

Justice Center

AGENCY BEST PRACTICES

October 21, 2014

CP Annual Conference

Agenda

- The Justice Center ...Then & Now
- Group Activity
- Agency Best Practices

The Measure of a Society:
Protection of Vulnerable Persons
in Residential Facilities
Against Abuse & Neglect

Report submitted to
Governor Andrew M. Cuomo

By
Clarence J. Sundram
Governor's Special Advisor on Vulnerable Persons

December 2011

Recommendations from the Sundram Report

- Common and consistent definitions
- Statewide, centralized 24-hour reporting hotline
- Consistent requirements for reporting
- Common standards for investigations
- Improved processes for incident review committees
- Centralized repository of substantiated cases

Protection of People with Special Needs Act

Key Elements:

- ✓ Created the Justice Center
- ✓ Created consistent definitions of abuse and neglect
- ✓ Provided for proportional and progressive discipline including termination, for staff responsible for abuse or neglect
- ✓ Strengthened penal laws.

Protection of People with Special Needs Act

More Specifically:

- Incident Reporting, Investigation, and Prevention
- Prevents individuals found responsible for egregious or repeated acts of abuse from working in human services
- Arrest and Prosecution of Crimes Committed against people receiving services
- Consolidates pre-employment checks
- Analyzes trends to predict and prevent abuse
- Advocates on behalf of people with disabilities and special needs



GROUP ACTIVITY

GROUP ACTIVITY

Question to Answer:

- What is our responsibility to staff regarding the Justice Center and how do we walk the line between supporting our staff, protecting individuals, and maintaining the integrity of investigations?

Areas to Consider:

- Pre-Hire
- Orientation
- During the course of an investigation



Cerebral Palsy Associations
of New York State

Where possibilities become realities

Agency Best Practices

THE JUSTICE CENTER AND YOU

Here are 10 important things to know

VPCR Hotline: 855-373-2122

1. **The Justice Center** is a **law enforcement agency**, which means it has the ability to press criminal charges and prosecute.
2. The Justice Center maintains a **Staff Exclusion List** of anyone found responsible for serious abuse or neglect of a person with special needs.
3. Anyone entered onto the **Staff Exclusion List** is prohibited from ever working again with vulnerable persons in New York State.
4. **Anyone** can call and report to the Justice Center, not just employees.
5. You are a **mandated reporter** and **are required** to report alleged abuse or neglect to the Justice Center.
6. When reporting an incident to the Justice Center, you **must** provide your name and contact information.
7. **As a mandated reporter, you have the right to:** immunity from liability and protection from retaliation by the agency when making a good faith report to the Justice Center.
8. If you are identified as the subject of an investigation, **your name, address, date of birth, and Social Security #** is required to be provided to the Justice Center as part of the investigation.
9. **As the subject of an investigation, you have the right** to have a union delegate present during your interview.
10. As the subject of a substantiated abuse or neglect incident, you have the right to appeal the decision.



INCIDENT TELEPHONE NOTIFICATIONS – ALL BOROUGHS

REPORTABLE INCIDENTS (ABUSE/NEGLECT AND SIGNIFICANT INCIDENTS)	SERIOUS NOTABLE OCCURRENCES (INCLUDING DEATHS)	MINOR NOTABLE OCCURRENCES
<p>ADMINISTRATOR/VP (After hours notify the Administrator on Call)</p> <p>OPWDD IMU – Metro: Selina Hughes 718-983-1705 Brooklyn: Lisa Kois 518-408-2180 Staten Island: Selina Hughes 718-983-1705 Queens: Mary Ellen Kaufold 631-416-3844 (After hours notify the OPWDD Central Hotline 888-479-6763) <i>* Provide: Your name, title, the agency you are calling from, telephone number where you can be reached, the name of the involved individual(s), the date the incident occurred or was discovered, the classification, as well as a description of the incident and protections implemented.</i></p> <p>JUSTICE CENTER VPCR – 855-373-2122 <i>* Person reporting will need to call the Justice Center. All other witnesses and the first Supervisor that the reporter informs is to call the Justice Center or complete the web based form found at https://vpcr.justicecenter.ny.gov/vw/. Information to be provided to the Justice Center: details regarding all parties involved, the incident, location and immediate protections will need to be provided, if known (i.e. ER, staff suspensions, first aid, 911 called, etc.)</i></p> <p>FAMILY OR PRIMARY CORRESPONDENT <i>* Offer a meeting to discuss the incident and document the response to the offer on page 2 of the occurrence report. If family is not reached at the first attempt, document attempts until family is contacted.</i></p> <p>MSC</p> <p>For Physical and Sexual Abuse only</p> <p>LAW ENFORCEMENT – Local Precinct or 911 <i>* Obtain the name and badge number of the person notified and document if the incident is being accepted for police investigation</i></p> <p>WILLOWBROOK CLASS ONLY: CAB REPRESENTATIVE CAB MAIN OFFICE – 718-477-8800 (after hours 718-887-4986) LITIGATION SUPPORT – Lori Lehmkuhl 518-473-6026 BOROUGH SPECIFIC MHLS REPRESENTATIVE</p>	<p>ADMINISTRATOR/VP (After hours notify the Administrator on Call)</p> <p>OPWDD IMU – Metro: Selina Hughes 718-983-170586 Brooklyn: Lisa Kois 518-408-2180 Staten Island: Selina Hughes 718-983-1705 Queens: Mary Ellen Kaufold 631-416-3844 (After hours notify the OPWDD Central Hotline 888-479-6763) <i>* Information to be reported: Your name, title, the agency you are calling from, telephone number where you can be reached, the name of the involved individual(s), the date the incident occurred or was discovered, the classification, as well as a description of the incident and protections implemented.</i></p> <p>FAMILY OR PRIMARY CORRESPONDENT <i>* Offer a meeting to discuss the incident and document the response to the offer on page 2 of the occurrence report. If family is not reached at the first attempt, document attempts until family is contacted.</i></p> <p>MSC</p> <p>WILLOWBROOK CLASS ONLY: CAB REPRESENTATIVE CAB MAIN OFFICE – 718-477-8800 (after hours 718-887-4986) LITIGATION SUPPORT – Lori Lehmkuhl 518-473-6026 BOROUGH SPECIFIC MHLS REPRESENTATIVE</p> <p>Theft of \$15 or more Law Enforcement – Local Precinct or 911</p> <p>DEATH REPORTING LINE: 855-373-2124 <i>* All deaths must be reported to the Justice Center within 24 hours of the occurrence or discovery.</i></p>	<p>ADMINISTRATOR/VP (After hours notify the Administrator on Call)</p> <p>FAMILY OR PRIMARY CORRESPONDENT <i>* Offer a meeting to discuss the incident and document the response to the offer on page 2 of the occurrence report. If family is not reached at the first attempt, document attempts until family is contacted.</i></p> <p>MSC</p> <p>WILLOWBROOK CLASS ONLY: CAB REPRESENTATIVE CAB MAIN OFFICE – 718-477-8800 (after hours 718-887-4986) LITIGATION SUPPORT – Lori Lehmkuhl 518-473-6026 BOROUGH SPECIFIC MHLS REPRESENTATIVE</p> <p>Only for Theft or Financial Exploitation OPWDD IMU – Metro: Selina Hughes 718-983-1705 Brooklyn: Lisa Kois 518-408-2180 Staten Island: Selina Hughes 718-983-1705 Queens: Mary Ellen Kaufold 631-416-3844</p> <p>Theft of \$15 or more Law Enforcement – Local Precinct or 911</p> <p>(After hours notify the OPWDD Central Hotline 888-479-6763) <i>* Information to be reported: Your name, title, the agency you are calling from, telephone number where you can be reached, the name of the involved individual(s), the date the incident occurred or was discovered, the classification, as well as a description of the incident and protections implemented.</i></p>

CLASSIFICATIONS FOR INCIDENTS

<u>REPORTABLE INCIDENTS (ABUSE/NEGLECT, SIGNIFICANT INCIDENTS)</u>	<u>SERIOUS NOTABLE OCCURRENCES</u>	<u>MINOR NOTABLE OCCURRENCES</u>
<p>Abuse/Neglect: Physical Abuse</p> <p>Sexual Abuse</p> <p>Psychological Abuse</p> <p>Deliberate inappropriate use of restraints</p> <p>Aversive Conditioning</p> <p>Obstruction of reports of reportable incidents</p> <p>Unlawful use or administration of a controlled substance</p> <p>Neglect</p> <p>Significant Incident: Conduct between individuals receiving services</p> <p>Seclusion</p> <p>Unauthorized use of time out</p> <p>Medication error with a dverse effect</p> <p>Inappropriate Use of Restraints</p> <p>Other mistreatment</p> <p>Missing Person</p> <p>Choking, with known risk</p> <p>Self-abusive behavior with injury – more than first aid</p>	<p>Injury – Hospitalization or Observation b/c of injury</p> <p>Unauthorized Absence</p> <p>Death</p> <p>Choking, no known risk</p> <p>Theft or financial exploitation (greater than \$100 or any theft involving a debit card or public benefit card regardless of the amount)</p> <p>Sensitive Situation</p> <hr/> <p>*ICF Violation –Abuse or Significant Incidents Any incident involving an individual living in an ICF must be called in to the Administrator. The Administrator will speak directly to Central Office for classification and proper notifications.</p>	<p>Injury – More than first aid provided and any positive findings on diagnostic testing (x-ray, ct scan, etc.)</p> <p>Theft or financial exploitation (personal funds greater than \$15 and less than or equal to \$100 that does not involve a credit, debit, or public benefit card and that is an isolated event or property/belongings)</p>

Frequently Asked Questions (FAQ) regarding investigations

1. **What is an investigation?**
 - An investigation is a systematic collection of information to describe and explain an event or a series of events.
2. **Why investigate?**
 - An investigation of all incidents (Reportable Abuse and Neglect, Reportable Significant Incidents, Serious Notable Occurrences and Minor Notable Occurrences) is required of all OPWDD agencies. This process is in place to protect individuals and employees while Aspire determines what happened and how to prevent the incident from happening again.
3. **What is the process once an incident has been identified?**
 - An incident is reported to the appropriate state oversight agency (i.e. the Justice Center, OPWDD) the Quality Assurance Department.
 - If reported to the Justice Center (JC), the JC determines who will investigate the incident. The JC, OPWDD, or the Aspire
 - If Aspire is assigned to investigate the incident, the Quality Assurance Department assigns a Certified Investigator.
 - The investigator collects all the evidence – testimonial, documentary, physical and demonstrative.
 - The investigator will contact and interview the individual, all witnesses and the subject of the investigation.
 - Upon completion of all interviews and the collection of all evidence, the investigator will evaluate the evidence and draw conclusions to explain the event.
 - The investigator will write a final report and forward the report to the Vice President of Quality.
 - The Vice President of Quality will review the report and share it with the Agency's incident review committee for final approval.
 - The incident review committee will review the investigation to determine if the investigation is thorough. The committee can request additional information or clarification from investigator.
4. **How long is the agency's investigative process?**
 - It is difficult to determine when an investigation will be completed because each allegation varies in complexity.
 - Each investigator is made aware of their responsibility to conduct the investigation in a thorough and timely manner, typically completing an investigation within 30 days.
 - If the Justice Center is investigating the incident, they have 60 days to complete the investigation.
5. **Who is aware of the allegation/investigation?**
 - Once an allegation is made the following individuals will be notified of the allegation as per New York State Regulations: President and CEO, Vice President of the Division, Aspire's Quality Assurance Department, the individual and/or the individual's parent or guardian, the individual's Medicaid Service Coordinator (MSC), the subject of the investigation, and the immediate supervisor in which the allegation was reported. As applicable, Human Resources, CPS/APS, OPWDD, and/or the Justice Center.
6. **Who can I talk to about the allegation or the investigation?**
 - The Agency has a compelling interest in protecting the integrity of all investigations. This includes evidence protection and ensuring that witnesses do not experience any intimidation or harassment from their participation in an investigation. It is necessary that the Agency require strict confidentiality of all information during the course of an investigation. All persons involved in the investigation must refrain from sharing information about an ongoing investigation in order to avoid:
 - Harassment and intimidation of a witness.
 - Destruction of evidence.
 - Fabrication of testimony.
 - Attempts to cover up the event(s) that occurred.

r concerns regarding allegations should be directed to the Quality Assurance Department. All employees involved or aware of an investigation **MUST NOT** discuss the information with anyone including individuals served, co-workers, and supervisors.

Investigation?

Who are the subject of the investigation or identified as possible witnesses to the incident cooperate with the investigator. All employees have an obligation to respond honestly to the interview. Failure to participate in an investigation may result in discipline, up to and including termination.

Representation during the investigative process?

Aspire's policy is that union employees may have UCPEU representation as appropriate during investigations.

Conclusions of an investigation into Abuse and Neglect allegation?

- The findings indicate that the preponderance of the evidence supports that the reported abuse has occurred. This information is entered into the personnel file of the subject of the investigation.

nd - The findings indicate that the preponderance of the evidence does not meet the burden to substantiate that the allegation of abuse has occurred. No information is entered into the personnel file of the subject of the investigation.

The outcome of the investigation of Abuse and Neglect?

At the conclusion of an investigation will be notified by their supervisor at the conclusion of the investigation. If the investigation was reported and accepted by the JC, the Justice Center will provide the Subject with a copy of the investigation file.

The incident review committee, oversight bodies (OPWDD and/or the Justice Center), Human Resources, and the Vice President of the Division will also be notified of the conclusion of the investigation.

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When alleged abuse or neglect are reported, the investigator must request that the Justice Center in the Statewide Central Register (SCR) for any indicated cases of child abuse or neglect on the part of known subjects of the investigation.

Employment from Aspire of WNY prior to the completion of an investigation?

Investigations that occur while an employee is on leave from employment prior to the completion of a pending investigation, the investigation team will attempt to contact the former employee in order to ensure a thorough investigation.

Investigation is delegated to the Justice Center for investigation?

The investigator will request contact information from Human Resources. Interviews will be conducted with the individual and witnesses. If necessary, the individual will be provided with UCPEU representation as appropriate.

Human Resources will provide Aspire of WNY written findings and recommendations for the agency to review. The investigation will be monitored through the incident review committee. If the investigation is determined to be substantiated, a category of abuse is assigned. You have the right to appeal the finding by an administrative law judge. You are entitled to legal representation in writing within 30 days. The request to appeal must be made in writing within 30 days.

What are the consequences for employees who are found responsible for seriously abusing or neglecting a person with special needs?

Special needs?

- The Justice Center maintains a "Staff Exclusion List," a statewide register that contains the names of employees found responsible for serious or repeated acts of abuse or neglect. Employees on the Staff Exclusion List (SEL) will be prohibited from being hired by any New York State funded and licensed agencies/providers that serve people with special needs. Service providers are required to check this list before hiring employees who will be working with anyone with special needs.

149 Investigatory Questions for Reportable Abuse and Neglect

The investigatory questions noted below each abuse definition should be used to determine if an allegation of Reportable Abuse and Neglect should be Substantiated or Unsubstantiated.

Physical abuse shall mean conduct by a custodian (see glossary, section 624.20) intentionally (see glossary, section 624.20) or recklessly (see glossary, section 624.20)

causing by physical force, or by a protracted impairment of the individual receiving services, which may include, but is not limited to, smothering, shaking, or other corporal punishment, or any other act necessary to protect the individual from harm.

Investigatory questions for physical abuse:

- Was the conduct intentional or reckless?
- Did the conduct cause physical injury or serious or protracted impairment of the individual?

Sexual abuse shall mean any conduct by a custodian in violation of article 130 or section 230 or 263 of the penal law, or any sexual contact with a minor, or any sexual contact with an adult who has a physical or mental disability.

any conduct by a custodian in violation of article 130 or section 230 or 263 of the penal law, or any sexual contact with a minor, or any sexual contact with an adult who has a physical or mental disability.

any sexual contact with a minor, or any sexual contact with an adult who has a physical or mental disability. However, if the contact shall not be considered sexual contact if the contact is necessary for a person to receive services, or if the contact is necessary for a person to receive services, or if the contact is necessary for a person to receive services.

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.

Investigatory questions for deliberate inappropriate use of restraints:

- Was the use of the restraint deliberately inconsistent with the individual's service plan or generally accepted treatment practices and was not used as a reasonable emergency intervention to prevent harm? And
- Did the restraint immobilize or limit the ability of the individual to freely move his or her arms, legs, or body?

Use of aversive conditioning shall mean the application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change the behavior of a person receiving services. Aversive conditioning may include, but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, blindfolds, and the withholding of meals and the provision of substitute foods in an unpalatable form. The use of aversive conditioning is prohibited by OPWDD.

Investigatory questions for use of aversive conditioning:

- Was a physical stimulus intentionally used for the purpose of inducing pain or discomfort in order to modify or change a behavior?

Unlawful use or administration of a controlled substance shall mean 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.

Investigatory questions for the unlawful use or administration of a controlled substance:

- Was the medication/drug administered without a prescription? and/or
- Was the substance in question a controlled substance as defined by article 33 of the public health law or a medication not approved for any use by the federal food and drug administration? or;

Was 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?

Investigatory Questions for sexual abuse:

- Did the custodian's conduct subject the individual 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?; or
- Was there sexual conduct between the custodian and the individual (regardless if the

Neglect shall mean any action, inaction, or lack of attention that breaches a custodian's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental, or emotional condition of a service recipient. Neglect shall include, but is not limited to:

failure to provide proper supervision, including a lack of proper supervision that results in conduct between persons receiving services that would constitute abuse as described in paragraphs (1) through (7) of this subdivision if committed by a custodian; failure to provide adequate food, clothing, shelter, or medical, dental, optometric or surgical care, consistent with Parts 633, 635, and 686, of this Title (and 42 CFR Part 483, applicable to Intermediate Care Facilities), and provided that the agency has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric, or surgical treatment have been sought and obtained from the appropriate parties; or

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.

Investigatory questions for Neglect:

- Was the action, inaction, or lack of attention of the custodian a breach of duty?
- Did the action, inaction, or lack of attention of the custodian result or could likely result in physical injury or serious or protracted impairment of the physical, mental, or emotional condition of the individual?

Center for Disability Services
CONTINUED EMPLOYMENT STATUS

*Completed for all target employees involved in Incidents/ Events with **employee culpability to the results.**

* The Director and HR Manager have determined the course of employee action at the conclusion of the investigation.

* If there is more than one employee involved, a new form is completed for each employee.

Name of Employee: _____

Program: _____ Date of Incident: _____

Classification: _____

What level of discipline **and** corrective action did you implement?

Why did you choose this corrective action?

Why did you believe that this decision to continue the employment of the employee **not** pose a risk to any of the individual's health & safety?

What is your plan (action & time frame) to monitor for prevention of reoccurrence to assure the continued health, safety and welfare of the individual services?

Who is responsible for implementation & follow through:

Name & Title

This decision was made in conjunction with

_____ on _____, 20____

(list all participants)

month & day

Signature & Title of Person Completing the form: _____

(HR Manager or Director ONLY) * Within 10 days of the completion of the investigation completed and to be submitted to the IRC Chairperson.

Date Completed: _____

Original to investigative file - Rcvd: _____

Cc: DED

PROCESS:

This form only applies to investigations of **Incidents or Events that involve consumer/client/ participants where an employee's action or inaction is culpable in the following categories:**

Physical Abuse	Sexual Abuse	Deliberate Inappropriate Use of Restraints
Neglect	Missing Person	Obstruction of Reports of Rep. Incidents
Unauthorized use of time out	Psychological Abuse	Use of Aversive Conditioning
Med Error with adverse effect	Other Mistreatment	Unlawful Administration of controlled substance
Missing Person	Seclusion	Conduct between person receiving services
Choking with Known Risk		
Self Abusive Behavior with injury		

Investigation will be completed and communicated to the Director of the Program with the findings and preliminary recommendations.

Director of the Program will consult with Human Resources Manager to determine course of action with the employee.

The Director of the Program and the Human Resources Manager will complete this entire form, to ensure that the safeguards and appropriate supervisory follow up will occur within 10 days of the completion of the investigation.

The form will then be submitted to the IRC Chairperson for review and evaluating enough of a description on course of action is appropriate within one business day.

The IRC Chairperson will present the plan to the Committee to monitor that the action plan to prevent reoccurrence is monitored to completion.

SHOULD ANY OF THIS PLAN BE MODIFIED IN ANY WAY, THIS INFORMATION NEEDS TO BE RESUBMITTED TO THE COMMITTEE IMMEDIATELY UPON THE CHANGE FOR REVIEW.



DATE

Dear Employee,

I am writing this letter in regards to your employment status with the Center for Disability Services. As you are aware there was an investigation involving the safety of one of our individuals. Following our preliminary investigation several issues surfaced that are a cause for concern. These relate to

At this time you will remain an active employee for the Center for Disability Services under a specific supervision plan. In addition to a _____ for job performance, you are being placed on _____ probation to ensure that you are putting into practice the trainings that have been provided you during your time at the program. If there are any performance related events during this time period your employment will be terminated immediately.

Due to the seriousness of this situation the Justice Center is actively investigating this incident. While we have concluded our investigation, it is still an open investigation in which you will be required to be available and cooperative with the process. Please again be aware that any future findings may result in further disciplinary action up to and including termination.

Sincerely,

Name
Title of the Supervisor

Cc: Personnel File

JUSTICE CENTER BEST PRACTICES TABLE OF CONTENTS

This CD is a compilation of resources that have been developed by either Aspire of WNY, Center for Disability Services or CP Associations of NYS – Metro Services. The purpose of this CD is to offer references of various materials to assist in creating and/or enhancing your organizations Best Practices related to adhering to the regulations involving Reportable Incidents within your own agency.

1. Tuesday, October 21, 2014 Justice Center Regulations Panel Presentation
2. Quick Reference Tips for Staff
 - Incident Definitions at a Glance
 - JC Hotline Poster
 - Justice Center and You Flyer
 - Keep People Safe
3. Quick Reference Tips for Supervisors
 - JC and OPWDD Notification Cheat Sheet
 - Incident Classifications
 - Supervisors Resources
 - HR and QI Investigations: What do I do as a supervisor?
 - Tips to use when suspending staff from work, pending outcome of an investigation
 - Tips on what to cover when meeting with returning “target” staff
 - Tips for follow up with Consumers Reporting an Incident when an Employee is the target
 - Tips to use when following up with staff who reported the incident
 - Tips to use when scheduling a follow up meeting with Qualified Person(s)
4. Justice Center Training PowerPoint
 - Justice Center and Incident Management Training
 - What to expect if you are involved in a Justice Center Investigation
5. Reference Materials – Investigations
 - 149 Investigatory Report Format
 - Continued Employment Status Form
 - EE letter pending JC findings
 - FAQs regarding investigations
 - Investigation File Order for Upload to OPWDD
 - Letter to target or subject of allegation of abuse or neglect
 - OPWDD 149 Investigatory Questions

Contact information for Panelists:

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Questions ?

Thank You!