



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

- **A new subdivision (e) is added to Section 624.1 as follows:**
 - (e) The requirements of this Part are also applicable to services for persons with developmental disabilities (see paragraph 1.03(4) of the Mental Hygiene Law) which are funded through contract by OMRDD.
- **A new subdivision (k) is added to section 624.2 as follows:**
 - (k) It is the intent of this Part to require a process for facilities that is in full compliance with the provisions of Section 29.29 of the Mental Hygiene Law.

Note: Rest of subdivision is renumbered.

- **Subdivision 624.3(l) is amended as follows:**
 - (l) Section 29.29 of the Mental Hygiene Law requires the compilation and analysis of incident reports in [State operated] facilities and the submission of aggregated information to the State Commission on Quality of Care and Advocacy for Persons with Disabilities on at least a semi-annual basis; composition of a committee to review incidents within [State operated] facilities is also specified.
- **New subdivisions (o) and (p) are added to section 624.3 as follows:**
 - (o) Section 33.23 of the Mental Hygiene Law requires notification to specified parties of certain incidents that occur at a facility.
 - (p) Section 33.25 of the Mental Hygiene Law requires the release of records and documents pertaining to allegations and investigations of abuse at a facility to specified parties.

Note: Current subdivisions (o) – (r) are renumbered (q) - (t).

Note: New material is underlined. Deleted material is in [brackets].

Emergency Regulations: Jonathan's Law
Effective: December 22, 2008

- **Subdivision 624.4(b) is amended as follows:**

- (b) **Reportable Incidents and Serious Reportable Incidents** - Significant events or situations endangering a person's well-being. A "serious reportable incident" is a "reportable incident" which, because of the severity or sensitivity of the situation, must also be immediately reported to the DDSO in whose area of jurisdiction the incident occurred and followed up in writing [on Form OMR 147(I), Reportable Incident Reporting Form] in the form and format specified by the commissioner, to that DDSO.

Note: Rest of subdivision remains unchanged.

- **Subdivision 624.4(c) is amended as follows:**

- (c) **Abuse** - 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 (see [glossary] section 624.20) of abuse are to be reported on a standardized form (see [glossary] section 624.20); 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 DDSO in whose area the alleged abuse occurred and followed up in writing in the form and format specified by the commissioner [on Form OMR 147(A), Allegation of Abuse]. Abuse is categorized as follows:

Note: Rest of subdivision is unchanged.

- **Paragraphs 624.5(b)(1)-(6) are amended as follows:**

- (1) Initial incident report and initial allegation of abuse report.
 - (i) Reportable incidents. The chief executive officer (or designee) shall be advised of all reportable incidents within 48 hours of their occurrence or

Note: New material is underlined. Deleted material is in [brackets].

Emergency Regulations: Jonathan's Law
Effective: December 22, 2008

discovery. The agency shall complete an initial incident report in the form and format specified by the commissioner within 48 hours of occurrence or discovery.

- (ii) Serious reportable incidents and allegations of abuse. [However, a] Any serious reportable incident or any allegation of abuse shall be reported immediately (but no later than 24 hours) upon observation or discovery to the chief executive officer (or designee). The agency shall complete an initial incident report or initial allegation of abuse report within 24 hours of occurrence or discovery.
- (2) Any report of a serious reportable incident or allegations of abuse shall immediately be investigated in accordance with the agency's policies/procedures. [Said investigation shall result in a written preliminary finding within 24 hours of the initial report of a serious reportable incident or allegation of abuse.] The chief executive officer is responsible for ensuring that such action is taken as is necessary to protect the safety and welfare of the person(s) receiving services. Subsequent thereto, the agency shall observe its own policies and procedures for the reporting and investigation of alleged abuse as well as the requirements set forth in this Part.
- (3) Any serious reportable incident or any allegation of abuse shall be reported immediately to the DDSO by telephone or other appropriate methods; and,
 - (i) A written initial incident report of any serious reportable incident shall be sent to the DDSO in the form and format specified by the commissioner [on Form OMR 147(I), *Reportable Incident Reporting Form*] within 24 hours of observation or discovery, and shall contain such information as is known at the time the form is completed.
 - (ii) A written initial allegation of abuse report [of any allegation of client abuse] shall be sent to the DDSO in the form and format specified by the commissioner [on Form OMR 147A, *Report of Alleged Client Abuse*], within 24 hours of occurrence or discovery of the alleged abuse, and shall contain such information as is known at the time the form is completed.
- (4) A written report, in the form and format specified by the commissioner [documented on Form OMR 147(A)], of any allegation of abuse is to be sent to the Commission on Quality of Care and Advocacy for Persons with Disabilities (see [glossary] section 624.20) within 48 hours of occurrence or discovery.

Note: New material is underlined. Deleted material is in [brackets].

Emergency Regulations: Jonathan's Law
Effective: December 22, 2008

- (5) An allegation of abuse, involving a person who resides in a facility requires a written report, in the form and format specified by the commissioner, [on Form OMR 147(A)] to be sent to the Mental Hygiene [l] Legal [s] Service (see [glossary] section 624.20) within three working days. If a person resides in a State operated facility, [notification on Form OMR 147(A) shall also be made] the initial allegation of abuse report shall also be sent within three working days to the board of visitors of the applicable DDSO. The Mental Hygiene [l] Legal [s] Service and the board of visitors shall be informed of the results of the investigation.
- (6) Any reportable incident, serious reportable incident, or any instance of alleged abuse is to be thoroughly investigated by the chief executive officer or designated senior staff. A full investigation of serious reportable incidents or allegations of abuse shall take place immediately [or subsequent to preliminary findings,] with further investigation undertaken commensurate with the seriousness and circumstances of the situation. All such investigations shall be documented.

- **Paragraph 624.5(d)(1) is amended as follows:**

- (1) A reportable incident, serious reportable incident, or alleged abuse occurs while a person is still directly under the auspices of the agency, 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):
- (i) The process to be followed shall be the same as would be followed had the situation happened in the facility.
 - (ii) Investigation and follow-up shall be made to the extent possible, and available community resources utilized (e.g., law enforcement authorities, department of social services child and adult protective services.)
 - (iii) The meaning and usage of the term “under the auspices” in this paragraph is different from the meaning and usage of the same term in sections 624.6, 624.8 and 624.20, related to notification and access to records by qualified parties.

- **Current subdivision 624.6(f) is deleted and a new subdivision 624.6(f) is added as follows:**

Note: New material is underlined. Deleted material is in [brackets].

Emergency Regulations: Jonathan's Law
Effective: December 22, 2008

- [(f)] [A person's parent(s), guardian, or correspondent/advocate, and if applicable, the service coordinator (a.k.a., case manager) is to be notified of any serious reportable incident or allegation of abuse within 24 hours unless there is written advice from the parent or guardian that he or she does not want to be notified; unless the involved person is a capable adult (see Glossary) and objects to such notification, being made; or if the alleged abuser is one of the aforementioned parties. Notification of other types of events or situations shall be made at the chief executive officer's discretion and in accordance with agency policy /procedure.]
- [(1)] [A person's parent, guardian, or correspondent/advocate shall be informed that he or she may request information on the actions taken to protect the person if abuse to that person is alleged to have taken place, unless the person is a capable adult and objects to such information being provided or the alleged abuser is one of the aforementioned parties. In providing such information as is requested, the agency shall ensure the privacy rights of other parties.]
- [(2)] [A person's parent, guardian, or correspondent/advocate shall be informed that he or she may request information on the status and/or resolution of an abuse allegation if abuse to the person is alleged to have taken place, unless the person is a capable adult and objects to such information being provided or the alleged abuser is one of the aforementioned parties. In providing such information as is requested, the agency shall ensure the privacy rights of other parties.]
- (f) For serious reportable incidents that are classified as "restraint," "possible criminal act" or "sensitive situation;" a person's guardian, parent or correspondent/advocate, is to be notified within 24 hours of the completion of the initial incident report, unless:
- (1) there is written advice from the guardian or parent that he or she does not want to be notified; or
 - (2) the involved person is a capable adult (see section 624.20) and objects to such notification being made; or
 - (3) the alleged abuser is one of the aforementioned parties.

- **New subdivisions 624.6(g), (h), (i) and (j) are added as follows:**

Note: New material is underlined. Deleted material is in [brackets].

Emergency Regulations: Jonathan's Law
Effective: December 22, 2008

- (g) For reportable incidents that are classified as “injury,” “death” or “medication error;” serious reportable incidents that are classified as “injury,” “missing person,” “death” or “medication error;” and for all allegations of abuse:
- (1) The agency shall provide telephone notice to one of the following: a person’s guardian, parent, spouse or adult child.
 - (2) However, the agency 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.
 - (3) 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.
 - (4) The telephone notice shall include:
 - (i) a description of the event or situation and a description of initial actions taken to address the incident or alleged abuse, if any;
 - (ii) an offer to meet with the chief executive officer or designee to further discuss the incident or allegation of abuse; and
 - (iii) 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, the agency shall ensure the privacy rights of other parties.

Note: New material is underlined. Deleted material is in [brackets].

Emergency Regulations: Jonathan's Law
Effective: December 22, 2008

- (5) Methods of notification.
- (i) 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.
 - (ii) Notice may be made in person instead of by telephone.
 - (iii) Notice may be provided by other methods at the request of the party receiving the notice.
- (6) 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; the agency shall provide notice to the following parties in the manner (and subject to the same limitations) specified in this subdivision:
- (i) the person receiving services, if the person is a capable adult; and
 - (ii) the person's advocate or correspondent (if one exists).
- (7) Requests for the initial incident or allegation of abuse report.
- (i) Process for requests.
 - (a) 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.
 - (b) Such request shall be in writing. However, at the discretion of the agency, documented verbal requests may be accepted in lieu of a written request.
 - (c) 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.

Note: New material is underlined. Deleted material is in [brackets].

Emergency Regulations: Jonathan's Law
Effective: December 22, 2008

- (d) If an otherwise eligible requestor is the alleged abuser, the initial incident or allegation of abuse report shall not be provided to that requestor.
- (ii) Redaction.

 - (a) 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.
 - (b) 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.
- (iii) 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.
- (iv) 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.
- (8) Report on actions taken.

 - (i) The agency 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

Note: New material is underlined. Deleted material is in [brackets].

Emergency Regulations: Jonathan's Law
Effective: December 22, 2008

- (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.
 - (ii) The agency shall provide the report on actions taken to any party specified in paragraphs (1) or (6) of this subdivision who received the notification.
 - (iii) The report shall be provided within 10 days of the completion of the initial incident report or initial allegation of abuse report.
 - (iv) The report that is provided shall be in the form and format specified by the commissioner or in a similar format developed by the agency.
 - (v) 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.
- (9) The following documentation shall be maintained:
- (i) 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;
 - (ii) any requests for a meeting or the initial incident report or allegation of abuse report;
 - (iii) meetings held in response to the request, and those present;

Note: New material is underlined. Deleted material is in [brackets].

Emergency Regulations: Jonathan's Law
Effective: December 22, 2008

- (iv) when the report on actions taken and any requested initial incident report or initial allegation or abuse report was provided;
 - (v) 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
 - (vi) 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.
- (10) For the purpose of redaction as specified in this subdivision and section 624.8 only, the term "employee" means any party who is, or formerly was:
- (i) directly employed by an agency; or
 - (ii) 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
 - (iii) a family care provider or family care substitute/respite provider; or a party living in the home of the provider.
- (h) Reported incidents and allegations of abuse which are not under the auspices (see section 624.20) of an agency or sponsoring agency are not subject to the notification requirements of subdivisions (f) and (g) of this section.
- (i) For the Willowbrook class, agencies shall comply with the incident reporting requirements of the Willowbrook Permanent Injunction, dated March 11, 1993.
- (j) An individual's service coordinator (or equivalent in an ICF) is to be notified of all reportable incidents, serious reportable incidents, and allegations of abuse 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 the agency providing service coordination.

Note: Current subdivision 624.6(g) is renumbered 624.6(k).

Note: New material is underlined. Deleted material is in [brackets].

Emergency Regulations: Jonathan's Law
Effective: December 22, 2008

- **A new section 624.8 is added as follows:**

Section 624.8 Release of records pertaining to allegations and investigations of abuse.

- (a) Policies and procedures. Agencies shall have policies and procedures concerning the process for requesting the release of records pertaining to allegations and investigations of abuse, including but not limited to identifying appropriate staff who are authorized to receive requests and those who are authorized to release records.
- (b) Eligible requestors. Persons receiving services or who formerly received services; and guardians, parents, spouses, and adult children of such persons, pursuant to paragraph (a)(6) of section 33.16 of the Mental Hygiene Law, are eligible to request the release of records as established by this section, subject to the following restrictions:
 - (1) 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.
 - (2) 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.
- (c) Records subject to release.
 - (1) Agencies are required to release all records and documents pertaining to allegations and investigations into abuse under the auspices (see section 624.20) of the agency or sponsoring agency to eligible requestors who make a request in accordance with the provisions of this section.
 - (2) Agencies are required to 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) Agencies are required to 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, 2010.

Note: New material is underlined. Deleted material is in [brackets].

Emergency Regulations: Jonathan's Law
Effective: December 22, 2008

(d) 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, the agency 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 has ascertained that no further investigation is necessary and a conclusion is reached whether the allegation is substantiated, disconfirmed or inconclusive. Pursuant to the provisions of section 624.7, 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.

(e) 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. For the purpose of this section, "employee" has the same meaning as in paragraph 624.6(g)(10). 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 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.

Note: New material is underlined. Deleted material is in [brackets].

Emergency Regulations: Jonathan's Law
Effective: December 22, 2008

- (f) Dissemination prohibition. Agencies shall give written notice to recipients, that the law specifies that records and documents released in accordance with this section shall not be further disseminated by the recipient. Such notice shall accompany each release of records.
- (g) 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 shall be maintained and the time the records were provided shall be documented.
- **Subdivision 624.20(d) is amended as follows:**
 - (d) **Agency** - [A DDSO, a not-for-profit organization (voluntary agency), or any other authorized entity which is the operator or administrator of a facility (see Glossary) certified by OMRDD; or a DDSO which is the operator of a developmental center. Certified family care providers are not considered to be an “agency” (see “agency, sponsoring”).] The operator of a facility, program or service operated, certified, authorized or funded through contract by OMRDD. In the case of State-operated facilities, the DDSO is considered to be the agency. Family care providers are not considered to be an agency (also see “agency, sponsoring”).
- **Section 624.20 is amended by the addition of a new subdivision (j):**
 - (j) **Auspices, under the.** For the purposes of sections 624.6 and 624.8 only (related to notification and access to records), circumstances in which the agency/sponsoring agency or family care provider is providing services to a person which are operated, certified, authorized or funded through contract by OMRDD. These circumstances can occur whether or not the person is physically at a site owned, leased or operated by the agency/sponsoring agency or family care provider.
 - (1) Such circumstances are those in which agency personnel (staff, interns, contractors, consultants and/or volunteers) or a family care provider (or respite/substitute provider) are, or should have been, physically present and providing services at that point in time.

Note: New material is underlined. Deleted material is in [brackets].

Emergency Regulations: Jonathan's Law
Effective: December 22, 2008

- (2) In addition, any circumstances involving physical conditions at the site provided by the agency or family care home are under the auspices of the agency or sponsoring agency, even in the absence of agency personnel or the family care provider.
- (3) An event or circumstance is not under the auspices of an agency or sponsoring agency if it exclusively involves the person's family, friends, employers, or co-workers, whether or not in the presence of agency personnel or a family care provider.
- (4) An event or circumstance is not under the auspices of an agency or sponsoring agency if it occurs in the context of the provision of services which are subject to the oversight of State Agency other than OMRDD (e.g. special education, Article 28 clinic, hospital, physician's office), whether or not in the presence of agency personnel or a family care provider.
- (5) Related to incidents and abuse as defined in section 624.4, any event that directly involves or may have involved agency personnel or a family care provider (or respite/substitute provider) or someone who lives in the home of the family care provider are also deemed to be under the auspices of the agency or sponsoring agency. However, if such party is alleged to have been involved in an incident or allegation of abuse during the time he or she was providing services which are subject to the oversight of a State Agency other than OMRDD, the incident or allegation is not under the auspices of the agency or sponsoring agency.
- (6) An allegation of neglect which is based on conditions in a private home (excluding a family care home) or workplace is not under the auspices of an agency or sponsoring agency.
- (7) This definition does not apply to the term as used in paragraph 624.5(d)(1).
- (8) Agencies are required to intervene and take appropriate action in situations which are not under the auspices of an agency or sponsoring agency pursuant to the requirements of section 624.5.

Note: Rest of section is renumbered.

- Newly renumbered subdivision (ar) is amended as follows:

Note: New material is underlined. Deleted material is in [brackets].

Emergency Regulations: Jonathan's Law
Effective: December 22, 2008

- (ar) *Treatment, requiring medical or dental.* That situation where by a person who, by virtue of his or her condition as a result of a reportable incident or serious reportable incident, must see a physician, dentist, physician's assistant, or nurse practitioner to have the condition [diagnosed,] controlled and/or attended to with more than first-aid procedures. While individual agency policy/procedure may direct that a person who is in anyway injured or has suffered any ill effects to see a medical professional even though first-aid has adequately addressed the situation, this does not always constitute requiring medical or dental treatment in terms of defining a reportable incident or serious reportable incident. [If there is a diagnostic procedure (e.g., x-ray) are performed, this would constitute an injury requiring medical or dental treatment and would be reported as a reportable or serious reportable incident.] If a person is retained in a hospital overnight for observation, this would be a situation that required medical treatment, and be reported as a serious reportable incident.
- **Section 624.20 after subdivision (ar), forms OMR 147(I) and OMR 147(A) are deleted.**

Note: New material is underlined. Deleted material is in [brackets].