

Cerebral Palsy Association of Nassau County, Inc.

<b>Policy &amp; Procedure</b>	Incident Management		
<b>Issued by</b>	Quality Assurance		
<b>Distribution</b>	Directors and Department Heads		
<b>Effective Date</b>	1/22/2020	Revision Date	

**Policy:** This Cerebral Palsy of Nassau County, Inc. (CP Nassau) policy sets forth principles and the procedures for the reporting of specific types of incidents, including abuse, neglect, significant incidents, and notable occurrences in the lives of the individuals we provide services and supports to, under the funding of OPWDD and, where applicable, under the jurisdiction of the Justice Center for the Protection of People with Special Needs.

**Purpose:** The purposes for reporting, investigating, reviewing, correcting, and/or monitoring certain events or situations are to enhance the quality of care provided to persons with developmental disabilities, to protect them (to the extent possible) from harm, and to ensure that such persons are free from abuse and neglect. A primary function of the reporting of certain incidents, events or situations is to enable the agency to become aware of problems, to take corrective measures, and to minimize the potential for recurrence of the same or similar incidents, events or situations. The prompt reporting of these incidents, events or situations can ensure that immediate steps are taken to protect persons receiving services from being exposed to the same or similar risk.

OPWDD has established two regulations that apply to the reporting and addressing of incidents: Part 624, of the 14 NYCRR regulation, address reportable incidents and notable occurrences that happen under the auspices of facilities and programs that are operated, certified, sponsored, or funded by OPWDD. Part 625, of the 14 NYCRR regulation, address events and situations that are not under the auspices of the facilities and programs that are operated, certified, sponsored, or funded by OPWDD.

In addition, the Justice Center for the protection of People with Special Needs oversees the reporting of, and, at times, the investigation of, reportable incidents of abuse, neglect, and significant incidents that occur in our certified programs, and that are the result of the care and treatment of a “custodian” (staff member).

Note: Intermediate Care Facilities must comply with the requirements of 42 CFR 483. In some instances, these federal requirements are more stringent than the requirements of Part 624.

**SECTION I: OPWDD- Part 624- Reportable Incidents Defined**

1. Reportable incidents shall be defined as follows:

- (a) *Physical abuse.* Conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury or serious or protracted impairment of the physical, mental, or emotional condition of the individual receiving services, or causing the likelihood of such injury or impairment. Such conduct may include, but 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.
- (b) *Sexual abuse.* Any conduct by a custodian that subjects a person receiving services to any offense defined in article 130 or section 255.25, 255.26, or 255.27 of the penal law, or any conduct or communication by such custodian that allows, permits, uses, or encourages a person receiving services to engage in any act described in articles 230 or 263 of the penal law. For purposes of this paragraph only, a person with a developmental disability who is or was receiving services and is also an employee or volunteer of an agency is not considered a custodian if he or she has sexual contact with another individual receiving services who is a consenting adult who has consented to such contact.
- (c) *Psychological Abuse.* Any verbal or nonverbal conduct that may cause significant emotional distress to an individual receiving services.
  - (i) Examples include, but are not limited to, taunts, derogatory comments or ridicule, intimidation, threats, or the display of a weapon or other object that could reasonably be perceived by an individual receiving services as a means for infliction of pain or injury.
  - (ii) In order for a care 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.
- (d) *Deliberate inappropriate use of restraint.* The use of a restraint when the technique that is used, the amount of force that is used, or the situation in which the restraint is used is deliberately inconsistent with an individual's plan of services (or behavior support plan, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, except when the restraint is used as a reasonable emergency intervention to prevent imminent risk of harm to a person receiving services or to any other party. For purposes of this paragraph, a restraint shall include the use of any manual, pharmacological, or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body.
- (e) *Use of aversive conditioning.* The application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change the behavior of a person receiving services. Aversive conditioning may include, but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, blindfolds, and the withholding of meals

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and the provision of substitute foods in an unpalatable form. The use of aversive conditioning is prohibited by OPWDD.

- (f) *Obstruction of reports of reportable incidents.* Conduct by a custodian that impedes the discovery, reporting, or investigation of the treatment of a service recipient by falsifying records related to the safety, treatment, or supervision of an individual receiving services; actively persuading a custodian or other mandated reporter (as defined in section 488 of the Social Services Law) from making a report of a reportable incident to the statewide vulnerable persons' central register (VPCR) or OPWDD with the intent to suppress the reporting of the investigation of such incident; intentionally making a false statement, or intentionally withholding material information during an investigation into such a report; intentional failure of a supervisor or Manager to act upon such a report in accordance with OPWDD regulations, policies or procedures; or, for a custodian, failing to report a reportable incident upon discovery.
- (g) *Unlawful use or administration of a controlled substance.* Any administration by a custodian to a service recipient of a controlled substance as defined by article 33 of the public health law, without a prescription, or other medication not approved for any use by the federal food and drug administration. It also shall include a custodian unlawfully using or distributing a controlled substance as defined by article 33 of the public health law, at the workplace or while on duty.
- (h) *Neglect.* Any action, inaction, or lack of attention that breaches a custodian's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental, or emotional condition of a service recipient. Neglect shall include, but is not limited to:
  - (i) failure to provide proper supervision, including a lack of proper supervision that results in conduct between persons receiving services that would constitute abuse as described in paragraphs (a) through (g) of this subdivision if committed by a custodian;
  - (ii) failure to provide adequate food, clothing, shelter, or medical, dental, optometric or surgical care, consistent with Parts 633, 635, and 686, of this Title (and 42 CFR Part 483, applicable to Intermediate Care Facilities), and provided that the agency has reasonable access to the provision of such services and that necessary consents obtained from the appropriate parties; or
  - (iii) failure to provide access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction in accordance with the provisions of part one of article 65 of the education law and/or the individual's individualized education program.
- (i) *Significant incident.* An incident, other than an incident of abuse or neglect, that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety, or welfare of a person receiving services, and shall include but shall not be limited to:
  - (i) *conduct between persons receiving services* that would constitute abuse as described in paragraphs (a) through (g) of this section if committed by a custodian, except sexual activity involving adults who are capable of consenting and consent to the activity; or

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- (ii) *conduct on the part of a custodian*, that is inconsistent with the individual's plan of services, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, and which impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare of an individual receiving services, including:
- (a) *Seclusion*. 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. Unless permitted by Section 633.16, the use of seclusion is prohibited;
  - (b) *Unauthorized use of time-out*. 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 that 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. An "adverse effect" shall mean the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the wellbeing of a person receiving services;
  - (d) *Inappropriate use of restraints*. The use of a restraint when the technique that is used, the amount of force that is used, or the situation in which the restraint is used is inconsistent with an individual's plan of services (including a behavior support plan), generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies. For the purposes of this subdivision, a "restraint" shall include the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body; and
  - (e) *Mistreatment*. Other conduct on the part of a custodian, inconsistent with the individual's plan of services, generally accepted treatment practices, and/or applicable federal or state laws, regulations, or policies, and that impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare of an individual receiving services, except as described in any other provision of this subdivision.
  - (f) *Missing person at risk for injury*. The unexpected absence of an individual that based on the person's history and current condition exposes him or her to risk of injury;
  - (g) *Unauthorized absence*. The unexpected or unauthorized absence of a person after formal search procedures have been initiated by the agency. Reasoned judgments, taking into consideration the person's habits, deficits, capabilities, health problems, etc., determine when formal search procedures need to be implemented. It is required that formal search

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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;

- (h) *Choking, with known risk.* The partial or complete blockage of the upper airway by an inhaled or swallowed foreign body, including food, that leads to a partial or complete inability to breathe, involving an individual with a known risk for choking and a written directive addressing that risk;
- (i) *Choking, with no known risk.* 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;
- (j) *Self-abusive behavior, with injury.* A self inflicted injury to an individual receiving services that requires medical care beyond first aid;
- (k) *Injury, with hospital admission.* Any injury that results in the admission of an individual to a hospital for treatment or observation because of injury, except as defined in clause (j) of this subparagraph;
- (l) *Theft and financial exploitation.* Any suspected theft of a service recipient's personal property (including personal funds or belongings) or financial exploitation, involving a value of more than \$100.00; theft involving a service recipient's credit, debit, or public benefit card (regardless of the amount involved); or a pattern of theft or financial exploitation involving the property of one or more individuals receiving services;
- (m) *Other significant incident.* An incident that occurs under the auspices of an agency, but that does not involve conduct on the part of a custodian, and does not meet the definition of any other incident described in this subdivision, but that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety, or welfare of a person receiving services.

## **SECTION II: Notable Occurrences Defined**

1. Notable occurrences are events or situations that occur under the auspices of CP Nassau.

2. Serious Notable Occurrences

- (i) *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 CP Nassau;

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- (ii) *Sensitive situations.* Those situations involving a person receiving services that do not meet the criteria of the definitions of reportable incidents as defined in section 624.3, which may be of a delicate nature to the agency, and which are reported to ensure awareness of the circumstances. Sensitive situations shall be defined in agency policies and procedures, and shall include, but not be limited to, possible criminal acts committed by an individual receiving services.

3. Minor Notable Occurrences

- (i) Theft or financial exploitation, minor notable occurrence. Any suspected theft of a service recipient's personal property (including personal funds or belongings) or financial exploitation, involving values of more than \$15.00 and less than or equal to \$100.00, that does not involve a credit, debit, or public benefit card, and that is an isolated event; and
- (ii) Injury, minor notable occurrence. Any suspected or confirmed harm, hurt, or damage to an individual receiving services, caused by an act of that individual or another, whether or not by accident, and whether or not the cause can be identified, that results in an individual requiring medical or dental treatment by a physician, dentist, physician's assistant, or nurse practitioner, and such treatment is more than first aid.

**SECTION III: Policies and Procedures**

1. All reportable incidents, including allegations of abuse and neglect, shall be investigated.
2. If an employee leaves employment prior to the conclusion of a pending investigation, the investigations shall continue until it is completed and (for abuse and neglect allegations) a finding is made of substantiated or unsubstantiated.
3. Notification of Policies and Procedures:
  - (a) Annually CP Nassau shall offer to make available written information developed by OPWDD in collaboration with the Justice Center for the Protection of People with Special Needs and a copy of the agency's policy 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. The agency shall also offer to make available a copy of OPWDD's part 624 regulations. In order to satisfy this requirement the agency shall:
    - (i) Provide instruction on how to access it electronically; or
    - (ii) Upon written request, provide paper copies of such information.
  - (b) Upon employment or initial volunteer, contract, or sponsorship arrangements, and annually thereafter, CP Nassau shall make the agency's policies and procedures on incident management known to agency employees, interns, volunteers, consultants,

contractors, and family care providers. For parties who are required to be trained, this information shall be provided in conjunction with training conducted in accordance with section 633.8 of this Title.

- (c) In accordance with section 633.7 of this Title, 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.

## **SECTION IV: Reporting Requirements**

### *1. General reporting requirements*

- (a) CP Nassau will ensure accurate and timely reporting of all reportable incidents and notable occurrences as specified in part 624.5 of the New York State regulations. Records will be maintained in a confidential manner and in accordance to applicable regulations. CP Nassau will 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) The Executive Director (or designee) shall be advised of all reportable incidents and serious notable occurrences immediately upon their occurrence or discovery.
- (c) The Executive Director (or designee) shall be advised of all minor notable occurrences within 48 hours upon occurrence or discovery.
- (d) All reportable incidents and serious notable occurrences shall be reported to the Quality Assurance Department immediately. All minor notable occurrences shall be reported to the Quality Assurance Department within 48 hours upon occurrence or discovery. The Quality Assurance Department will maintain a log of reportable incidents and notable occurrences.
- (e) The family and/or legal guardian shall be informed of all reportable incidents and notable occurrences as soon as reasonably possible. Notification for all reportable and serious reportable incidents will occur no later than 24 hours after the initial entry of initial information in IRMA by CP Nassau. Notification of minor notable occurrences will occur no later than 24 hours after the completion of the initial written initial incident/occurrence report.
- (f) The person's Care Manager shall be informed of all reportable incidents and serious notable occurrences with 24 hours of the entry of initial information in IRMA by the agency and within 24 hours of the completion of the written initial incident/occurrence report for minor notable occurrences. This notification will include a description of the immediate protections provided to the person. Within 10 days of the conclusion of an investigation, the program will forward the Care Manager written information as to the outcome of the investigations and recommendations. This information will not include

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identifying information of staff members or other persons involved. The Care Manager will also receive in written form, additional conclusions, or recommendations made by the Incident Review Committee within 3 weeks of the Committee's review. If the Care Manager is the target of an allegation of abuse the above information will be forwarded to the Care Manager's supervisor.

- (g) All reportable incidents and serious notable occurrences must be reported to OPWDD immediately. This can be done with the incident compliance officer during business hours or to the Incident Management Unit (IMU) after-hour's number on evenings, weekends and holidays.

*3. Reporting of Reportable Incidents to the Vulnerable Persons' Central Register (VPCR)*

- (a) CP Nassau facilities and programs that are operated or certified by OPWDD shall report all reportable incidents to the VPCR.

- (i) Non-certified programs are not required to report to the VPCR.

- (ii) Reportable incidents are required to be reported to the VPCR.

- (b) Mandated reporters are Custodians and Human Service Professionals.

- (c) Mandated reporters are required to report reportable incidents to the Justice Center immediately and always within 24 hours.

- (i) Mandated reporters must report to the VPCR whenever the mandated reporter has reasonable cause to suspect a reportable Incident involving an individual receiving services. In cases where the incident is very serious in nature or involves criminal activity, administrators may also want to report to insure that the Justice Center is fully aware of the situation. "Group reporting" is not permitted.

- (d) Where multiple reports to the VPCR would be made regarding the same incident, a mandated reporter is not required to report the allegation to the VPCR when both of the following elements are met:

- (i) When the mandated reporter has actual knowledge that the incident was already reported to the VPCR; and

- (ii) the mandated reporter has actual knowledge that he or she was named in the report as a person with knowledge of the incident.



- (iii) 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 subject to the requirements of Article 11 of the social services law, the mandated reporter is also required to report the incident to the VCPR.

*(See Appendices 1, 2, 3 & 4) for reporting checklists and contact information)*

#### 4. Reporting Deaths

- (a) All deaths of any participant who received OPWDD certified services (or who had been receiving OPWDD certified services in the 30 day period prior to their death) must be reported to the Justice Center and OPWDD. This reporting is required regardless of whether the death did or did not occur under the auspices of CP Nassau. Deaths are reported as serious notable occurrences and may be reported in more than one category if applicable. Specifics of the reporting requirement are as follows:
  - (i) Deaths must be reported to the Executive Director (or designee) immediately.
  - (ii) Deaths must be reported to OPWDD, via telephone, immediately upon discovery and in no case more than twenty-four hours after discovery.  
(See Appendix 4)
  - (iii) Deaths must be reported to the Justice Center's Death Reporting Line immediately upon discovery and in no case more than twenty-four hours after discovery.
  - (iv) All deaths that are reported to the Justice Center must also be reported to OPWDD.
  - (v) The Form OPWDD 147 (see Appendix 5) must be submitted into IRMA within 24 hours or close of business the next day.
  - (vi) Subsequent information must be submitted to the Justice Center, by submission of the Report of Death (Form OPWDD 162) in IRMA within five working days of discovery of the death. (See Appendix 6)
  - (vii) If an autopsy report is available it should be submitted to the Justice Center (via OPWDD) within 60 working days of discovery of death.
  - (viii) If more than one agency provided services there will be one responsible agency. The agency responsible for reporting shall be the provider of services to the individual (or sponsoring agency) in the order stated:

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- (a) OPWDD certified residential facility, including a family care home, but not a free-standing respite facility;
- (b) OPWDD certified 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 Part 624.3 and 624.4), that occurred during a stay at the facility within thirty days of discovery of the death;
- (c) OPWDD certified 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) Article 16 clinic services;
- (e) Any other service operated by OPWDD.
- (f) Notwithstanding any other requirement in this section, 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.

- (ix) A death that did not occur under the auspices of an agency (e.g., the death of 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.

*5. Reporting to OPWDD using the Incident Report and Management Application (IRMA)*

- (a) Reportable incidents and serious notable occurrences. The Form OPWDD 147 (see Appendix 5) must be submitted into IRMA within 24 hours of occurrence or discovery, or by close of the next working day, whichever is later.
- (b) Reporting subsequent information in IRMA.

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- (i) Subsequent information is information concerning the incident or occurrence that 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).
  - (ii) Subsequent information must be entered into IRMA by the close of the fifth working day after the action is taken or the information becomes available, except as follows:
    - (a) 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.
    - (b) 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.
  - (iii) If another provision of Part 624 identifies a different time frame for the entry of specific information, agencies must comply with that timeframe requirement instead. Specific timeframes are identified in provisions concerning:
    - (a) Reporting updates (Section (IV)(11));
    - (b) Notification of law enforcement officials (Section (V)(2); and
    - (c) Minutes of incident review committee (IRC) meetings (Section (VI)(6)(c).
  - (iv) CP Nassau is not required to enter information about investigatory activities into IRMA until the investigative report is completed.
  - (v) CP Nassau shall comply with all requests by OPWDD for the entry of specific subsequent information.
- (c) Minor notable occurrences. Form OPWDD 147 (see Appendix 5) must be completed for minor notable occurrences within 48 hours of the occurrence or discovery of the incident. Information for minor notable occurrences will not be entered into IRMA except for minor notable occurrences of theft. Minor notable occurrences of theft must be entered into IRMA within 48 hours of the occurrence or discovery of the incident.
- (d) To comply with any requirement that CP Nassau send or disclose a copy of the initial incident/occurrence, CP Nassau will send or disclose either:
- (i) A copy of the written initial incident/occurrence report completed by the Agency (with redaction if required): or
  - (ii) An initial incident/occurrence report printed from IRMA (with redaction if required.)

*6. Immediate Protections*

- (a) The first priority when discovering a possible incident is to ensure the individual receiving services is safe and protected, that all necessary and reasonable steps 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.
- (b) 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.
- (c) 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.

*7. General Investigation requirements*

- (a) Any report of a reportable incident or notable occurrence (both serious and minor) shall be thoroughly investigated by CP Nassau's Executive Director or an investigator designated by the Executive Director, unless OPWDD or the Justice Center advises CP Nassau that the investigation has been designated to OPWDD or the Justice Center. CP Nassau is responsible for monitoring IRMA to ascertain whether the Justice Center, OPWDD or CP Nassau is responsible for the investigation. If the Justice Center or OPWDD is responsible for the investigation, CP Nassau shall fully cooperate with the assigned investigator but shall not conduct an independent investigation.
- (b) Investigations of all reportable incidents and notable occurrences shall be initiated immediately, with further investigation undertaken commensurate with the serious and circumstances of the situation.
  - (i) If CP Nassau can reasonably anticipate that the Justice Center or OPWDD are likely to investigate the incident, CP Nassau shall restrict investigatory actions 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 that CP Nassau forgo any of the above investigatory actions, CP Nassau shall comply with such direction.
  - (iii) CP Nassau's Quality Assurance Department is responsible for monitoring IRMA and to ascertain whether the Justice Center, OPWDD, or the agency is responsible for the investigation.

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- (iv) If the Justice Center or OPWDD is responsible for the investigation, CP Nassau must fully cooperate with the assigned investigator but will not conduct an independent investigation.
- (v) Intermediate Care facilities shall take steps as needed to comply with federal requirements for the completion of the investigations with specified timeframes, including assuming the responsibility for conducting the investigation if necessary.
- (c) The suspect (s) of an allegation of abuse/neglect must be notified as soon as possible that an investigation is being conducted unless notifying the suspect would impede the investigation. The notification must be recorded (see Appendix 6) and submitted to the Justice Center with the investigative record (via WSIR). If, in conjunction with his or her supervisor, the investigator decides that a notification should not be sent to the suspect, a note should be added to the investigative record indicating why the notification will not be sent.
- (d) For cases of alleged abuse and neglect, the investigator must request that the Justice Center conduct a search in the Statewide Central Register (SCR) for any known subjects/suspects in the care. The SCR Check Request Form (See Appendix 8) must be completed and submitted to the Justice Center with the investigative record (via WSIR).
- (e) The CP Nassau investigations shall incorporate the following:
  - (i) Appropriate medical examination of any injured person. 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 interviewed in as private an environment as possible.
  - (iii) Interviews shall be conducted separately by qualified parties. Interviews of participants shall be conducted by parties with an understanding of the persons' unique needs and/or capabilities.
  - (iv) In accordance with Chapter 394 of the Laws of 2014 amending Executive law 553, the NYS Justice Center developed protocols that are to be followed when interviewing individuals receiving services during an investigation for reports of abuse and neglect. The completed Form OPWDD 163 (see Appendix 8) must be retained and provided upon request to an authorized employee of OPWDD, or the Justice Center.
  - (v) Pertinent information shall be reviewed (e.g., records, photos, observations of incident scene, expert assessments).
  - (vi) Physical evidence, if any, shall be identified and appropriate steps shall be taken to safeguard and preserve physical evidence.
- (f) An agency may become aware of additional information concerning an incident that may warrant its reclassification.

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- (i) If the incident was classified as a reportable incident by the VPCR, or the additional information may warrant its classification as a reportable incident, CP Nassau shall report the additional information to the VPCR. At its discretion, the VPCR may reclassify the incident based on the additional information.
  - (ii) In other cases (e.g. incidents in non-certified programs which are not operated by OPWDD), CP Nassau shall determine whether the incident is to be reclassified and shall report any reclassification in IRMA.
  - (iii) In the event that the incident is reclassified, CP Nassau shall make all additional reports and notifications that may be warranted by the reclassification.
- (g) The Form OPWDD 149 (see Appendix 9) shall be used for the investigative report for all reportable incidents and notable occurrences. For reportable incidents and serious notable occurrences, the full text of the investigative report shall be entered into IRMA.
- (h) The investigation shall continue through completion regardless of whether an employee or custodian who is directly involved leaves employment (or contact with individuals receiving services) before the investigation is complete.
- (i) CP Nassau shall maintain the confidentiality of information regarding the identities of reporters, witnesses, and subjects of reportable incidents and notable occurrences, and limit access to such information to parties who need to know, including, but not limited to, personnel administrators and assigned investigators.
- (j) Restrictions on situations that may compromise the independence of investigators.
- (i) The assigned investigator shall report any potential conflict of interest in the assignment to the Director of Quality Assurance. The Director of Quality Assurance 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) 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 an incident review committee (IRC) shall not routinely be assigned the responsibility of investigating incidents or occurrences. In the event that an IRC member conducts an investigation of an incident or occurrence the CP Nassau will comply with section (VI) (b)(ii).
- (k) Restrictions for reportable incidents and serious notable occurrences:
- (i) The CP Nassau 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. The requirements identified in clauses (ii) and (iii) below

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reflect the minimum expectation regarding independence concerning the investigator's work function.

- (ii) 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.
- (iii) 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.

*8. Review/Investigation by OPWDD and the Justice Center*

- (a) 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.
- (b) When an incident or occurrence is investigated or reviewed by OPWDD and OPWDD makes recommendations to CP Nassau concerning any matter related to the incident or occurrence (except during survey activities), CP Nassau shall either:
  - (i) implement each recommendation in a timely fashion and submit documentation of the implementation to OPWDD; or
  - (ii) in the event that CP Nassau 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.
- (c) In the event that OPWDD or the Justice Center conducts an investigation, CP Nassau may be responsible to conduct some investigatory activities. In these instances, CP Nassau must comply with pertinent requirements in subdivision (7) of this section. Note that when the Justice Center conducts the investigation, the Justice Center is not required to adhere to the requirements.

*9. Findings of Allegations of Abuse or Neglect*

- (a) For every allegation of abuse or neglect, a finding shall be made. The CP Nassau 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:

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- (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 CP Nassau 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.
- (b) Concurrent finding: In conjunction with the possible findings identified in paragraph (a) of this section, a concurrent finding may be made that a systemic problem caused or contributed to the occurrence of the incident.

10. *Plans for Prevention and Remediation for Substantiated Allegations of Abuse or Neglect*

- (a) Within 10 days of the completion of the investigation, if the allegation of abuse or neglect has been substantiated, CP Nassau shall develop and implement a plan of prevention and remediation (investigation recommendations) 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.
  - (b) The Corrective Actions for allegations of abuse and neglect are to be submitted into IRMA within 60 days of the date on the Justice Center's Letter of Determination.
  - (c) The plan shall specify by title agency staff who are responsible for monitoring the implementation of each remedial action identified and for assessing the efficacy of the remedial action.
  - (d) OPWDD will inform the Justice Center about plans developed pursuant to this subdivision.
11. Corrections in response to findings and recommendations made by the Justice Center. When the Justice Center makes findings concerning reports of abuse and neglect under its jurisdiction and issues a report and/or recommendations to the agency regarding such matters, the agency must:
- (a) make a written response that identifies action taken in response to each correction requested in the report and/or each recommendation made by the Justice Center; and
  - (b) submit the written response to OPWDD in the manner specified by OPWDD, within sixty days after the agency receives a report of findings and/or recommendations from the Justice Center.



12. *Reporting Updates*

- (a) For reportable incidents and serious notable occurrences, CP Nassau 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.
- (b) CP Nassau 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.
- (c) If CP Nassau is not responsible for conducting the investigation, CP Nassau shall complete the required fields to the extent possible given information provided to CP Nassau.
- (d) If CP Nassau is responsible for conducting the investigation and if the investigation has not been completed within the specified timeframe, CP Nassau 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.

12. *Timeframe for Completion of the Investigation.* Where CP Nassau 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.

- (a) CP Nassau may extend the timeframe for completion of a specific investigation beyond 30 days if there is adequate justification to do so. CP Nassau 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 CP Nassau delay necessary investigatory actions; and
  - (ii) whether there are delays in obtaining necessary evidence which are beyond the control of CP Nassau (e.g. an essential witness is temporarily unavailable to be interviewed and/or provide a written statement).

13. *Closure of an incident or occurrence.* An incident or occurrence shall be considered closed:

- (a) For incidents and occurrences that are not subject to VCPR oversight (i.e. notable occurrences or incidents/occurrences in programs that are not certified or operated by OPWDD):
  - (i) when the IRC has ascertained that no further investigation is necessary; or
  - (ii) 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
- (b) For incidents that are subject to VPCR oversight (i.e. reportable incidents in programs certified or operated by OPWDD):
  - (i) if CP Nassau conducts the investigation, when the Justice Center notifies the agency that it has accepted the results of the investigation; or
  - (ii) if OPWDD conducts the investigation, when the Justice Center notifies CP Nassau that it has accepted the results of the investigation; or
  - (iii) if the Justice Center conducts the investigation, when the Justice Center notifies CP Nassau that the incident is closed.

14. *Final reports to the Justice Center*

- (a) CP Nassau shall submit a final report to OPWDD for all reportable incidents that were accepted by the VPCR.
- (b) For reports of abuse or neglect that were reported to the Justice Center, the investigative record must be submitted into the Justice Center's Web Submission of Investigation Report (WSIR) within 50 days of the VPCR accepting a report.
- (c) For reports of abuse and neglect that are not required to be reported to the Justice Center and for the death of any individual that occurs under the auspices of CP Nassau, CP Nassau must upload the entirety of the investigative record into IRMA.
- (d) Notwithstanding the specified timeframes, CP Nassau 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.
- (e) In the event that the Justice Center or OPWDD conducts the investigation in lieu of CP Nassau, CP Nassau 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, CP Nassau shall provide information as requested by the Justice Center or OPWDD as may be necessary for the completion of the final report.

15. *Submission of investigation records.* If CP Nassau conducts the investigation of an allegation of abuse or neglect that was reported to the Justice Center, CP Nassau shall submit the entirety of the investigation records to OPWDD in the manner and within the timeframe specified by OPWDD.
16. *Cooperation with the Justice Center.* In the event that the Justice Center requests additional information from CP Nassau or OPWDD, in accordance with law or regulation, CP Nassau or OPWDD shall provide such requested information in a timely manner.
17. *Duty to Report Events or Situations under the Auspices of another Agency*
  - (a) 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.
  - (b) 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 OWPDD.
  - (c) 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.
  - (d) If CP Nassau 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.

18. *Records and Statistics*

- (a) *Record retention.* CP Nassau 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 in accordance with requirements of this Part, and documentation regarding compliance with the requirements of this Part.

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- (ii) Records shall be retained for a minimum period of seven years from the date that the incident or allegation of abuse is closed (see subdivision (13) of this section). 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.
- (b) Records, reports, and documentation shall be retrievable by the person's name and filing number or identification code assigned by CP Nassau. For incidents and occurrences which are reported in IRMA, such information shall be retrievable by the master incident number in IRMA.
- (c) When there is an 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) CP Nassau 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.

19. *Confidentiality of Records.* All records generated in accordance with the requirements Part 624 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.

20. *Retaliation.*

- (a) CP Nassau shall not take any retaliatory action against an employee or agent who believes that he or she has reasonable cause to suspect that a person receiving services has been subjected to a reportable incident or notable occurrence, and the employee or agent makes a report to the VPCR and/or OPWDD in accordance with this section and/or if the employee or agent cooperates with the investigation of a report made to the VPCR or OPWDD.
- (b) Effective January 1, 2014, when CP Nassau enters into a new contract or renews a contract for the provision of services that are provided by one or more employees or agents who have regular and substantial physical contact with persons receiving services, the contract shall include a provision concerning retaliation by the contractor. The provision shall require the contractor not to take any retaliatory action against an employee or agent of the contractor when:
  - (i) the employee or agent believes that he or she has reasonable cause to suspect a person receiving services has been subjected to a reportable incident or notable occurrence, and the employee or agent makes a report to the VPCR and/or OPWDD in accordance with this section; and/or
  - (ii) if the employee or agent of the contractor cooperates with the investigation of a report to the VPCR and/or OPWDD.

## **SECTION V: Notifications**

1. For a report 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 of occurrence or discovery. The responsible agency or program shall inform MHLS of the results of the investigation. (See Appendix #17)
2. For reports of abuse or neglect that occur when a person receiving services is under the auspices of a residential facility operated by OPWDD, a family care home sponsored by OPWDD, or a certified day program operated by OPWDD, OPWDD shall send the written initial incident report to the appropriate board of visitors within three working days of occurrence or discovery. OPWDD shall also inform the board of visitors of the results of the investigation.
3. 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.
4. Reporting to law enforcement.
  - (a) An appropriate law enforcement official must be contacted immediately in the event that an emergency response by law enforcement is needed.
  - (b) Agencies 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.
5. In a case where a subject of a report of abuse or neglect in a program certified or operated by OPWDD resigns from his or her position or is terminated while under investigation, the agency shall promptly report such resignation or termination to the Justice Center.
6. For all reportable incidents and notable occurrences:
  - (a) CP Nassau will provide telephone notice to one of the following: a person's guardian, parent, spouse, or adult child. The telephone notification information must be documented on CP Nassau JL Notification Form ( See Appendix 11):
  - (b) However, CP Nassau shall not provide such notice to a party in the following situations:

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- (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.
- (c) 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 (for minor notable occurrences) or entry of initial information in IRMA by CP Nassau.
- (d) 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 occurrence, if any;
  - (ii) An offer to meet with the chief executive officer (or designee) to further discuss the incident or occurrence; and
  - (iii) For reports of abuse and neglect, an offer to provide information on the status and/or finding of the report. 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, the agency shall protect the privacy rights of other parties.
- (e) 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 notice.
- (g) 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; CP Nassau shall provide notice to the following parties in the manner (and subject to the same limitations) provided 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).

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(h) 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 the agency,
- (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 specified in this subparagraph.
  - (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, that name 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.

(i) Report on actions taken.

- (i) The CP Nassau 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

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- (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) The CP Nassau shall provide the report on actions taken to any party specified in paragraph (6)(a) or (6)(g) of this subdivision who received the notification.
  - (iii) The report shall be provided within 10 days of the completion of the written initial incident/occurrence report (for minor notable occurrences) or entry of initial information in IRMA by the agency.
  - (iv) The report that is provided must be on the Form OPWDD 148. (See Appendix 12)
  - (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.
- (j) The following documentation shall be maintained on CP Nassau's JL Notification Form (See Appendix 11) :
- (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.
- (k) For the purpose of redaction as specified in this subdivision and Section (VII) of this Part only, the term employee means any party who is, or formerly was:
- (i) directly employed by CP Nassau; or
  - (ii) used by CP Nassau 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



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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/respice provider; or a party living in the home of the provider.

7. For the Willowbrook class, agencies shall comply with the incident reporting requirements of the Willowbrook Permanent Injunction, dated March 11, 1993.
8. The individual's service coordinator (e.g. a Care Manager or Plan of Care Support Services Service Coordinator, or Willowbrook Service Coordinator) must be notified by the agency 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:
  - (a) The service coordinator must be notified within 24 hours of the completion of the written initial incident/occurrence report (for minor notable occurrences) or entry of initial information in IRMA by the agency. The notification must include a description of immediate protections.
  - (b) The service coordinator must be provided with subsequent information that 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. This information must be documented on the CP Nassau CM/QIDP Investigative Recommendations Report Form (See Appendix 13). Specifically:
    - (i) The service coordinator must be provided with written information identifying investigative conclusions (including the findings of a report 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 an agency receives a request for this information from a service coordinator, the agency shall provide information that it deems appropriate. In providing this information, the agency must exclude information that directly or indirectly identifies agency employees, consultants, contractors, volunteers, and other individuals receiving services. If an agency determines that it would be inappropriate to disclose specific information requested, the agency must advise the service coordinator of this determination and its justification, in writing, within 10 days following the request. If the agency 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 the

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

- (c) If the service coordinator is identified as the subject of a report of abuse or neglect or as a witness to a reportable incident or occurrence, the agency shall not provide information to that party. In such a case, notifications and written information identified in paragraphs (a) and (b) of this subdivision 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.

- 9. The individual's Qualified Intellectual Disabilities Professional (QIDP) and (if the person is a Willowbrook class member), the Willowbrook Care Services Coordinator (WCSC) must also be notified by the agency 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, in accordance with paragraphs 8(a) and (b) of this section. 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.

- 10. Administrative appeal process - denial of requested records/documents.

- (a) 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.
- (b) Upon receipt of the appeal, CP Nassau 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.
- (c) 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 to CP Nassau. If so directed by the incident records appeals officer, CP Nassau shall provide the requested records and/or documents to the requestor.

- 11. It is the responsibility of the Director (or designee) of the program where a report on a reportable incident or notable occurrence is received or made out, to notify any other agency where the person receives services of that reportable incident or notable occurrence if the

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incident or occurrence 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 provided by another agency.

12. Notwithstanding any other provision in this Part, reports of *Obstruction of reports of reportable incidents* (see Section I(1)(f)) that are reported to the Justice Center and/or OPWDD are not subject to the notification requirements in this section.

## **SECTION VI: The Incident Review Committee**

1. CP Nassau's Incident Review Committee (IRC) is a standing committee, which reviews and monitors reportable incidents and notable occurrences that occur to people receiving services from the Agency.
2. The IRC shall review reportable incidents and notable occurrences to:
  - (a) ascertain that reportable incidents and notable occurrences were reported, managed, investigated and documented consistent with the provisions of part 624 and agency policy and procedure;
  - (b) to make written recommendations to the appropriate staff and or the chief executive office to correct, improve or eliminate inconsistencies;
  - (c) ascertain that the 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;
  - (d) 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.;
  - (e) 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
  - (f) ascertain and ensure the adequacy of the agency's reporting and review practices, including the monitoring of the implementation of approved recommendations for corrective preventive and remedial action.
3. The IRC shall:
  - (a) meet monthly but no less frequently than on a quarterly basis and always within one month of the report of a reportable incident or serious notable occurrence or sooner should the circumstances so warrant. The IRC shall meet as necessary to meet the timeframes established for submission of a final report to the Justice Center for reportable incidents, if required;

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- (b) review and monitor all minor notable occurrences that are reported, which may be done by a sub-committee of the IRC or by individual assignment to members of the IRC and maintain a record of such incident/occurrence review, recommendations, and or actions taken in a such a manner as to provide for tracking and trending;
  - (c) review and monitor all reportable incidents and/or serious notable occurrences that are reported;
  - (d) review and monitor investigatory procedures, but shall not perform the routine investigation of reportable incidents or notable occurrences;
  - (e) make written recommendations to appropriate staff to eliminate or minimize similar reportable incidents and or to improve investigatory or other procedures;
  - (f) 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;
  - (g) forward findings and recommendations to the chief executive officer within two weeks of meeting;
  - (h) 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 agency executives and others with a need to know;
  - (i) monitor actions taken on any and all recommendations made and advise the chief executive officer when there is a problem;
  - (j) 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 the subcommittee reporting to the full committee;
  - (k) in accordance with agency policy, report periodically, but at least annually, to the chief executive officer, chief agency executives, the governing body and OPWDD concerning the committee's general monitoring functions, general identified trends in reportable incidents, notable occurrences and corrective, preventive remedial and/or disciplinary action pertaining to identified trends; and
  - (l) the IRC will interact with the governing body and comply with the policies in relation to the review and monitoring of all reportable incidents and notable occurrences.
4. For reportable incidents of abuse and neglect in facilities and programs that are certified or operated by OPWDD, an incident will not be considered closed by an IRC until CP Nassau receives written notification from the Justice Center which specifies that it has accepted an investigation conducted by CP Nassau (or by OPWDD) or, if the Justice Center conducted the investigation, when the Justice Center notifies CP Nassau that the incident is closed.
5. Organization and membership of the IRC:

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- (a) Committee members shall be appointed by the chief executive officer. In the care of a shared committee, each chief executive officer shall appoint committee members and shall approve the shared committee membership arrangement.
- (b) An IRC may have other responsibilities in addition to specified responsibilities related to reportable incidents and notable occurrences.
- (c) Membership of the IRC shall include:
  - (i) at least two professional staff, including but not limited to, licensed clinicians, such as occupational, physical, and speech therapists, social workers, psychologists, and nurses; a behavioral intervention specialist and others with primary responsibility for developing and/or monitoring individuals' plans of care, such as developmental and habilitation specialists or a QIDP;
  - (ii) at least one of the professional staff must be a licensed health care practitioner (e.g. physician, physician's assistant, nurse practitioner or registered nurse);
  - (iii) other staff, including [professional, direct care or] administrative staff, as deemed necessary by the agency to achieve the purposes of the committee pursuant to this section;
  - (iv) at least one direct support professional;
  - (v) at least one individual receiving services;
  - (vi) at least one representative of advocacy organizations (e.g. self-advocacy, family or other advocacy organizations); and
  - (vii) the participation of a psychologist on the committee is recommended.

6. Case-specific requirements.

- (a) There shall be representation by someone from or with knowledge of the agency's own organizational entity where the event under discussion occurred, or by someone who is familiar with the person(s) involved.
- (b) Restrictions on review of specific incidents or allegations of abuse.
  - (i) 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.
  - (ii) 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, [or] preventive, or remedial action.

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

7. Record Keeping

- (a) Minutes. The chairperson of an incident review committee shall ensure that minutes are kept for all meetings.
- (b) 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.
- (c) 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, and provide a brief summary of the situation (including date, location and type) that caused the report to be generated, committee findings (including reclassification of event, if applicable), and recommendations and actions taken on the part of the agency as a result of such recommendations. Full names of all parties involved are to be recorded (not initials).

## **SECTION VII: Release of Records**

1. CP Nassau will release all records and documents pertaining to allegations of abuse and neglect under the auspices of CP Nassau to eligible requesters who make a request in accordance with the provisions of this policy.
2. 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 and are subject to the following restrictions:
  - (a) 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.
  - (b) 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.
3. Records subject to release concerning reports of abuse that occurred prior to June 30, 2013.
  - (a) CP Nassau will 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 (see glossary) of the agency or sponsoring agency to eligible requestors who make a request in accordance with the provisions of this section.
  - (b) CP Nassau will 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.
  - (c) CP Nassau will 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.
4. Records subject to release concerning reportable incidents that occurred on or after June 30, 2013. CP Nassau will release all records and documents pertaining to reportable incidents to eligible requestors who make a request in accordance with the provisions of this section.
5. Procedures. Eligible requestors shall submit a written request to the Director (or designee) of the program where the incident occurred. If the request is made prior to the closure of the incident, the parties specified by agency policy/procedures 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 agency shall provide the requested records no

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later than 21 days after the request is made. The written request shall specify the records that are requested.

6. Redaction of Records.

(a) Prior to the release of records, CP Nassau 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 or for another reason specified in this subdivision.

(b) 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 that name as well as any information tending to identify the party shall be redacted.

7. Cover letter and dissemination restrictions. The release of records to recipients shall be in accordance with the following:

(a) The release of records shall be accompanied by a cover letter (see Appendix 14) to the recipient which includes the following statement: "pursuant to section 33.25 of the Mental Hygiene Law, the enclosed records and reports shall not be further disseminated, EXCEPT that you may share the report with:

(i) a health care provider;

(ii) a behavioral health care provider;

(iii) law enforcement, if you believe a crime has been committed; or your attorney."

(b) Pursuant to New York State law, the recipient, parties with whom the recipient shared records, or the individual receiving services may use records and documents released in accordance with this section in any legal action or proceeding brought by or on behalf of the individual receiving services.

8. Documentation.

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

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

9. Administrative appeal process - denial of requested records/documents.



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- (a) 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.
- (b) Upon receipt of the appeal, CP Nassau 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.
- (c) 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.

10. Note that records maintained by the agency 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.

**OPWDD Part 625**

Part 625 is applicable to all facilities and programs that are operated, certified, or funded by OPWDD for the provision of services to individuals with developmental disabilities. Requirements concerning events and situations that are not under the auspices of CP Nassau are found in this Part.

Intermediate Care Facilities (see Part 681 of this Title), including state operated developmental centers, must also comply with the requirements of 42 CFR Part 483. Events and situations involving ICF residents that meet the definitions of abuse and other violations under the federal regulation, but do not occur under the auspices of the ICF, must be reported and thoroughly investigated in accordance with federal requirements in 42 CFR Part 483 that are more stringent than requirements of this Part.

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

Programs that are certified under paragraph 16.03(a)(4) of the Mental Hygiene Law and are funded by OPWDD, but are not operated by OPWDD, are required to report and address events and situations that are not under the auspices of an agency in accordance with this Part. Such certified programs are not, however, required to report deaths to the Justice Center.

## **SECTION I: OPWDD-Part 625- Definitions**

1. *Auspices, under the.* An event or situation in which CP Nassau 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 CP Nassau or family care provider.
  - (a) Events or situations that are under the auspices of CP Nassau include but are not limited to:
    - (i) An event or situation in which CP Nassau 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 CP Nassau, even in the absence of agency personnel or the family care provider.
    - (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 (Part 624.3 and 624.4).
    - (iv) Notwithstanding any other requirement in this subdivision, the death of an individual receiving services who lives in a residential facility operated or certified by OPWDD is always under the auspices of the agency. The death is also under the auspices of the agency if the death occurred up to 30 days after the discharge of the individual from the residential facility (unless the person was admitted to a different residential facility in the OPWDD system). (Note: this does not include free-standing respite facilities.)
    - (v) Related to reportable incidents and notable occurrences (Part 624.3 and 624.4), any event that directly involves or may have involved CP Nassau personnel.
  - (b) Events or situations that are not under the auspices of CP Nassau include:
    - (i) Any event or situation that directly involves or may have involved CP Nassau personnel during the time he or she was acting under the supervision of a State agency other than OPWDD (e.g. a an agency 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).

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- (i) 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 CP Nassau personnel or at a certified site.
  - (ii) 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 CP Nassau personnel.
  - (iii) Any allegation of neglect that is based on conditions in a private home (excluding a family care home).
  - (iv) The death of an individual who received OPWDD operated, certified, or funded services, except deaths that occurred under the auspices of an agency as specified in Section I(1).
2. *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.
  3. *Sexual abuse.* Non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.
  4. *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.
  5. *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.
  6. *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.
  7. *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.
  8. *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.
  9. *Death.* The end of life, expected or unexpected, regardless of cause.

**SECTION II: The CP Nassau involvement in events or situations that are not under the auspices of CP Nassau** (see Appendix 16).

1. If CP Nassau 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 CP Nassau (see 625(I)(1)), CP Nassau shall respond to the event or situation as follows:
  - (a) If the event or situation meets one of the definitions of reportable incidents and notable occurrences (defined in Part 624 sections 624.3 or 624.4) and occurred under the auspices of another agency subject to the requirements of Part 624:
    - (i) The CP Nassau shall comply with the requirements of Part 624.5(q). This includes 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) 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 OWPDD.
  - (b) If the event or situation meets one of the definitions of Part 624.3 or 624.4 and occurred in a facility or service setting subject to the regulatory oversight of another State Agency (e.g. school, hospital), CP Nassau shall document the event or situation and shall report the situation to the management of the facility or service setting.
  - (c) The CP Nassau shall intervene as specified in subdivision (b) of this section if it has reason to believe (e.g. a report or complaint is made to the agency, etc.) that the event or situation meets the definition of physical, sexual, or emotional abuse; active, passive, or self neglect; or financial exploitation as defined in Section I, unless the event or situation meets the criteria in paragraphs (a) or (b) of this subdivision.
  - (d) Requirements concerning agency involvement in deaths that are not under the auspices of an agency are in 625 Section (IV).
2. The CP Nassau 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:
  - (a) 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);
  - (b) offering to make referrals to appropriate service providers, clinicians, State agencies, or any other appropriate parties;

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- (c) interviewing the involved individual and/or witnesses;
  - (d) assessing and monitoring the individual;
  - (e) reviewing records and other relevant documentation; and
  - (f) educating the individual about his or her choices and options regarding the matter.
3. CP Nassau shall intervene as it deems necessary and appropriate (see subdivision (b) of this section for a list of interventions) 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:
- (a) the individual resides in a residence certified or operated by OPWDD (or a family care home);
  - (b) the individual receives day program services certified or operated by OPWDD;
  - (c) the individual receives Care Management Coordination or Plan of Care Support Services (PCSS) authorized by OPWDD; and/or
  - (d) the individual receives Home and Community Based Services (HCBS) waiver services authorized by OPWDD.
4. CP Nassau 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:
- (a) the individual is only receiving family support services (FSS), individual support services (ISS), or Article 16 clinic services; and/or
  - (b) the individual is not available to CP Nassau or sponsoring agency; and/or
  - (c) the individual is in need of protective services that CP Nassau cannot provide.
5. 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.
6. 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.
- (a) The agency responsible for intervening shall be the provider of the services to the individual (or sponsoring agency) in the order stated:

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- (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) Care Manager 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 OPWD 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).

**SECTION III: OPWDD involvement in events or situations that are not under the auspices of CP Nassau.**

1. Reporting to OPWDD. CP Nassau shall report events or situations in which actions were taken by the agency in accordance with the requirements of Part 625.3 as follows:
  - (a) CP Nassau shall submit an initial report on the Form OPWDD 150 (See Appendix 15) about the event or situation in the OPWDD Incident Report and Management Application (IRMA).
  - (b) The CP Nassau or sponsoring agency 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 the agency, including any initial actions taken to protect the involved individual.
  - (c) The CP Nassau 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 (see Section 625(II)(2)) and shall include information about the resolution of the event or situation.
  - (d) For reports of abuse and neglect that are not required to be reported to the Justice Center that occurs under the auspices of CP Nassau, CP Nassau must upload the entirety of the investigative record in IRMA.
  - (e) Requirements concerning OPWDD involvement in deaths that are not under the auspices of an agency are in Section 625(IV).

2. Review/investigation by OPWDD.

- (a) OPWDD has the right to investigate or review any event or situation regardless of the source of the information. The CP Nassau 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.
- (b) When an event or situation is investigated or reviewed by OPWDD, OPWDD may make recommendations to CP Nassau or sponsoring agency concerning any matter related to the event or situation. This may include recommendation that the agency conduct an investigation and/or take specific actions to intervene. In the event that OPWDD makes recommendations, CP Nassau or sponsoring agency shall either:
  - (i) implement each recommendation in a timely fashion and submit documentation of the implementation to OPWDD; or
  - (ii) in the event that the agency 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.

***Section IV: The CP Nassau and OPWDD involvement in deaths that are not under the auspices of the agency.***

- 1. 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 the agency, shall be reported to the Justice Center for the Protection of People with Special Needs (Justice Center), as follows:
  - (a) The initial report shall be submitted, by the agency's chief executive officer or designee, through a statewide, toll-free telephone number (JC Death Line 1-855-373-21214) in a manner specified by the Justice Center.
  - (b) The initial report on Form OPWDD 150 (See Appendix 15) shall be submitted immediately upon discovery and in no case more than twenty-four hours after discovery.
  - (c) Subsequent information shall be submitted on Form OPWDD 162 (See Appendix 5) to the Justice Center, via IRMA, within five working days of discovery of the death.
  - (f) For reports of death that are not under the auspices of CP Nassau, CP Nassau must upload the entirety of the investigative record in IRMA.
  - (d) The results of an autopsy, if performed and if available to the provider agency, 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.)

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Note: The requirements in this subdivision 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, to the death of an individual who resided in an OPWDD certified or operated residential program (see paragraph Section I(1)(a)), or when the death occurred under the auspices of any agency.

2. All deaths that are reported to the Justice Center shall also be reported to OPWDD.
  - (a) A death that occurred under the auspices of CP Nassau shall be reported as a serious notable occurrence in accordance with Part 624.
  - (b) A death that did not occur under the auspices of any agency (see Section 625I(1)(b)) shall be reported in accordance with subdivision (3) of this section.
3. 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 any agency, shall be reported to OPWDD as follows:
  - (a) 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.
  - (b) The CP Nassau 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.
  - (c) The CP Nassau 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 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:
  - (a) 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);
  - (b) Care Manager or PCSS (only OPWDD operated services report to the Justice Center);
  - (c) HCBS Waiver services (only OPWDD operated services report to the Justice Center);
  - (d) Care at Home Waiver services (only OPWDD operated services report to the Justice Center);



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- (e) Article 16 clinic services;
- (f) FSS or ISS services (only OPWDD operated services report to the Justice Center);
- (g) Any other service operated by OPWDD.

5. Investigations into deaths that did not occur under the auspices of CP Nassau.

- (a) 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 CP Nassau. CP Nassau 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.
- (b) OPWDD has the right to investigate or review, or to request that CP Nassau investigate, the death of any individual, even if the death did not occur under the auspices of CP Nassau. CP Nassau 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.
- (c) If the Justice Center or OPWDD is responsible for the investigation, CP Nassau shall fully cooperate with the assigned investigator.

Issued By:		Date:	
	Department Head		
Reviewed By:		Date:	
	Administrative Director		
Approved By:		Date:	
	Executive Director		

## APPENDIX

APPENDIX 1	CP Nassau Procedural Check List for Reportable Incidents
APPENDIX 2	CP Nassau Procedural Check List for Serious Notable Occurrences
APPENDIX 3	CP Nassau Procedural Check List for Minor Notable Occurrences
APPENDIX 4	CP Nassau Procedural Check List for Reporting Deaths/Part 624
APPENDIX 5	Form OPWDD 147 (revised 01/01/2016) and Instructions
APPENDIX 6	Form OPWDD 162
APPENDIX 7	Notice to Subject Letter
APPENDIX 8	Statewide Central Register (SCR) Check & Instructions
APPENDIX 9	OPWDD Form 163
APPENDIX 10	OPWDD Form 149: Investigative Report Form and Instructions
APPENDIX 11	CP Nassau JL Notification Form
APPENDIX 12	OPWDD Form 148
APPENDIX 13	CP Nassau Care Manager/QIDP Investigative Recommendations Report Form
APPENDIX 14	CP Nassau Release of Records-Cover Letter
APPENDIX 15	Form OPWDD 150 and Instructions
APPENDIX 16	CP Nassau Procedural Check List for OPWDD Part 625 Incidents
APPENDIX 17	MHLS Investigation Results Report Form

