



Putting People First

Memorandum

To: Provider Associations
 Voluntary Provider Agency Executive Directors
 Developmental Disabilities State Operations Office Directors
 Developmental Disabilities Regional Office Directors
 IBR Director
 Commissioner's Advisory Council
 DDPC Consumer Caucus
 OPWDD Required Regulations Mailing List

From: Barbara Brundage, Director ^{BB}
 OPWDD Regulatory Affairs Unit

Date: December 23, 2013

Re: Emergency Regulations – Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management

Effective: Wed., December 25, 2013
Comments Due: Monday, February 24, 2014

Suggested distribution:

Administrators and Management Staff
 Incident Coordinators and Investigators
 Quality Assurance/Quality Improvement Staff
 Qualified Intellectual Disabilities Professionals and Clinical Staff
 Medicaid Service Coordination Staff

Purpose:

OPWDD is filing emergency regulations effective December 25, 2013 to implement provisions of the Protection of People with Special Needs Act (PPSNA) and make reforms in incident management. The new emergency regulations replace prior emergency regulations that were effective on June 30, 2013 and September 26, 2013.

Please refer to the summary and text of the emergency regulations for specific information about the new requirements. These documents can be found on OPWDD’s website at www.opwdd.ny.gov. Look under “Regulations.”

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Changes in provisions:

The new emergency regulations include most of the same provisions that were in the June 30, 2013 and September 26, 2013 emergency regulations. However, a number of changes were made as noted below. In addition, technical or grammatical corrections were made throughout the text. Changes in the new emergency regulations include:

- 624.3(b)(9)(ii)(a) and (b): Provisions were modified to clarify definitions of reportable *seclusion* and *time out*. The changes were made because the statutory definitions of seclusion and time out in the PPSNA differ from those used in OPWDD's regulations on person-centered behavioral interventions in 14 NYCRR Section 633.16. Specifically, the definition of reportable seclusion was expanded to state that seclusion is prohibited except as permitted by Section 633.16.

OPWDD had previously prohibited any use of seclusion (previously defined as the placement of a person in a secured room or area from which he or she cannot leave at will); however, because the PPSNA expanded the definition of seclusion to encompass circumstances in which an individual perceives he or she cannot leave at will, the definition of reportable seclusion was expanded and a note was added to clarify that the use of “exclusionary time out”, which may be perceived as seclusion, may be included in a formal behavior support plan and implemented in accordance with the conditions and limits set forth in paragraph 633.16(j)(3). (See pages 7 and 8 of the text.)

- 624.5(g)(4): Provisions were modified concerning reclassification of incidents. (See page 21 of the text.)
- 624.5(m): Provisions specifying the time that incidents are closed were changed. These changes affect the timing of the release of records pursuant to Section 624.8 in accordance with Jonathan’s Law. Section 624.8 requires that records be released no later than 21 days after closure of the incident, for requests made prior to closure. (See pages 27 and 28 of the text.)
- 624.5(t)(2): A new provision in the September 26, 2013 emergency regulations that required agencies to include a non-retaliation provision in new or renewed contracts, effective January 1, 2014, was modified to specify that the requirement is applicable only to contracts for services that involve regular and substantial physical contact with persons receiving services. (See page 31 of the text.)
- 624.6(l): A new provision was added to explicitly state that reports of *Obstruction of reports of reportable incidents* that are reported to the Justice Center and/or OPWDD are not subject to the notification requirements in Section 624.6. (See page 39 of the text.)

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- 624.8(g): Provisions related to dissemination of records released in accordance with Jonathan's Law were changed to conform to a new law (Chapter 395 of the Laws of 2013). (See page 47 of the text.)
- 633.24(c)(6): New provisions were added on Statewide Central Register of Child Abuse and Maltreatment (SCR) checks for employees of registered providers. OPWDD is instituting a new process for conducting checks of the SCR for employees of registered providers. Basically, OPWDD will submit the SCR request and send information to the registered provider. The changes in the regulation reflect the new process. For more details about the process see additional OPWDD guidance on the OPWDD website. (See page 82 of the text.)

Future information:

OPWDD will continue to post additional information and guidance on its website as information becomes available. Finally, OPWDD will provide technical assistance to provider agencies when needed.

Information about the implementation of the Justice Center requirements and OPWDD's new incident management requirements can be found at:

http://www.opwdd.ny.gov/opwdd_resources/incident_management/home. Provider agencies should check the website frequently for the most up to date information.

OPWDD also revised its curriculum pertinent to incident management to reflect the changes, which will assist agencies in training their staff in the new requirements. The revised curriculum can be found at http://www.opwdd.ny.gov/opwdd_careers_training/training_opportunities/resources_for_providers_and_instructors/training_curricula/praise/instructor-manual

Public comments:

OPWDD does not intend to permanently adopt these emergency regulations. Therefore, the emergency regulations that were promulgated have NOT been proposed. While the State Administrative Procedure Act does not include requirements for a formal comment period for emergency regulations, OPWDD invites comments from the public on the emergency regulations to assist in the process of evaluating the requirements. OPWDD intends to permanently adopt regulations containing similar provisions at some point in the future.

Please note when developing comments that OPWDD may not have the discretion to change specific provisions of the regulations that are in conformance with the PPSNA.

Questions and comments received in response to the June 30, 2013 and September 26, 2013 emergency regulations were especially helpful in development of guidance to the field.

The December 25, 2013 emergency regulations will expire in late March 2014 and OPWDD expects to

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file similar emergency regulations or emergency/proposed regulations at that time to keep in force all requirements that are essential to coordination with the Justice Center. OPWDD will consider making changes in the regulations filed in March in the provisions that are discretionary.

In order to be considered in the development of the future emergency regulations, written comments about the emergency regulations should be sent no later than Monday, February 24, 2013. Comments should be addressed to:

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If you have any questions about complying with the provisions of the emergency regulations or other aspects of incident management, contact the OPWDD Incident Management Unit at Incident.Management@OPWDD.ny.gov.

Thank you.