



**NEW YORK STATE
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES
SUMMARY - EMERGENCY REGULATIONS TO IMPLEMENT JONATHAN'S LAW
EFFECTIVE: DECEMBER 22, 2008**

- Effective December 22, 2008. Replaces similar emergency regulations that were effective October 1 and December 30, 2007, and March 27, June 25, and September 23, 2008.
- No changes were made in the December 22, 2008 regulations compared to the September 23, 2008 regulations.

General:

- The regulations amend existing OMRDD regulations on incidents and abuse (Part 624).
- The regulations apply to all facilities and services operated, certified, authorized or funded through contract by OMRDD. This includes residential facilities, day programs, HCBS waiver services, and Medicaid Service Coordination.
- New notification and disclosure requirements do not apply to events or situations which are not under the auspices of the agency, such as allegations of abuse by family members in private residences. Requirements that agencies intervene and take appropriate action in these events or situations are unchanged.
- The OMR 147(I) and OMR 147(A) are removed from the regulation. OMRDD is replacing these forms with a single revised form.
- The OMR 147 must be used for all reportable incidents, serious reportable incidents and allegations of abuse.
- Full documentation of compliance is required.
- Existing requirements are unchanged for notification to CQCAPD, law enforcement officials, Statewide Central Register of Child Abuse and Maltreatment, etc.
- For the Willowbrook class, agencies must continue to comply with the incident reporting requirements of the Willowbrook Permanent Injunction.

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- An old requirement for a “written preliminary finding” within 24 hours of the occurrence or discovery has been eliminated. The OMR 148 or equivalent report on actions taken takes the place of the written preliminary finding.
- The use of a diagnostic procedure (e.g. x-ray) when the results are negative (nothing broken) is no longer considered a reportable injury.
- Service coordinators must be notified of all reportable incidents, serious reportable incidents and allegations of abuse whether or not the event or situation is “under the auspices” of the agency or sponsoring agency.

Regulations to implement Section 33.23 MHL:

- The regulations build on notification requirements in pre-existing OMRDD regulations, which required notification of serious reportable incidents and allegations of abuse to guardians, parents and advocates/correspondents.
- The following types of events/situations are subject to the new requirements:
 - Reportable incidents in the categories of injury, medication error and death.
 - Serious reportable incidents in the categories of injury, missing person, medication error and death.
 - All allegations of abuse.
- Current notification requirements are maintained for serious reportable incidents which are in the other categories (restraint, possible criminal act, and sensitive situation). Notification must occur within 24 hours of completion of the OMR 147.
- Neither notification nor disclosure is required for reportable incidents in the category of sensitive situation or for events/situations which do not rise to the level of reportable incidents (e.g. “agency reportable incidents”).
- The new requirements require notification to one of the following: guardian, parent, spouse or adult child.
- Exceptions:
 - The guardian, parent, spouse or adult child objects to notification to himself or herself.

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- The person receiving services is a capable adult who objects to the notification being made to someone else.
- The person who would otherwise be notified is the alleged abuser.
- If there is no guardian, parent, spouse or adult child (or they are unavailable), but the person has an advocate or correspondent, notification should be made to that individual in the same manner. Advocates/correspondents must also be offered a meeting and must be sent the report on actions taken. Upon request, advocates/correspondents must be sent the redacted OMR 147. (Note: the advocate or correspondent is not eligible to request disclosure of the investigation report and other investigation documents).
- If there is no guardian, parent, spouse or adult child (or they are unavailable), and the person receiving services is a “capable adult” as defined in the regulations, the person receiving services must be notified. In addition, the person receiving services must be offered a meeting and must receive the report on actions taken.
- The notification must be by telephone or in person, or by other methods at the request of the recipient of the notice.
- The notification must be made within 24 hours of the completion of the OMR 147.
- The notice must include:
 - A description of the event or situation and a description of initial actions taken to address the incident or alleged abuse, if any,
 - An offer to meet with the chief executive officer or designee, and
 - For allegations of abuse, an offer to provide information on the status and resolution of the allegation (this is a pre-existing requirement).
- Upon request, a copy of the OMR 147 reporting form must be provided to the person receiving services, guardian, parent, spouse, adult child, or advocate/correspondent. Records must be redacted.
- The agency must provide a written report on actions taken to address the incident or alleged abuse for every incident and allegation subject to the new notification process.
 - The report must be provided to the individual that was notified.

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- The report must include: any immediate steps taken in response to the incident or alleged abuse to safeguard the health or safety of the person receiving services, and a general description of any initial medical or dental treatment or counseling provided to the person in response to the incident or alleged abuse.
- The report must be on a form developed by OMRDD or a similar agency form.
- The report must be provided within 10 days of the completion of the OMR 147.
- The report on actions taken cannot include names of others involved in the incident/allegation or investigation or information tending to identify them.

Regulations to implement Section 33.25 MHL:

- The regulations require the release of records and documents pertaining to allegations and investigations into abuse under the auspices of the agency.
- Only guardians, parents, spouses and adult children who are considered to be a “qualified person” according to the definition in the Mental Hygiene Law, are eligible to receive records.
- If the otherwise eligible requestor is the alleged abuser he or she is not eligible to receive records.
- If the consumer is a capable adult and objects to the release of records, the otherwise eligible requestor is not eligible to receive records.
- Requests must be in writing.
- Documents and records must be released 21 days after the closure of the alleged abuse case or 21 days after the request, if the request is made after closure.

For purposes of determining when the 21 day clock begins, closure is considered the time when the standing committee has ascertained that no further investigation is necessary and a conclusion is reached whether the allegation is substantiated, disconfirmed or inconclusive.

- Records must be redacted.
- Agencies are required to release records pertaining to allegations of abuse which occurred or were discovered on or after May 5, 2007.

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- Agencies are also required to release records pertaining to allegations of abuse covering the period Jan. 1, 2003 to May 5, 2007. Qualified persons have until Dec. 31, 2010 to make these requests.
- Records may not be disseminated by recipients.

Redaction (applicable to the release of documents and records pursuant to Section 33.25 MHL and the OMR 147). The following should be redacted:

- Names or other information tending to identify people receiving services and employees. Redaction shall be waived if the employee or person receiving services authorizes disclosure (unless redaction is needed because the information would tend to identify a different person whose identity is shielded by the regulations). The definition of employee is very inclusive, but only for the purposes of redaction of these records in compliance with the new law and the implementing regulations. It includes consultants, contractors, volunteers, family care providers and family care respite/substitute providers, and individuals who live in home of the provider.
- Names or other information tending to identify anyone who made a report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation.