse/neglect. *Inappropriate use of restraints* is a significant incident.
- ***Deliberate*** means willful, purposeful, or conscious; use of the term *deliberate* implies a belief or perception that the custodian has acted *with intent* to engage in an inappropriate use of restraint. If this standard is not met, the incident may be filed as a significant incident under the category *inappropriate use of restraints*.
- There can be a fine line between proper and improper physical conduct with persons receiving services. It is necessary for staff to be educated in order to distinguish that line and the differences between proper and improper conduct. This can be done through formal training in approved interventions, ongoing discussions and supervision, and the example provided by the appropriate behavior of those in positions of authority and role models.
- OPWDD requirements concerning use of restraints can be found in OPWDD regulations at 14 NYCRR Section 633.16 *Person-Centered Behavioral Intervention*. In addition, information about the use of OPWDD approved physical intervention techniques (e.g. manual holds) may be found in OPWDD's PROMOTE or SCIP-R curriculum. Refer to these resources to understand the terminology used in this commentary.
- Deliberate inappropriate use of restraints by a custodian may include:
  - the willful use of any intermediate and/or restrictive physical intervention technique in a manner inconsistent with or contraindicated by the individual's behavior support plan;
  - the willful use of any intermediate or restrictive physical intervention technique when not necessary to protect the individual or others from harm during a behavioral event or in an emergency situation. An emergency situation poses an immediate health or safety risk to the person or to others that is unexpected, unforeseen, or unanticipated, and for which procedures have not been specified in a person's behavior support plan.
- The willful use of any medically contraindicated physical intervention technique, except in an actual emergency and only when necessary to ensure the safety and well-being of an individual. The use of a prone restraint is prohibited and is always considered physical abuse.



- Use of OPWDD approved physical intervention techniques on an emergency basis is not “deliberate inappropriate use” if it is justified by the circumstances, even if it is not part of a behavior support plan.
- The intentional use of medication to modify or control challenging behavior that is not in conformance with the requirements of Section 633.16 is considered deliberate inappropriate use of restraint. This would always include a medication prescribed for a medical reason but is administered to control a person’s behavior. An example would be that an individual has a physician’s order for Benadryl for allergies. This medication is administered by a direct support professional because the individual is “acting up” and the Benadryl makes the individual sleepy. If a controlled substance is administered similarly it is a reportable incident of Unlawful use or administration of a controlled substance.
- If a mechanical restraining device is used to control a person in a manner that is not in conformance with the requirements of Section 633.16, and is used for staff convenience, for disciplinary purposes or retribution, as a substitute for programming, or as a substitute for supervision, the situation must be reported as deliberate inappropriate use of restraint.



624.3(b)(5) 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.

Commentary:

- Aversive conditioning is prohibited by OPWDD, and therefore, any use would constitute abuse and would be reported as *use of aversive conditioning*.



## 624.3(b)(6) 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 (as defined in section 488 of the Social Services Law) from making a report of a reportable incident to the statewide vulnerable persons' central register (VPCR) or OPWDD with the intent to suppress the reporting of the investigation of such incident; intentionally making a false statement, or intentionally withholding material information during an investigation into such a report; intentional failure of a supervisor or manager to act upon such a report in accordance with OPWDD regulations, policies, or procedures; or, for a custodian, failing to report a reportable incident upon discovery.

Commentary:

- Mandated reporter as defined in Social Services Law (SSL) Section 488 includes custodians in programs certified or operated by OPWDD and a specified list of “human services professionals” defined as (noted below).
- A mandated reporter is defined as a “custodian” or “human services professional.”
  - Custodian. For the purposes of section 633.7 only, a party that meets one of the following criteria:
    - (1) a director, operator, employee or volunteer of a facility or program which is certified or operated by OPWDD; or
    - (2) a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to such facility or program pursuant to contract or other arrangement that permits such party to have regular and substantial contact with individuals receiving services from the facility or program; or
    - (3) a family care provider; or
    - (4) a family care respite/substitute provider.
  - Justice Center for the Protection of People with Special Needs (Justice Center). An entity established by Article 20 of the Executive Law for the protection of people who are vulnerable because of their reliance on professional caregivers to help them overcome physical, cognitive and other challenges. The Justice Center contains the Vulnerable Persons' Central Register as established by Article 11 of the Social Services Law and receives requests for criminal history record checks pursuant to section 16.33 of the Mental Hygiene Law.
  - "Human services professional" is defined in the PPSNA as a physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; psychologist; registered nurse; licensed practical nurse; nurse practitioner; social worker; emergency medical technician; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed psychoanalyst; licensed speech/language pathologist or audiologist; licensed physical therapist; licensed occupational therapist; hospital personnel engaged in the admission, examination, care or treatment of persons; Christian Science practitioner; school official, which includes but is not



Limited to a school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate; social services worker; any other child care or foster care.

- Custodians in non-certified services that are not operated by OPWDD are required to report reportable incidents pursuant to the requirements of Part 624, but are not mandated reporters as defined in SSL Section 488 (and are therefore not required to report to the Justice Center). It must be noted that some human service professionals in non-certified settings may be “mandated reporters” because of their occupation and/or professional licensing requirements, thus would report abuse or neglect according to those professional requirements. However, conduct by these custodians may constitute “obstruction of reports of reportable incidents” if they fail to report a reportable incident as required by OPWDD regulations or engage in the other conduct specified in the definition.
- Each mandated reporter in programs operated or certified by OPWDD are required to report reportable incidents to the Justice Center’s Vulnerable Persons’ Central Register (VPCR). Additional reporting requirements related to reportable incidents are also included in this Part, including the requirement that reports of reportable incidents be submitted to OPWDD.
- Each mandated reporter is required to submit a report of a reportable incident to the VPCR either through calling the VPCR hotline or submitting the NYJC Incident Submittal Web Form at <https://vpcr.justicecenter.ny.gov/wi/>.



## 624.3(b)(7) 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.

Commentary:

- Controlled substances are listed in Public Health Law (PHL) §3306 and range from illegal drugs, like non-medicinal marijuana, heroin, and LSD that have no accepted medical use for treatment in NYS, to commonly used prescription drugs, such as Klonopin, Valium, and cough syrup with Codeine.
- Any administration by a custodian to an individual receiving services of a controlled substance without a prescription is considered unlawful administration of a controlled substance
- Custodians must not use controlled substances unlawfully at the workplace or while on duty. This must be reported as unlawful use or administration of a controlled substance.
- Custodians must never unlawfully distribute any controlled substance at the workplace or while on duty. This must be reported as unlawful use or administration of a controlled substance. Distribution of a controlled substance includes both selling and giving the controlled substance to another person. This is not limited to individuals receiving services.
- If a custodian has a prescription for the use of a controlled substance and is taking it in accordance with doctor's orders, this use would not be considered unlawful and would not meet the definition of abuse in this category. A custodian must, however, follow agency policies and procedures on safeguarding medications for personal use and should not be on duty if his or her ability to fulfill job responsibilities is impaired.
- This category is not intended to address the use of legally available herbal supplements and vitamins; these supplements may be administered with a prescription and in accordance with OPWDD regulations at 14 NYCRR section 633.17.
- This provision addresses unlawful use of controlled substances. There is another provision, categorized as a "significant incident," that addresses administration of a prescribed or over-the-counter medication that is inconsistent with a prescription and results in an adverse effect to an individual receiving services.

## 624.3(b)(8) 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 as described in paragraphs (1) through (7) of this subdivision if committed by a custodian;
- (ii) Failure to provide adequate food, clothing, shelter, or medical, dental, optometric, or surgical care, consistent with Parts 633, 635, and 686, of this Title (and 42 CFR Part 483, applicable to Intermediate Care Facilities), and provided that the agency has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric, or surgical treatment have been sought and obtained from the appropriate parties; or
- (iii) Failure to provide access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction in accordance with the provisions of part one of article 65 of the education law and/or the individual's individualized education program.

Definition from Section 624.20:

***Injury, physical and “impairment of physical condition.”*** Any confirmed harm, hurt or damage resulting in a significant worsening or diminution of an individual's physical condition.

Commentary:

- It is not the custodian's role to determine if the conduct or conditions will result in or is likely to result in physical injury or serious or protracted impairment of the physical, mental, or emotional condition of the individual receiving services. It is the responsibility of the custodian to report all suspected neglect.
- A pattern of failures to provide one or more individuals with routine medical care or treatment may constitute neglect. Failure to provide medical services that were ordered to address signs and symptoms of a known or suspected medical condition may also constitute neglect.
- When a custodian witnesses, but does not attempt to intervene, during an altercation between two individuals receiving services, a report of neglect may be filed. If the custodian attempts to intervene but is not successful, a report of neglect should not be filed. An altercation between two individuals receiving services may need to be reported as a significant incident “conduct between individuals receiving services.”
- If there is documentation that an individual receiving services requires enhanced supervision and that enhanced supervision is not provided it must be reported as neglect.
- If an action or inaction on the part of a custodian does not meet the definition of another classification of abuse but jeopardizes the health and safety of an individual receiving services, it must be reported.
- For example:





- Texting while driving;
- Sleeping on duty by a custodian that leaves the program below the established health and safety minimums; or
- If a custodian is sleeping on duty and an individual is injured; an untoward event occurs, including but not limited to, a physical altercation between individuals receiving services or a choking incident; or an individual is not provided with appropriate supervision.



PRIOR TO JANUARY 1, 2016

- 624.3(b)(9) *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:



- (i) the following types of incidents prior to January 1, 2016:
  - (a) *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
  - (b) *Conduct on the part of a custodian, that is inconsistent with the individual's plan of services, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, and that impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare of an individual receiving services, including:*

- (1) *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, the use of seclusion is prohibited;

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

- (2) *Unauthorized use of time-out.* For the purposes of this subclause 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 time out" includes any use of time out that is inconsistent with an individual's plan of services except as noted in subclause (1) of this clause.

- (3) 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 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;
- (4) *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



- (5) *Other mistreatment.* Other conduct on the part of a custodian, that is inconsistent with the individual's plan of services, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, and that impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare of an individual receiving services, except as described in subclauses (1) through (4) of this clause;
- (c) *Missing person.* 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;
- (d) *Choking, with known risk.* The partial or complete blockage of the upper airway by an inhaled or swallowed foreign body, including food, that leads to a partial or complete inability to breathe, involving an individual with a known risk for choking and a written directive addressing that risk; or
- (e) *Self-abusive behavior, with injury.* A self-inflicted injury to an individual receiving services that requires medical care beyond first aid.



624.3(b)(9)(ii) **the following types of incidents on and after January 1, 2016: UPDATED**

624.3(b)(9)(ii)(a) 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

Commentary:

- Please see *OPWDD Guidelines for Responding to Conduct Between Persons Receiving Services that would Constitute Abuse if Committed by a Custodian* (Appendix 2)

<b>Decision Matrix for Sexual Contact Involving Persons Receiving Services</b> (Words in bold italic font represents type of incident per 624)		
Characteristics of Involved People	Use of Coercion/force	
	Coercion/force was not used	Coercion/force was used
Both receive services; Both capable of consent	<b><i>Not an incident</i></b>	<b><i>Reportable Significant-Conduct Between Individuals Receiving Services</i></b>
Both receive services; Initiator capable of consent, Other not capable of consent	<b><i>Reportable Significant-Conduct Between Individuals Receiving Services</i></b>	<b><i>Reportable Significant-Conduct Between Individuals Receiving Services</i></b>
Both receive services; Initiator not capable of consent, Other capable of consent	<b><i>Reportable Significant-Conduct Between Individuals Receiving Services</i></b>	<b><i>Reportable Significant-Conduct Between Individuals Receiving Services</i></b>
Both receive services; Both not capable of consent	<b><i>Reportable Significant-Conduct Between Individuals Receiving Services</i></b>	<b><i>Reportable Significant-Conduct Between Individuals Receiving Services</i></b>

- The above matrix does not apply to employees of an agency where the people involved are receiving services. Any sexual contact between a person receiving services and an employee, intern, consultant, contractor or volunteer of an agency is always considered to be sexual abuse and is prohibited. A person with a developmental disability who is or who 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. The above matrix does not apply Refer to 624.3(b)(2).
- Failure on the part of a custodian to provide proper supervision for an individual receiving services as required in their plan of care that results in an incident of conduct between persons receiving services is to be reported as a reportable incident of neglect. Refer to 624.3(b)(6)(i).
- An intentional physical interaction between individuals, which results in an injury requiring more than first aid, is a reportable incident, and must be reported to the Justice Center, and OPWDD’s Incident Management Unit.
- If a physical interaction between individuals does not rise to the level of a reportable incident, the agency may elect to document the event as an occurrence.



624.3(b)(9)(ii)(b) *Conduct on the part of a custodian, that is inconsistent with the individual's plan of services, generally accepted treatment practices, and/or applicable federal or state laws, regulations, or policies, and that impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare of an individual receiving services; including*

624.3(b)(9)(ii)(b)(1) 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, the use of seclusion is prohibited;

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

Commentary:

- The use of a time-out room when an individual does not have time-out as an intervention in their Behavior Support Plan, even in an emergency, is considered seclusion. Seclusion is prohibited by OPWDD and must be reported as "seclusion," a significant incident.
- The placement of an individual in any room where the door is locked/secured from the outside and stays locked/secured without staff direct physical continuous action is seclusion.
- The use of a room where an individual cannot leave at will is considered seclusion.
- The use of a room for time-out not designated for time-out use is considered seclusion. For example, the placement of an individual into a coat closet because the time-out room is occupied is considered seclusion and must be reported as a significant incident.
- Requiring an individual to move to a particular location where they are contained and where egress is blocked (e.g., taped off area of the hall, area that staff surround with mats to contain an individual) when the use of such intervention is not prescribed in an approved BSP is seclusion.



Examples	Seclusion	Unauthorized use of time out
Use of a time out room when it is not an intervention in the BSP.	X	
Individual is restricted to an area where they cannot leave at will and time out is not an approved intervention in their BSP.	X	
Use of a time out room when there is no current HRC approval and/or current informed consent for the BSP to use the intervention.	X	
An individual is locked in a room.	X	
The use of a room such as a bedroom or a laundry room for time out; regardless of whether the individual has time out included in a BSP.	X	
The use of a time out room for time exceeding that prescribed in the current BSP.		X
Placing a person in time out when they are exhibiting a behavior in their BSP but time out is not the intervention for that behavior.		X
An individual becomes agitated and is required to sit in the hall where staff prevent the individual from leaving the area. The individual does not have a BSP.	X	



## 624.3(b)(9)(ii)(b)(2) Unauthorized use of time-out.

For the purposes of this subclause 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 subclause (1) of this clause.

Commentary:

- The following circumstances do not constitute *unauthorized use of time out*:
  - An individual receiving services goes into a time-out room voluntarily and independently and sits down. The staff member ensures that egress is not blocked, provides ongoing visual and auditory monitoring of the individual, and encourages the individual to use their self-soothing or calming techniques. The staff member encourages the individual to continue programming when he or she expresses a desire to leave the room.
  - A staff member encourages an individual, who is becoming upset, to take a walk to the individual's personal space, such as a bedroom, where the staff member and individual discuss how the individual is feeling and how they can appropriately address the problem.
  - An individual goes to their bedroom, locks the door, and listens to music. This is not *unauthorized use of time-out* as the individual can unlock the door and leave the room at will.
- Situations in which an individual refuses to leave the time-out room after an hour of authorized time-out should not be filed as *unauthorized use of time-out*. However, in such circumstances, staff must ensure that the individual has the ability to leave the room at will and that the person is not denied the opportunity for reinforcement.
- The use of time-out in any way other than as specified in the person-centered BSP constitutes *unauthorized time-out*. The following are examples of unauthorized time out:
  - Staff failing to attempt less restrictive or intrusive interventions, as outlined in the BSP and when safety permits, prior to placement in time-out constitutes unauthorized time-out.
  - Requiring an individual to remain in time-out for twenty minutes once the challenging behavior has ceased when their plan requires that the individual be released from time-out after five minutes of no challenging behavior constitutes *unauthorized use of time-out*.
- It is not *unauthorized use of time-out* when an individual is in the time-out room for the maximum amount of time prescribed in the BSP, leaves, but must be escorted back to the time-out room due to challenging behavior.





Examples	Seclusion	Unauthorized use of time out
Use of a time out room when it is not an intervention in the BSP.	X	
Individual is restricted to an area where they cannot leave at will and time out is not an approved intervention in their BSP.	X	
Use of a time out room when there is no current HRC approval and/or current informed consent for the BSP to use the intervention.	X	
An individual is locked in a room.	X	
The use of a room such as a bedroom or a laundry room for time out; regardless of whether the individual has time out included in a BSP.	X	
The use of a time out room for time exceeding that prescribed in the current BSP.		X
Placing a person in time out when they are exhibiting a behavior in their BSP but time out is not the intervention for that behavior.		X
An individual becomes agitated and is required to sit in the hall where staff prevent the individual from leaving the area. The individual does not have a BSP.	X	



## 624.3(b)(9)(ii)(b)(3) Medication error with adverse effect

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 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;

Commentary:

- Medication errors requiring medical treatment and/or monitoring resulting in a negative effect on an individual's physical condition would be considered a "medication error with adverse effect".
- If errors involving medication do not meet the definition of a medication error with adverse effect as defined in Part 624, the agency is to ensure that the errors are recorded and addressed appropriately according to agency policy.

## Examples:

- Aspirin is administered as ordered for an individual receiving services and the individual receiving services develops a slight rash. This would not be a medication error with adverse effects. However, it should be reported within the agency, reviewed, and monitored according to agency policy/procedure.
- An individual receiving services has a seizure disorder and receives medication daily to control his/her seizures. If the seizure medication is not administered or the administration is late, and the person experiences a seizure, this would be considered a reportable incident, medication error with adverse effect.
- An individual receiving services is given an incorrect medication and/or incorrect dosage of medication. The individual presents marked lethargy and is taken to the hospital for observation. This situation would be an incident, medication error with adverse effect.



624.3(b)(9)(ii)(b)(4) 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

Commentary:

- ***Inappropriate use of restraints*** and ***Deliberate inappropriate use of restraints*** are two separate categories of reportable incidents that must be reported to the Justice Center (where applicable) and to OPWDD. *Inappropriate use of restraints* is a significant incident. *Deliberate inappropriate use of restraints* is a reportable incident of abuse/neglect.
- Inappropriate use of restraints by a custodian, that does not constitute deliberate inappropriate use of restraint, may include:
  - the use of any intermediate and/or restrictive physical intervention technique in a manner inconsistent with or contraindicated by the individual’s behavior support plan;
  - the use of any intermediate and/or restrictive physical intervention technique when not necessary to protect the individual or others from harm during a behavioral event or in an emergency situation. An emergency situation poses an immediate health or safety risk to the person or to others that is unexpected, unforeseen, or unanticipated, and for which procedures have not been specified in a person’s behavior support plan.
  - The use of any medically contraindicated physical intervention technique, except in an emergency and only when necessary to ensure the safety and well-being of an individual; or
  - the use of any intermediate and/or restrictive physical intervention over the written objection of a parent, guardian or other designated surrogate, except in an emergency.
- There can be a fine line between proper and improper physical conduct with persons receiving services. It is necessary for staff to be educated in order to distinguish that line and the differences between proper and improper conduct. This can be done through formal training in approved interventions, ongoing discussions and supervision, and the example provided by the appropriate behavior of those in positions of authority and role models.
- OPWDD requirements concerning use of restraints can be found in OPWDD regulations at 14 NYCRR Section 633.16 Person-Centered Behavioral Intervention. In addition, information about the use of approved physical intervention techniques (e.g. manual holds) may be found in OPWDD’s PROMOTE or SCIP-R curriculum. Refer to these resources to understand the terminology used in this commentary.
- In those cases when restrictive physical interventions permitted through OPWDD’s PROMOTE or SCIP-R curriculum are used in an emergency situation, notifications must be made as required by Part 633.16(j)(1)(ix). In addition, the person’s program planning or treatment team must be notified to determine whether changes to the individual’s current plan, or perhaps development of a new plan, is necessary.



624.3(b)(9)(ii)(b)(5) 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.

Commentary:

- Mistreatment maybe an action or inaction by a custodian that does not meet the definition of Abuse or Neglect or any other type of significant incident, but may have a negative effect on the individual’s wellbeing.
- The failure to provide programming, socialization, recreation, etc., may be categorized as mistreatment if it impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare of an individual receiving services.
- Not every instance or failure to follow an individual’s plan of care and accepted treatment practices constitutes mistreatment. Each situation must be reviewed individually.
- Action or inaction by anyone other than a custodian does not constitute mistreatment.



## 624.3(b)(9)(ii)(c) 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;

Commentary:

- If an individual who is a potential risk to himself or herself cannot be located, then a Missing person at risk for injury must be reported. A person at risk is a person who is not safe alone in the community.
  - If person's plan required a specific supervision level, and that supervision level was breached, the missing person incident may need to be upgraded to a report of neglect.
  - It is necessary to implement the agency's formal search procedures when a person is missing and at risk for injury.
  - Every agency must have written formal search procedures for each of its facilities. The determination of when formal search procedures for a person receiving services are initiated is defined by each agency using knowledge of that person's risks, capabilities, and supervision needs.
- (aa) *Procedures, formal search.* A systematic process involving employees with specific responsibilities (e.g., security personnel), law enforcement agencies, and any others designated by agency policy and which is initiated for the purpose of locating a person who has not been found in response to an informal search.

Examples:

- An individual who regularly returns home at 4:30 pm is not back to his or her residence at 5:00 pm. This circumstance might not rise to the level of a Missing person at risk for injury as the individual has community skills and is not at risk to himself or herself in the community, but at times gets distracted, stopping at stores on his or her return home.
- If an individual leaves a residence or program and staff are able to accompany or follow the individual at all times, this is not required to be reported in accordance with the OPWDD Part 624 process because the person is not missing. This circumstance should be managed in accordance with the individual's plan of care.
- If a person is unexpectedly at another location that is known to staff, this does not necessitate a Missing person at risk for injury report in conformance with Part 624. It may be appropriate, however, to record the circumstance in the person's record and to monitor the behavior, and/or revise the individual's plan as appropriate.
- An individual unexpectedly leaves his or her residence. A staff member follows the individual but loses sight of the individual after 10 minutes. The individual has no safety skills, and is therefore at risk when alone in the community. This must be reported as a Missing person at risk for injury.
- An individual who has a current diagnosis of diabetes who is able to navigate the community but has not returned to receive insulin coverage may be at risk for injury. If a nurse or health care professional deems the individual at risk for injury due to missing the medication dose, the incident should be reported as a Missing person at risk for injury.
- An individual who is unable to independently safely navigate in the community cannot be located at his or her workshop/program, a Missing person at risk for injury incident must be reported. Staff notice that a particular individual who is at risk for injury to himself is not in the home.
- Search procedures begin immediately and include staff searching outside of the home and in the local vicinity. The individual is found outside fifteen minutes later unharmed. This situation is reported in accordance with Part 624 even though the report is made after the individual was found.



## 624.3(b)(9)(ii)(d) Unauthorized absence.

The unexpected or unauthorized absence of a person after formal search procedures (see glossary, section 624.20) have been initiated by the agency. Reasoned judgments, taking into consideration the person's habits, deficits, capabilities, health problems, etc., 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;

Commentary:

- An Unauthorized Absence involve individuals who have community safety skills and is reported only after formal search procedures have been initiated.
- (aa) *Procedures, formal search.* A systematic process involving employees with specific responsibilities (e.g., security personnel), law enforcement agencies, and any others designated by agency policy and which is initiated for the purpose of locating a person who has not been found in response to an informal search.
- If the individual is a risk to him/herself then the incident is always reported as a Missing Person.

Examples:

- An individual travels to program independently from his/her residence on the public bus and does not arrive at day program at the regular start time. The individual has been known to stop at the park prior to program and arrive at program before lunchtime. This would not automatically become an “Unauthorized Absence”. The person would be an “absentee,” and the day program should follow-up to the extent required in its own practices. An incident would be reported if the individual’s whereabouts are unknown for a period of time outside his/her norm. When formal search procedures are deemed necessary to be initiated, an Unauthorized Absence should be reported.
- An individual with community skills leaves his/her residence in an agitated state against staff’s advisement. Staff are unable to follow him/her. The individual has been known to become physically assaultive when agitated. Due to the individual’s mental health status, he/she may pose a risk to others in the community. Formal search procedures should be initiated and this incident handled as an Unauthorized Absence.
- An individual can remain in the community for up to four hours independently. The individual goes to the mall but does not return to the residence at the end of the four-hour period. Staff are unable to reach the individual by cellular phone and initiate formal search procedures. This incident should be handled as an Unauthorized Absence.
- The same situation as above, however, staff are able to reach the individual by his/her cellular phone. The individual had lost track of time and meet the staff. He/she was 15 minutes outside the allotted four-hour community access timeframe. Formal search procedures were not initiated. This situation should not be handled as an Unauthorized Absence. It may be prudent to discuss this situation with the individuals’ team to reduce the likelihood of it occurring again.



## 624.3(b)(9)(ii)(e) Choking, with known risk.

The partial or complete blockage of the upper airway by an inhaled or swallowed foreign body, including food, that leads to a partial or complete inability to breathe, involving an individual with a known risk for choking and a written directive addressing that risk;

Commentary:

- There is a known risk of choking if there is documentation noting an individual's risk such as:
  - History of choking events or aspiration identified in any component of the person's service plan;
  - The person has a prescribed, modified food/beverage size, consistency, pacing due to or based on a documented risk of choking;
  - The person has a history of or is experiencing a diagnosed aspiration pneumonia;
  - The person has had a swallowing evaluation which finds that aspiration or choking is a risk;
  - A medical assessment includes regurgitant symptoms or diagnosis of GERD and specifies that choking is a risk;
  - The service plan includes a type of supervision and/or assistance required during eating/drinking due to a risk of choking; such as the person's pace or amount.
- Choking occurs when a person's airway becomes fully or partially blocked by food, liquid or other objects.

The following are examples which may be signs of a choking event:

- showing distress/panic and/or grabbing neck/throat displaying the universal sign for choking;
- the person's skin/lips turn blue and they are unable to speak or cough; loss of consciousness may occur;
- coughing in and of itself may not constitute choking, but the individual should be monitored for signs of distress or choking.
- The following may also be signs of choking:
  - the person may run away instead of toward help;
  - a person may have last consumed food or drink earlier than the episode but experiences choking later, due to regurgitating the food/drink. This is still choking.
- After any choking incident, it is the best practice to have the individual examined by a medical professional.
- Refer to OPWDD website for Health and Safety Alerts and Safeguarding Alerts for more information on choking prevention and intervention.



624.3(b)(9)(ii)(f) 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;

Commentary:

A person is considered to have no known risk of choking if the person:

- does not have a documented history of choking or aspiration
- does not have a modified consistency diet due to a swallowing disorder or other documented risk of choking;
- does not have a service plan including intervention to address rapid eating or food seeking behavior or other risk of choking.





## 624.3(b)(9)(ii)(g) Self-abusive behavior, with injury.

A self-inflicted injury to an individual receiving services that requires medical care beyond first aid;

Commentary:

- The definition of the term “treatment, requiring medical or dental” in this subdivision is found in the glossary and is as follows:

## Section 624.20

- (ak) For the purpose of this part, a situation in which a person who, by virtue of his or her condition as a result of an injury, must see a physician, dentist, physician’s assistant, or nurse practitioner to have the condition controlled and/or attended to with more than first aid procedures. While an agency’s policy and procedure may direct that a person who is in any way injured or has suffered any ill effects is to see a medical professional, even though first-aid has adequately addressed the injury, this does not always constitute requiring medical or dental treatment in terms of defining a notable occurrence.
- The use of dermabond or steri-strips is not considered more than first aid.
- Stitches, sutures and staples are all treatment beyond first aid.
  - The following must be filed as self-abusive behavior, with injury:
    - a person receiving services kicks the wall in an attempt to injure themselves and breaks a bone in their toe; the injury must be reported to ensure proper follow-up occurs to address any medical, environmental, or potential causes.
    - A person has a soft tissue injury (contusion, bruise) which resulted from self-injurious behavior and is examined by a healthcare professional. The diagnosis by the healthcare professional is a sprain. However, an MRI is subsequently completed and reveals a fracture.
    - An individual throws themselves into their dresser and injures their shoulder and an x-ray is negative for fracture. However, the physician prescribes Oxycodone 500mg for pain which requires a prescription.
- Part 624 is exclusively focused on incidents as they affect individuals receiving services. It may happen that employees may be injured due to the aggressive behavior of a person or in some other way related to workplace violence. In general, like other employee injuries, this would not be reported in the Part 624 process, but would be handled through the workers’ compensation and insurance process at the agency, and/or other required reporting processes. The New York State Workplace Violence Prevention Law (Section 27-b of the Labor Law) also addresses this issue in state worksites.



## 624.3(b)(9)(ii)(h) 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;

Commentary:

- Every injury, no matter how slight, must be responded to and treated by a nurse, physician, etc. when appropriate. This does not necessarily mean that the injury must be reported as an incident. Agencies must consider the severity of the injury and the resulting necessary care when determining whether the injury is to be classified as a reportable incident.
- Pursuant to Section 633.10(a)(4), the agency must notify the individual's parent, guardian or correspondent/advocate every time a health problem, symptoms, or condition results in emergency room/urgent care services or admission to a hospital or infirmary.
- If an injury required medical treatment (a "minor notable" injury) and resulted in the person being admitted to a hospital or any other type of 24-hour treatment facility, whether for further treatment or observation, the injury is considered to be an Injury, with hospital admission.
- Symptoms or a diagnosis of an Illness (including mental illness) is not in and of itself a reportable incident. Hospitalization for a health-related problem or condition (e.g., seizures, blood pressure, psychotic episode, pneumonia) does not constitute a reportable incident as this involves an increase of symptoms of a condition rather than an injury.
- If a person fell related to a medical problem (e.g., during a seizure), and was admitted to the hospital for a possible concussion from the fall, this would constitute an Injury, with hospital admission. However, if they were admitted to a hospital due to the seizure only (not the injury), this would not constitute an *Injury, with hospital admission*. If agency review of the situation indicates possible neglect, the neglect is to be reported as a potential reportable incident.
- Part 624 is exclusively focused on incidents as they affect individuals receiving services. It may happen that employees may be injured due to the aggressive behavior of a person or in some other way related to workplace violence. In general, like other employee injuries, this would not be reported in the Part 624 process, but would be handled through the workers' compensation and insurance process at the agency, and/or other required reporting processes. The New York State Workplace Violence Prevention Law (Section 27-b of the Labor Law) also addresses this issue in state worksites.



## 624.3(b)(9)(ii)(i) 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 \$100.00; theft involving a service recipient's credit, debit, or public benefit card (regardless of the amount involved); or a pattern of theft or financial exploitation involving the property of one or more individuals receiving services;

Commentary:

- Law enforcement must be notified anytime a crime may have been committed against an individual by a custodian. See 624.6(d)(2)(i)(ii)

Examples of Theft and Exploitation filed in this classification are:

- During a scheduled audit of personal allowance ledgers, it is discovered that deposits into individual's accounts are less than the amounts listed on the check stub for deposit. The agency suspects theft by a staff member. The total amount of money missing is over \$100.00.
- An individual is accompanied by a staff member to purchase some groceries they would like. While at the store, the staff member adds several additional items to the cart and pays for them with the individual's benefit card. These items are brought to the staff member's car and not to the IRA. The total for these groceries is \$56.89.
- An individual's video game system is missing and the agency believes it has been stolen. If the replacement value is more than \$100.00.



624.3(b)(9)(ii)(j) 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

Commentary:

Incidents that are reportable to the Justice Center, but do not appropriately meet the definition of any other significant incidents.



## 624.4. Notable occurrences, defined.

- (a) Notable occurrences are events or situations that meet the definitions in subdivision (c) of this section and occur under the auspices of an agency.
- (b) Notable occurrences 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 definitions 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.
- (c) Serious and minor notable occurrences are defined and categorized as follows:

- (1) the following types of incidents prior to January 1, 2016:

- (i) *Injury.*

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

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

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

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

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

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



- (iv) *Choking, with no known risk.* For the purposes of this paragraph, partial or complete blockage of the upper airway by an inhaled or swallowed foreign body, including food, that leads to a partial or complete inability to breathe, other than a "reportable" choking, with known risk, incident (see clause 624.3(b)(9)(i)(d) of this Part), involving an individual with a known risk for choking and a written directive addressing that risk. Any choking with no known risk event is considered a serious notable occurrence.
- (v) *Theft and financial exploitation.*
  - (a) *Minor notable occurrence.* Any suspected theft of a service recipient's personal property (including personal funds or belongings) or financial exploitation, involving values of more than \$15.00 and less than or equal to \$100.00, that does not involve a credit, debit, or public benefit card, and that is an isolated event.
  - (b) *Serious notable occurrence.* Any suspected theft of a service recipient's personal property (including personal funds or belongings) or financial exploitation, involving a value of more than \$100.00; theft involving a service recipient's credit, debit, or public benefit card (regardless of the amount involved); or a pattern of theft or financial exploitation involving the property of one or more individuals receiving services.
- (vi) *Sensitive situations.* Those situations involving a person receiving services that do not meet the criteria of the definitions in subparagraphs (i) – (v) of this subdivision or the definitions of reportable incidents as defined in section 624.3 of this Part, that may be of a delicate nature to the agency, and are reported to ensure awareness of the circumstances. Sensitive situations shall be defined in agency policies and procedures, and shall include, but not be limited to, possible criminal acts committed by an individual receiving services. Sensitive situations are serious notable occurrences.
- (vii) *ICF Violations.* Events and situations concerning residents of Intermediate Care Facilities (ICFs) that are identified as violations in federal regulation applicable to ICFs and do not meet the definitions of reportable incidents as specified in section 624.3 of this Part or other notable occurrences as specified in this section. ICF violations are serious notable occurrences.

**624.4(2) the following types of incidents on and after January 1, 2016:**

624.4(2)(i) Serious Notable Occurrences:

624.4(2)(i)(a) Death.

The death of any person 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;

Commentary:

- All deaths, regardless of the reason for the death, are to be considered serious notable occurrences and reviewed by, at least, the committee that reviews incidents. This is in addition to any other medically oriented/constituted Committee within the agency organizational structure that may also be charged with the responsibility.
- A mortality review does not suffice as an investigation of a death.
- The Justice Center’s Death Reporting Line must be contacted for all deaths of individuals receiving certified facility based services.
- If an individual receives MSC services and attends a certified facility based day program and the individual passes away at home unrelated to any issue at that certified program the death should be reported under Part 625. However, since the individual received a certified facility based service it must also be reported to the Justice Center’s Death Reporting Line.
- If an individual receiving services dies and it is suspected there was abuse or neglect on the part of a custodian, a report of the abuse or neglect must be made to OPWDD. For programs certified or operated by OPWDD, a report must also be made to the VPCR.
- The report of Death Form must be completed in IRMA within five working days from the date of occurrence or discovery of the death for both Part 624 and Part 625 deaths.
- In certain instances, MHLS must be notified of the death of an individual who is a Willowbrook Class Member; see *Guidelines for Willowbrook Incident Reporting* (Appendix 4). There is no requirement that an agency report the death of any other individual receiving services to MHLS.



624.4(2)(i)(b) 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.

Commentary:

- This is not intended to be a “catch-all” category for events or circumstances that are perceived as not fitting neatly into other categories; if the event or circumstance meets the definition of one of the other categories of incidents, it is to be reported under that classification only.
- The intention of reporting an incident in this category is to make administrators aware that a situation related to an individual receiving services occurred and to provide information to OPWDD.
- There may be circumstances that are not related to a person receiving services that may need to be brought to the attention of the agency administration or OPWDD such as possible staff involvement in a criminal act not related to an individual receiving services. Such reports should be made, but not through the Part 624 process.





**624.4 (ii) Minor Notable Occurrences**  
**(a) Theft or financial exploitation**

624.4(2)(ii) Minor Notable Occurrences

624.4(2)(ii)(a) 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 \$15.00 and less than or equal to \$100.00, that does not involve a credit, debit, or public benefit card, and that is an isolated event; and

Commentary:

- It should be noted that law enforcement must be notified anytime a crime may have been committed against an individual by a custodian. See 624.6(2)
- If a theft or financial exploitation involves the use of a credit, debit, or public benefit card, it is always to be reported as a serious notable occurrence.



## 624.4(2)(ii)(b) 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 (see glossary, section 624.20) by a physician, dentist, physician's assistant, or nurse practitioner, and such treatment is more than first aid.

Commentary:

- The definition of the term “treatment, requiring medical or dental” in this subdivision is found in the glossary and is as follows:

## Section 624.20

- (ak) For the purpose of this part, a situation in which a person who, by virtue of his or her condition as a result of an injury, must see a physician, dentist, physician’s assistant, or nurse practitioner to have the condition controlled and/or attended to with more than first aid procedures. While an agency’s policy and procedure may direct that a person who is in any way injured or has suffered any ill effects is to see a medical professional, even though first-aid has adequately addressed the injury, this does not always constitute requiring medical or dental treatment in terms of defining a notable occurrence.
- If it is medically acceptable to treat an injury solely with first aid procedures, the injury is not a minor notable occurrence even if the first aid is provided by a medical professional.
- The administration of any over-the-counter drugs, including the application of commonly used over-the-counter topical medications, the use of antiseptic cleansers, and medication in the dosage prescribed that is available over-the-counter are considered “first aid,” even if a physician or dentist writes a prescription for such. If it is unknown if a medication at the dosage prescribed is available over-the-counter or requires a prescription, then ask a pharmacist.
- The administration of a tetanus booster is not considered more than first aid treatment even if ordered (prescribed) by a physician.
- The use of dermabond or steri-strips is not considered more than first aid.
- Stitches, sutures and staples are all treatment beyond first aid and a minor notable occurrence must be reported.
- When a diagnostic procedure (e.g. x-ray, CT scan) reveals a positive finding for an injury (e.g. fracture) even when no treatment beyond first aid is required, it is a *minor notable occurrence*.
  - For example:
    - a person falls and fractures a rib. It is unlikely that medical treatment beyond first aid will be provided; however, a minor notable occurrence must be reported to ensure proper follow-up occurs to address any medical, environmental, or potential causes.
    - An individual has a soft tissue injury (contusion, bruise) and is examined by a healthcare professional. The diagnosis is sprain and no more than first aid is provided. This is not a minor



notable occurrence. However, an x-ray is subsequently completed and reveals a fracture. A *minor notable occurrence* must be reported.

- An individual falls and an x-ray is negative for fracture. However, the physician prescribes Ibuprofen 800mg for pain. A *minor notable occurrence* must be reported because the pain medication is only available by prescription.
- An individual sustains a small laceration and does not require treatment beyond first aid. This is not a *minor notable occurrence*. Later, the individual develops an infection and is prescribed an oral antibiotic such as Penicillin. A *minor notable occurrence* must then be reported.