

CLADDAGH COMMISSION, INC. OPERATIONS POLICY MANUAL

SECTION: GENERAL POLICY: INCIDENT AND ABUSE REPORTING PAGINATION CODE: 3.C.1

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Policy Statement

- 1) It is the policy of Claddagh Commission, Inc. to report and investigate all incidents and allegations of abuse in accordance with Part 624 and Part 625 of New York State Mental Hygiene law.
- 2) Policies/procedures shall be made known to all persons receiving services and their parent, guardian, or correspondent or advocate; to agency employees, interns, volunteers, consultants, and contractors. This may be done by providing a copy of the appropriate policies/procedures to those with a need to know (e.g., staff, consultants, family care providers) or as an overview to others.

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Date Approved by Board of Directors: 9/26/2013

Policy Standards

Minor Incident Reporting and Investigation

Incidents that do not rise to the level of being reportable incidents including abuse, neglect and significant incidents, or notable occurrences shall be documented in Therap on a General Event Report (GER).

Categories of Minor Incidents

- 1) Minor Injuries - Injuries to staff or individuals receiving services that require no other treatment than in-house first aid; or injuries in which the required treatment indicated “negative” results (e.g., no broken bones on an x-ray)
 - a) Explained – Cause of the injury is known
 - b) Unexplained – the cause of the injury is unknown (see below)
- 2) Medication Incidents - Incorrect or erroneous procedures relating to the handling and administration of medications without serious adverse effect to the participant’s health or welfare
- 3) Assaultive Behavior
- 4) Complaint
- 5) Theft - Any suspected theft or financial exploitation that is less than or equal to \$15.00 in value, that does not involve a debit, credit, or benefit card, and that is an isolated occurrence
- 6) Property Damage
- 7) Vehicle Accident – Any motor vehicle accident involving one or more individuals receiving services with minor injury.
- 8) Acting-Out Behavior
- 9) Self-Injurious Behavior
- 10) Other (Fire, etc.)

Minor Injuries of Unknown Origin

- 1) In instances where an injury is unexplained at the time of discovery, reasonable effort must be made to discover the cause of the injury and that effort must be documented on the Incident Reporting Form.
- 2) Furthermore, unexplained injuries must be reported to the Program Director within five (5) days of discovering the injury.
- 3) On at least an annual basis, the Internal Management Committee will review injuries of unknown origin and appropriate corrective measures taken, as applicable.

Review of Minor Incidents

- 1) The Program Director (or designee) is responsible for reviewing each situation to ensure that appropriate immediate action is taken and to determine the need for further investigation. The Program Director (or designee) is responsible for ensuring proper investigation and reporting of incidents brought to his/her attention.
- 2) Minor Incidents are tracked to determine if there are any trends. If so they are reported to the Incident Review Committee for consideration and recommendations.

Minor Notable Occurrences, Serious Notable Occurrences, Abuse, Neglect and Significant Incidents

Definition

- 1) Minor notable occurrences, serious notable occurrences, abuse, neglect and significant incidents are those events which, in accordance with the requirements of Part 624 and Part 625 regulations, are required to be recorded, reviewed, investigated and reported to designated parties according to

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established procedures of Claddagh; reviewed by a standing committee; and acted upon in an appropriate manner to safeguard the well-being of persons receiving services and to bring the matter to closure.

- 2) Minor notable occurrences, serious notable occurrences and reportable incidents including abuse, neglect and significant incidents are events or situations endangering a person's well-being and must be reported to OPWDD through a regulatory reporting system and documented in the Incident Report and Management Application (IRMA).
- 3) Any staff or witness to a reportable incident will immediately notify up their chain of command and then contact the Justice Center to report.

Categories of Minor Notable Occurrences & Serious Notable Occurrences

<i>Minor Notable Occurrence</i>	<i>Serious Notable Occurrences</i>
Injury - Any suspected or confirmed harm, hurt, or damage to a person receiving services, caused by an act of that person or another, whether or not by accident, and whether or not the cause can be identified, which results in a person requiring medical or dental treatment (see glossary) by a physician, dentist, physician's assistant, or nurse practitioner, and such treatment is more than first aid. Illness, in and of itself, shall not be reported as an injury or any other type of incident.	Any injury which results in the admission of a person to a hospital or 24 hour infirmary for treatment or observation because of the injury. (Note: If the injury is suspected to have been caused by abuse, the abuse is to be reported; see subdivision [c] of this section.)
	Unauthorized Absence - The unexpected or unauthorized absence of a person after formal search procedures (see glossary) have been initiated by the agency. Reasonable judgments, taking into consideration a person's habits, deficits, capabilities, health issues, etc., shall determine when formal search procedures should be initiated. Formal search procedures should be initiated immediately up on discovery for of a absence involving a person whose absence constitutes a recognized potential danger to themselves or others.
Theft or Financial Exploitation – Any suspected theft of a service recipient's personal (including funds or belongings) or financial exploitation, involving values of more than \$15.00 and less than or equal \$100.00 that does not involve a credit, debit or public benefit card, and is an isolated incident.	Any suspected theft of a service recipient's personal (including funds or belongings) or financial exploitation, involving values of more than \$100.00 or involves a credit, debit or public benefit card (regardless of amount involved), or a pattern of theft/financial exploitation involving a service recipient.
	Death – The death of any person receiving services, regardless of cause. 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 the agency.

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	<p>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, other than a reportable choking with known risk.</p>
	<p>Possible Criminal Acts - Actions by persons receiving services which are or appear to be a crime under New York State or Federal Law.</p>
	<p>Sensitive Situations - Those sensitive situations which, in the judgment of the chief executive officer, need to be brought to the attention of OPWDD as expeditiously as possible. Situations of delicate nature to the agency and are reported to ensure awareness of the circumstances. These include, but are not limited to possible criminal acts committed by an individual receiving services.</p>

Reportable Incidents – Significant Incidents (Certified Settings - Part 624)

- 1) Conduct between person receiving services – Conduct between one or more person receiving services that would constitute abuse as defined if committed by a custodian¹, except sexual activity involving consenting adults and who both consent to the activity.
- 2) Mistreatment – Conduct on the part of a custodian, that is inconsistent with the individual’s plan of service, generally accepted treatment practice, and/or applicable federal or state laws, regulations or policies and which impairs or creates a reasonably foreseeable potential to impair health, safety or welfare of individual receiving services.
- 3) Seclusion – The placement of an individual receiving services in a room or area which they cannot, or perceives that they cannot, leave at will.
- 4) 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.
- 5) Medication error with adverse effect – The administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription or order issues by the service recipients qualified health care practitioner, and which has an adverse effect on an individual receiving services.
- 6) Inappropriate use of restraints – The use of a restraint when the technique used, the amount of force used, or the situation in which the restraint is used is inconsistent with the plan of service, and/or applicable state or federal laws, regulations and/or policies. A restraint shall include the use of any manual, pharmacological or mechanical restraining devices to immobilize or limit the person’s ability to freely move their arms, legs or body.
- 7) Missing person – The unexpected absence of an individual receiving services that based on the person’s history and current condition exposes him or her to the risk of injury.
- 8) Choking with 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, involving an individual with a known risk for choking and written directive addressing that risk is already in place.
- 9) Self-abusive behavior, with injury – A self-inflicted injury to an individual receiving services that requires medical care beyond first aid.

¹ The term custodian here and throughout this policy is used by the Justice Center to refers to all employees, volunteers, contractor’s etc.

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Abuse

Defined

Abuse is defined as the maltreatment or mishandling of a person receiving services which would endanger the physical or emotional well-being of the person through the action or inaction on the part of anyone, including an employee, intern, volunteer, consultant, contractor, visitor, or others, whether or not the person is or appears to be injured or harmed. The failure to exercise one's duty to intercede on behalf of a person receiving services also constitutes abuse. While a person receiving services may have allegedly abused another person receiving services, it is necessary to take into consideration the aggressor's judgment and cognitive capabilities to determine whether the act is to be reviewed as an abuse allegation or as a behavioral problem. All allegations of abuse are to be reported on a standardized form; reviewed, investigated and reported to designated parties according to established procedures; reviewed by a standing committee; and acted upon in an appropriate manner by the chief executive officer to safeguard the well-being of persons receiving services and to bring the matter to closure. All such allegations of abuse must be immediately reported to The Justice Center and OPWDD in whose area the alleged abuse occurred and followed up in writing in the form and format specified by the commissioner.

Abuse is categorized as follows:

- 1) Physical abuse. Conduct by a custodian intentionally or recklessly causing by physical contact, physical injury or serious 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 not limited to hitting, slapping, biting, pinching, kicking, hurling, strangling, shoving, smothering, dragging, punching, shaking, burning, cutting or the use of corporal punishment. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any party.
- 2) Sexual abuse. Any sexual contact between a person receiving services and a custodian, employee, intern, consultant, contractor or volunteer of an agency is always considered to be sexual abuse and is prohibited. Any sexual contact between persons receiving services and others, or among persons receiving services, is considered to be sexual abuse unless the involved person(s) is a consenting adult. This shall not include those situations in which a person with a developmental disability who was a service recipient becomes an employee of a service provider organization and already has a relationship with another service recipient of the same or another service provider organization; in such a situation, this shall be noted in the person's service plan and the relationship shall not be considered as "sexual abuse" unless there is reason to believe that there is harassment, coercion, exploitation, etc. involved. Sexual contact is defined as the touching or fondling of the sexual or other intimate parts of a person, not married to the actor, for the purpose of gratifying the sexual desire of either party, whether directly or through clothing. Sexual contact also includes causing a person to touch anyone else for the purpose of arousing or gratifying personal sexual desires.
- 3) Deliberate inappropriate use of restraints. The use of a restraint when the technique used, the amount of force used, or a situation in which the restraint is used deliberately inconsistent with an individual's plan of service, 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 any other party. Restraint may also include pharmacological devices and medication.
- 4) Psychological abuse. The use of verbal or non-verbal conduct that may cause significant emotional distress to an individual receiving services. In order for an allegation of psychological abuse to be substantiated, 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/condition of the individual receiving services. Evidence of such effect must be supported by a clinical assessment performed by a physician, psychologist, nurse practitioner, licensed social worker, or mental health counselor.

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- 5) 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 safety, treatment, or supervision of an individual receiving services; actively persuading a custodian or other mandated reporter from making a report to the 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 and procedures; or for a custodian, failing to report a reportable incident upon discovery.
- 6) Use of aversive conditioning. The application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change behavior of a person receiving services. The use of any type of aversive conditioning is prohibited in any service recipient's plan of service.
- 7) Unlawful use or administration of a controlled substance. Any administration by a custodian to a service recipient of a controlled substance without a prescription, or other medication not approved for use by any food and drug administration. It also includes a custodian unlawfully using or distributing a controlled substance at the workplace while on duty.
- 8) Neglect. Any action or inaction that breaches a custodian's duty and results or is likely to result in physical injury or serious impairment of the physical, mental or emotional condition of a service recipient. This includes improper levels of supervision and failure to provide adequate medical care and follow up.

Initial Incident Report and Initial Allegation of Abuse Report (Certified Settings –Part 624)

- 1) Minor Notable Occurrences. The chief executive officer (or designee) shall be advised of all reportable incidents within 48 hours of their occurrence or discovery. An OPWDD 147 form shall be completed via IRMA within 48 hours of occurrence or discovery.
- 2) All Reportable and Serious Notable Occurrences. Any reportable incident or serious notable occurrences shall be reported immediately (but no later than 24 hours) upon observation or discovery to the chief executive officer (or designee). All reportable and serious notable occurrences shall be reported to OPWDD immediately via telephone. In addition, an OPWDD 147 form shall be completed in IRMA within 24 hours of occurrence or discovery by the program director.
- 3) The VPCR will be notified for reportable incidents immediately upon discovery. Every custodian witness or involved shall call the Justice Center toll free number or complete the web intake form (available online on the Justice Center's website) to report upon discovery of a reportable incident.
- 4) The OPWDD 147 will be completed in IRMA by the program director for any reportable incident, serious notable occurrence or minor notable occurrence.
- 5) The OPWDD 147 of any allegation of abuse is to be sent to Mental Hygiene Legal Services within three working days.
- 6) Any reportable incident, serious notable occurrence, or minor notable occurrence is to be thoroughly investigated by the chief executive officer or designated senior staff unless the investigation has been picked up by the Justice Center or OIIA staff. A full investigation shall take place immediately with further investigation undertaken commensurate with the seriousness and circumstances of the situation depending on instruction from the Justice Center. All such investigations shall be documented. The incident management director will forward any documentation and investigatory evidence to the Justice Center and/or OIIA upon request.
- 7) Death reporting shall be submitted by the chief executive officer or designee through a statewide, toll-free telephone number to the Justice Center within 24 hours. OPWDD shall be notified immediately and filed as a serious notable occurrence, unless the death occurred as a result of abuse or neglect. In these cases, the death will be filed as a reportable incident. Subsequent information should be forwarded to the Justice Center within five working days.

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Investigation, Follow-Up and Records Maintenance

- 1) No one may investigate any reportable incident, serious notable occurrences or minor notable occurrences in which he or she was directly involved, in which his or her testimony is incorporated, or in which a spouse or immediate family member was directly involved. When a reportable incident or serious notable occurrence is to be investigated, every effort is to be made to have someone conduct or review the investigation who is not an immediate supervisor of staff directly involved with the situation or event so as to be as disinterested and objective a party as possible. Those who are members of a standing committee to review and monitor incidents shall not routinely be assigned the responsibility of investigating such events.
- 2) Unless deemed necessary by OPWDD, multiple independent investigations of a single situation are not required.
- 3) If investigations have been picked up by the Justice Center or OIIA, the agency shall not conduct its own separate investigation into the incident, unless directed to do so by either entity.
- 4) With regard to all incidents, a person's safety must always be the primary concern of the chief executive officer. He or she shall take whatever measures appear to be reasonable and prudent to ensure the protection of a person from further harm, injury, or abuse, and to provide prompt treatment or care. When appropriate, an employee, intern, volunteer, consultant, or contractor alleged to have abused a person shall be removed from immediate proximity to, or responsibility for, the person.
- 5) Appropriate action is to be taken when there is an injury, which, upon review or investigation is determined to be of unknown origin. On no less than an annual basis such injuries are to be reviewed; overall corrective measures taken, as may be applicable; and trends are to be analyzed.
- 6) OPWDD has, pursuant to statute, the right to review and/or investigate any incident, regardless of the source of the information. All relevant records, reports and/or minutes of meetings at which the incident or alleged abuse 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. Such reviews and/or investigations include those conducted by OIIA. OPWDD shall ensure confidentiality.
- 7) Investigation records and subsequent reports or documentation of investigations shall be maintained so as to protect the privacy of persons receiving services, anyone else involved, or others whose names may appear in the report. Such reports shall be retrievable by the person's name and, if used, filing number or identification code.

Irregular Situations (Non Certified Settings - Part 625)

- 1) Part 625 regulations shall be followed when handling irregular situations that occur in non-certified settings such as community habilitation, MSC, non-certified respite, not under the auspices of the agency.
- 2) A reportable incident, serious notable occurrence, or minor notable occurrence occurs while a person is still directly under the auspices of Claddagh, but is not physically at the facility (e.g., in a restaurant, at the doctor, visiting family, in school, on a vacation trip, at camp, receiving non-certified services at a non-certified location) and agency staff supervision was not required, nor was staff present at the time of the incident.
- 3) A reportable incident, serious reportable incident, or abuse is alleged by a facility to have occurred while a person was under the supervision of another agency's facility (e.g., day treatment facility staff alleges that a situation occurred at a residence, residential staff alleges that a situation occurred at a workshop).
- 4) A reportable incident, serious notable occurrence, or minor notable occurrence is alleged to have occurred while a person, who resides in one of the agency's certified settings was at another location (e.g., at a family home, at a friend's home that is not a certified setting).
- 5) All non-certified programs and settings fall under OPWDD Part 625 and do not require Jonathan Law reporting, or Justice Center notification. The OPWDD 150 shall be completed through IRMA

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documentation of the event by the program director. Such incidents do not require standing committee review.

Reporting Updates

- 1) OPWDD and the Justice Center shall be kept informed on at least a monthly basis of the progress or results of investigations of incidents.
- 2) Such information shall be submitted and updated in IRMA until the close of an incident.
 - a) status (open or closed), and until closure, a brief review of findings of the investigation since submission of the last report in IRMA to OPWDD;
 - b) upon closure of an alleged abuse case, the resolution: substantiated or unsubstantiated; and
 - c) corrective and/or preventative actions taken.
- 3) Reports for all Justice Center incidents shall be submitted to the Justice Center in their entirety. This includes all investigative materials, copies of evidence and witness statements.

Notifications

- 1) Claddagh shall ensure notification by appropriate means, as follows:
 - a) For children under 18 years of age, notification of alleged abuse must immediately be made to the Statewide Central Register of Child Abuse and Maltreatment (1-800-342-3720).
 - b) For all reportable incidents reportable incidents and deaths, the Justice Center shall be contacted (1-855-373-2122). Death reporting is called into the Justice Center via a separate number (1-855-373-2124)
 - c) For all reportable incidents reportable incidents and deaths, OPWDD shall be contacted immediately upon discovery of the incident. (1-888-479-6763)
 - d) Mental Hygiene Legal Services shall be contacted within 48 hours for all reportable abuse and neglect incidents.
 - e) 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 and police.
 - f) For all serious notable occurrences, OPWDD shall be contacted immediately and the information will be entered into IRMA within twenty four hours by the program director.
 - g) For all minor notable occurrences, the program director will enter all of the incident details into IRMA within 48 hours of discovery.
 - h) In the case of any reportable incident, serious notable occurrences, or minor notable occurrences where a crime may have been committed, it is the responsibility of the chief executive officer, or designee to notify law enforcement officials immediately.
- 2) For all reportable incidents, serious notable occurrences and minor notable occurrences, a person's guardian, parent or correspondent/advocate, is to be notified within 24 hours of the completion of the initial incident report, unless:
 - a) there is written advice from the guardian or parent that he or she does not want to be notified; or
 - b) the involved person is a capable and objects to such notification being made; or
 - c) the alleged abuser is one of the aforementioned parties.
- 3) For reportable incidents involving abuse and neglect:
 - a.) The investigator shall provide the target of the allegation with a certified letter informing them that they are the subject of an allegation of abuse and have been placed on administrative leave pending outcome of the investigation. A copy of this letter shall be securely emailed to the agency's Incident Management Unit (IMU) liaison at OPWDD in West Seneca.
 - b.) The investigator will complete the Statewide Central Register (SCR) Check and submit to the Justice Center at subjectsearch@justicecenter.ny.gov to request that the Justice Center search the SCR for known subjects of allegations of abuse.
- 4) For reportable incidents, serious notable occurrences and minor notable occurrences:

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- a) Claddagh shall provide telephone notice to one of the following: a person's guardian, parent, spouse or adult child. However, Claddagh shall not provide such notice to a party in the following situations:
 - i) there is written advice from the guardian, parent, spouse or adult child that he or she objects to such notification to himself or herself (notice shall then be provided to another party who is a guardian, parent, spouse or adult child, if one exists); or
 - ii) if the person receiving services is a capable adult who objects to such notification being made. If the capable adult objects to notification of all parties who are a guardian, parent, spouse or adult child, the capable adult shall be provided the notice described in this subdivision; or
 - iii) if the guardian, parent, spouse or adult child is the alleged abuser.
- 5) The telephone notice shall be provided as soon as reasonably possible, but no later than 24-hours after completion of the initial incident or initial allegation of abuse report.
- 6) The telephone notice shall include:
 - a) a description of the event or situation and a description of initial actions taken to address the incident or alleged abuse, if any;
 - b) an offer to meet with the chief executive officer or designee to further discuss the incident or allegation of abuse; and
 - c) for allegations of abuse, an offer to provide information on the status and/or resolution of the allegation. Requested information shall be provided verbally or in writing, unless the person is a capable adult and objects to the provision of this information. In providing such information as is requested, Claddagh shall ensure the privacy rights of other parties.

Methods of Notification

- 1) 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.
- 2) Notice may be made in person instead of by telephone, and in certain circumstances, via electronic communication, if done so securely and at the request of the party receiving the notice.
- 3) Notice may be provided by other methods at the request of the party receiving the notice.
- 4) 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; Claddagh shall provide notice to the following parties in the manner (and subject to the same limitations) specified in this subdivision:
 - a) the person receiving services, if the person is a capable adult; and
 - b) the person's advocate or correspondent (if one exists).

Requests for the Initial Incident or Allegation of Abuse Report

Process for Requests

- 1) Requests may be made for a copy of the initial incident or allegation of abuse report by the person receiving services (or who formerly received services), guardian, parent(s), or correspondent/advocate.
- 2) Such request shall be in writing. However, at the discretion of Claddagh, documented verbal requests may be accepted in lieu of a written request.
- 3) If the person is a capable adult and objects to the provision of the initial incident or allegation of abuse report, such report shall not be provided to otherwise eligible requestors.
- 4) If an otherwise eligible requestor is the alleged abuser, the initial incident or allegation of abuse report shall not be provided to that requestor.

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Redaction

- 1) The copy of the report shall incorporate redaction of the names of employees who are involved in the incident or alleged abuse 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.
- 2) In addition, if the report identifies a particular party as having made a child abuse or maltreatment report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation, those names as well as any information tending to identify the party shall be redacted.
- 3) The copy of the initial incident report or initial allegation of abuse report shall be provided to an eligible requestor as soon as reasonable, but in no event more than 10 days after the request.
- 4) The copy of the initial incident or allegation of abuse report shall be accompanied by a statement that all contents are preliminary and have not been substantiated.

Report On Actions Taken

- 1) Claddagh shall provide a report on initial actions taken to address the incident or abuse allegation. Such report shall include:
 - a) any immediate steps taken in response to the incident or alleged abuse to safeguard the health or safety of the person receiving services; and
 - b) a general description of any initial medical or dental treatment or counseling provided to the person in response to the incident or alleged abuse.
- 2) Claddagh shall provide the report on actions taken to any party specified in this section who received the notification.
- 3) The report shall be provided within 10 days of the completion of the initial incident report or initial allegation of abuse report.
- 4) The report that is provided shall be in the form and format specified by the commissioner or in a similar format developed by Claddagh.
- 5) The report that is provided shall not include names of anyone who is involved in the incident or alleged abuse or the investigation or who are interviewed as a part of the investigation, or any information tending to identify such parties. In addition, the report shall not 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. Names of any such parties as well as any information tending to identify those parties shall be excluded or redacted.

The Following Documentation Shall Be Maintained:

- 1) 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;
 - a) any requests for a meeting or the initial incident report or allegation of abuse report;
 - b) meetings held in response to the request, and those present;
 - c) when the report on actions taken and any requested initial incident report or initial allegation or abuse report was provided;
 - d) a copy of the report on actions taken and any initial incident report or initial allegation of abuse report (with redaction) that was provided; and

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- e) 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.
- 2) For the purpose of redaction the term employee means any party who is, or formerly was:
 - a) directly employed by an agency; or
 - b) used by an agency to provide services substantially similar to those that are or could be provided by someone who is directly employed by an agency. Such parties shall include, but not be limited to: those who are employed by other entities on behalf of an agency and/or for the care and treatment of the person receiving services; consultants; contractors; or volunteers; or
 - c) a family care provider or family care substitute/respite provider; or a party living in the home of the provider.
- 3) Reported incidents and allegations of abuse which are not under the auspices of Claddagh Commission, are not subject to the notification requirements of this policy and are subject to Part 625.
- 4) An individual's service coordinator, or MSC supervisor is to be notified of all reportable incidents, serious notable occurrences and minor notable occurrences within 24 hours of the completion of the initial incident report unless the service coordinator is the alleged abuser. If the service coordinator is the alleged abuser, notification shall be made to the supervisor of the service coordinator or an administrator of Claddagh providing service coordination.

Administrative Appeal Process - Denial of Requested Records/Documents

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

Incident Review Committee

- 1) Claddagh Commission, Inc. has an Incident Review Committee to review and monitor reportable incidents, serious notable occurrences and minor notable occurrences that occur to people in its facilities as part of certified programs; or to review situations which involve any of its employees, interns, volunteers, consultants, or contractors.
- 2) The Incident Review Committee reviews reportable incidents, serious notable occurrences and minor notable occurrences that occur in certified settings only to:
 - a) ascertain that reportable incidents, serious notable occurrences and minor notable occurrences were reported, managed, investigated and documented consistent with the provisions of this policy and with agency policies and procedures and to make written recommendations to the

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- appropriate staff and/or the chief executive officer to correct, improve or eliminate inconsistencies;
- b) ascertain that necessary and appropriate corrective, preventive, and/or disciplinary action has been taken to protect persons receiving services from further harm and to safeguard against the recurrence of similar incident and to make written recommendations to the chief executive officer to correct, improve or eliminate inconsistencies;
 - c) ascertain if further investigation or if additional corrective, preventive, and/or disciplinary action is necessary, and if so, to make appropriate written recommendations to the chief executive officer relative to the incident.
 - d) identify trends in minor incidents, reportable incidents, serious notable occurrences, and/or minor notable occurrences (e.g., by type, person, site, employee involvement, time, date, circumstances, etc.), and to recommend appropriate corrective, preventive, and/or disciplinary action to the chief executive officer to safeguard against such recurring situations or incidents; and
 - e) ascertain and ensure the adequacy of Claddagh's reporting and review practices, including the monitoring of the implementation of approved recommendations for corrective and preventive action.
- 3) The Incident Review Committee shall:
- a) meet no less frequently than on a monthly basis and always within one month of the report of a reportable incident, serious notable occurrence or minor notable occurrence, or sooner should the circumstances so warrant;
 - b) review and monitor all reportable incidents that are reported, which may be done by a subcommittee of the standing committee or by individual assignment to members of the standing committee; and maintain a record of such incident review, recommendations, and/or actions taken in such a manner as to provide for tracking and trending;
 - c) review and monitor all reportable incidents, serious notable occurrences and minor notable occurrences that are reported;
 - d) review and monitor investigatory procedures, but shall not perform the routine investigation of incidents;
 - e) make written recommendations to appropriate staff to eliminate or minimize similar reportable incidents, serious notable occurrence and minor notable occurrences; 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, serious notable occurrences and minor notable occurrences reviewed;
 - g) forward findings and recommendations to the chief executive officer and program within ten days of the meeting;
 - h) provide documentation that all reports of reportable incidents, serious notable occurrences and minor 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 event. This may be done by the full committee or a member of subcommittee reporting to 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, serious notable

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occurrences and minor notable occurrences; and corrective, preventive and/ or disciplinary action pertaining to identified trends; and

- l) interact with the governing body and comply with the policies in relation to the review and monitoring of all reportable incidents, serious notable occurrences and minor notable occurrences.

Organization and Membership of the Incident Review Committee

- 1) Members shall be appointed by the chief executive officer.
- 2) The Incident Review Committee may have other responsibilities in addition to specified responsibilities related to reportable incidents, serious notable occurrences and minor notable occurrences that occur in certified settings and fall under Part 624.
- 3) Membership of a standing committee shall include:
 - a) a member of the governing body;
 - b) at least two professional staff;
 - c) other staff, including professional, direct care or administrative staff, as deemed necessary by Claddagh to achieve the purposes of the committee pursuant to this section;
 - d) One licensed health care practitioner, including an RN, a physician, physician's assistant or nurse practitioner;
 - e) one individual receiving services;
 - f) one direct support professional; and
 - g) at least one representative of an advocacy group including a self-advocate, family member or other advocacy organization

Membership Limitations

- 1) The chief executive officer of Claddagh shall not serve as a member of the Committee, but may be consulted by the Committee in its deliberations.
- 2) The administrator of a service may be designated as a member. If he or she is not a member, an administrator may be consulted by the committee in its deliberations.

Case-Specific Requirements

- 1) There shall be representation by someone from or with knowledge of an agency's own organizational entity where the event, which is under discussion, occurred; or by someone who is familiar with the person(s) involved.
- 2) No committee member may participate in the review of any reportable incident in which he or she was directly involved, in which his or her testimony is incorporated, in which his or her spouse 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 action.

Minutes

- 1) The chairperson of a standing committee shall ensure that minutes are kept for all meeting.
- 2) Minutes addressing the review of reportable incidents, serious notable occurrences and minor notable occurrences shall clearly state the filing number or identification code of the report (if used), the person's full name and identification number (if used), and provide a brief summary of the situation (including date, location and type), that caused the report to be generated, committee findings (including reclassification of event, if applicable), and recommendations, and actions taken on the part of Claddagh as a result of such recommendations. Full names of all parties involved are to be recorded (not initials).
- 3) Minutes are to be filed and otherwise maintained in a manner that ensures confidentiality.

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- 4) Minutes will be kept and recorded in IRMA following each IMC review.
- 5) Release of Records Pertaining to Allegations and Investigations of Abuse
- 6) Eligible requestors. Persons receiving services or who formerly received services; and guardians, parents, spouses, and adult children of such persons, pursuant the Mental Hygiene Law, are eligible to request the release of records as established by this section, subject to the following restrictions:
- 7) 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.
- 8) 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.

Release of Records

Records Subject to Release

- 1) Claddagh will release all records and documents pertaining to allegations and investigations into abuse under the auspices of Claddagh to eligible requestors who make a request in accordance with the provisions of this policy.
- 2) Claddagh 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.
- 3) Claddagh 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, 2012.

Procedures

- 1) Eligible requestors shall submit a written request to staff designated by agency policy/procedures. If the request is made prior to the closure of an alleged abuse case, the parties specified by agency policy/procedures shall provide the requested records no later than 21 days after the closure of the alleged abuse case. If the request is made at or subsequent to the closure of the alleged abuse case, Claddagh shall provide the requested records no later than 21 days after the request is made. The written request shall specify the records that are requested.
- 2) The closure of the alleged abuse case shall be considered to have occurred when the standing committee established pursuant to section 624.7 of this Part has ascertained that no further investigation is necessary and a conclusion is reached whether the allegation is substantiated or unsubstantiated based on a preponderance of evidence. Pursuant to the provisions of section 624.7 of this Part, the standing committee may have additional responsibilities related to the allegation that continue after the closure of the alleged abuse case, such as making recommendations to the chief executive officer and monitoring actions taken on recommendations.

Redaction of Records

- 1) Prior to the release of records, agencies shall redact the names of employees who are involved in the alleged abuse 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.
- 2) In addition, if any records which are subject to release identify a particular party as having made a child abuse or maltreatment report to the Statewide Central Register of Child Abuse and

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Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation, those names as well as any information tending to identify the party shall be redacted.

Non Dissemination of Records

- 1) Records and reports released in accordance with this policy and shall not be further disseminated by the recipient, provided that a recipient may share any records and reports with:
 - i) a health care provider;
 - ii) a behavioral health care provider;
 - iii) law enforcement if the recipient believes a crime has been committed; or
 - iv) the recipient's attorney.
- 2) A cover letter shall accompany records and reports released in accordance with this policy and shall state, "Pursuant to section 33.25 of the Mental Hygiene Law, the attached 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 (iv) your attorney."
- 3) Nothing in this policy shall prohibit the receipt, use or dissemination of any such records, reports, information or results of investigations or inquiry by any patient, former patient, or qualified person or person or official specified in this policy acting on behalf of any patient, former patient or patient's estate, in any legal action or proceeding brought by or on behalf of such patient, former patient or patient's estate.

Documentation

- 1) The written request for the release of records shall be maintained and the time the request was received shall be documented.
- 2) A copy of the redacted records that were released and the accompanying letter shall be maintained and the time the records were provided shall be documented.
- 3) Administrative appeal process - denial of requested records/documents.
- 4) A requestor denied access to the initial incident report or report on actions taken may appeal in writing such denial to the incident records appeals officer designated by the commissioner of OPWDD.
- 5) Upon receipt of the appeal, Claddagh 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.
- 6) 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 Claddagh. If so directed by the incident records appeals officer, Claddagh shall provide the requested records and/or documents to the requestor.

Follow-Up Activities Subsequent to a Reported Allegation of Abuse to Persons Receiving Services

- 1) Each situation shall be evaluated immediately, evidence preserved, when possible, and appropriate actions taken, which may include the investigation by trained investigators. Such actions shall cause as little disruption as possible to the daily routine of the person(s) being served, yet provide for the ensuring of health and safety. Consistent with the demands of the situation, one or more of the following actions may be considered and implemented while an allegation of abuse is being investigated:

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- a) Removal, reassignment, relocation or suspension of the alleged abuser, consistent with appropriate collective bargaining agreements and applicable provisions of the Civil Service Law or other applicable laws or regulations. In most cases, the alleged abuser will be placed on unpaid administrative leave pending outcome of the investigation.
- b) Provision of counseling to the alleged abuser.
- c) Provision of increased training to the alleged abuser and staff pertinent to the prevention and remediation of abuse.
- d) Increasing supervision and providing additional support to restore a secure environment to the affected staff and persons in the facility.
- e) Removal or relocation of the person, consistent with his or her developmental needs (or any court order applicable to the person) when it is determined that there is a risk to such individual if he or she continues to remain in the program.
- f) Provision of counseling to the individual and to other persons in the facility, as appropriate.
- 2) If an allegation of abuse or neglect is substantiated, the Justice Center may make a request to terminate the employee and place that employee on the Staff Exclusion List (SEL).
- 3) Claddagh must monitor that the identified corrective actions are being implemented and that those actions are likely to prevent the abuse from re-occurring.
- 4) When an allegation of child client abuse has been accepted and designated as "indicated" by the Statewide Central Register of Child Abuse and Maltreatment, Claddagh shall develop a corrective action plan in conformance with the Mental Hygiene Law.
- 5) After an allegation of child abuse that has been accepted and "indicated" by the Statewide Central Register of Child Abuse and Maltreatment, and investigation by the New York State Commission on Quality of Care and Advocacy for Persons with Disabilities, it may be determined that some credible evidence of abuse exists that may be attributable in whole or in part to noncompliance of Claddagh with any regulations of the commissioner applicable to the residential facility under investigation. In such an instance, Claddagh shall develop and implement a plan of prevention and remediation.
- 6) When it appears that a crime may have been committed against a person receiving services, regardless of who that party might be, and persons receiving services including another person receiving services, the suspected criminal activity shall be reported to the district attorney or other local law enforcement official having jurisdiction. Such reporting shall be:
 - a) the responsibility of the chief executive officer or program administrator;
 - b) made as soon as possible, or, in any event, within three working days; and
 - c) in accordance with policies/procedures established by Claddagh/facility or the sponsoring agency. Every effort shall be made to develop such policies/procedures with input from the district attorney or other appropriate local law enforcement official(s).
- 7) When an allegation of abuse is determined to be unsubstantiated, immediate and appropriate action shall be taken to exonerate the person against whom the allegation was made.

Regulatory References:

- Part 624
- Part 625
- Part 633.9
- June 9, 2011 OPWDD Memo - Required Protections for Significant Allegations of Abuse
- June 30, 2013 OPWDD Memo – Emergency Regulations Implementation of the Protection of People with Special Needs Act Reforms to Incident Management

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Reviews

Date	Reviewer/ Title	Un- changed	Minor Changes	Revision Needed	Comments/ Follow-up