

## Frequently Asked Questions (FAQs) Concerning the Part 624 Handbook



### Background:

14 NYCRR Part 624 is OPWDD's regulation concerning the management of incidents and allegations of abuse. Part 624 contains the following:

- definitions of categories of incidents and abuse
- procedures for reporting, recording, investigation, and follow up
- provisions for the protection of individuals receiving services
- requirements for incident review committees

[The Part 624 Handbook](#) is a manual that has been developed by the OPWDD Statewide Committee on Incident Review (SCIR) in an effort to provide an understanding of the intent and direction of Part 624 regulations. The Handbook includes the following:

- a line by line explanation of requirements related to incidents and abuse in the OPWDD system
- information on the interrelationship of the various administrative entities within the OPWDD system
- documentation of laws and policies related to incidents and abuse
- OPWDD forms

The Handbook is a living document that is continuously updated to reflect new or revised requirements and regulatory interpretations pertaining to incident management. Therefore, the SCIR committee recommends that providers routinely reference the electronic version of the Handbook on the OPWDD website at [www.opwdd.ny.gov](http://www.opwdd.ny.gov). Click on "News & Publications" and then "Manuals."

This FAQ page addresses questions that have been submitted to OPWDD's Incident Management Unit (IMU). If your question has not been answered below, please send it to the IMU mailbox at [incident.management@opwdd.ny.gov](mailto:incident.management@opwdd.ny.gov).





## Frequently Asked Questions by Topic:

### Form OPWDD 147

**Question:** What is the expectation regarding completing notifications on the revised Form OPWDD 147 for incidents that may involve more than one individual receiving services?

**Answer:** The revised Form OPWDD 147 eliminates the use of a separate notification form. If there are multiple individuals it is appropriate to list (in item #8) the name of the person who was most involved or affected first (or the first alphabetically if all were equally affected), followed by "et al." For the notifications, you can attach additional second pages of the Form OPWDD 147 with item #29 completed for each of the subsequent individuals.

If you are entering data into the Incident Report and Management Application (IRMA) the system would generate a separate Form OPWDD 147 for each individual. The numbering of the form would indicate that the notifications for each individual are part of the same incident. Direct entry of data into IRMA is the best way to handle this situation.

**Question:** If an agency has been using its own notification log form for incident reporting which records all of the information required in item #29 of the revised Form OPWDD 147 including additional agency specific information, is it permissible to substitute item #29 with the agency's notification log?

**Answer:** The agency must complete all of the items on the Form OPWDD 147, including item #29 (Notifications). The agency cannot substitute its own notification log.

In designing the Form OPWDD 147, OPWDD realizes that agencies may have additional notifications required by agency policy and have left blank lines for those purposes. Hopefully duplicate entry can be avoided by using these extra lines.

Please note that this is not an issue for incidents that are directly entered into IRMA.





## Injury

**Question:** Does the use of dermabond or steri-strips for wound care mean that the injury is classified as a reportable incident?

**Answer:** The definition of injury as a reportable incident states that the treatment is “more than first aid.” The use of dermabond or steri-strips is not considered to be more than first aid and therefore, this is not a reportable incident as defined in Part 624, paragraph 624.4(b)(1). Agencies may choose to file this as an “agency reportable” or equivalent, but not as a reportable incident.

**Question:** Does a reportable or serious reportable incident need to be filed when a diagnostic procedure is performed which results in a positive finding, even though no treatment is provided that is more than first aid?

**Answer:** A reportable or serious reportable incident must be filed when a diagnostic procedure (e.g. x-ray) reveals a positive finding for an injury, even if no treatment is provided. For example, a person falls and fractures a rib. It is not likely that any medical treatment would be given to this individual; however, an incident must be filed to ensure proper follow-up occurred to address any medical, environmental, or other potential causes.

If a diagnostic procedure is performed and does not result in an additional positive finding for an injury or require more than first aid treatment then a reportable or serious reportable incident is not indicated. Here are some scenarios:

**Scenario #1:** The individual has a soft tissue injury (contusion, bruise) and is examined by a health care professional. The diagnosis is sprain and the treatment is no more than first aid. This is not a reportable incident; a Form OPWDD 147 **is not** required.

**Scenario #2:** Same situation as specified in Scenario 1. The health care professional orders an x-ray which is negative for a fracture. Since it is already known that the individual has a sprain and no treatment beyond first aid is given, this is not considered to be a reportable incident; a Form OPWDD 147 **is not** required.

**Scenario #3:** Same situation as specified in Scenarios 1 and 2. The x-ray is positive for a fracture. This is a reportable incident; a Form OPWDD 147 **is** required.





**Scenario #4:** The individual falls and is examined by a health care professional. A diagnostic procedure reveals a broken rib. This is a reportable incident; a Form OPWDD 147 is required.

### **Physical Exam/findings**

**Question:** In IRMA under the physical findings tab the question is asked, "Was the consumer examined by a Healthcare Professional/LPN/EMT?" If an AMAP direct support professional examined an individual, can he or she answer yes to this question?

**Answer:** Any staff may be in a position to check for injuries and to document them, but AMAP direct support professionals are not considered to be health care professionals. If the individual was examined by an AMAP direct support professional alone, then the "no" answer should be checked in IRMA.

### **Death**

**Question:** Is it necessary to file an OPWDD 147 form for incidents/deaths that involve an individual who was discharged from all OPWDD services?

**Answer:** It is not necessary to file an OPWDD 147 form for any incidents (including deaths) that occur after the individual is discharged from the OPWDD system and therefore, not receiving any OPWDD services at the time of the incident/death. An exception would be if the individual were involved in an incident that leads to his/her discharge.

**Question:** Upon the death of an individual who received services from multiple agencies, which agency is responsible to submit the Form OPWDD147 and QCC-100 form?

**Answer:** The Form OPWDD 147 and QCC 100 should only be filed by only one agency. As a general rule the agency with the most involvement and/or knowledge of the circumstances surrounding the individual's death should complete the OPWDD 147/QCC100. If it is later determined that the death should have been reported by a different agency then the DDSO will assist the agency that filed the report and the "agency replace" function will be utilized in IRMA to move the incident under the appropriate agency. In any case, if the individual resides in or attends a certified program, it is generally the responsibility of the certified program to complete the OPWDD





147/QCC100, even if the death occurred outside the certified program. Here are some examples:

- If an individual lives in a certified residence, generally the residence should file regardless of where the death occurred. An exception would be if the death occurred at a certified day program as a result of an accident at the day program, then the certified day program should file.
- The individual had longstanding medical complications and passed away while attending a certified day program. The individual lived in a certified residence. The residence should file because they would be more intimately familiar with the medical history of the individual.
- The death occurred at a family home. The individual received services at a certified day program and MSC. The day program should file.

**Question:** Is it true that mortality reviews suffice as an investigation in a case of a reportable death?

**Answer:** Yes, please refer to Appendix 4 of the Part 624 Handbook for the memo issued by Sheila McBain on *Reporting Deaths*, which indicates that a mortality review may suffice as an investigation in a case of a reportable death. A mortality review is not sufficient in the case of a serious reportable death.

**Question:** If an individual lives independently in the community with supports, and the provider does not have full access to medical records, how can a mortality review be conducted?

**Answer:** When a person does not reside in a certified setting and medical records are not available, then the agency would be unable to complete a mortality review. In these cases, the agency would have to complete a death investigation to the best of its ability, and to the extent possible.

**Question:** Does Mental Hygiene Legal Services (MHLS) need to be contacted when there is a death of an individual receiving services?

**Answer:** There is no requirement that an agency report deaths to MHLS.





## **Theft of Personal Property and/or Financial Exploitation**

**NEW Question:** The memorandum issued by OPWDD titled, *Reporting Suspected Theft of Personal Property and/or Financial Exploitation*, includes dollar thresholds for deciding how to classify a particular incident (serious reportable, reportable, or occurrence). However, the dollar value associated with theft of personal property can vary depending on how the value of the property is determined (replacement cost, depreciated value or original purchase price). How should the value be determined?

**Answer:** For the purpose of categorizing the incident, the value should be determined by using the replacement cost of the personal property.

**NEW Question:** Identity theft is not addressed in the memorandum issued by OPWDD titled, *Reporting Suspected Theft of Personal Property and/or Financial Exploitation*, and is an increasing problem that can have serious consequences for an individual. Should identity theft be reported as an incident?

**Answer:** Yes, identity theft must be classified and reported as a Sensitive Situation, serious reportable incident.

**NEW Question:** The memorandum issued by OPWDD titled, *Reporting Suspected Theft of Personal Property and/or Financial Exploitation*, directs providers to report instances of theft and financial exploitation as Sensitive Situations in IRMA. Since these events will be reported to OPWDD as Sensitive Situations, how should providers indicate that the incident involves the theft or financial exploitation of an individual?

**Answer:** When reporting any incident or allegation of abuse in IRMA providers are to select the appropriate contributing factors that may have contributed to the incident or alleged abuse. *Potential theft/Financial Exploitation* and *Identity Theft* are among the many contributing factors listed in IRMA. In order to properly report the theft of an individual's personal property or identity to OPWDD, providers must be sure to select the appropriate contributing factor when reporting the incident in IRMA.

## **Abuse**

**Question:** The Handbook commentary states: "Use of approved physical interventions on an emergency basis is not "unauthorized" if it is justified by the circumstances (i.e. imminent threat of injury), even if it is not part of a behavior plan. A behavioral note/completion of agency specific data sheet





specific to use of physical interventions, but not an OPWDD 147 form, would be required.” Is this guidance referring to someone who has a behavior plan for physical interventions, but the specific technique used in the emergency situation was not among those authorized for that individual and described in their behavior plan, OR someone who either has no behavior plan, or their behavior plan does not include the use of any physical interventions?

**Answer:** The intervention may be warranted in either situation.

**Question:** If it is determined via clinical team/internal review that an emergency situation justified physical intervention (i.e. someone was running into traffic), then is it true that a Form OPWDD 147 would not be required whether or not the person intervening was ever trained in SCIP-R, and whether or not the person being rescued had a behavior plan authorizing the use of any physical interventions?

**Answer:** See commentary under paragraph 624.4(c)(1) in the Handbook. This situation could be reported as an agency reportable or equivalent or sensitive situation and should be investigated and upgraded to an allegation of physical abuse only if the circumstances meet the established criteria for physical abuse. Failure to intervene would result in an allegation of neglect being filed.

**Question:** Should sensitive situations filed as a result of applying the decision matrix for sexual contact be reportable or serious reportable?

**Answer:** When reporting sexual activity between individuals, neither of whom is capable of consenting, where no coercion/force is used, the agency should use its discretion in determining whether to report the occurrence as a reportable sensitive situation or as a serious reportable sensitive situation. Keep in mind that the filing of a serious reportable sensitive situation requires reporting to the DDSO.

**Question:** When an individual’s capacity to consent to sexual contact is not known, should the individual be considered to be capable of consent or not capable of consent when applying the decision matrix for sexual contact?

**Answer:** The agency should not assume that an individual has capacity to consent when his or her capacity to consent to sexual activity is not known. The agency is encouraged to file an allegation of abuse and use the time period within which to make required notifications, to assess the person’s capacity. If the person is determined to have the capacity to consent, the allegation can be disconfirmed. Notifications do not have to be made if an





allegation is disconfirmed before the deadline has passed for the notification. Whether or not the individual has the capacity to consent, OPWDD encourages agencies to consider the need and appropriateness for the involved individuals to receive counseling and education about sexuality. For example, individuals who are interested in a relationship involving sexual contact may be able to attain the capacity to consent with additional counseling and education.

**Question:** How should agencies classify situations when employees have an argument with raised voices or inappropriate language directed at each other in front of an individual receiving services?

**Answer:** If it is determined that an individual receiving services is not adversely affected by the argument this should not be reported using the Part 624 process. These situations should be handled by the agency's personnel or labor relations department. Agencies may rely on clinical evaluations for a determination as to whether or not an individual has been adversely affected.

The definition of psychological abuse has not changed as a result of recent revisions to the Handbook. Please note that if staff are directing language at an individual to ridicule, scorn or dehumanize that individual, this is still considered to be psychological abuse.

**Question:** What happens if the agency has already filed an allegation of abuse and the investigation determines that the individual was not adversely affected?

**Answer:** The agency should disconfirm the allegation.

**Question:** The Handbook states: "MHLS is to be advised, by way of Form OPWDD 147, of any abuse that occurs to a person receiving services who resides in a certified residence. The residential provider is responsible for ensuring that the OPWDD 147 is forwarded to MHLS." (Commentary about paragraph 624.5(b)(5)). If the residential provider is responsible for ensuring that the OPWDD 147 form is forwarded to MHLS but an allegation of abuse occurs while an individual is receiving services from a non-residential provider, is the non-residential provider supposed to provide the residential provider with the OPWDD 147 form?

**Answer:** Subdivision 624.6(1) requires providers to notify other providers of incidents and allegations which may be of concern to the other provider. Since the residential provider is required to ensure that MHLS receives the





completed OPWDD 147, the non-residential provider must notify the residential provider so it is aware of this obligation. However, either the non-residential provider can supply the form to the residential provider so that the residential provider can send it to MHLS, or the non-residential provider can send it to MHLS directly. If the non-residential provider sends the form directly, it does not have to send the form to the residential provider but must inform the residential provider that the form has been sent directly to MHLS.

**Question:** A staff member has been trained in an individual's treatment plan. The staff member unintentionally implements the treatment plan incorrectly. Should this be filed as an allegation of mistreatment?

**Answer:** If there is no intent, an allegation of mistreatment should not be filed. The situation should be handled as a personnel issue. Staff should be re-trained on the treatment plan. The treatment plan should also be reviewed to determine that it is implementable and makes sense for the individual.

Upon further investigation, if it is determined that the staff intentionally implemented the treatment plan incorrectly then an allegation of mistreatment may be filed. The criteria for mistreatment include deliberate and willful intent. The agency may also consider filing an allegation of neglect depending on the situation and the outcome to the individual.

### Neglect

**Question:** Is neglect determined based on staff or agency action that puts the individual at risk of harm or results in harm to the individual or both?

**Answer:** Neglect is determined based on both harm to the individual and the level of risk of harm to the individual. See guidance under paragraph 624.4(c)(10) in the Handbook for more clarification on neglect.

Some elements to consider when making a determination to file an allegation of neglect are as follows:

The significant risk or negative consequence of the staff/agency action or inaction is egregious in nature and/or a pattern that:

- jeopardizes the health or safety of the individual; or
- endangers the physical or emotional well-being of an individual; or
- results in an adverse impact on the individual.





**Question:** When a staff member is found sleeping on duty under the circumstances when staff minimums are met and there is no egregious outcome, is this considered a personnel issue or should it be filed as an allegation of neglect?

**Answer:** Per commentary under paragraph 624.4(c)(10) in the Handbook, when a staff member is found to be sleeping on duty it should be handled as a personnel issue. If this act immediately jeopardizes the health and safety of individuals receiving services in any way then an allegation of neglect should be filed.

### **Investigations**

**Question:** When an incident/allegation involves more than one classification, does the investigator have to complete a separate investigation report for each classification?

**Answer:** When one event or situation results in different classifications for individuals involved and in the filing of multiple OPWDD 147 forms, only one investigation, one investigator and one investigation report of that event is necessary. The investigation report must note the findings, conclusions, and recommendations pertaining to each classification of the event or situation.

**Question:** Part 624 regulations prohibit immediate supervisors and parties in the chain of command of “directly involved” staff from performing investigations of serious reportable incidents and allegations of abuse. Additionally, the regulations preclude immediate supervisors of “directly involved” staff from reviewing such investigations as a member of the provider’s incident review committee. What criteria should providers use to determine whether or not a staff person is “directly involved” in an incident or alleged abuse?

**Answer:** The phrase “directly involved” as it pertains to regulations concerning the investigation and review of serious reportable incidents and allegations of abuse applies to staff who meet the following criteria:

- a) Any staff person who is the target of an allegation of abuse;
- b) Any staff person who is physically present or providing services to an individual at the time of the occurrence of a serious reportable incident or allegation of abuse involving that individual, or who should have been





physically present. If the situation is discovered but it is not known what time it actually occurred all staff who could have been present at the time of occurrence are considered to be “directly involved.” This includes allegations of abuse where the target of the investigation is another individual receiving services. For residential facilities, if the serious reportable incident or allegation of abuse occurred at a certified residence, this would include all employees who were working at the residence at that time (except for very large sites such as developmental centers).

### **Irregular Situations**

**Question:** An individual lives in a certified residence and also receives other services from different providers (e.g. day services, Medicaid Service Coordination (MSC)). A provider becomes aware of a situation that constitutes an allegation of abuse of an individual receiving services by his/her family member. Which provider is responsible for filing the OPWDD 147, investigating, etc.?

**Answer:** The residential provider is responsible. Other providers which become aware of the situation must notify the residential provider. For individuals in family care, the sponsoring agency is responsible.

**Question:** A provider becomes aware of a situation that constitutes an allegation of abuse of an individual who receives services by his/her family member. The individual does not reside in a certified residence but attends a certified day program and receives MSC and/or other non-certified services. Which provider is responsible to file an OPWDD 147, investigate, etc.?  
(Non-certified services are those which do not have an operating certificate and the agency does not provide a site for the delivery of those services. Examples are MSC, supported employment, community habilitation and family support services (FSS).)

**Answer:** The agency providing the certified day program is responsible to file the report, investigate, etc. If other providers become aware of these situations they must notify the certified day program. OPWDD regulations & policy do not specify which organizational entity within the agency which operates the day program is responsible. (This is the case whether the person receives only one service or more than one service from the agency.) The agency may choose to assign investigators by agency policy or on a case-by-case basis. It is up to the agency how this assignment is made.

### **Non-certified services**





**Question:** What is a non-certified service?

**Answer:** Non-certified services are those which do not have an operating certificate and the agency does not provide a site for the delivery of those services. Examples are MSC, supported employment, community habilitation and family support services (FSS).

**Question:** A provider becomes aware of a situation that constitutes an allegation of abuse of an individual who receives services by his/her family member. If an individual receives MSC and/or other non-certified services and does not live in a certified residence or attend a certified day program, which provider is responsible to report and investigate incidents/allegations of abuse?

**Answer:** Generally there is no specific guidance pertaining to which provider of a non-certified service is responsible to report when the individual receives non-certified services from multiple providers and does not live in a certified residence or attend a certified day program. Providers are encouraged to discuss the situation with each other and decide which provider may be best suited to address the situation. If the person is receiving FSS and MSC and/or other non-certified services, the provider which is NOT providing FSS is responsible. Agencies are encouraged to contact their local DDSO for guidance if they cannot determine which provider should be responsible. When the provider of non-certified services (e.g. MSC) is the only provider of service to an individual, the provider is responsible. Generally, Protective Services for Adults (PSA) is not responsible to report and investigate (although they can assist in specific circumstances). However, if the person receives only Family Support Services, Protective Services for Adults (PSA) is responsible for investigating and intervening. The FSS provider must report the situation to PSA. The Statewide Committee on Incident Review is planning a revision to Section VIII of the Handbook, *Application of Non-Certified Programs or Services*, to improve guidance in this area.

**Question:** Who is responsible to report and investigate incidents/allegations that involve individuals who are receiving Consolidated Supports & Services (CSS)?

**Answer:** The agency providing Fiscal Management Services (FMS) is always responsible to investigate incidents/allegations involving a “self hired staff person” who is co-employed by the FMS and the CSS participant and is on the FMS payroll. If the person is receiving other services certified or





funded by OPWDD any incident/allegation occurring during the receipt of those services is the responsibility of the provider of those services. Incidents/allegations occurring when the CSS participant is not receiving services are the responsibility of the agency providing certified day services, if the person is receiving certified day services. If the CSS participant is not receiving certified day services, the FMS agency is responsible for incidents/allegations occurring when the CSS participant is not receiving services. The MSC agency is only responsible for incidents/allegations that occur that are directly related to the provision of MSC (e.g. abuse of the participant by the service coordinator). If the FMS agency does not have the resources for required incident management activities (e.g. filing the OPWDD 147, investigation, and/or review by a committee), the FMS agency may coordinate with another agency or contact the local DDSO for assistance.

### **Medical Immobilization/Protective Stabilization (MIPS)**

**Question:** Do MIPS plans have to be reviewed and approved by the agency's human rights committee?

**Answer:** OPWDD recently issued ADM #2010-02 Medical Immobilization/Protective Stabilization (MIPS) and Sedation for Medical/Dental Appointments. (available on the OPWDD website at [www.opwdd.ny.gov](http://www.opwdd.ny.gov).) The ADM does not give specific guidance on behavior review or human rights committees because these types of holds and procedures are not being used to manage behavior. Therefore, in an Individualized Residential Alternative (IRA) or other certified setting (except for ICFs as discussed below) it is not necessary for the MIPS plan to be reviewed by a committee. (The ADM does not apply to non-certified services.)

There are additional rules that apply to Intermediate Care Facilities (ICFs). ICFs are subject to federal regulations which require that these types of holds be reviewed by a specially constituted committee. ICF providers must continue to adhere to the federal regulations and submit the MIPS plan through the review process of the specially constituted committee. However, the ICF provider will not have to demonstrate a fading plan which is required for a behavioral type of intervention or strategy because there is clinical justification that the person needs these types of supports for their treatment and only for as long as they are needed for such treatment.





**Question:** Who can order a manual intervention?

**Answer:** The following health care professionals can order a manual intervention:

- Physician
- Physician's Assistant
- Nurse Practitioner
- Dentist

## **Record Retention for Incident Reports**

**Question:** How long should agencies retain incident reports and other related documents?

**Answer:** There is currently no record retention requirement for voluntary agencies. Agencies should consult with their provider associations for guidance. Currently state-operated facilities have a 20 year record retention requirement.

## **Crimes**

**Question:** The individual does not live in a certified residence and does not receive any certified services. The only services received are MSC and/or other non-certified services (e.g. SEMP, Community Habilitation). The person is a victim of a crime in the community which is not associated with the provision of services. Is this an incident? Does a report have to be made to law enforcement officials?

**Answer:** The crime may or may not be an incident, depending on the particulars. If the circumstances do not meet the definitions of other categories, the agency has the discretion to report this as a sensitive situation. Please see guidance under paragraph 624.4(b)(7) in the Handbook for more clarification on sensitive situations. Regardless of whether the circumstances meet the definition of a reportable incident or allegation of abuse, if it appears that a crime may have been committed against an individual who receives services, the provider must report the crime to law enforcement immediately. Refer to the [memos issued by the Division of Quality Management](#) regarding notification to law enforcement. Also, refer to guidance under subdivision 624.6(d) in the Handbook for additional information on reporting crimes to law enforcement officials. If an agency is aware that the crime has already been reported to law enforcement officials, it does not need to make additional reports.





**NEW Question:** When is it appropriate to report a Possible Criminal Act in IRMA? Do providers report the act upon occurrence/discovery or should providers report the act only if law enforcement files criminal charges?

**Answer:** Providers must report a Possible Criminal Act in IRMA when it appears that a crime may have been committed by an individual receiving services. Providers should not wait for law enforcement to take action before reporting a Possible Criminal Act, providers should report such acts in IRMA upon occurrence/discovery and within the required timeframes for reporting serious reportable incidents in IRMA.

**Question:** In the case of a Possible Criminal Act, can an agency proceed with its investigation if law enforcement officials might also be investigating the possible crime?

**Answer:** Agencies must contact law enforcement officials to determine whether or not it is necessary to defer investigative activities. Upon the request of law enforcement officials, agencies might need to defer some or all of its investigative activities.

**Question:** Are any other actions necessary beside investigation of the Possible Criminal Act?

**Answer:** Yes, agencies are responsible to ensure that measures are taken to protect the safety and welfare of individuals receiving services during the investigation, if such measures are needed.

**Question:** What conclusions must be included in the investigation report pertaining to a Possible Criminal Act?

**Answer:** The agency's investigation report must state the facts and focus on the corrective/preventive measures to be taken to eliminate/minimize reoccurrence. Please see commentary under paragraphs 624.5(b)(6) and 624.5(e)(2) in the Handbook for more guidance.

**Question:** Are providers permitted to give the police department information they request pertaining to the incident?

**Answer:** Even though providers are required to make reports about incidents and allegations of abuse to law enforcement officials when a crime may have been committed, there are restrictions on sharing information with these officials because of state laws governing the confidentiality of clinical records and HIPAA. Agencies generally cannot share clinical information with law enforcement officials without authorization from the individual or





someone authorized to consent on his/her behalf (a guardian or involved parent, spouse or adult child). Without authorization, disclosures made in connection with criminal investigations must be limited to identifying data about the individual (name, address, physical description, ID numbers, etc.).

One exception is that a district attorney (DA) is allowed to access clinical records as part of an investigation into client abuse (Mental Hygiene Law 33.13 (c)(9)(vi)). Police or other law enforcement officials who need clinical information may contact the DA and ask that the DA request that the information be provided to the law enforcement official. Upon receiving and documenting the DA's request, the agency may provide the police or other law enforcement official with the relevant clinical records or information.

**Question:** Should an act of aggression committed by an individual receiving services towards another individual receiving services be reported to law enforcement?

**Answer:** If an individual receiving services exhibits aggression towards another individual receiving services and it is determined that the action is to be reviewed as a behavior problem instead of as an allegation of abuse (see the Part 624 Handbook for definitions and guidance), then law enforcement does not need to be notified. When the actions of an individual receiving services are reviewed as an allegation of abuse, please refer to the guideline below from the *Protocol for Reporting Potential Crimes to Law Enforcement* to determine if it is necessary to contact law enforcement. The [Protocol](#) identifies events and situations that meet the criteria for abuse as defined in Part 624 that might also constitute a crime and would therefore need to be reported to law enforcement.

The *Protocol for Reporting Potential Crimes to Law Enforcement* states:

“Any intentional hitting, slapping, pinching, kicking, hurling, strangling or shoving of an individual receiving services by another individual receiving services, where the individual who performs the abusive action intends to cause physical injury to the other individual and causes such physical injury, may be a crime and must be reported to law enforcement. Physical injury is defined as impairment of physical condition or substantial pain.”





**Question:** What is OPWDD’s expectation for determining when a report of a potential crime has been accepted by law enforcement for investigation?

**Answer:** “Accepted by law enforcement for investigation” means that a law enforcement entity intends to conduct its own investigation into the reported event. This must be more than the police issuing a blotter number or responding to the scene and/or taking an initial report. When the case is “accepted” by law enforcement they will be doing their own independent examination of the circumstances surrounding the event. A case is always accepted by law enforcement if an arrest made. Incidents (in which law enforcement was notified) should not be closed until the agency has determined whether or not the referral has been accepted by law enforcement for investigation.

A case is not accepted by law enforcement in the following examples:

- The police take an initial report, either by phone or in person, and no other action is taken.
- The police conduct an initial interview with the individual or staff to determine if an investigation should be pursued and they determine that no additional action is necessary.
- The police agree to counsel the individual on the seriousness of his or her criminal actions (i.e. a store manager calls the police because an individual stole a can of soda, the police either come to the house or the individual goes to the station to discuss the seriousness of the individual’s actions however there is no arrest or charges).
- The police respond to a 911 call and transport the individual to the hospital.

### **Agency Incident Review Committee Recommendations**

**Question:** If our incident review committee reviews a case and feels that a thorough and complete investigation was conducted, agrees that the recommendations are appropriate, but either disagrees or is split on agreement with the investigator’s finding of substantiated, disconfirmed, or inconclusive, how should this be addressed?

**Answer:** Per subdivision 624.2(i), and paragraphs 624.7(c)(9) and 624.7(d)(4), when members of the agency's incident review committee are unable to agree with or are undecided on an investigator’s findings, the





committee should consult with the agency's Chief Executive Officer and the agency's governing body for resolution.

### **Breaches of Confidential Protected Health Information (PHI) or Clinical Information**

**Question:** If a list of names of individuals receiving services from an agency is sent via unsecure email by one agency employee to another agency employee, is this considered to be a reportable or serious reportable incident or allegation of abuse?

**Answer:** This is not a reportable or serious reportable incident or allegation of abuse as defined in Part 624. Per commentary under paragraph 624.4(c)(8) in the Handbook, unauthorized disclosures of confidential protected health information (PHI) or clinical information may constitute a breach under HIPAA and HITECH and should be reported in compliance with the agency's HITECH breach reporting and notification policy.

### **Article 16 Clinics**

**Question:** What are the responsibilities of state operated or certified Article 16 clinics in relation to the Part 624 process for reporting incidents/abuse when an allegation of familial abuse (or abuse by a caregiver) is made?

**Answer:** It depends on the age of the individual, whether the individual has a developmental disability, and the types of services that the individual is receiving.

Sometimes Article 16 clinics serve individuals who do not have a developmental disability. The clinic may be providing diagnostic and evaluation services which determine that the individual does not have a developmental disability. Some clinics also provide ongoing services to individuals who do not have a developmental disability. If the clinic staff become aware that the individual who does not have a developmental disability may have been abused by a family member or other caregiver, the staff must inform the Statewide Central Register of Child Abuse and Maltreatment (for children) or Protective Services for Adults (PSA) or Adult Protective Services (APS) (for adults). The agency is not required to complete a Form OPWDD 147 or notify the DDSO.

If a person of any age has a developmental disability (whether or not the formal OPWDD eligibility process has been completed), and the person





receives any clinic service (whether one-time diagnostic and evaluation service or ongoing), and the clinic becomes aware that the individual may have been abused, either the agency operating the clinic or another service provider in the OPWDD system is responsible for filing a Form OPWDD 147 and investigating, etc. The provider which discovered or observed the alleged familial abuse is not necessarily the provider which is responsible for filing the Form OPWDD 147 and investigating, etc. If the discovering provider is not responsible for filing the Form OPWDD 147, it must document that it has made a referral to the provider which is responsible for filing the Form OPWDD 147.

If the person lives in a residence certified or operated by OPWDD, the residential provider has an obligation to file a Form OPWDD 147 and investigate, etc. If the person does not live in a residence certified or operated by OPWDD, but is receiving OPWDD operated or certified day services, the day services provider has an obligation to file the Form OPWDD 147 and investigate, etc. If the person does not live in an OPWDD operated or certified residence and does not attend an OPWDD operated or certified day service, but receives other services besides the Article 16 clinic services (e.g. respite, community habilitation, MSC), one of these providers is responsible for filing the Form OPWDD 147 and investigating, etc. If these providers are unable to agree regarding which one will be responsible, the DDSO can decide which is responsible. If the person is only receiving clinic services and no other services in the OPWDD system, then the clinic is responsible for filing a Form OPWDD 147 and investigating, etc.

If the person with a developmental disability is a child, in addition to the responsibility of the agency in the OPWDD system discussed above, there is a legal obligation for clinic staff to report to the Statewide Central Register of Child Abuse and Maltreatment.

If the person with a developmental disability is an adult, in certain circumstances a referral must be made to the local PSA/APS. If the person receives certain types of services in the OPWDD system, PSA/APS is not responsible for investigating and no report should be made to PSA/APS (except when their assistance is necessary for a specific purpose). If the person receives an OPWDD operated or certified residential or day program service, an HCBS waiver service, and/or Medicaid Service Coordination, then a referral should not be made to PSA/APS. These services include (but are not limited to) all residential services, day treatment, day habilitation,



prevocational services, supported employment services (SEMP), and HCBS waiver respite. If the person does not receive any of these services (e.g. only receives services from the Article 16 clinic or clinic services plus family support services), the clinic must make a referral to PSA/APS. PSA/APS is responsible to investigate and intervene. In the case when an investigation is conducted by Child Protective Services (CPS) or PSA/APS, the provider still has an obligation to file a Form OPWDD 147 and conduct their own investigation, etc. The provider should collaborate with CPS or PSA/APS if they are also conducting an investigation. (See the Part 624 Handbook for further information on adult abuse (Appendices 8-10 and child abuse (Appendices 5-7.)

If the Article 16 clinic is responsible for filing the Form OPWDD 147, investigating, etc., this can be assigned to anyone in the agency. The discovering clinician would not typically be responsible.

