



Adults and Children with Learning and Developmental Disabilities, Inc.

INCIDENT MANAGEMENT POLICY AND PROCEDURES

Part I

Part 624 NYSCRR

REPORTABLE INCIDENTS AND NOTABLE OCCURRENCES

Policy

In order to enhance the quality of care provided to persons with developmental disabilities, to prevent them from harm and to ensure they are free from mental and physical abuse, ACLD shall have policies to ensure that significant events or situations are reported, investigated, reviewed, corrected and/or monitored. The primary function of the reporting of incidents is to enable the governing body, ACLD executives, administrators and supervisors to become aware of problems, to take corrective measures and to minimize the potential for the recurrence of the same or similar events.

.Incident Reporting policies and procedures shall be made known to all persons receiving services and their parents, guardians, correspondents or advocates upon entrance into their program.

Incident Reporting policies and procedures shall be made known to all ACLD employees, interns, volunteers, consultants and contractors as part of the orientation process.

The following requirements are applicable to incidents that occur on or after June 30, 2013. and only apply to events and situations that are under the auspices of ACLD. The event or situation can occur whether or not the person is physically at a site owned, leased, or operated by ACLD.

Note that requirements concerning events and situations that are not under the auspices of ACLD are set forth in Part II of this Policy and Procedure.

ACLD programs certified or operated by OPWDD are required to comply with relevant provisions of Article 20 of the Executive Law (Protection of People with Special Needs) and Article 11 of the Social Services Law (Protection of People with Special Needs), and are required to implement regulations promulgated by the Justice Center for the Protection of People with Special Needs.

Reportable Incidents

Reportable incidents are events or situations that occur under the auspices of an agency.

Definitions of Reportable Incidents:

- (1) *Physical abuse* shall mean conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury or serious or protracted impairment of the physical, mental, or emotional condition of the individual receiving services, or causing the likelihood of such injury or impairment. Such conduct may include, but shall not be limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting, or the use of corporal punishment. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any party.

- (2) *Sexual abuse* shall mean:
- (i) any conduct by a custodian that subjects a person receiving services to any offense defined in article 130 or section 255.25, 255.26, or 255.27 of the penal law (*under separate cover*), or any conduct or communication by such custodian that allows, permits, uses, or encourages a person receiving services to engage in any act described in articles 230 or 263 of the penal law; and/or
 - (ii) any sexual contact between an individual receiving services and a custodian of the program or facility which provides services to that individual whether or not the sexual contact would constitute a crime (see especially section 130.05(i) of the penal law). However, if the individual receiving services is married to the custodian the sexual contact shall not be considered sexual abuse. Further, a person with a developmental disability who is or was receiving services and is also an employee or volunteer of an agency shall not be considered a custodian if he or she has sexual contact with another individual receiving services who is a consenting adult who has consented to such contact.
- (3) *Psychological Abuse* includes any verbal or nonverbal conduct that may cause significant emotional distress to an individual receiving services.
- (i) Examples include, but are not limited to, taunts, derogatory comments or ridicule, intimidation, threats, or the display of a weapon or other object that could reasonably be perceived by an individual receiving services as a means for infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury.
 - (ii) In order for a case of psychological abuse to be substantiated after it has been reported, the conduct must be shown to intentionally or recklessly cause, or be likely to cause, a substantial diminution of the emotional, social or behavioral development or condition of the individual receiving services. Evidence of such an effect must be supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor.
- (4) *Deliberate inappropriate use of restraints* shall mean the use of a restraint when the technique that is used, the amount of force that is used, or the situation in which the restraint is used is deliberately inconsistent with an individual's plan of services (e.g. individualized service plan (ISP) or a habilitation plan), or behavior support plan, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, except when the restraint is used as a reasonable emergency intervention to prevent imminent risk of harm to a person receiving services or to any other party. A restraint shall include the use of any manual, pharmacological, or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body.
- (5) *Use of aversive conditioning* shall mean the application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change the behavior of a person receiving services. Aversive conditioning may include, but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, blindfolds, and the withholding of meals and the provision of substitute foods in an unpalatable form. The use of aversive conditioning is prohibited by OPWDD.
- (6) *Obstruction of reports of reportable incidents* shall mean conduct by a custodian that impedes the discovery, reporting, or investigation of the treatment of a service recipient by falsifying records related to the safety, treatment, or supervision of an individual receiving services; actively persuading a custodian or other mandated reporter (see Appendix A) 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.

- (7) *Unlawful use or administration of a controlled substance* shall mean any administration by a custodian to a service recipient of a controlled substance 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 at the workplace or while on duty.
- (8) *Neglect* shall mean any action, inaction, or lack of attention that breaches a custodian's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental, or emotional condition of a service recipient. Neglect shall include, but is not limited to:
- (i) failure to provide proper supervision, including a lack of proper supervision that results in conduct between persons receiving services that would constitute abuse committed by a custodian;
 - (ii) failure to provide adequate food, clothing, shelter, or medical, dental, optometric or surgical care, 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 according to education law and/or the individual's individualized education program.
- (9) *Significant incident* shall mean an incident, other than an incident of abuse or neglect, that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety, or welfare of a person receiving services, and shall include but shall not be limited to:
- (i) *conduct between persons receiving services that would constitute abuse* if committed by a custodian, except sexual activity involving adults who are capable of consenting and consent to the activity; or
 - (ii) *conduct on the part of a custodian, that is inconsistent with the individual's plan of services*, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, and which impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare of an individual receiving services, including but not limited to:
 - a. *seclusion*, which shall mean the placement of an individual receiving services in a room or area from which he or she cannot, or perceives that he or she cannot, leave at will. OPWDD prohibits the use of seclusion;
 - b. *unauthorized use of time-out*, which shall mean the use of a procedure in which a person receiving services is removed from regular programming and isolated in a room or area for the convenience of a custodian, or as a substitute for programming;
 - c. *administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription* or order issued for a service recipient by a licensed, qualified health care practitioner, and which has an adverse effect on an individual receiving services. For purposes of this clause, "adverse effect" shall mean the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the wellbeing of a person receiving services; and
 - d. *inappropriate use of restraints*, which shall mean the use of a restraint when the technique that is used, the amount of force that is used, or the situation in which the

restraint is used is inconsistent with an individual's plan of services (including a behavior support plan), generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies. For the purposes of this subdivision, a "restraint" shall include the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body; or

- (iii) *missing person* which shall mean the unexpected absence of an individual receiving services that based on the person's history and current condition exposes him or her to risk of injury; or;
- (iv) *choking, with known risk* which shall mean partial or complete blockage of the upper airway by an inhaled or swallowed foreign body, including food, that leads to a partial or complete inability to breathe, involving an individual with a known risk for choking and a written directive addressing that risk; or
- (v) *self-abusive behavior, with injury*, which shall mean a self inflicted injury to an individual receiving services that requires medical care beyond first aid.

Notable Occurrences

Notable occurrences are events or situations that meet the definitions in subdivision (c) of this section and occur under the auspices of an agency.

Minor and serious notable occurrences defined:

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

Note: An injury due to self- injurious behavior that requires medical care beyond first aid is a "reportable incident."

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

Note: An unauthorized absence that results in exposure to risk of injury to the person receiving services is a "reportable" missing person incident.

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

- (4) *Choking, with no known risk.* For the purposes of this paragraph, partial or complete blockage of the upper airway by an inhaled or swallowed foreign body, including food, that leads to a partial or complete inability to breathe, other than a "reportable" *choking, with known risk*, incident, 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.
- Theft and financial exploitation.*
- (i) *Minor notable occurrence.* Any suspected theft of a service recipient's personal property (including personal funds or belongings) or financial exploitation, involving values of more than \$15.00 and less than or equal to \$100.00, that does not involve a credit, debit, or public benefit card, and that is an isolated event.
- (ii) *Serious notable occurrence.* Any suspected theft of a service recipient's personal property (including personal funds or belongings) or financial exploitation, involving a value of more than \$100.00; theft involving a service recipient's credit, debit, or public benefit card (regardless of the amount involved); or a pattern of theft or financial exploitation involving the property of one or more individuals receiving services.
- (5) *Sensitive situations.* Those situations involving a person receiving services which may be of a delicate nature to the agency, and which are reported to ensure awareness of the circumstances. Sensitive situations shall include, but not be limited to, possible criminal acts committed by an individual receiving services. Sensitive situations are serious notable occurrences.
- (6) *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..

Education and Training

Upon commencement of service provision, and annually thereafter, ACLD shall offer to make available written information developed by OPWDD in collaboration with the Justice Center for the Protection of People with Special Needs (Justice Center) and a copy of ACLD's policies and procedures, to persons receiving services who have the capacity to understand the information and to their parents, guardians, correspondents or advocates, unless a person is a capable adult who objects to their notification. ACLD shall also offer to make available a copy of OPWDD's Part 624 regulations. In order to satisfy this requirement ACLD shall:

- (i) provide instructions on how to access such information in electronic format and;
- (ii) upon written request, provide paper copies of such information.

Upon employment or initial volunteer, contract, or sponsorship arrangements, and annually thereafter, ACLD shall make its policies and procedures on incident management known to employees, interns, volunteers, consultants and contractors. For parties who are required to be trained, this information shall be provided annually.

Custodians with regular and direct contact in facilities and programs operated or certified by OPWDD shall be provided with the code of conduct adopted by the Justice Center.

General Reporting Requirements

All ACLD employees, interns, volunteers, consultants and contractors are required to report any event or situation that meets the criteria of a reportable incident or notable occurrence as defined in Part 624. Custodians of programs and

facilities certified or operated by OPWDD are mandated reporters and are also required to report reportable incidents as required by the Justice Center. Reports shall be made in accordance with ACLD policies and procedures.

Internal reporting

- (i) All minor notable occurrences, as defined in section 624.4, shall be reported to the Administrator of each program as the designee of the chief executive officer, within 48 hours upon occurrence or discovery.
- (ii) All reportable incidents and serious notable occurrences, as defined in section 624.4, shall be reported to the Director of Quality Management, and by extension, the Quality Management Department, as the designee of the chief executive officer immediately upon occurrence or discovery.

Immediate reporting to OPWDD

- (i) All reportable incidents and serious notable occurrences shall be reported immediately to OPWDD's Incident Management Unit (IMU) by telephone, 24 hours a day. Immediate entry of initial information into the OPWDD Incident Report and Management Application (IRMA) shall not be sufficient to satisfy this requirement.

Reporting of reportable incidents to the Vulnerable Persons' Central Register (VPCR).

- (i) Facilities and programs that are operated or certified by OPWDD shall report all reportable incidents to the VPCR.
- (ii) Non-certified programs that are not state operated are not required to report to the VPCR.
- (iii) Only reportable incidents are required to be reported to the VPCR (not notable occurrences).
- (iv) All custodians ("Custodian" means a director, operator, employee or volunteer of a facility or provider agency; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a facility or provider agency pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by the facility or provider agency.) in programs or facilities operated or certified by OPWDD are "mandated reporters" and are required to report reportable incidents to the VPCR.
- (v) All custodians shall submit reports of allegations of reportable incidents to the VPCR immediately upon discovery of the reportable incident.
- (vi) "Discovery" occurs when the mandated reporter witnesses a suspected reportable incident or when another party, including an individual receiving services, comes before the mandated reporter in the mandated reporter's professional or official capacity and provides the mandated reporter with reasonable cause to suspect that the individual has been subjected to a reportable incident.
- (vii) Reports shall be submitted by a statewide, toll-free telephone number (a "hotline") or by electronic transmission, in a manner and on forms prescribed by the Justice Center.
- (viii) A report to the VPCR shall include the name, title, and contact information of every person known to the mandated reporter to have the same information as the mandated reporter concerning the reportable incident.
- (ix) The obligation of mandated reporters to report reportable incidents to the VPCR is not limited to reportable incidents occurring at the agency with which the mandated reporter is associated. If the mandated reporter becomes aware that an individual has been subjected to a reportable incident at a different facility or program, the mandated reporter is also required to report the incident to the VPCR. These facilities and programs include but are not limited to facilities and programs certified or operated by OPWDD, facilities under the oversight of the Office of Mental Health (OMH), specified residential schools and summer camps for children with developmental disabilities.

Reporting Deaths

In accordance with New York State Law and guidance issued by the Justice Center, the death of any individual who had received services operated or certified by OPWDD, within thirty days preceding his or her death, shall be reported to the Justice Center. This reporting is required regardless of whether the death did or did not occur under the auspices of an agency. Specifics of the reporting requirement are as follows:

- (i) The initial report shall be submitted, by the Director of Quality Management, and by extension, a member of the Quality Management Department, through a statewide, toll-free telephone number, in a manner specified by the Justice Center.
- (ii) The initial report shall be submitted immediately upon discovery and in no case more than twenty-four hours after discovery.
- (iii) Subsequent information shall be submitted to the Justice Center, in a manner and on forms specified by the Justice Center, within five working days of discovery of the death.
- (iv) The results of an autopsy, if performed and if available to ACLD, shall be submitted to the Justice Center, in a manner specified by the Justice Center, within sixty working days of discovery of the death. (The Justice Center may extend the timeframe for good cause.)
- (v) If more than one agency provided services to the individual, there shall be one responsible agency that is designated to report the death of the individual. The agency responsible for reporting shall be the provider of the services to the individual in the order stated:
 - a. OPWDD certified or operated residential facility., including a family care home, but not a free-standing respite facility;
 - b. OPWDD certified or operated free standing respite facility, if the death occurred during the individual's stay at the facility, or was caused by a reportable incident or notable occurrence defined in sections 624.3 and 624.4 , that occurred during a stay at the facility within thirty days of discovery of the death;
 - c. OPWDD certified or operated day program (if the individual received services from more than one certified day program, the responsible agency shall be the agency that provided the greater duration of service on a regular basis);
 - d. MSC or PCSS (OPWDD operated services only);
 - e. HCBS Waiver services (OPWDD operated services only);
 - f. Care at Home Waiver services (OPWDD operated services only);
 - g. Article 16 clinic services;
 - h. FSS or ISS (OPWDD operated services only);
 - i. Any other service operated by OPWDD.
 - j. There may be circumstances in which the death of an individual who resided at a certified residential facility, or was staying at a certified free-standing respite facility, was caused by a reportable incident or notable occurrence that occurred under the auspices of an OPWDD certified or operated day program

within thirty days of discovery of the death; under these circumstances the certified day program shall be responsible for reporting the death. Note: This requirement does not apply to the death of an individual who received only OPWDD funded services (such as community habilitation or supported employment services provided by a voluntary-operated agency), rather than services that are operated or certified by OPWDD.

- (vi) All deaths that are reported to the Justice Center shall also be reported to OPWDD.
 - a. A death that occurred under the auspices of an agency shall be reported as a serious notable occurrence.
 - b. A death that did not occur under the auspices of an agency (e.g., the death of a person who received certified day habilitation services, but died at his or her private home of causes not associated with the day services) shall be reported in accordance with Part 625.
 - c. The death of any individual who had received services certified, operated, or funded by OPWDD, and the death occurred under the auspices of the agency, shall be classified as a serious notable occurrence, and reported and managed as such, in accordance with the requirements of this Part.
- (vii) A death is considered to have occurred under the auspices of an agency if:
 - a. the individual was living in a residential facility operated or certified by OPWDD, including a family care home (but excluding free standing respite facilities), at the time of his or her death, or if the death occurred up to thirty days after the individual was discharged from the residential facility (unless the person was admitted to a different residential facility in the OPWDD system in the meantime);
 - b. the individual's death occurred during a stay at an OPWDD certified or operated free standing respite facility or was caused by a reportable incident or notable occurrence, defined in sections 624.3 and 624.4 of this Part, that occurred at the facility within thirty days of discovery of the death; or
 - c. the individual had received non-residential services operated, certified, or funded by OPWDD, and
 - 1. the death occurred while the individual was receiving services; or
 - 2. the death was caused by a reportable incident or notable occurrence, defined in sections 624.3 and 624.4 that occurred within thirty days of discovery of the death.

Reporting to OPWDD - Required Reporting Formats

- (1) Reporting using the OPWDD Incident Report and Management Application (IRMA).
 - (i) Information shall be entered into IRMA for the following:
 - a. reportable incidents; and
 - b. serious notable occurrences.
 - (ii) Reporting initial information in IRMA.
 - a. Initial information is information about the incident or occurrence which is required to create a new incident report in IRMA and any other information available at the time when information is first entered into IRMA.
 - b.) For reportable incidents and serious notable occurrences initial information shall be entered into IRMA within 24 hours of occurrence or discovery, or by close of the next working day, whichever is later.
 - (iii) Reporting subsequent information in IRMA.
 - a. Subsequent information is information concerning the incident or occurrence which is not included in the initial information entered in IRMA. This includes, but is not limited to, information about required notifications that was not reported as part of the initial information and any updates to information related to deaths (e.g. autopsy reports).

- b. Subsequent information shall be entered by the close of the fifth working day after the action is taken or the information becomes available, except as follows:
 - 1. Subsequent information about immediate protections shall be entered into IRMA within 24 hours after the action is taken or by the close of the next working day, whichever is later.
 - 2. Subsequent information about a death shall be entered in IRMA within five working days of the discovery of the death, in the manner and form specified by OPWDD.
 - 3. ACLD is not required to enter information about investigatory activities into IRMA until the investigative report is completed.
- c. ACLD shall comply with all requests by OPWDD for the entry of specific subsequent information.

(2) Written initial incident/occurrence report.

- (i) Minor notable occurrences. ACLD may enter information about minor notable occurrences into IRMA in lieu of completing a written initial incident/occurrence report. Within 48 hours of occurrence or discovery or by close of the next working day, whichever is later, the ACLD shall either:
 - a. complete a written initial incident/occurrence report in the form and format specified by OPWDD; or
 - b. enter initial information into IRMA.
- (ii) To comply with any requirement that ACLD send or disclose a copy of the written initial incident/occurrence report, ACLD shall send or disclose either:
 - a. a copy of the written initial incident/occurrence report (with redaction if required); or
 - b. a written initial incident/occurrence report printed from IRMA (with redaction if required).

Immediate protections

- (1) A person's safety must always be the primary concern of the chief executive officer and the Director of quality Management, and by extension, the Quality Management Department. All necessary and reasonable steps shall be taken to ensure that a person receiving services who has been harmed receives any necessary treatment or care and, to the extent possible, take reasonable and prudent measures to immediately protect individuals receiving services from harm and abuse.

- (2) When appropriate, an employee, intern, volunteer, consultant, or contractor alleged to have abused or neglected a person shall be removed from direct contact with, or responsibility for, all persons receiving services from the agency.
- (3) When appropriate, an individual receiving services shall be removed from a facility when it is determined that there is a risk to such individual if he or she continues to remain in the facility.

General investigation requirements

- (1) Any report of a reportable incident or notable occurrence (both serious and minor) shall be thoroughly investigated by the Quality Management Department, unless OPWDD or the Justice Center advises the chief executive officer that the incident or occurrence will be investigated by OPWDD or the Justice Center and specifically relieves ACLD of the obligation to investigate.
- (2) Investigations of all reportable incidents and notable occurrences shall be initiated immediately, with further investigation undertaken commensurate with the seriousness and circumstances of the situation.
 - (i) ACLD shall commence an investigation immediately even when it anticipates that the Justice Center or Central Office of OPWDD will assume the responsibility for the investigation. However, if ACLD can reasonably anticipate that the Justice Center or the Central Office of OPWDD are likely to investigate the incident, the actions taken by ACLD are restricted to:
 - (a) securing and/or documenting (e.g. photographing) the scene as appropriate;
 - (b) collecting and securing physical evidence;
 - (c) taking preliminary statements from witnesses and involved parties; and
 - (d) performing such other actions as specified by the Justice Center or OPWDD.
 - (ii) In the event that law enforcement directs ACLD to forgo any of the actions above, ACLD shall comply with such direction.
 - (iii) ACLD is responsible for monitoring IRMA to ascertain whether the Justice Center, the Central Office of OPWDD or ACLD is responsible for the investigation.
 - (iv) If the Justice Center or the Central Office of OPWDD is responsible for the investigation, ACLD shall fully cooperate with the assigned investigator but shall not conduct an independent investigation.
- (3) Investigations conducted by agencies or the Central Office of OPWDD shall incorporate the following:
 - (i) If a person is physically injured, an appropriate medical examination of the injured person shall be obtained. The name of the examiner shall be recorded and his or her written findings shall be retained.
 - (ii) Witnesses to the incident or occurrence shall be identified and shall be interviewed in as private an environment as possible.
 - (iii) Interviews should be conducted separately by qualified, objective parties. Interviews of individuals receiving services should be conducted by parties with an understanding of the persons' unique needs and/or capabilities.
 - (iv) Pertinent information shall be reviewed (e.g., records, photos, observations of incident scene, expert assessments).

- (v) Physical evidence, if any, shall be identified and appropriate steps shall be taken to safeguard and preserve physical evidence.
- (4) An incident or occurrence may be reclassified based on additional information obtained during the course of the investigation (e.g. a minor notable occurrence injury may be reclassified as an allegation of physical abuse). In this event, ACLD shall report the reclassification in IRMA and (if appropriate) to the Justice Center and make all additional notifications that may be warranted by the reclassification.
- (5) Where ACLD is responsible for the investigation, all investigations shall be documented. Such documentation shall include an investigative report.
 - (i) For all reportable incidents and notable occurrences, investigative reports shall be in the form and format specified by OPWDD or in a similar format approved by the Central Office of OPWDD. At a minimum, the report shall contain the following information:
 - a. identifying data, such as the name(s) of person(s) receiving services involved in the incident or occurrence; the date the incident/occurrence was reported and/or discovered; the classification of the incident; and the incident/occurrence number. For incidents/occurrences entered into IRMA, this includes the master incident number assigned by IRMA;
 - b. a description of the incident or notable occurrence;
 - c. immediate protections provided to person(s) receiving services;
 - d. investigatory question(s);
 - e. a description of the investigative process and specific evidence obtained;
 - f. a summary of the evidence obtained in the investigation;
 - g. conclusions, including the findings in the case of an allegation of abuse or neglect; and
 - h. recommendations, including recommendations for remedial actions.
 - (ii) For reportable incidents and serious notable occurrences, the full text of the investigative report shall be entered into IRMA. (Note: In the event that the Central Office of OPWDD conducts an investigation of an incident or notable occurrence, the Central Office of OPWDD will enter the investigative report into IRMA.)
- (6) The investigation shall continue through completion regardless of whether an employee or other custodian who is directly involved leaves employment (or contact with individuals receiving services) before the investigation is complete.
- (7) Restrictions on situations that may compromise the independence of investigators.
 - (i) Any party who has been assigned to investigate a reportable incident, or notable occurrence in which he or she recognizes a potential conflict of interest in the assignment, shall report this information to ACLD. ACLD shall relieve the assigned investigator of the duty to investigate if it is determined that there is a conflict of interest in the assignment.

- (ii) No one may conduct an 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, domestic partner, or immediate family member was directly involved.
- (iii) For reportable incidents or serious notable occurrences which occurred on or after June 30, 2013, no one may conduct an investigation in which his or her spouse, domestic partner, or immediate family member provides supervision to the program where the incident took place or provides supervision to directly involved parties.
- (iv) Members of ACLD's incident review committee (IRC) shall not routinely be assigned the responsibility of investigating incidents or occurrences.
- (v) For reportable incidents and serious notable occurrences:
 - a. ACLD shall assign an investigator whose work function is at arm's length from staff who are directly involved in the reportable incident or serious notable occurrence.
 - b. No party in the direct line of supervision of staff who are directly involved in the reportable incident or serious notable occurrence may conduct the investigation of such an incident or occurrence, except for the chief executive officer.
 - c. Although the chief executive officer is in the direct line of supervision of all staff, the chief executive officer (not a designee) may conduct the investigation of a reportable incident or serious notable occurrence unless he or she is the immediate supervisor of any staff who are directly involved in the reportable incident or serious notable occurrence.

Review/investigation by OPWDD and the Justice Center

- (1) OPWDD and the Justice Center have the right to review and/or investigate any reportable incident, and/or notable occurrence regardless of the source of the information. All relevant records, reports and/or minutes of meetings at which the incident or occurrence was discussed shall be made available to reviewers or investigators. Persons receiving services, staff, and any other relevant parties may be interviewed in pursuit of any such review or investigation.
- (2) When an incident or occurrence is investigated or reviewed by OPWDD and OPWDD makes recommendations to ACLD concerning any matter related to the incident or occurrence (except during survey activities), ACLD shall either:
 - (i) implement each recommendation in a timely fashion and submit documentation of the implementation to OPWDD; or
 - (ii) in the event that ACLD does not implement a particular recommendation, submit written justification to OPWDD, within a month after the recommendation is made, and identify the alternative means that will be undertaken to address the issue, or explain why no action is needed.
- (3) When the Justice Center makes findings concerning matters referred to its attention and the Justice Center issues a report and recommendations to ACLD regarding such matters, ACLD shall make a written response, within ninety days of receipt of such report, of action taken regarding each of the recommendations in the report.
- (4) In the event that OPWDD or the Justice Center conducts an investigation, ACLD may be responsible to conduct some investigatory activities.

Findings of allegations of abuse or neglect

- (1) For every allegation of abuse or neglect, a finding shall be made. ACLD shall make the finding or, in the event that the Central Office of OPWDD or the Justice Center conducted the investigation, the Central Office of OPWDD or the Justice Center shall make the finding. A finding shall be based on a preponderance of the evidence and shall indicate whether:
 - (i) the alleged abuse or neglect is *substantiated* because it is determined that the incident occurred and the subject of the report was responsible or, if no subject can be identified and an incident occurred, that ACLD was responsible; or
 - (ii) the alleged abuse or neglect is *unsubstantiated* because it is determined not to have occurred or the subject of the report was not responsible, or because it cannot be determined that the incident occurred or that the subject of the report was responsible.
- (2) Concurrent finding. In conjunction with the possible findings noted above, a concurrent finding may be made that a systemic problem caused or contributed to the occurrence of the incident.

Plans for Prevention and Remediation for Substantiated Allegations of Abuse or Neglect

- (1) Within 10 days of the completion of the investigation, if the allegation of abuse or neglect has been substantiated, ACLD shall develop and implement a plan of prevention and remediation to be taken to assure the continued health, safety, and welfare of individuals receiving services and to provide for the prevention of future acts of reportable incidents.
- (2) The plan shall include written endorsement by the CEO or designee.
- (3) The plan shall specify by title ACLD staff who are responsible for monitoring the implementation of each remedial action identified and for assessing the efficacy of the remedial action.
- (4) Such plan shall be entered into IRMA by the close of the fifth working day after the development of the plan.
- (5) OPWDD will inform the Justice Center about plans developed.

Reporting updates

- (1) For reportable incidents and serious notable occurrences, ACLD shall enter reporting updates into IRMA on at least a monthly basis or more frequently as requested by OPWDD, until closure of the incident or occurrence.
- (2) ACLD shall complete required fields in IRMA for the reporting update. Among other required information, the reporting update shall include:

- (i) a brief review of additions to the summary of evidence and specific investigatory actions taken since the last update was entered into IRMA, if any; and
 - (ii) if there have been no additions to the summary of evidence or investigatory actions taken since the last report, an explanation of why no progress has been made.
- (3) If ACLD is not responsible for conducting the investigation, ACLD shall complete the required fields to the extent possible given information provided.
 - (4) Effective July 29, 2013, if ACLD is responsible for conducting the investigation and if the investigation has not been completed within the timeframe specified, ACLD shall inform OPWDD of the reason for extending the timeframe of the investigation and shall continue to keep OPWDD informed on at least a monthly basis of the progress of the investigation and other actions taken.

Timeframe for completion of the investigation

Effective June 30, 2013, where ACLD is responsible for the investigation, investigations of all incidents and notable occurrences shall be completed no later than 30 days after the incident or notable occurrence is reported to the Justice Center and/or OPWDD. An investigation shall be considered complete upon completion of the investigative report.

- (1) Investigations that were initiated for incidents that occurred before June 30, 2013 shall be completed no later than July 29, 2013. However, this does not apply to incidents that occurred before June 30, 2013 but were not discovered until on or after June 30, 2013.
- (2) ACLD may extend the timeframe for completion of a specific investigation beyond 30 days if there is adequate justification to do so. ACLD shall document its justification for the extension. Circumstances which may justify an extension include (but are not limited to):
 - (i) whether a related investigation is being conducted by an outside entity (e.g. law enforcement) which has requested that ACLD delay necessary investigatory actions; and
 - (ii) whether there are delays in obtaining necessary evidence which are beyond the control of ACLD (e.g. an essential witness is temporarily unavailable to be interviewed and/or provide a written statement).

Closure of an incident or occurrence

An incident or occurrence shall be considered closed:

- (1) when the IRC has ascertained that no further investigation is necessary; or
- (2) in the event that an investigation was conducted by the Central Office of OPWDD, when the Central Office of OPWDD has ascertained that no further investigation is necessary; or
- (3) in the event that an investigation was conducted by the Justice Center, when the Justice Center has ascertained that no further investigation is necessary.

Final reports to the Justice Center

- (1) ACLD shall submit a final report to OPWDD for all reportable incidents that were accepted by the VPCR.
- (2) Final reports must be submitted in the manner, form and format specified by the Justice Center.
- (3) Final reports must be submitted within 50 days of the VPCR accepting a report of an allegation of abuse or neglect, and within 60 days of the VPCR accepting a report of a significant incident.
- (4) ACLD may take additional time to submit its final report provided, however, that the reasons for any delay must be for good cause and must be documented. The report must be submitted as soon thereafter as practicably possible.
- (5) In the event that the Justice Center or OPWDD conducts the investigation in lieu of ACLD, ACLD is not required to submit the final report to the Justice Center. In the event that OPWDD conducts the investigation, OPWDD will submit the final report to the Justice Center. However, ACLD shall provide information as requested by the Justice Center or OPWDD as may be necessary for the completion of the final report.
- (6) If ACLD conducts the investigation of an allegation of abuse or neglect that was reported to the Justice Center, ACLD shall submit the entirety of the investigation records to OPWDD in the manner and within the timeframe specified by OPWDD.

Cooperation with the Justice Center

In the event that the Justice Center requests additional information from ACLD or OPWDD, in accordance with law or regulation, ACLD or OPWDD shall provide such requested information in a timely manner.

Duty to report events or situations under the auspices of another agency

- (1) If a reportable incident or notable occurrence is alleged to have occurred while a person was under the auspices of another agency (e.g., day habilitation staff allege that a situation occurred at a residence), the discovering agency shall document the situation and shall report the situation to the agency under whose auspices the event or situation occurred.
- (2) Note that mandated reporters (e.g. custodians) are required to make reports to the VPCR pursuant to section 491 of the social services law. This means that mandated reporters at the discovering agency must report to the VPCR upon discovery of an allegation of a reportable incident that occurred in another program or facility which is certified or operated by OPWDD.
- (3) It shall be the responsibility of the agency under whose auspices the situation is alleged to have occurred to report, investigate, review, correct, and monitor the situation.

Note: Similarly, when a person receives two or more services from the same provider agency, and one program or service environment discovers an incident that is alleged to have occurred under the supervision of another program or service environment operated by the same agency, the discovering program/service environment must document the situation and

report it to the program/service environment where the situation or event is alleged to have occurred. The program or service environment where the incident is alleged to have occurred is responsible for reporting and managing the incident, in accordance with this Part and agency policy.

- (4) If the agency suspecting or alleging the incident or occurrence 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.

Records and statistics

- (1) Record retention. ACLD shall retain records pertaining to incidents and occurrences as follows:
 - (i) Records that must be retained include but are not limited to evidence and materials obtained or accessed during the investigative process, copies of all documents generated, and documentation regarding compliance.
 - (ii) Records shall be retained for a minimum period of seven years from the date that the incident or allegation of abuse is closed. However, when there is a pending audit or litigation concerning an incident or allegation of abuse, agencies shall retain the pertinent records during the pendency of the audit or litigation.
- (2) Records, reports, and documentation shall be retrievable by the person's name and filing number or identification code assigned by ACLD. For incidents and occurrences which are reported in IRMA, such information shall be retrievable by the master incident number in IRMA.
- (3) When there is a incident or occurrence reported involving more than one person receiving services:
 - (i) From a statistical point of view, the situation shall be considered as one event and shall be recorded as such.
 - (ii) ACLD shall establish whatever procedures it deems necessary to ensure that overall statistics reflect single events and that, when an event involves more than one person, records are retrievable by event in addition to being retrievable by a person's name.
- (s) Confidentiality of records. All records shall be kept confidential and shall 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.

Notifications

- (a) For an allegation of abuse or neglect involving a person who resides in a facility certified or operated by OPWDD, the agency under whose auspices the event occurred and/or that is responsible for the person shall send the written initial incident/occurrence report to the Mental Hygiene Legal Service within three working days. The responsible agency or program shall inform MHLS of the results of the investigation.
- (b) All suicides, homicides, accidental deaths, or deaths due to suspicious, unusual, or unnatural circumstances must be reported immediately by telephone, and later in writing, to the coroner/medical examiner

Reporting to law enforcement

- (1) An appropriate law enforcement official must be contacted immediately in the event that an emergency response by law enforcement is needed.
- (2) ACLD shall report to an appropriate law enforcement official anytime a crime may have been committed against an individual by a custodian. This is in addition to reporting to the Justice Center when the event or situation is a reportable incident (if the services are certified or operated by OPWDD).
 - (i) The report to the appropriate law enforcement official shall be made as soon as practicable, but in no event later than 24 hours after occurrence or discovery.
 - (ii) Information about the report to the appropriate law enforcement official shall be entered into IRMA within 24 hours of the report being made.
- (d) In a case where a subject of a report of alleged abuse or neglect resigns from his or her position or is terminated while under investigation, ACLD shall promptly report such resignation or termination to the Justice Center. The subject of a report means a custodian who is reported to the VPCR for the alleged abuse or neglect of a person receiving services.
- (e) For all reportable incidents and notable occurrences:
 - (1) ACLD shall provide telephone notice to one of the following: a person's guardian, parent, spouse or adult child.
 - (2) However, ACLD shall not provide such notice to a party in the following situations:
 - (i) there is written advice from the guardian, parent, 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
 - (ii) 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, spouse or adult child, the capable adult shall be provided the notice described in this subdivision; or
 - (iii) if the guardian, parent, spouse or adult child is the alleged abuser.
 - (3) The telephone notice shall be provided as soon as reasonably possible, but no later than 24 hours after completion of the written initial incident/occurrence report or entry of initial information in IRMA.
 - (4) The telephone notice shall include:
 - (i) a description of the event or situation and a description of initial actions taken to address the incident or alleged abuse, if any;
 - (ii) an offer to meet with the chief executive officer (or a designee) to further discuss the incident or allegation of abuse; and
 - (iii) for allegations of abuse and neglect, an offer to provide information on the status and/or finding of the allegation. Requested information shall be provided verbally or in writing, unless the person is a capable adult and objects to the provision of this information. In providing such information, ACLD shall protect the privacy rights of other parties.

- (5) Methods of notification:
- (i) The complete telephone notice may be comprised of more than one call, so long as the initial call includes a description of the event or situation and is within the required period of time or is attempted within the required period of time. Follow-up calls with the additional required information shall be made within a reasonable timeframe after the initial call.
 - (ii) Notice may be made in person instead of by telephone.
 - (iii) Notice may be provided by other methods at the request of the party receiving the notice.
- (6) If the person does not have a guardian, parent, spouse or adult child, or if such parties are not reasonably available, or if there is written advice that such parties do not want to be notified; ACLD shall provide notice to the following parties in the manner (and subject to the same limitations) specified in this subdivision:
- (i) the person receiving services, if the person is a capable adult; and
 - (ii) the person's advocate or correspondent (if one exists).
- (7) Requests for the written initial incident/occurrence report.
- (i) Process for requests.
 - (a) Requests may be made for a copy of the written initial incident/occurrence report by the person receiving services (or who formerly received services), guardian, parent(s), or correspondent/advocate.
 - (b) Such request shall be in writing. However, at the discretion of ACLD, documented verbal requests may be accepted in lieu of a written request.
 - (c) If the person is a capable adult and objects to the provision of the written initial incident/occurrence report, such report shall not be provided to otherwise eligible requestors.
 - (d) If an otherwise eligible requestor is the alleged abuser, the written initial incident/occurrence report shall not be provided to that requestor.
 - (ii) Redaction.
 - (a) The copy of the report shall incorporate redaction of the names of employees who are involved in the incident or occurrence or the investigation or who are interviewed as a part of the investigation, persons receiving services (or who formerly received services), and any information tending to identify such employees or persons. Redaction shall be waived if the employee or person authorizes disclosure, unless redaction of the specific information is necessary because it tends to identify another employee or person who has not authorized disclosure or for another reason.
 - (b) In addition, if the report identifies 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, those names as well as any information tending to identify the party shall be redacted.
 - (iii) The copy of the written initial incident/occurrence report shall be provided to an eligible requestor as soon as reasonable, but in no event more than 10 days after the request is made.

- (iv) The copy of the written initial incident/occurrence report shall be accompanied by a statement that all contents are preliminary and have not been substantiated.
- (8) Report on actions taken.
- (i) ACLD shall provide a report on initial actions taken to address the incident or notable occurrence. Such report shall include:
 - a. any immediate steps taken in response to the incident or occurrence to safeguard the health or safety of the person receiving services; and
 - b. a general description of any initial medical or dental treatment or counseling provided to the person in response to the incident or occurrence.
 - (ii) ACLD shall provide the report on actions taken to any party specified in paragraph (1) or (6) who received the notification.
 - (iii) The report shall be provided within 10 days of the completion of the written initial incident/occurrence report.
 - (iv) The report that is provided shall be in the form and format specified by OPWDD or in a similar format developed by ACLD.
 - (v) The report that is provided shall not include names of anyone who is involved in the incident or occurrence or the investigation, or who is interviewed as a part of the investigation, or any information tending to identify such parties. Names of any such parties as well as any information tending to identify those parties shall be excluded or redacted.
- (9) The following documentation shall be maintained:
- (i) The telephone notice and responses received, including the identity and position of the party providing the notice, the name of the party receiving the notice, the time of the original call or attempted call, the time of subsequent attempted calls if the initial call was not successful and the time of follow up calls if the notice occurred in more than one call;
 - (ii) any requests for a meeting or the written initial incident/occurrence report ;
 - (iii) meetings held in response to the request, and those present;
 - (iv) when the report on actions taken and any requested written initial incident/occurrence report was provided;
 - (v) a copy of the report on actions taken and any written initial incident/occurrence report (with redaction) that was provided; and
 - vi) advice that a particular party does not want to receive notifications or that the capable adult receiving services objects to notice or objects to the provision of documents/ information.

- (10) For the purpose of redaction, the term employee means any party who is, or formerly was:
- (i) directly employed by an agency; or
 - (ii) used by an agency to provide services substantially similar to those that are or could be provided by someone who is directly employed by an agency. Such parties shall include, but not be limited to those who are employed by other entities on behalf of an agency and/or for the care and treatment of the person receiving services; consultants; contractors; or volunteers; or
 - (iii) a family care provider or family care substitute/respite provider; or a party living in the home of the provider.

Reports to the Service Coordinator

The individual's service coordinator (e.g. a Medicaid Service Coordinator or Plan of Care Support Services Service Coordinator, or Willowbrook Service Coordinator) must be notified by ACLD of all reportable incidents and notable occurrences involving any individual receiving non-ICF services that are certified, funded, or operated by OPWDD and must be provided with subsequent information, as follows:

- (1) The service coordinator must be notified within 24 hours of the completion of the written initial incident/occurrence report or entry of initial information in IRMA, whichever is earlier. The notification must include a description of immediate protections.
- (2) Effective June 30, 2013, the service coordinator must be provided with subsequent information which may be needed to update an individual's plan of services and to monitor protective, corrective, and other actions taken following a reportable incident or occurrence. Specifically:
 - (i) The service coordinator must be provided with written information identifying investigative conclusions (including the findings of an allegation of abuse or neglect) and recommendations pertaining to the individual's care, protection, and treatment. The information provided must exclude information that directly or indirectly identifies agency employees, consultants, contractors, volunteers, or other individuals receiving services. This information must be provided to the service coordinator within 10 days following completion of the investigation.
 - (ii) If the IRC review results in additional findings, conclusions, or recommendations regarding the individual's care, protection, and/or treatment, this information must be provided to the service coordinator, in written form, within 3 weeks following committee review.
 - (iii) The service coordinator may request additional information concerning the incident or occurrence in order to monitor protective, corrective, and/or other actions taken. In the event that ACLD receives a request for this information from a service coordinator, ACLD shall provide information that it deems appropriate. In providing this information, ACLD must exclude information that directly or indirectly identifies employees, consultants, contractors, volunteers, and other individuals receiving services. If ACLD determines that it would be inappropriate to disclose specific information requested, ACLD must advise the service coordinator of this determination and its justification, in writing, within 10 days following the request. If ACLD does not have specific information requested by the service coordinator (e.g. if the Justice Center conducted the investigation and it has not provided that information to ACLD) ACLD

shall advise the service coordinator that it does not have the requested information. If the information may be available from the Justice Center, ACLD shall so advise the service coordinator.

- (3) If the service coordinator is identified as the subject of a report of an allegation of abuse or neglect or as a witness to a reportable incident or occurrence, ACLD shall not provide information to that party. In such a case, notifications and written information must be provided to the service coordinator's supervisor or the administrator of the agency providing service coordination in lieu of the service coordinator.

Note: A service coordinator may be permitted to access information related to substantiated reports in accordance with section 496(2)(n) of the Social Services Law.

- (i) The individual's Qualified Intellectual Disabilities Professional (QIDP) and (if the person is a Willowbrook class member), the Willowbrook Case Services Coordinator (WCSC) must also be notified by ACLD of all reportable incidents and occurrences involving any individual who resides in an Intermediate Care Facility that is operated or certified by OPWDD. The QIDP and WCSC must also be provided with subsequent information. Information to the QIDP and WCSC shall be provided in the same manner that the information is provided to the Non-ICF service coordinator. If the QIDP or WCSC is identified as the alleged abuser, or is a witness to an incident or alleged abuse, the required notifications and subsequent information must be provided to the QIDP's or WCSC's supervisor or the administrator of the agency providing the residential or WCSC services, in lieu of the QIDP or WCSC.

Note: A service coordinator (including a QIDP performing that function) may be permitted to access information related to substantiated reports in accordance with Section 496(2)(n) of the Social Services Law.

Administrative appeal process - denial of requested records/documents

- (1) A requestor denied access to the initial incident/occurrence report or report on actions taken may appeal in writing such denial to the incident records appeals officer designated by the commissioner of OPWDD.
- (2) Upon receipt of the appeal, the agency issuing the denial will be notified of the appeal and given an opportunity to submit relevant information to the incident records appeals officers, including the reasons for denial, within 10 business days of the receipt of such appeal. The incident records appeals officer may also request additional information from the requestor as may be necessary to resolve the appeal.
- (3) Within 10 business days of the receipt of complete information, the incident records appeals officer will make a determination about whether the requested documents should be released. The incident records appeals officer will issue his or her determination with an explanation of the reasons for the determination to the requestor and the agency. If so directed by the incident records appeals officer, the agency shall provide the requested records and/or documents to the requestor.
- (k) It is the responsibility of a designated staff member of the agency where a report on a reportable incident or notable occurrence is received or made out, to notify any other agency with which the person is associated of that reportable incident or notable occurrence if it has resulted in visible evidence of injury to the person, may be of concern to another agency, or may have an impact upon programming or activities elsewhere.

Incident review committees (IRC)

- (a) Every agency shall have one or more incident review committees to review and monitor reportable incidents and notable occurrences that occur to people receiving services from ACLD. ACLD's organizational structure and its own policies determined That ACLD shall have one agency wide Incident Review Committee.

- (b) ACLD's IRC shall review reportable incidents and notable occurrences to:
 - (1) ascertain that reportable incidents and notable occurrences were reported, managed, investigated and documented and to make written recommendations to the appropriate staff and/or the chief executive officer to correct, improve or eliminate inconsistencies;
 - (2) ascertain that necessary and appropriate corrective, preventive, remedial 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 chief executive officer to correct, improve or eliminate inconsistencies;
 - (3) ascertain if further investigation or if additional corrective, preventive, remedial and/or disciplinary action is necessary, and if so, to make appropriate written recommendations to the chief executive officer relative to the reportable incident or notable occurrence;
 - (4) identify trends in reportable incidents and notable occurrences (e.g., by type, person, site, employee involvement, time, date, circumstances, etc.), and to recommend appropriate corrective, preventive, remedial and/or disciplinary action to the chief executive officer to safeguard against such recurring situations or reportable incidents and notable occurrences; and
 - (5) ascertain and ensure the adequacy of ACLD's reporting and review practices, including the monitoring of the implementation of approved recommendations for corrective, preventive, and remedial action.

- (c) ACLD's agency-wide IRC shall:
 - (1) meet monthly;
 - (2) delegate the review and monitoring of all minor notable occurrences to the programs' internal incident review committees which shall maintain a record of such incident/occurrence review, recommendations, and/or actions taken in such a manner as to provide for tracking and trending;
 - (3) review and monitor all reportable incidents and/or serious notable occurrences that are reported;
 - (4) review and monitor investigatory procedures, but shall not perform the routine investigation of reportable incidents or notable occurrences;
 - (5) make written recommendations to appropriate staff to eliminate or minimize similar reportable incidents and/or notable occurrences in the future; and/or to improve investigatory or other procedures;

- (6) make written recommendations to the chief executive officer on changes in agency policy or procedures and to improve conditions contributing to the reportable incidents and/or notable occurrences reviewed;
 - (7) forward findings and recommendations to the chief executive officer within two weeks of meeting;
 - (8) provide documentation that all reports of reportable incidents and serious notable occurrences have been reviewed by the committee and that results and recommendations have been conveyed to appropriate ACLD executives and others with a need to know;
 - (9) monitor actions taken on any and all recommendations made and advise the chief executive officer when there is a problem;
 - (10) monitor trends of other events or situations attributable to a person receiving services which may be potentially harmful, but do not meet the definition of being a reportable incident or notable occurrence. This may be done by the full committee or a member of subcommittee reporting to the full committee;
 - (11) in accordance with agency policy, report periodically, but at least annually, to the chief executive officer, chief agency executives, the Joint Conference Committee of the Board of Trustees, and OPWDD concerning the committee's general monitoring functions; general identified trends in reportable incidents and notable occurrences; and corrective, preventive, remedial and/or disciplinary action pertaining to identified trends; and
 - (12) interact with the Joint Conference Committee of the Board of Trustees and comply with the policies in relation to the review and monitoring of all reportable incidents and notable occurrences.
- (d) Organization and membership of ACLD's the IRC.
- (1) ACLD's committee is established to meet on an agency-wide basis.
 - (2) ACLD's Committee members are appointed by the chief executive officer.
 - (3) ACLD's IRC Membership shall include:
 - (i) a member of the governing body;
 - (ii) at least two professional staff;
 - (iii) other staff, including professional or administrative staff, as deemed necessary to achieve the purposes of the committee;
 - (iv) at least one licensed health care practitioner;
 - (v) at least one direct support professional;
 - (vi) at least one individual receiving services;
 - (vii) at least one representative of an advocacy organization.

- (4) Membership limitations
 - (i) ACLD's chief executive officer shall not serve as a member of the committee, but may be consulted by the committee in its deliberations.

- (5) Case-specific requirements
 - (i) There shall be representation by someone from or with knowledge of ACLD's own organizational entity where the event which is under discussion occurred;
 - (ii) Restrictions on review of specific incidents or allegations of abuse.
 - (a) Any committee member who recognizes a potential conflict of interest in his or her assignment shall report this information to the committee and recuse him or herself from participating in committee review of the incident or occurrence in question.
 - (b) No committee member may participate in the review of any reportable incident or notable occurrence in which he or she was directly involved, in which his or her testimony is incorporated, in which his or her spouse, domestic partner, or other immediate family member was directly involved, or which he or she investigated or participated in the investigation. Such members may, however, participate in committee deliberation regarding appropriate corrective, preventive, or remedial action.
 - (c) For reportable incidents and serious notable occurrences, no committee member may participate in the review of an investigation in which his or her spouse, domestic partner, or immediate family member provides supervision to the program where the incident took place or supervised directly involved parties.
 - (d) No committee member may participate in the review of a reportable incident or serious notable occurrence, if such committee member is the immediate supervisor of staff directly involved in the event or situation. Such member may, however, participate in committee deliberation regarding appropriate corrective, preventive or remedial action.

- (6) Members of the committee shall be trained in confidentiality laws and regulations, and shall comply with section 74 of the public officers law.

- (e) Minutes.

The chairperson of ACLD's incident review committee shall ensure that minutes are kept for all meetings.

 - (1) For reportable incidents and serious notable occurrences, the portion of the minutes that discuss matters concerning the specific event or situation shall be entered into IRMA within three weeks of the meeting.
 - (2) Minutes addressing the review of specific reportable incidents and/or serious notable occurrences shall clearly state the filing number or identification code of the report, the person's full name and identification number (if used), 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 ACLD as a result of such recommendations. Full names of all parties involved are to be recorded (not initials).

- (f) Role of the IRC when investigations are conducted by the Central Office of OPWDD or the Justice Center. When an investigation of an incident or occurrence is conducted by the Central Office of OPWDD or the Justice Center:
 - (1) The IRC role in reviewing and monitoring the particular incident or occurrence is limited to matters involving compliance with the reporting and notification requirements, protective and remedial actions taken, operational concerns, and the quality of services provided.
 - (2) The finding of substantiated or unsubstantiated shall be made by the Central Office of OPWDD or the Justice Center.
 - (3) ACLD's IRC shall monitor all actions taken to implement recommendations made by the Central Office of OPWDD or the Justice Center.

Release of records

- (a) Policies and procedures. ACLD shall have policies and procedures concerning the process for requesting the release of records, including but not limited to identifying appropriate staff who are authorized to receive requests and those who are authorized to release records.
- (b) Eligible requestors. Persons receiving services or who formerly received services; and guardians, parents, spouses, and adult children of such persons, pursuant to paragraph (a)(6) of section 33.16 of the Mental Hygiene Law, are eligible to request the release of records as established by this section, subject to the following restrictions:
 - (1) In the event that an otherwise eligible requestor is an alleged abuser, such requestor is not eligible to receive any records or documents pertaining to the specific allegation or investigation of the event or situation in which he or she was the targeted alleged abuser, regardless of the conclusion.
 - (2) 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, such requestor is not eligible to receive those records or documents.
- (c) Records subject to release concerning allegations of abuse which occurred prior to June 30, 2013:
 - (1) ACLD is required to release all records and documents pertaining to allegations and investigations into abuse as defined in applicable OPWDD regulations in effect at the time the allegation occurred under the auspices of ACLD to eligible requestors who make a request.
 - (2) Agencies are required to release records and documents pertaining to allegations of abuse which occurred or were discovered on or after May 5, 2007, regardless of the date of the submission of the written request.
 - (3) Agencies are required to release records and documents pertaining to allegations of abuse which occurred or were discovered on or after January 1, 2003 but prior to May 5, 2007, if the written request is submitted on or before December 31, 2015.
- (d) Records subject to release concerning reportable incidents which occurred on or after June 30, 2013:
 - (1) ACLD is required to release all records and documents pertaining to reportable incidents to eligible requestors who make a request.

(e) Procedures.

Eligible requestors shall submit a written request to the ACLD's Quality Management Department. If the request is made prior to the closure of the incident, the Quality Management Department shall provide the requested records no later than 21 days after the closure of the incident. If the request is made at or subsequent to the closure of the incident, the Quality Management Department shall provide the requested records no later than 21 days after the request is made. The written request shall specify the records that are requested.

(f) Redaction of records.

(1) Prior to the release of records, ACLD shall redact the names of employees who are involved in the incident or the investigation or who are interviewed as a part of the investigation, persons receiving services (or who formerly received services), and any information tending to identify such employees or persons. Redaction shall be waived if the employee or person authorizes disclosure, unless redaction of the specific information is necessary because it tends to identify another employee or person who has not authorized disclosure.

(2) In addition, if any records which 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, those names as well as any information tending to identify the party shall be redacted.

(g) Dissemination prohibition. Agencies shall give written notice to recipients, that the law specifies that records and documents released in accordance with this section shall not be further disseminated by the recipient. Such notice shall accompany each release of records.

(h) Documentation.

(1) The written request for the release of records shall be maintained and the time the request was received shall be documented.

(2) A copy of the redacted records that were released shall be maintained and the time the records were provided shall be documented.

(i) Administrative appeal process - denial of requested records/documents.

(1) A requestor denied access to the records and documents requested pursuant to this section may appeal, in writing, such denial to the incident records appeals officer designated by OPWDD.

(2) Upon receipt of the appeal, the agency issuing the denial will be notified of the appeal and given an opportunity to submit relevant information to the incident records appeals officer, including the reasons for denial, within 10 business days of the receipt of such appeal. The incident records appeals officer may also request additional information from the requestor as may be necessary to resolve the appeal.

(3) Within 10 business days of the receipt of complete information, the incident records appeals officer will make a determination about whether the requested records and/or documents should be released. The incident records appeals officer will issue his or her determination with an explanation of the reasons for the determination to the requestor and the agency. If so directed by the incident records appeals officer, the agency shall provide the requested records and/or documents to the requestor.

(j) Note that records maintained by ACLD 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.

Part II
Part 625 NYSCRR
EVENTS AND SITUATIONS THAT ARE NOT UNDER THE AUSPICES OF ACLD

The requirements of Part 625 apply to events and situations that occur on or after June 30, 2013.

Definitions

- (a) *Under the Auspices*
an event or situation in which ACLD is providing services to a person. The event or situation can occur whether or not the person is physically at a site owned, leased, or operated by ACLD.
- (1) Events or situations that are under the auspices of ACLD include but are not limited to:
- (i) An event or situation in which ACLD personnel (staff, interns, contractors, consultants, and/or volunteers) are, or should have been, physically present and providing services at that point in time.
 - (ii) Any situation involving physical conditions at the site provided by ACLD, even in the absence of ACLD personnel.
 - (iii) The death of an individual that occurred while the individual was receiving services or that was caused by or resulted from a reportable incident or notable occurrence.
 - (iv) The death of an individual receiving services who lives in an ACLD residential facility certified by OPWDD, is always under the auspices of ACLD. The death is also under the auspices of ACLD if the death occurred up to 30 days after the discharge of the individual from ACLD's residential facility (unless the person was admitted to a different residential facility in the OPWDD system).
 - (v) Any event that directly involves or may have involved ACLD personnel.
- (2) Events or situations that are not under the auspices of ACLD include:
- (i) Any event or situation that directly involves or may have involved ACLD personnel during the time he or she was acting under the supervision of a State agency other than OPWDD (e.g. an ACLD employee has a second job at a hospital and an incident occurred while he or she was providing care to an individual receiving services during the individual's hospitalization).
 - (ii) Any event or situation that exclusively involves the family, friends, employers, or co-workers of an individual receiving services, whether or not in the presence of ACLD personnel or at a certified site.
 - (iii) Any event or situation that occurs in the context of the provision of services that are subject to the oversight of a State agency other than OPWDD (e.g. special education, article 28 clinic, hospital, physician's office), whether or not in the presence of ACLD personnel.
 - (iv) Any allegation of neglect that is based on conditions in a private home.

- (v) The death of an individual who received OPWDD operated, certified, or funded services, except deaths that occurred under the auspices of ACLD.
- (b) *Physical abuse.* The non-accidental use of force that results in bodily injury, pain or impairment, including but not limited to, being slapped, burned, cut, bruised or improperly physically restrained.
- (c) *Sexual abuse.* Non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.
- (d) *Emotional abuse.* The willful infliction of mental or emotional anguish by threat, humiliation, intimidation, or other abusive conduct, including but not limited to, frightening or isolating an adult.
- (e) *Active neglect.* The willful failure by the caregiver to fulfill the care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment, willful deprivation of food, water, heat, clean clothing and bedding, eyeglasses or dentures, or health related services.
- (f) *Passive neglect.* The non-willful failure of a caregiver to fulfill care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment or denial of food or health related services because of inadequate caregiver knowledge, infirmity, or disputing the value of prescribed services.
- (g) *Self neglect.* An adult's inability, due to physical and/or mental impairments, to perform tasks essential to caring for oneself, including but not limited to, providing essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, mental health, emotional well-being, and general safety; or managing financial affairs.
- (h) *Financial exploitation.* The use of an adult's funds, property, or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers, or denial of access to assets.
- (i) *Death.* The end of life, expected or unexpected, regardless of cause.

ACLD involvement in events or situations that are not under ACLD's auspices

- (a) If ACLD becomes aware of an event or situation involving an individual receiving services from the agency in which the event or situation is not under the auspices of ACLD, ACLD shall respond to the event or situation as follows:
 - (1) If the event or situation meets one of the definitions of a reportable incident or notable occurrence and occurred under the auspices of another agency subject to the requirements of Part 624:
 - (i) ACLD shall comply with the requirement to document the event or situation and report the situation to the agency under whose auspices the event or situation occurred.
 - (ii) Note that mandated reporters (e.g. custodians) are required to make reports to the Vulnerable Persons' Central Register (VPCR). This means that mandated reporters at the discovering agency must report to the VPCR upon discovery of an allegation of a reportable incident that occurred in another program or facility which is certified or operated by OWPDD.

- (2) If the event or situation meets one of the definitions of a reportable incident or notable occurrence and occurred in a facility or service setting subject to the regulatory oversight of another State Agency (e.g. school, hospital), ACLD shall document the event or situation and shall report the situation to the management of the facility or service setting.
 - (3) ACLD shall intervene if it has reason to believe (e.g. a report or complaint is made to ACLD, etc.) that the event or situation meets the definition of physical, sexual, or emotional abuse; active, passive, or self neglect; or financial exploitation, unless the event or situation meets the criteria in paragraphs (1) or (2).
- (b) ACLD shall intervene in an event or situation that meets the definition of physical, sexual, or emotional abuse; active, passive, or self neglect; or financial exploitation by taking actions to protect the involved individual with developmental disabilities. Such actions, as appropriate, may include but are not limited to the following:
- (1) notifying an appropriate party that may be in a position to address the event or situation (e.g. Statewide Central Register of Child Abuse and Maltreatment, Adult Protective Services, law enforcement officials, family members, school, hospital, or the Office of Professional Discipline);
 - (2) offering to make referrals to appropriate service providers, clinicians, State agencies, or any other appropriate parties;
 - (3) interviewing the involved individual and/or witnesses;
 - (4) assessing and monitoring the individual;
 - (5) reviewing records and other relevant documentation; and
 - (6) educating the individual about his or her choices and options regarding the matter.
- (c) ACLD shall intervene as it deems necessary and appropriate when the event or situation meets the definition of physical, sexual, or emotional abuse; active, passive, or self neglect; or financial exploitation, and involves an adult who meets the following criteria:
- (1) the individual resides in a residence certified or operated by OPWDD (or a family care home);
 - (2) the individual receives day program services certified or operated by OPWDD;
 - (3) the individual receives Medicaid Service Coordination (MSC) or Plan of Care Support Services (PCSS) authorized by OPWDD; and/or
 - (4) the individual receives Home and Community Based Services (HCBS) waiver services authorized by OPWDD.
- (d) ACLD shall intervene by notifying Adult Protective Services of any event or situation that meets the definition of physical, sexual or emotional abuse; active, passive, or self neglect; or financial exploitation, when it involves an adult receiving services who meets the following criteria:
- (1) the individual is only receiving family support services (FSS), individual support services (ISS), or Article 16 clinic services; and/or

- (2) the individual is not available to ACLD; and/or
 - (3) the individual is in need of protective services that ACLD cannot provide.
- (e) Mandated reporters identified in Section 413 of the Social Services Law who are required to report cases of suspected child abuse or maltreatment shall report to the Statewide Central Register of Child Abuse and Maltreatment in accordance with the requirements of Article 6 of the Social Services Law.
- (f) If more than one agency is providing services to the individual, there shall be a responsible agency that is designated to intervene in events or situations that meet the definition of physical, sexual, or emotional abuse; active, passive, or self neglect; or financial exploitation.
- (1) The agency responsible for intervening shall be the provider of the services to the individual in the order stated:
 - (i) residential facility, including a family care home (note: this does not include free-standing respite facilities);
 - (ii) certified day program (if the individual is receiving services from more than one certified day program, the responsible agency shall be the agency that provides the greater duration of service on a regular basis);
 - (iii) MSC or PCSS;
 - (iv) HCBS Waiver services including respite services provided at a free standing respite facility or services under the Care at Home Waiver;
 - (v) FSS, ISS and/or Article 16 clinic services;
 - (vi) Any other service certified, operated, or funded by OPWDD.
 - (2) If the discovering agency is not the responsible agency, the discovering agency shall notify the responsible agency of the event or situation (unless it is sure that the responsible agency is already aware).

OPWDD involvement in events or situations that are not under the auspices of ACLD

- (a) Reporting to OPWDD. ACLD shall report events or situations in which actions were taken by ACLD as follows:
- (1) ACLD shall submit an initial report about the event or situation in the OPWDD Incident Report and Management Application (IRMA).
 - (2) ACLD shall enter initial information about the event or situation within twenty-four hours of occurrence or discovery or by close of the next working day, whichever is later. Such initial information shall identify all actions taken by ACLD, including any initial actions taken to protect the involved individual.
 - (3) ACLD shall report updates on the event or situation in IRMA on a monthly basis or more frequently upon the request of OPWDD until the event or situation is resolved. Such updates

shall include information about subsequent interventions and shall include information about the resolution of the event or situation.

- (b) Review/investigation by OPWDD.
 - (1) OPWDD has the right to investigate or review any event or situation regardless of the source of the information. ACLD shall provide OPWDD reviewers or investigators with all relevant records, reports, and other information pertaining to the event or situation. Individuals receiving services, staff, and any other relevant parties may be interviewed in pursuit of any such review or investigation.
 - (2) When an event or situation is investigated or reviewed by OPWDD, OPWDD may make recommendations to ACLD concerning any matter related to the event or situation. This may include recommendation that the ACLD conduct an investigation and/or take specific actions to intervene. In the event that OPWDD makes recommendations, ACLD shall either:
 - (i) implement each recommendation in a timely fashion and submit documentation of the implementation to OPWDD; or
 - (ii) in the event that ACLD does not implement a particular recommendation, submit written justification to OPWDD within a month after the recommendation is made, and identify the alternative means that will be undertaken to address the issue, or explain why no action is needed.

ACLD and OPWDD involvement in deaths that are not under the auspices of ACLD

- (a) In accordance with New York State Law and guidance issued by the Justice Center, the death of any individual who had received services operated or certified by OPWDD, within thirty days preceding his or her death, and the death did not occur under the auspices of ACLD, shall be reported to the Justice Center for the Protection of People with Special Needs (Justice Center), as follows:
 - (1) The initial report shall be submitted, by ACLD's chief executive officer or designee, through a statewide, toll-free telephone number in a manner specified by the Justice Center.
 - (2) The initial report shall be submitted immediately upon discovery and in no case more than twenty-four hours after discovery.
 - (3) Subsequent information shall be submitted to the Justice Center, in a manner and on forms specified by the Justice Center, within five working days of discovery of the death.
 - (4) The results of an autopsy, if performed and if available to ACLD, shall be submitted to the Justice Center within sixty working days of discovery of the death. (The Justice Center may extend the timeframe for good cause.)
 - (5) If more than one agency provided services to the individual, there shall be one responsible agency that is designated to report the death of the individual. The agency responsible for reporting to the Justice Center shall be the provider of the services to the individual in the order stated:
 - (i) OPWDD certified or operated day program (if the individual received services from more than one certified day program, the responsible agency shall be the agency that provided the greater duration of service on a regular basis);

- (ii) MSC or PCSS (OPWDD operated services only);
- (iii) HCBS Waiver services (OPWDD operated services only);
- (iv) Care at Home Waiver services (OPWDD operated services only);
- (v) Article 16 clinic services;
- (vi) FSS or ISS (OPWDD operated services only);
- (vii) Any other service operated by OPWDD.

Note: These requirements do not apply to the death of an individual who received only OPWDD funded services (such as community habilitation or supported employment services) provided by a voluntary-operated agency, rather than services that are operated or certified by OPWDD, or to the death of an individual who resided in an OPWDD certified or operated residential program.

- (b) All deaths that are reported to the Justice Center shall also be reported to OPWDD.
 - (1) A death that occurred under the auspices of ACLD shall be reported as a serious notable occurrence in accordance with Part 624.
 - (2) A death that did not occur under the auspices of ACLD shall be reported in accordance with the requirements of Part 625.
- (c) The death of any individual who had received services certified, operated, or funded by OPWDD, within thirty days of his or her death, and the death did not occur under the auspices of ACLD shall be reported to OPWDD as follows:
 - (1) All deaths shall be reported immediately upon discovery to OPWDD by telephone or other appropriate methods. Immediate entry of initial information into the OPWDD Incident Report and Management Application (IRMA) shall not be sufficient to satisfy this requirement.
 - (2) ACLD shall submit an initial report about the death in IRMA within twenty-four hours of discovery of the death, or by close of the next working day, whichever is later, in the form and format specified by OPWDD.
 - (3) ACLD shall submit subsequent information about the death in IRMA within five working days following discovery of the death, in the form and format specified by OPWDD.
 - (4) If more than one agency provided services to an individual, there shall be one responsible agency that is designated to report the death of the individual. The agency responsible for reporting the death to OPWDD shall be the provider of the services to the individual in the order stated:
 - (i) OPWDD certified or operated day program (if the individual received services from more than one certified day program, the responsible agency shall be the agency that provided the greater duration of service on a regular basis);
 - (ii) OPWDD operated or funded MSC or PCSS;

- (iii) OPWDD operated or funded HCBS Waiver services;
- (iv) OPWDD operated or funded Care at Home Waiver services;
- (v) Article 16 clinic services;
- (vi) OPWDD operated or funded FSS or ISS services;
- (vii) Any other service operated or funded by OPWDD.

(d) Investigations into deaths that did not occur under the auspices of ACLD

- (1) The Justice Center has the right to investigate or review the death of any individual who had received services operated or certified by OPWDD, even if the death did not occur under the auspices of ACLD. ACLD shall provide Justice Center reviewers or investigators with all relevant records, reports, and other information pertaining to the event or situation. Individuals receiving services, staff, and any other relevant parties may be interviewed in pursuit of any such review or investigation.
- (2) OPWDD has the right to investigate or review, or to request ACLD to investigate, the death of any individual, even if the death did not occur under the auspices of ACLD. ACLD agency shall provide OPWDD reviewers or investigators with all relevant records, reports, and other information pertaining to the event or situation. Individuals receiving services, staff, and any other relevant parties may be interviewed in pursuit of any such review or investigation.
- (3) If the Justice Center or OPWDD is responsible for the investigation, ACLD shall fully cooperate with the assigned investigator.