

Subject: OPWDD Incident Reporting / Review: Management of Incidents and Allegations of Abuse
Section: 7.1
Effective Date: January 1, 2016
New/Supersedes: Supersedes September 24, 2007, April 1, 2008, June 1, 2012 and June 30, 2015

Approval:  _____

1.0 **PURPOSE:**

To set forth Head Injury Association's policy and procedure regarding Incident Reporting/Review: Management of Incidents and Allegations of Abuse in accordance with regulations and laws.

2.0 **SCOPE:**

This policy and procedure applies to all employees, interns, volunteers, consultants, and contractors of Head Injury Association.

3.0 **RESPONSIBILITY:**

The responsibility of interpretation and administration of this policy and procedure shall be vested with the agency administrators.

4.0 **POLICY:**

Head Injury Association has developed policies and procedures in accordance with New York State Office for People With Developmental Disabilities Regulations Part 624, Part 625, Jonathan's Law, The Justice Center and Mental Hygiene Law.

The purpose of reporting, investigating, reviewing, correcting and/or monitoring certain events or situations is to enhance the quality of care provided to persons with developmental disabilities who are in programs, to protect program members from harm, and to ensure that such persons are free from mental and physical abuse. In addition, to enable program administrators to become aware of problems, ensure corrective action, minimize the potential for re-occurrence and identify trends. The reporting of certain events or situations in a uniform orderly manner facilitates identification of trends, which ultimately allows for the development and implementation of preventive strategies.

Whenever an accident, situation, condition, or event not routine to normal treatment or activity occurs that endangers the health or safety of program members occurs as part of program activities, the incident reporting procedure will be utilized and an incident report form will be completed.

Categories of Incidents:

Minor notable occurrences, serious notable occurrences, significant incidents and reportable incidents are events which in accordance to New York State Office For People With Developmental Disabilities Part 624 and 625, are required to be recorded, reviewed, investigated, reported to agency and program administrators, reviewed by an incident review committee; and acted upon in an appropriate manner in order to safeguard the well being of program members and bring the matter to closure.

Serious notable occurrences, significant incidents and reportable incidents are significant events or situations endangering a person's well-being. Because of the severity or sensitivity of the situation these will also be immediately reported to the OPWDD Incident Management Unit and according to regulations the Justice Center's Vulnerable Persons' Central Registry and State Central Child Abuse Registry if applicable.

Incidents that fall under Jonathan's Law reporting guidelines are: defined in Section 33.23 MHL as an "accident or injury that affects the health or safety" of a person receiving services of any age. OPWDD has evaluated the current categories of incidents established in 14 NYCRR Section 624 and 625 and drafted the new regulations to reflect the interpretation that the following events or situations are considered "incidents" for the purpose of complying with the new Section 33.23 MHL provisions:

- minor notable occurrences
- serious notable occurrences
- significant incidents
- reportable incidents

OPWDD Part 624 Under the Auspices of HIA

Minor Notable Occurrences Injury
Any suspected or confirmed harm, hurt, or damage to an individual receiving services, caused by an act of that individual or another, whether or not by accident, and whether or not the cause can be identified, which results in an individual requiring medical or dental treatment by a physician, dentist, physician's assistant, or nurse practitioner, and such treatment is more than first aid. Illness in itself shall not be reported as an injury or any other type of incident or occurrence.

Minor Notable Occurrences Theft or Financial Exploitation
Any suspected theft of a service recipient's personal property (including personal funds or belongings) or financial exploitation, involving values of more than \$15.00 and less than or equal to \$100.00, that does not involve a credit, debit, or public benefit card, and that is an isolated event.

Serious Notable Occurrences Sensitive Situation
Those situations involving a person receiving services which may be of a delicate nature to the agency, and which are reported to ensure awareness of the circumstances. shall include, but not be limited to, possible criminal acts committed by an individual receiving services. Sensitive situations are serious notable occurrences.

Serious Notable Occurrences Death
The death of any person receiving services, regardless of the cause of death and deaths that occur under the auspices of an agency.

Significant Incidents

Conduct Between Individuals Receiving Services	Seclusion	Unauthorized Use of Time Out	Medication Error With Adverse Effects	Inappropriate Use of Restraints
<p>Conduct between persons receiving services that would constitute abuse if committed by a custodian, except sexual activity involving adults who are capable of consenting and consent to the activity</p> <p>Penal Law 130 Definition Sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.</p>	<p>The placement of an individual receiving services in a room or area from which he or she cannot, or perceives that he or she cannot, leave at will. OPWDD prohibits the use of seclusion;</p>	<p>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;</p>	<p>administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription or order issued for a service which has an adverse effect on an individual receiving services. "adverse effect" shall mean the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the wellbeing of a person receiving services</p>	<p>The use of a restraint when the technique that is used, the amount of force that is used, or the situation in which the restraint is used is inconsistent with an individual's plan of services (including a behavior support plan). A "restraint" shall include the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body</p>

Mistreatment	Missing Persons	Choking, With Known Risk	Self-Abusive Behavior With Injury
<p>Conduct on the part of a custodian, that is inconsistent with the individual's plan, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, and which impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare of an individual receiving services.</p>	<p>The unexpected absence of an individual receiving services that based on the person's history and current condition exposes him or her to risk of injury</p>	<p>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 a written directive addressing that risk</p>	<p>A self-inflicted injury to an individual receiving service that requires medical care beyond first aid.</p>

Significant Incidents

Injury With Hospital Admission	Unauthorized Absence	Choking, No Known Risk	Theft or Financial Exploitation	Other Significant Incident
Any injury that results in the admission of a person to a hospital for treatment or observation because of injury.	<p>The unexpected or unauthorized absence of a person after formal search procedures have been initiated by the agency. It is required that formal search procedures must be initiated immediately upon discovery of an absence involving a person whose absence constitutes a recognized potential danger to the wellbeing of the person or others. Any unauthorized absence event is considered a serious notable occurrence.</p> <p>An unauthorized absence that results in exposure to risk of injury to the person receiving services is a "reportable" missing person incident</p>	<p>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 involving an individual with a known risk for choking and a written directive addressing that risk. Any choking with no known risk event is considered a serious notable occurrence.</p>	<p>Any suspected theft of a service recipient's personal property (including personal funds or belongings) or financial exploitation, involving a value of more than \$100.00; theft involving a service recipient's credit, debit, or public benefit card (regardless of the amount involved); or a pattern of theft or financial exploitation involving the property of one or more individuals receiving services.</p>	<p>Those situations involving a person receiving services which may be of a delicate nature to the agency, and which are reported to ensure awareness of the circumstances. shall include, but not be limited to, possible criminal acts committed by an individual receiving services. Sensitive situations are serious notable occurrences.</p>

Reportable Incidents:

Physical Abuse	Sexual Abuse	Psychological Abuse	Deliberate Inappropriate Use of Restraints	Use of Aversive Conditioning
<p>Conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury or serious or protracted 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 shall not be limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, 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.</p>	<p>Any sexual contact between an individual receiving services and a custodian which provides services to an individual whether or not the sexual contact would constitute a crime. A person with a developmental disability who is or was receiving services and is also an employee or volunteer of an agency shall not be considered a custodian if he or she has sexual contact with another individual receiving services who is a consenting adult who has consented to such contact. Penal Law 130 Definition Sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.</p>	<p>Psychological Abuse includes any verbal or nonverbal conduct that may cause significant emotional distress to individual receiving services. Examples include, but are not limited to, taunts, derogatory comments or ridicule, intimidation, threats, or the display of a weapon or other object that could reasonably be perceived by an individual receiving services as a means for infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury.</p> <p>In order for a case of psychological abuse to be substantiated after it has been reported, 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 or condition of the individual receiving services. Evidence of such an effect must be supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor.</p>	<p>The use of a restraint when the technique that is used, the amount of force that is used, or the situation in which the restraint is used is deliberately inconsistent with an individual's plan of services (e.g. individualized service plan (ISP) or a habilitation plan), or behavior support plan, 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 to any other party. A restraint shall include the use of any manual, pharmacological, or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body.</p>	<p>The application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change the behavior of a person receiving services. Aversive conditioning may include, but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, blindfolds, and the withholding of meals and the provision of substitute foods in an unpalatable form. The use of aversive conditioning is prohibited by OPWDD.</p>

Reportable Incidents

Obstruction of Reports of Reportable Incidents	Unlawful Use or Administration of a Controlled Substance	Neglect
<p>Conduct by a custodian that impedes the discovery, reporting, or investigation of the treatment of a service recipient by falsifying records related to the safety, treatment, or supervision of an individual receiving services; actively persuading a custodian or other mandated reporter from making a report of a reportable incident to the statewide 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 or procedures; or, for a custodian, failing to report a reportable incident upon discovery.</p>	<p>Any administration by a custodian to a service recipient of a controlled substance without a prescription, or other medication not approved for any use by the federal food and drug administration. It also shall include a custodian unlawfully using or distributing a controlled substance at the workplace or while on duty.</p>	<p>Any action, inaction, or lack of attention that breaches a custodian's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental, or emotional condition of a service recipient. Neglect shall include, but is not limited to:</p> <p>Failure to provide proper supervision, including a lack of proper supervision that results in conduct between persons receiving services that would constitute abuse if committed by a custodian;</p> <p>Failure to provide adequate food, clothing, shelter, or medical, dental, optometric or surgical care, provided that the agency has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric, or surgical treatment have been sought and obtained from the appropriate parties; or</p> <p>Failure to provide access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction of the education law and/or the individual's individualized education program.</p>

In establishing the difference between a minor notable occurrence, serious notable occurrence, significant incident and a reportable incident, the judgment of the Chief Operating Officer, Director of Residential Services and / or Chief Compliance Officer shall prevail.

5.0 PROCEDURE:

- 5.1 Service Coordinators shall ensure that all program members, guardians, qualified persons, correspondents or advocates are familiar with this policy and procedure related to reporting and investigation of incidents. All program members, guardians, qualified persons, correspondents or advocates will be provided instructions on how to access this policy in electronic format and with notification that upon written request the agency will provide a paper copy.

Upon employment or initial volunteer or interning, contract, and annually thereafter, Head Injury Association will make Head Injury Association's policy and procedure on incident management and investigations known to agency employees, interns, volunteers, consultants and contractors. This information shall be provided in conjunction with orientation and annual retraining.

Any custodian as defined by the Justice Center regulations which include directors, employees and volunteers and consultants who will have regular and substantial contact with people with special needs in facilities and programs operated or certified by OPWDD shall be provided with the Code of Conduct adopted by the Justice Center and the Notice to Mandated Reporters that must be signed on an annual basis.

5.2 Incident Report Notification and Reporting

Any staff who witnesses actions or lack of action which constitutes a minor notable occurrence, serious notable occurrence, significant or reportable incident, shall render assistance to the program participant immediately to prevent or deal with any injury or potential for such or to terminate abuse, mistreatment or neglect if present. Staff will call for assistance from other staff where circumstances are such that sufficient staff assistance is not readily available.

Head Injury Association shall not take any retaliatory action against an employee or agent who believes that he or she has reasonable cause to suspect that a person receiving services has been subjected to a reportable incident or notable occurrence, and the employee or agent makes a report to the VPCR and/or OPWDD in accordance with this policy or Part 624 and 625 and/or if the employee or agent cooperates with the investigation of a report made to the VPCR or OPWDD.

Any serious notable occurrence, significant or reportable incident, will be reported immediately to the Program Manager, Director of Residential Services, Asst. Director of Residential Services, Chief Operating Officer, Director of Human Resources, Chief

Compliance Officer and Chief Executive Officer upon observation or discovery.

All employees are notified that all reportable incidents, including reports of abuse and neglect, shall be investigated; and if an employee leaves employment prior to the conclusion of a pending investigation, the investigation shall continue until it is completed and (for reports of abuse and neglect) a finding is made of substantiated or unsubstantiated.

The CEO will be advised immediately of all serious notable occurrences, significant or reportable incidents immediately upon observation or discovery. The CEO or designee will contact law enforcement if a crime may have been committed.

For all incidents a person's safety must always be the primary concern. The CEO or designee 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. Protective measures will include but are not limited to:

- Staff removal, reassignment, relocation or suspension of the alleged abuser, consistent with appropriate and applicable provisions of the Civil Service Law or other applicable laws or regulations.
- Increasing the degree of supervision of the alleged abuser by having him / her work only during shifts that the Program Manager or Assistant Program Manager is on site for a two month period. In addition, face to face individual supervision will occur on a weekly basis.
- Provision of counseling to the alleged abuser.
- Provision of increased training to the alleged abuser and staff pertinent to the prevention and remediation of the abuse.
- Increasing supervision and providing additional support to restore a secure environment to the affected staff and persons in the facility.
- 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.
- Provision of counseling to the individual and to other persons in the facility.

Minor notable occurrences involving theft or financial exploitation, serious notable occurrences, significant or reportable incidents will immediately be reported to the incident management unit at the LIDDSO. Serious notable occurrences, significant or reportable incidents occurring after business hours (between 4:30pm and 8:30am), on the weekend or holiday must be reported immediately to the OPWDD After Hours Incident Management Notification system by the Director, Chief Operating Officer or designee. The After Hours OPWDD Incident Notification system telephone number is: 1-888-479-6763.

All significant, reportable incidents and serious notable deaths must immediately be called into the Justice Center (deaths must be called into the Justice Center Death Reporting Line number. Any staff witnessing a reportable incident or being informed of a reportable incident must immediately call the Justice Center's Vulnerable Person's Central Registry at 1-855-373-2122.

All minor notable occurrences in the category of theft or financial exploitation, serious notable occurrences, significant and reportable incidents must be inputted into IRMA within 24 hours of observation or discovery of the incident or allegation of abuse. If the incident occurs or is discovered on a business day, the incident will be inputted into IRMA within 24 hours or by the next business day. The Justice Center will automatically enter initial information into IRMA for all reportable incidents.

For reportable incidents where the Justice Center initiates the entry into IRMA, Head Injury Association will update and complete required fields in IRMA by the close of the fifth working day unless otherwise stated. The update shall include:

- a review of the information within 24 hours of occurrence or discovery of the incident or by close of next working day and to report any missing or discrepant information to OPWDD
- subsequent information about the immediate protections will be entered within 24 hours after the action is taken or by close of next business day
- a brief review of additions to the summary of evidence and specific investigatory actions taken since the last update was entered into IRMA, if any
- if there have been no additions to the summary of evidence or investigatory actions taken since the last report, an explanation of why no progress has been made
- if Head Injury Association is not responsible for conducting the investigation, Head Injury Association will complete the required fields to the extent possible given information provided to the agency
- subsequent information will be entered into IRMA by the close of the 5th business day after action has been taken or the information has become available

Head Injury Association shall maintain the confidentiality of information regarding the identities of reporters, witnesses, and subjects of reportable incidents and notable occurrences, and limit access to such information to parties who need to know, including, but not limited to, personnel administrators and assigned investigators.

All deaths must be immediately reported to the Director of Residential Services, Chief Operating Officer, Chief Compliance Officer and Chief Executive Officer immediately. The LIDDSO or The After Hours OPWDD Incident Notification system, Commission on Quality of Care for the Mentally Disabled, the Justice Center, the Coroner and Medical Examiner must be notified immediately by telephone and then in writing.

The individual's Medicaid Service Coordinator will be notified by Head Injury Association of all serious notable occurrences, significant or reportable incidents, within 24 hours of

the completion of the written initial incident/occurrence report or entry of initial information in IRMA, whichever is earlier. The notification will include a description of immediate protections.

Any report of a serious notable occurrence, significant or reportable incident shall be immediately investigated by the designee of the CEO.

No staff will participate in an investigation 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. The investigator conducting and / or reviewing the investigation will not be an immediate supervisor of staff directly involved with the situation or event. All staff who conduct investigations will have completed the Justice Center training course.

All incidents fall under Jonathan's Law reporting guidelines therefore, the Program Manager, Director of Residential Services, Asst. Director of Residential Services, Chief Operating Officer, Service Coordinator, Chief Compliance Officer or designee will provide:

- telephone notice to the consumer, legal guardian, qualified person, advocate, correspondent (unless the aforementioned objects to being notified) and Service Coordinator within 24 hours of the incident / allegation. 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 hold a meeting with the qualified person to discuss the incident or abuse allegation, (the meeting may be held by the agency Chief Executive Officer/DDSO Director or a designee); and
 - for allegations of abuse, an offer to provide information on the status and resolution of the allegation and upon written request the status and resolution of the allegation.

If the person receiving services is a "capable adult" as defined in 14 NYCRR Section 624.20, he or she may object to the notification being made to a particular qualified person. In this instance, the notification will be made to another qualified person so long as the capable adult does not object to that person being notified. If the person receiving services objects to the notification of all potential qualified persons (aside from himself or herself), the person receiving services will be notified and receive an offer to hold a meeting and the report on actions taken. An advocate or correspondent must also be notified (if one exists), unless the capable adult objects to notification of that individual.

Upon written request, the agency must provide a redacted copy of the OPWDD 147 or 150 (initial incident or allegation of abuse report) to the person receiving services, guardian, parent, spouse, adult child or advocate/correspondent. The completed OPWDD 147 or 150 must be redacted (see below) and must be provided within 10 days of the request. The copy must be accompanied by a statement that all contents are preliminary and have not been substantiated.

5.3 **Notification to Law Enforcement**

Head Injury Association shall report to an appropriate law enforcement official immediately anytime a crime may have been committed against an individual by a custodian.

- The report to the appropriate law enforcement official shall be made as soon as practicable, but in no event later than 24 hours after occurrence or discovery.
- Information about the report to the appropriate law enforcement official shall be entered into IRMA within 24 hours of the report being made.
- Immediate notification to law enforcement for any allegation of physical or sexual abuse.
- Immediate notification to law enforcement for any incident in which there is suspicion that a crime may have been committed.

When there is reasonable cause to believe a crime against a person may have occurred in a Head Injury Association facility or program by another service provider licensed, certified, funded, or operated by a State Agency the Chief Executive Officer of that facility or program shall be notified as soon as possible, but within three working days, unless he or she is alleged to have committed the crime.

5.4 **For allegations of Abuse:**

Upon notification that a report of alleged abuse or neglect has been accepted by the Justice Center, HIA shall within 24 hours or next business day attempt to notify the service recipients who are alleged victims and their personal representatives that an interview may take place. There will not be notification to a personal representative if the alleged victim objects to such notification or providing such notification would compromise the investigation, violate confidentiality laws, be contrary to court order or otherwise contrary to the best interests of the victim.

HIA staff will complete an OPWDD form 163 when contacting personal representatives which will be included in the investigative record. If for any reason a personal representative is not notified, the reason will be documented on the 163 form.

If, during the course of an investigation, the names of additional alleged victims are identified, HIA will promptly notify such additional alleged victims and their personal representatives.

HIA will also notify service recipients who are potential witnesses to an alleged abuse or neglect incident and their personal representatives that such service recipient may be interviewed as part of the investigation. This notification will take place within 48 hours or next business day of notification that an incident of neglect or abuse has been accepted into the Justice Center's Vulnerable Persons Central Registry.

HIA staff will complete an OPWDD form 163 when contacting personal representatives

which will be included in the investigative record. If for any reason a personal representative is not notified, the reason will be documented on the 163 form.

For reports of abuse or neglect in programs certified or operated by OPWDD, and when Head Injury Association has been designated to conduct the investigation, Head Injury Association shall submit a request for a check of the Statewide Central Register of Child Abuse and Maltreatment (SCR) concerning each subject of the report. The request shall be submitted to the Justice Center (State Wide Central Registry Check form dated 06-13 see appendix via secure e-mail) as soon as the information required to make the request is known or discovered.

As a result of the check, Head Injury Association may receive information that one or more indicated reports exist concerning the subject of the report. If this occurs, Head Injury Association shall take appropriate steps to gather information contained in the report as specified by the Justice Center. Information obtained pursuant to this paragraph will be included in the investigation records submitted to OPWDD.

Additional requests to search the SCR (see above) should be sent to the Justice Center if new suspects are identified during the course of the investigation.

For reports of abuse or neglect in programs certified or operated by OPWDD, when Head Injury Association has been designated to conduct the investigation, Head Injury Association shall notify each subject of the report that an investigation is being conducted, unless notifying the subject of the report would impede the investigation. The notification will be sent at the beginning of the investigation or as soon as the suspect's contact information is known. Notification will be made in the manner specified by the Justice Center (see appendix). The notification or the reason a notification was not made shall be reported to OPWDD. If a decision is made that the notification should not be sent to the suspect, a note will be added to the "Notes Tab" of the VPCR record indicating why the notification was not sent. The determination and notification will be made by the investigator in conjunction with the Chief Compliance Officer and Chief Executive Officer.

In a case where a subject of a report of alleged abuse or neglect resigns from his or her position or is terminated while under investigation, the agency shall promptly report such resignation or termination to the Justice Center. The subject of a report means a custodian who is reported to the VPCR for the alleged abuse or neglect of a person receiving services.

For each incident and allegation subject to Jonathan's Law, HIA will provide a report on actions taken, (OPWDD 148 Actions Taken Form) completed in IRMA or paper form to the individual receiving the notification. The report will be provided within 10 days of the completion of the OPWDD 147 or 150 incident forms. The 148 form must be sent to MHLS in incidents of abuse or neglect.

If a meeting is requested, the Chief Executive Officer, or his or her designee, will hold the meeting within a reasonable amount of time after the request is made.

The requirement for disclosure under Jonathan's Law will not apply to any allegation of abuse which occurs while the consumer is not under the auspices of Head Injury Association. It does not apply to allegations which do not involve HIA personnel and did not occur during the time that services were provided.

OPWDD and the Justice Center 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 minutes of meetings at which the incident or alleged abuse was discussed shall be made available to reviewers or investigators. Program members, employees, and any other relevant persons may be interviewed in pursuit of any such review or investigation.

5.5 **Timeframes For Release of Records:**

Records subject to release concerning allegations of abuse which occurred prior to June 30, 2013.

Head Injury Association is required to release all records and documents pertaining to allegations and investigations into abuse as defined in applicable OPWDD regulations in effect at the time the allegation occurred under the auspices of the agency or sponsoring agency to eligible requestors who make a request in accordance with the provisions of this section.

Records subject to release concerning reportable incidents which occurred on or after June 30, 2013.

Head Injury Association is required to release all records and documents pertaining to reportable incidents to eligible requestors who make a request in accordance with the provisions of this section.

Eligible requestors shall submit a written request to the Director of Residential Care, Chief Compliance Officer or Chief Executive Officer. If the request is made prior to the closure of the incident, the Chief Compliance Officer shall provide the requested records no later than 21 days after the closure of the incident. If the request is made at or subsequent to the closure of the incident, Head Injury Association 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.

The closure of the incident will occur when the incident review committee, OPWDD or the Justice Center has determined a finding of substantiated or unsubstantiated.

5.6 **Redaction:**

Documents that are provided in conformance with the Jonathan's Law requirements will not include the names of employees or people receiving services, or other information tending to identify those individuals. If any name or any such information is on the form

or in the report, it will be redacted, unless the person receiving services or employee authorizes disclosure. If disclosure is authorized, the names or other information tending to identify that person must be disclosed, unless redaction is necessary because it might tend to identify a different employee or person receiving services or for another mandated purpose. All redaction of documents will be completed by the Chief Compliance Officer or designee, Chief Executive Officer or designee with approval of legal counsel if indicated.

5.7 **Administrative appeal process - denial of requested records/documents**

A requestor denied access to the records and documents requested may appeal, in writing, such denial to the incident records appeals officer designated by OPWDD.

If Head Injury Association denies a request for access to records, HIA will inform the requestor in writing of the opportunity to appeal the denial to the OPWDD Incident Records Appeal Officer to OPWDD Incident Records Appeal Officer, Office of Counsel, 44 Holland Avenue, Albany, New York 12229.

The Appeals Officer will notify HIA of the request and HIA will submit all relevant information concerning the denial within 10 business days of the request.

The Appeals Officer will render a determination within 10 business days of the receipt of complete information, or within 20 business days of making the request for information to HIA if HIA does not respond to the Officer's request within 10 business days. The Officer will provide the requestor and HIA with a written determination and explanation about whether the records denied by HIA should be released. If directed by the Officer, HIA shall provide the requested records to the requestor.

5.8 **Records**

Minor notable occurrences, serious notable occurrences, significant and reportable incidents and documentation of investigations shall be maintained so as to protect the privacy of program members, other individuals' involved or other persons whose names appear in the report.

Records that must be retained include but are not limited to evidence and materials obtained or accessed during the investigative process, copies of all documents.

Records shall be retained for a minimum period of seven years from the date that the incident or allegation of abuse is closed. However, when there is a pending audit or litigation concerning an incident or allegation of abuse, Head Injury Association shall retain the pertinent records during the pendency of the audit or litigation.

Records, reports, and documentation shall be retrievable by the person's name and filing number or identification code assigned by the agency. For incidents and occurrences which are reported in IRMA, such information shall be retrievable by the master incident number in IRMA.

When there is an incident or occurrence reported involving more than one person receiving services the situation shall be considered as one event and shall be recorded as such.

All records generated shall be kept confidential and shall not be disclosed except as otherwise authorized by law or regulation. Records of reportable incidents that are reported to the Justice Center are to be kept confidential pursuant to section 496 of the Social Services Law.

5.9 **Under the Auspices – Part 624**

Definition of Under the Auspices of Head Injury Association for the purposes of incident reporting under Part 624 is an event or situation in which Head Injury Association is providing services to a person. The event or situation can occur whether or not the person is physically at a site owned, leased, or operated by Head Injury Association include but are not limited to:

- An event or situation in which Head Injury Association personnel (staff, interns, contractors, consultants, and/or volunteers) are, or should have been, physically present and providing services at that point in time.
- Any situation involving physical conditions at a Head Injury Association facility even in the absence of agency personnel.
- The death of an individual that occurred while the individual was receiving services or that was caused by or resulted from a reportable incident or notable occurrence.
- The death of individual receiving services who lives in a Head Injury Association residential facility operated or certified by OPWDD is always under the auspices of the agency. The death is also under the auspices of the Head Injury Association if the death occurred up to 30 days after the discharge of the individual from a Head Injury Association residential facility (unless the person was admitted to a different residential facility in the OPWDD system).
- Any event that directly involves or may have involved Head Injury Association personnel.

If a minor notable occurrence, serious notable occurrence, significant or reportable incident occurs while an individual is still directly under the auspices of the agency, but is not physically on agency property (for example: in a restaurant, at the doctor, visiting family, in school, on a vacation trip, at camp, or other non-certified location), Head Injury staff must still report the incident to their supervisor immediately.

5.10 **Events and Situations are not under the auspices of Head Injury Association**

Definition of Not Under the Auspices of Head Injury Association for the purposes of incident reporting under Part 625 is:

- Any event or situation that directly involves or may have involved Head Injury Association personnel during the time he or she was acting under the supervision of a State agency other than OPWDD (e.g. an agency employee

has a second job at a hospital and an incident occurred while he or she was providing care to an individual receiving services during the individual's hospitalization).

- Any event or situation that exclusively involves the family, friends, employers, or co-workers of individual receiving services, whether or not in the presence of Head Injury Association personnel or at a certified site.
- Any event or situation that occurs in the context of the provision of services that are subject to the oversight of a State agency other than OPWDD (e.g. special education, article 28 clinic, hospital, physician's office), whether or not in the presence of Head Injury Association personnel or a family care provider.
- Any allegation of neglect that is based on conditions in a private home (excluding a family care home).
- The death of an individual who received OPWDD operated, certified, or funded services, except deaths that occurred under the auspices of Head Injury Association.

In all situations described above Not under the auspices of Head Injury Association- Part 625 an OPWDD 150 Incident Reporting Form will be completed and if required inputted into IRMA within 24 hours or by end of the next business day. Incidents that fall under Part 625 will still fall under Jonathan's Law and MHLS reporting requirements.

The following definitions pertain to Part 625 Not Under the Auspices of Head Injury Association:

- Physical abuse. The non-accidental use of force that results in bodily injury, pain or impairment, including but not limited to, being slapped, burned, cut, bruised or improperly physically restrained.
- Sexual abuse. Non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.
- Emotional abuse. The willful infliction of mental or emotional anguish by threat, humiliation, intimidation, or other abusive conduct, including but not limited to, frightening or isolating an adult.
- Active neglect. The willful failure by the caregiver to fulfill the care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment, willful deprivation of food, water, heat, clean clothing and bedding, eyeglasses or dentures, or health related services.
- Passive neglect. The non-willful failure of a caregiver to fulfill care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment or denial of food or health related services because of inadequate caregiver knowledge, infirmity, or disputing the value of prescribed services.
- Self neglect. An adult's inability, due to physical and/or mental impairments, to perform tasks essential to caring for oneself, including but not limited to, providing essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, mental health, emotional well-being, and general safety; or managing financial affairs.
- Financial exploitation. The use of an adult's funds, property, or resources by

another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers, or denial of access to assets.

- Death. The end of life, expected or unexpected, regardless of cause.

5.11 **Head Injury Association involvement in events or situations that are not under the auspices of an agency.**

If Head Injury Association becomes aware of an event or situation involving an individual receiving services from Head Injury Association in which the event or situation is not under the auspices of Head Injury Association, Head Injury Association shall respond to the event or situation as follows:

- If the event or situation meets one of the definitions in sections 624.3 or 624.4 (reportable incidents and notable occurrences) and occurred under the auspices of another agency subject to the requirements of Part 624:
 - (i) Head Injury Association shall comply with the requirements of 624.5. This includes the requirement to document the event or situation and report the situation to the agency under whose auspices the event or situation occurred.
 - (ii) All mandated reporters (e.g. custodians) will make reports to the Vulnerable Persons' Central Register (VPCR) pursuant to section 491 of the social services law. All mandated reporters at the discovering agency must report to the VPCR upon discovery of a reportable incident that occurred in another program or facility which is certified or operated by OWPDD.
- If the event or situation meets one of the definitions in sections 624.3 or 624.4 and occurred in a facility or service setting subject to the regulatory oversight of another State Agency (e.g. school, hospital), Head Injury Association shall document the event or situation and shall report the situation to the management of the facility or service setting.
- Head Injury Association shall intervene if it has reason to believe (e.g. a report or complaint is made to the agency, etc.) that the event or situation meets the definition of physical, sexual, or emotional abuse; active, passive, or self neglect; or financial exploitation as defined in section 625.2, unless the event or situation meets the criteria in the paragraphs above.

5.12 **Requirements concerning agency involvement in deaths that are not under the auspices of Head Injury Association.**

Head Injury Association shall intervene in an event or situation that meets the definition of physical, sexual, or emotional abuse; active, passive, or self neglect; or financial exploitation by taking actions to protect the involved individual with developmental disabilities. Such actions, as appropriate, may include but are not limited to the following:

- (1) notifying an appropriate party that may be in a position to address the event or situation (e.g. Statewide Central Register of Child Abuse and

- Maltreatment, Adult Protective Services, law enforcement officials, family members, school, hospital, or the Office of Professional Discipline);
- (2) offering to make referrals to appropriate service providers, clinicians, State agencies, or any other appropriate parties;
 - (3) Interviewing the involved individual and/or witnesses;
 - (4) assessing and monitoring the individual;
 - (5) reviewing records and other relevant documentation; and
 - (6) educating the individual about his or her choices and options regarding the matter.

Head Injury Association shall intervene as it deems necessary and appropriate when the event or situation meets the definition of physical, sexual, or emotional abuse; active, passive, or self neglect; or financial exploitation, and involves an adult who meets the following criteria:

- (1) the individual resides in a residence certified or operated by OPWDD (or a family care home);
- (2) the individual receives day program services certified or operated by OPWDD;
- (3) the individual receives Medicaid Service Coordination (MSC) or Plan of Care Support Services (PCSS) authorized by OPWDD; and/or
- (4) the individual receives Home and Community Based Services (HCBS) waiver services authorized by OPWDD.

Head Injury Association shall intervene by notifying Adult Protective Services of any event or situation that meets the definition of physical, sexual or emotional abuse; active, passive, or self neglect; or financial exploitation, when it involves an adult receiving services who meets the following criteria:

- (1) the individual is only receiving family support services (FSS), individual support services (ISS), or Article 16 clinic services; and/or
- (2) the individual is not available to the agency or sponsoring agency; and/or
- (3) the individual is in need of protective services that the agency cannot provide.

Mandated reporters who are required to report cases of suspected child abuse or maltreatment shall report to the Statewide Central Register of Child Abuse and Maltreatment in accordance with the requirements of Article 6 of the Social Services Law.

If more than one agency is providing services to the individual, there shall be a responsible agency that is designated to intervene in events or situations that meet the definition of physical, sexual, or emotional abuse; active, passive, or self neglect; or financial exploitation.

- (1) The agency responsible for intervening shall be the provider of the services to the individual (or sponsoring agency) in the order stated:
 - (i) residential facility, including a family care home (note: this does not include free-standing respite facilities);
 - (ii) certified day program (if the individual is receiving services

from more than one certified day program, the responsible agency shall be the agency that provides the greater duration of service on a regular basis);

- (iii) MSC or PCSS;
- (iv) HCBS Waiver services including respite services provided at a free standing respite facility or services under the Care at Home Waiver;
- (v) FSS, ISS and/or Article 16 clinic services;

If the discovering agency is not the responsible agency, the discovering agency shall notify the responsible agency of the event or situation (unless it is sure that the responsible agency is already aware).

5.13 **OPWDD involvement in events or situations that are not under the auspices of the agency.**

Head Injury Association shall submit an initial report about the event or situation in the OPWDD Incident Report and Management Application (IRMA). Head Injury Association shall enter initial information about the event or situation within twenty-four hours of occurrence or discovery or by close of the next working day, whichever is later. Such initial information shall identify all actions taken by the agency, including any initial actions taken to protect the involved individual. Head Injury Association shall report updates on the event or situation in IRMA on a monthly basis or more frequently upon the request of OPWDD until the event or situation is resolved. Such updates shall include information about subsequent interventions (see subdivision 625.3(b)) and shall include information about the resolution of the event or situation.

5.14 **OPWDD involvement in deaths that are not under the auspices of Head Injury**

OPWDD has the right to investigate or review any event or situation regardless of the source of the information. Head Injury Association shall provide OPWDD reviewers or investigators with all relevant records, reports, and other information pertaining to the event or situation. Individuals receiving services, staff, and any other relevant parties may be interviewed in pursuit of any such review or investigation.

When an event or situation is investigated or reviewed by OPWDD, OPWDD may make recommendations to Head Injury Association concerning any matter related to the event or situation. This may include recommendation that Head Injury Association conduct an investigation and/or take specific actions to intervene. In the event that OPWDD makes recommendations, Head Injury Association shall either:

- (i) implement each recommendation in a timely fashion and submit documentation of the implementation to OPWDD; or
- (ii) in the event that the agency does not implement a particular recommendation, submit written justification to OPWDD within a month after the recommendation is made, and identify the alternative means that will be undertaken to address the issue, or explain why no action is needed.

5.15 Head Injury Association and OPWDD involvement in deaths that are not under the auspices of the agency.

In accordance with New York State Law and guidance issued by the Justice Center, the death of any individual who had received services operated or certified by OPWDD, within thirty days preceding his or her death, and the death did not occur under the auspices of the agency, shall be reported to the Justice Center for the Protection of People with Special Needs (Justice Center), as follows:

- (1) The initial report shall be submitted, by the agency's Chief Executive Officer or designee, through a statewide, toll-free telephone number in a manner specified by the Justice Center.
- (2) The initial report shall be submitted immediately upon discovery and in no case more than twenty-four hours after discovery.
- (3) Subsequent information shall be submitted to the Justice Center, in a manner and on forms specified by the Justice Center, within five working days of discovery of the death.

The results of an autopsy, if performed and if available to Head Injury Association, shall be submitted to the Justice Center within sixty working days of discovery of the death. (The Justice Center may extend the timeframe for good cause.)

If more than one agency provided services to the individual, there shall be one responsible agency that is designated to report the death of the individual. The agency responsible for reporting to the Justice Center shall be the provider of the services to the individual in the order stated:

- (i) OPWDD certified or operated day program (if the individual received services from more than one certified day program, the responsible agency shall be the agency that provided the greater duration of service on a regular basis);
- (ii) MSC or PCSS (OPWDD operated services only);
- (iii) HCBS Waiver services (OPWDD operated services only);
- (iv) Care at Home Waiver services (OPWDD operated services only);
- (v) Article 16 clinic services;
- (vi) FSS or ISS (OPWDD operated services only);
- (vii) Any other service operated by OPWDD.

The requirements in this subdivision do not apply to the death of an individual who received only OPWDD funded services (such as community habilitation or supported employment services) provided by a voluntary-operated agency, rather than services that are operated or certified by OPWDD, or to the death of an individual who resided in an OPWDD certified or operated residential program.

All deaths that are reported to the Justice Center shall also be reported to OPWDD. A death that occurred under the auspices of Head Injury Association shall be reported as a serious notable occurrence in accordance with Part 624 of this Title.

A death that did not occur under the auspices Head Injury Association shall be reported

in accordance with the section below:

- The death of any individual who had received services certified, operated, or funded by OPWDD, within thirty days of his or her death, and the death did not occur under the auspices of the agency, shall be reported to OPWDD as follows:
 - (1) All deaths shall be reported immediately upon discovery to OPWDD by telephone or other appropriate methods. Immediate entry of initial information into the OPWDD Incident Report and Management Application (IRMA) shall not be sufficient to satisfy this requirement.
 - (2) The agency shall submit an initial report about the death in IRMA within twenty-four hours of discovery of the death, or by close of the next working day, whichever is later, in the form and format specified by OPWDD.
 - (3) Head Injury Association shall submit subsequent information about the death in IRMA within five working days following discovery of the death, in the form and format specified by OPWDD.
 - (4) If more than one agency provided services to an individual, there shall be one responsible agency that is designated to report the death of the individual. The agency responsible for reporting the death to OPWDD shall be the provider of the services to the individual (or sponsoring agency) in the order stated:
 - (i) OPWDD certified or operated day program (if the individual received services from more than one certified day program, the responsible agency shall be the agency that provided the greater duration of service on a regular basis);
 - (ii) OPWDD operated or funded MSC or PCSS;
 - (iii) OPWDD operated or funded HCBS Waiver services;
 - (iv) OPWDD operated or funded Care at Home Waiver services;
 - (v) Article 16 clinic services;
 - (vi) OPWDD operated or funded FSS or ISS services;
 - (vii) Any other service operated or funded by OPWDD.

5.16 Investigations into deaths that did not occur under the auspices of Head Injury Association

The Justice Center has the right to investigate or review the death of any individual who had received services operated or certified by OPWDD, even if the death did not occur under the auspices of Head Injury Association. Head Injury Association shall provide Justice Center reviewers or investigators with all relevant records, reports, and other information pertaining to the event or situation. Individuals receiving services, staff, and any other relevant parties may be interviewed in pursuit of any such review or investigation.

OPWDD has the right to investigate or review, or to request a provider agency to investigate, the death of any individual, even if the death did not occur under the auspices of Head Injury Association. Head Injury Association shall provide OPWDD reviewers or investigators with all relevant records, reports, and other information pertaining to the event or situation. Individuals receiving services, staff, and any other relevant parties may be interviewed in pursuit of any such review or investigation.

If the Justice Center or OPWDD is responsible for the investigation, Head Injury Association shall fully cooperate with the assigned investigator.

5.17 **Duty to report events or situations under the auspices of another agency**

If a minor notable occurrence, serious notable occurrence, significant or reportable is alleged to have occurred while a person was under the auspices of another agency (e.g., day habilitation staff allege that a situation occurred at a residence), the discovering agency shall document the situation and shall report the situation to the agency under whose auspices the event or situation occurred.

Mandated reporters (e.g. custodians) are required to make reports to the VPCR pursuant to section 491 of the social services law. The mandated reporters at the discovering agency will report to the VPCR upon discovery of an allegation of a reportable incident that occurred in another program or facility which is certified or operated by OPWDD.

It shall be the responsibility of the agency under whose auspices the situation is alleged to have occurred to report, investigate, review, correct, and monitor the situation. When a person receives two or more services from the same provider agency, and one program or service environment discovers an incident that is alleged to have occurred under the supervision of another program or service environment operated by the same agency, the discovering program/service environment must document the situation and report it to the program/service environment where the situation or event is alleged to have occurred. The program or service environment where the incident is alleged to have occurred is responsible for reporting and managing the incident, in accordance with this Part and agency policy.

If the agency suspecting or alleging the incident or occurrence is not satisfied that the situation will be or is being investigated or handled appropriately, it shall bring the situation to the attention of OPWDD.

In situations where there is a minor notable occurrence, serious notable occurrence, significant or reportable incident reported involving more than one person receiving services the situation shall be considered as one event.

The Chief Operating Officer, Director of Residential Services, Service Coordinator or designee will be responsible to notify any other agency in which the consumer is associated with of a minor notable occurrence, serious notable occurrence, significant

incidents, and allegation of abuse or neglect.

5.18 **Organization and Membership of the Incident Review Committee**

Membership the Incident Review Committee shall include:

- a member of the governing body;
- at least two professional staff;
- other staff, including professional or administrative staff, as deemed necessary by the agency to achieve the purposes of the committee pursuant to this section;
- a licensed health care practitioner (e.g. physician, physician's assistant or nurse practitioner);
- one direct support professional (except for agencies which do not have direct support professionals);
- one individual receiving services;
- one representative of advocacy organizations (e.g. self-advocacy, family or other advocacy organizations)
- Medical Director for consultation when needed or indicated

The Chief Executive Director will appoint IRC members and shall not serve as a member of the committee but may be consulted by the committee in its deliberations.

5.19 **Incident Review Committee**

Members of an Incident Review Committee (IRC) shall not routinely be assigned the responsibility of investigating incidents or occurrences. In the event that an IRC member conducts an investigation of an incident or occurrence, the member will recuse themselves from the review of that incident.

A staff person with knowledge of Head Injury Association's own organizational entity where the event which is under discussion occurred; or by someone who is familiar with the person(s) involved will be present at the IRC meeting.

Any committee member who recognizes a potential conflict of interest in his or her assignment shall report this information to the committee and recuse him or herself from participating in committee review of the incident or occurrence in question.

No committee member may participate in the review of any serious notable occurrence, significant or reportable incident in which he or she was directly involved, in which his or her testimony is incorporated, in which his or her spouse, domestic partner, 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, preventive, or remedial action.

No committee member may participate in the review of an investigation in which his or her spouse, domestic partner, or immediate family member provides supervision to the program where the incident took place or supervised directly involved parties.

No committee member may participate in the review of a serious notable occurrence, significant or reportable incident if such committee member is the immediate supervisor of staff directly involved in the event or situation. Such member may, however, participate in committee deliberation regarding appropriate corrective, preventive or remedial action.

Members of the committee shall be trained in confidentiality laws and regulations, and shall comply with section 74 of the public officer's law.

The chairperson of a standing committee shall ensure that minutes are kept for all meetings. The IRC chairperson will ensure documentation of reports of minor notable occurrences of theft or financial exploitation, serious notable occurrence, significant and reportable incidents have been reviewed by the committee and the results and recommendations have been conveyed to the Chief Operating Officer, Director, CEO and others with a need to know. All minutes will be filed and maintained in a manner which ensures confidentiality.

For reportable incidents, serious notable occurrences significant and reportable incidents, the portion of the minutes that discuss matters concerning the specific event or situation shall be entered into IRMA within three weeks of the meeting.

Minutes addressing the review of specific serious notable occurrence, significant and reportable incidents, will clearly state the filing number or identification code of the report, 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 the agency as a result of such recommendations. Full names of all parties involved are to be recorded (not initials).

When an investigation of an incident or occurrence is conducted by the Central Office of OPWDD or the Justice Center:

- The IRC role in reviewing and monitoring the particular incident or occurrence is limited to matters involving compliance with the reporting and notification requirements of this policy, protective and remedial actions taken, operational concerns, and the quality of services provided.
- The finding (of the allegation of abuse) of substantiated or unsubstantiated shall be made by the Central Office of OPWDD or the Justice Center.

The IRC shall monitor all actions taken to implement recommendations made by the Central Office of OPWDD or the Justice Center.

The standing committee will review all minor notable occurrences of theft or financial exploitation, serious notable occurrence, significant and reportable incidents to:

- Ascertain that all minor notable occurrences of theft or financial exploitation, serious notable occurrence, significant and reportable incidents, were

reported, managed and documented consistent with the provision of Part 624, Part 625 and with Head Injury Association policies and procedures. The IRC will further make recommendations to the CEO to correct, improve, or eliminate inconsistencies.

- Ascertain that necessary and appropriate corrective, preventative action has been taken to protect program members from further harm and to safeguard against the recurrence of similar reportable incidents or alleged consumer abuse. The committee will further make recommendations to the CEO to correct, improve, or eliminate inconsistencies.
- Identify trends to recommend appropriate corrective or preventative measures to the CEO to safeguard against such recurring situations or reportable incidents and allegations of abuse.
- Ascertain and ensure the adequacy of the agency's/program's reporting and review practices, including the monitoring of the implementation of approved recommendations for corrective and preventative action.
- On a quarterly basis review all occurrences and incidents to monitor trends and make recommendations

The Incident Review Committee will meet no less frequently than on a quarterly basis and always within one month of the report of a serious reportable incident or allegation of abuse, or sooner should the circumstances so warrant.

The Incident Review Committee is responsible for monitoring actions taken on any and all recommendations made and the chairperson will advise the CEO when there is a problem.

An annual trend analysis report will be developed and discussed with the Board of Directors and submitted to the DDSO by the CEO.

5.20 Notification to service coordinator

The Service Coordinator will be provided with subsequent information which may be needed to update an individual's plan of services and to monitor protective, corrective, and other actions taken following a reportable incident or occurrence. This will include written information identifying investigative conclusions (including the findings of an allegation of abuse or neglect) and recommendations pertaining to the individual's care, protection, and treatment. The information provided will exclude information that directly or indirectly identifies agency employees, consultants, contractors, volunteers, or other individuals receiving services. This information will be provided to the Service Coordinator within 10 days following completion of the investigation.

The Service Coordinator may request additional information concerning the incident or

occurrence in order to monitor protective, corrective, and/or other actions taken. In the event that Head Injury Association receives a request for this information from a service coordinator, the agency shall provide information that it deems appropriate. In providing this information, Head Injury Association will exclude information that directly or indirectly identifies agency employees, consultants, contractors, volunteers, and other individuals receiving services. If Head Injury Association determines that it would be inappropriate to disclose specific information requested, the agency must advise the Service Coordinator of this determination and its justification, in writing, within 10 days following the request. If Head Injury Association does not have specific information requested by the Service Coordinator (e.g. if the Justice Center conducted the investigation and it has not provided that information to the agency) the agency shall advise the Service Coordinator that it does not have the requested information. If the information may be available from the Justice Center the agency shall so advise the Service Coordinator.

If the Service Coordinator is identified as the subject of a report of an allegation of abuse or neglect or as a witness to a reportable incident or occurrence, Head Injury Association shall not provide information to that party. In such a case, notifications and written information will be provided to the Service Coordinator's supervisor or the administrator of the agency providing service coordination in lieu of the Service Coordinator.

If the IRC review results in additional findings, conclusions, or recommendations regarding the individual's care, protection, and/or treatment, this information must be provided to the Service Coordinator, in written form, within 3 weeks following committee review.

5.21 Findings of allegations of abuse or neglect.

For every allegation of abuse or neglect, a finding shall be made. Head Injury Association shall make the finding or, in the event that the Central Office of OPWDD or the Justice Center conducted the investigation, the Central Office of OPWDD or the Justice Center shall make the finding. A finding shall be based on a preponderance of the evidence and shall indicate whether:

- the alleged abuse or neglect is substantiated because it is determined that the incident occurred and the subject of the report was responsible or, if no subject can be identified and an incident occurred, that the agency was responsible; or
- the alleged abuse or neglect is unsubstantiated because it is determined not to have occurred or the subject of the report was not responsible, or because it cannot be determined that the incident occurred or that the subject of the report was responsible.

A concurrent finding may be made that a systemic problem caused or contributed to the occurrence of the incident. Upon the discovery of a concurrent finding, the Chief Compliance Officer or designee will establish a project team to review the finding and develop a corrective action.

5.22 Plans for prevention and remediation for substantiated allegations of abuse or neglect

Within 10 days of the completion of the investigation, if the allegation of abuse or neglect has been substantiated, Head Injury Association shall develop and implement a plan of prevention and remediation to be taken to assure the continued health, safety, and welfare of individuals receiving services and to provide for the prevention of future acts of reportable incidents. The plan shall include written endorsement by the CEO or designee.

The plan shall specify by title agency staff who are responsible for monitoring the implementation of each remedial action identified and for assessing the efficacy of the remedial action.

The plan will be entered into IRMA by the close of the fifth working day after the development of the plan and OPWDD will inform the Justice Center about plans developed.

For reportable incidents and serious notable occurrences, Head Injury Association shall enter reporting updates into IRMA on at least a monthly basis or more frequently as requested by OPWDD, until closure of the incident or occurrence.

5.23 Closure of an incident or occurrence

An incident will be considered closed when the IRC has ascertained that no further investigation is necessary; or in cases of abuse / neglect if the agency conducts the investigation, when the Justice Center provides written notice to the agency of the Justice Center's review of the investigation. If the Central Office of OPWDD conducts the investigation, when the Justice Center provides written notice to the agency of the Justice Center's review of the investigation; or if the Justice Center conducts the investigation, when the Justice Center provides written notice to the agency that the investigation is completed.

5.24 Final reports to the Justice Center

Head Injury Association shall submit a final report to OPWDD for all reportable incidents of abuse /neglect that were accepted by the VPCR. The report will include all information regarding the incident including the:

- copy of OPWDD 147
- copy of Jonathan's Law notification
- all statements
- copy of OPWDD 148
- copy of OPWDD 149
- any other documentation gathered during the course of the investigation

Head Injury Association will submit the entirety of the investigative record to the Justice Center and/or OPWDD, within 50 days of the VPCR and/or OPWDD accepting such report, as follows:

1. For reports of abuse or neglect that were reported to the Justice Center, HIA will enter the entirety of the investigative record in the Justice Center's Web Submission of Investigation Report (WSIR) application.
2. Effective January 1, 2016, for reports of abuse and neglect that are not required to be reported to the Justice Center and for the death of any individual that occurs under the auspices of an agency, HIA must enter/upload the entirety of the investigative record in IRMA.
3. HIA may take additional time to submit the investigative record provided, however, that the reasons for any delay must be for good cause and must be documented. The record must be submitted as soon thereafter as practicably possible.
4. In the event that the Justice Center or OPWDD conducts the investigation instead of HIA, HIA is not required to submit the investigative record to the Justice Center and/or OPWDD. In the event that OPWDD conducts the investigation, OPWDD will submit the investigative record to the Justice Center. However, HIA must provide information as requested by the Justice Center and/or OPWDD that may be deemed necessary to complete the record.

Insert OPWDD 147, 150, 148 and 163 Form
Statewide Central Register SCR Check Form dated 06-13
Letter to Subject Individual

Head Injury Association

Subject: Investigations of OPWDD Minor Notable, Serious Notable, Significant and Reportable Incidents Policy and Procedure
File Under Section: 7.1A
Effective Date: May 1, 2019
Supersedes: May 1, 2008, October 1, 2011, June 30, 2015 and January 1, 2016

Approval: _____



1.0 **Purpose:**

To set forth Head Injury Association's policy and procedure regarding the Investigation of Minor Notable, Serious Notable, Significant and Reportable Incidents.

2.0 **Scope:**

This policy and procedure shall apply to all employees, interns, volunteers, consultants and contractors of Head Injury Association.

3.0 **Responsibility:**

The responsibility of interpretation and administration of this policy and procedure shall be vested with the agency administrators.

4.0 **Policy:**

Head Injury Association has developed policies and procedures in accordance with New York State Office For People with Developmental Disabilities Regulations Part 624 and Part 625, the Justice Center and Mental Hygiene Law.

The purpose of investigating incidents or allegations is to enhance the quality of care provided to persons with developmental disabilities who are in programs and to protect members from harm ensuring that such persons are free from mental and physical abuse. In addition, to enable program administrators to become aware of problems, ensure corrective action; minimize the potential for re-occurrence, identification of trends and development and implementation of preventative strategies.

Whenever an incident occurs that endangers the health and safety of a participant or staff person, the investigation procedure will be utilized. All investigations will be documented on the appropriate forms enclosed within this policy.

5.0 **Procedure**

OPWDD and the Justice Center have the right to review and / or investigate any incident and / or allegation of abuse regardless of the source of information. All relevant records,

reports, and minutes of meetings at which the incident or alleged abuse was discussed shall be made available to reviewers or investigators. Program participants, employees and any other relevant persons may be interviewed in pursuit of any such review or investigation. OPWDD shall ensure confidentiality.

All incident reports and subsequent investigation reports and information shall be maintained so as to protect the privacy of program members, other individuals involved, or other persons whose names appear in the report. Further, such information shall be retrievable by program participant and filing number or identification code.

When a serious reportable incident, minor notable occurrence in the category of theft or financial exploitation, serious notable incident, significant incident or reportable incident occurs while an individual is still directly under the auspices of the agency but is not physically on agency property (e.g. at a restaurant, visiting family, the doctor or in school etc.), the same procedure shall be followed as though the situation occurred on agency property. 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 etc.).

If a serious reportable incident, minor notable occurrence in the category of theft or financial exploitation, serious notable incident, significant incident or reportable incident is alleged to have occurred while the individual was under the supervision of another agency's facility; the discovering agency shall make a written record of the report. The discovering agency shall determine if the event has or will be reported and investigated by the other agency / facility. The agency or facility under whose auspices the serious reportable incident or abuse occurred, shall report the situation to OPWDD IMU and the Justice Center if applicable.

It shall be the responsibility of the agency with authority over the facility or service where the situation is alleged to have occurred to investigate, review, correct and monitor the situation unless Head Injury Association is directed otherwise by OPWDD or the Justice Center. Further, the discovering agency as well as the DDSO shall be informed of the progress and outcomes as required by this policy and procedure.

If the agency suspecting or alleging the incident or abuse is not satisfied that the situation will be or is being investigated or handled appropriately, it shall bring the situation to the attention of the DDSO and / or the Justice Center. The DDSO, Justice Center shall follow up and take whatever measures are necessary to ensure appropriate action by the other agency.

If there is a serious reportable incident, minor notable occurrence in the category of theft or financial exploitation, serious notable incident, significant incident or reportable incident which involves more than one person receiving services shall be considered as one event unless otherwise indicated.

Program Management shall ensure that all program members, guardians, qualified person, correspondent or advocate are familiar with Head Injury Association's policy and procedure related to reporting and investigation of incidents. All program members, guardians, qualified person, correspondent or advocate will be provided instructions on

how to access this policy in electronic format and with notification that upon written request the agency will provide a paper copy.

Upon employment or initial volunteer or interning, contract, and annually thereafter, Head Injury Association will make the agency's policy and procedure on incident management and investigations known to agency employees, interns, volunteers, consultants, contractors. This information shall be provided in conjunction with orientation and annual retraining.

The complete investigation package will be forwarded to the Incident Review Committee for review, recommendations, disposition and if applicable disciplinary follow up.

5.1 **Investigations of Occurrences, Incidents and Injuries of Unknown Origin**

Any OPWDD report of a significant, reportable incident or notable occurrence (both serious and minor) shall be thoroughly investigated by the Chief Executive Officer or an investigator designated by the Chief Executive Officer, unless OPWDD or the Justice Center advises the Chief Executive Officer that the incident or occurrence will be investigated by OPWDD or the Justice Center and specifically relieves the agency of the obligation to investigate.

All agency investigators will have experience and training. For OPWDD investigations, all investigators will have completed the Justice Center training program.

Investigations of all notable occurrences, injuries of unknown origin, significant, reportable and serious reportable incidents shall be initiated immediately, with further investigation undertaken commensurate with the seriousness and circumstances of the situation.

5.2 **OPWDD Investigations**

Head Injury Association shall commence an investigation immediately even in OPWDD cases when it anticipates that the Justice Center or Central Office of OPWDD will assume the responsibility for the investigation. However, if Head Injury Association can reasonably anticipate that the Justice Center or the Central Office of OPWDD is likely to investigate the incident, the actions taken by Head Injury Association are restricted to:

- securing and/or documenting (e.g. photographing) the scene as appropriate;
- collecting and securing physical evidence;
- taking preliminary statements from witnesses and involved parties; and
- performing such other actions as specified by the Justice Center or OPWDD.
- in the event that law enforcement directs that Head Injury Association forgo any of the actions specified above

Upon notification that a report of alleged abuse or neglect has been accepted by the Justice Center, HIA shall within 24 hours or next business day attempt to notify the service recipients who are alleged victims and their personal representatives that an interview may take place. There will not be notification to a personal representative if the alleged victim objects to such notification or providing such notification would compromise the

investigation, violate confidentiality laws, be contrary to court order or otherwise contrary to the best interests of the victim.

HIA staff will complete an OPWDD form 163 when contacting personal representatives which will be included in the investigative record. If for any reason a personal representative is not notified, the reason will be documented on the 163 form.

If, during the course of an investigation, the names of additional alleged victims are identified, HIA will promptly notify such additional alleged victims and their personal representatives.

HIA will also notify service recipients who are potential witnesses to an alleged abuse or neglect incident and their personal representatives that such service recipient may be interviewed as part of the investigation. This notification will take place within 48 hours or next business day of notification that an incident of neglect or abuse has been accepted into the Justice Center's Vulnerable Persons Central Registry.

HIA staff will complete an OPWDD form 163 when contacting personal representatives which will be included in the investigative record. If for any reason a personal representative is not notified, the reason will be documented on the 163 form.

To determine if an interview of a service recipient can be conducted in a safe and timely manner, the investigator will:

- review the setting where and circumstances under which the interview is to be conducted;
- consult with the service recipient's personal representative
- ascertain the service recipient's diagnosis
- consult with the service recipient's licensed health professional
- review the service recipient's file
- observe the service recipient's behavior
- speak with service provider employees
- consider the service recipient's capability to provide information to assist the investigation
- engage with preliminary inquiries with service recipient to establish that proceeding with an interview would be appropriate

The HIA investigation will notify a service provider if they will need information from that provider to determine whether to proceed with an interview.

Exceptions: If conducting an interview of the service recipient would be clinically contraindicated, despite the provision of appropriate accommodations, the interview shall not take place. However, the investigator may proceed with an interview, even when contraindicated, where certain circumstances exist. These circumstances include but shall not be limited to:

- an investigator believes that a service recipient has information relevant to maintaining or securing the safety of service recipients;
- an investigator believes that failure to interview a service recipient may allow for the destruction of evidence by a subject;

- the delay of interviewing a service recipient may allow a subject to evade law enforcement; and
- an investigator has been directed by his or her supervisor to proceed with the interview

If an investigator determines that a service recipient may have difficulty comprehending questions due to cultural or linguistic barriers, the investigator shall work with a service provider to ensure that the service recipient is provided with the means to communicate with the investigator.

A personal representative may be permitted to accompany a service recipient who is an alleged victim or a potential witness during an interview, except under the following circumstances:

- the service recipient objects to the personal representative being present during the interview; or
- the investigator believes the presence of the personal representative would impede the investigation.

Objections by a service recipient to a personal representative being present during an interview will be reviewed on an individual basis consistent with the existing standards used to determine the ability of the service recipient to consent to services, programs and treatment.

Even if the personal representative requests to be present for an interview, the request need not be honored if the confidential nature of the information that would be disclosed during the interview would preclude the personal representative's presence.

If a personal representative is allowed to be present during an interview, the personal representative may not interfere with the interview. If the HIA investigator believes that the personal representative is interfering with the interview, the investigator may take appropriate actions to stop the interview. If an investigator determines that a personal representative should not be present or should leave an interview once it is underway, the investigator will document the rationale for such decision in the investigative record.

If a personal representative lives such a distance away that he or she cannot attend an interview in a timely manner, HIA shall provide appropriate technology to allow the personal representative to participate in the meeting. This will entail the use of a conference call line or a video conference if available. HIA shall not be required to unreasonably delay an interview to allow for a personal representative to participate.

Prior to beginning an interview with a service recipient, the HIA investigator shall advise service recipients and their personal representatives about what to expect in an interview. The investigator shall explain that participation in an interview is voluntary. In addition, the investigator shall advise the service recipient and their personal representative about searches of the service recipient's personal property and searches of the service recipient's person for the purposes of non-criminal investigations. The HIA investigator will clarify that when searches are voluntary, nothing in this policy changes the voluntary nature of such searches.

The designated investigator will compile all necessary information (e.g., statements, photographs, medical material, physical evidence, etc.) and begin an investigation package.

For reports of abuse or neglect in programs certified or operated by OPWDD, and when Head Injury Association had been designated to conduct the investigation, Head Injury Association shall submit a request for a check of the Statewide Central Register of Child Abuse and Maltreatment (SCR) concerning each subject of the report. The request shall be submitted to the Justice Center in the form and manner specified by the Justice Center as soon as the information required to make the request is known or discovered.

As a result of the check, Head Injury Association may receive information that one or more indicated reports exist concerning the subject of the report. If this occurs, Head Injury Association shall take appropriate steps to gather information contained in the report as specified by the Justice Center. Information obtained pursuant to this paragraph will be included in the investigation records submitted to OPWDD.

Additional requests to search the SCR should be sent to the Justice Center if new suspects are identified during the course of the investigation.

For reports of abuse or neglect in programs certified or operated by OPWDD, when Head Injury Association has been designated to conduct the investigation, Head Injury Association shall notify each subject of the report that an investigation is being conducted, unless notifying the subject of the report would impede the investigation. The notification will be sent at the beginning of the investigation or as soon as the suspect's contact information is known. Such notification shall be made in the manner specified by the Justice Center. Such notification or the reason a notification was not made shall be reported to OPWDD in the manner specified by OPWDD. If a decision is made that the notification should not be sent to the suspect, a note will be added to the "Notes Tab" of the VPCR record indicating why the notification was not sent. The determination and notification will be made by the investigator in conjunction with the Chief Compliance Officer and Chief Executive Officer.

For OPWDD incidents Head Injury Association is responsible for monitoring IRMA to ascertain whether the Justice Center, the Central Office of OPWDD or the agency is responsible for the investigation.

- If the Justice Center or the Central Office of OPWDD is responsible for the investigation, Head Injury Association shall fully cooperate with the assigned investigator but shall not conduct an independent investigation

All OPWDD minor notable occurrences in the category of theft or financial exploitation, serious notable occurrences, significant and reportable incidents investigative reports shall be documented on the OPWDD 149 form. The report shall contain the following information:

- identifying data, such as the name(s) of person(s) receiving services involved in the incident or occurrence; the date the incident/occurrence was reported and/or discovered; the classification of the incident; and the incident/occurrence number. For incidents/occurrences entered into IRMA, this includes the master incident number assigned by IRMA
- a description of the incident or notable occurrence;

- immediate protections provided to person(s) receiving services;
- investigatory question(s);
- a description of the investigative process and specific evidence obtained;
- a summary of the evidence obtained in the investigation;
- conclusions, including the findings (see subdivision (i) of this section) in the case of an allegation of abuse or neglect; and
- recommendations, including recommendations for remedial actions.

For reportable incidents of abuse/neglect where a provider agency has been delegated the investigation, OPWDD requires that the investigative report and all accompanying documents and evidence (e.g. pictures, audio or videotape) contained in the investigative record be submitted to OPWDD's Incident Management Unit (IMU) via the WSIR for entry into the Justice Center Vulnerable Persons Central Register (VPCR).

The submission of the investigative records will be accompanied by the OPWDD Form 158, Submission Form for Investigative Record of Abuse/Neglect. The purpose of the form is to transmit information to the NYS Justice Center for the Protection of People with Special Needs (Justice Center) that it needs to carry out its statutory responsibilities. This form provides the Justice Center with critical contact and other information and will decrease the number of follow up communications and delays in the investigative review and closure process.

5.3 **Reclassification of Incidents**

For significant and reportable incidents and serious notable occurrences, the full text of the investigative report shall be entered into IRMA. In the event that the Central Office of OPWDD conducts an investigation of an incident or notable occurrence, the Central Office of OPWDD will enter the investigative report into IRMA.

An incident or occurrence may be reclassified based on additional information obtained during the course of the investigation (e.g. a minor notable occurrence injury may be reclassified as an allegation of physical abuse) or by the Justice Center or OPWDD. In this event, for OPWDD incidents, Head Injury Association will report the reclassification in IRMA and (if appropriate) to the Justice Center and make all additional notifications that may be warranted by the reclassification.

5.4 **Investigation Process**

The investigation shall continue through completion regardless of whether an employee or other custodian who is directly involved leaves employment (or contact with individuals receiving services) before the investigation is complete. All employees are notified that all reportable incidents, including reports of abuse and neglect, shall be investigated; and if an employee leaves employment prior to the conclusion of a pending investigation, the investigation shall continue until it is completed and (for reports of abuse and neglect) a finding is made of substantiated or unsubstantiated. In an OPWDD case where a subject of a report of alleged abuse or neglect resigns from his or her position or is terminated while under investigation, the agency shall promptly report such resignation or termination to the Justice Center. The subject of a report means a custodian who is reported to the VPCR for the alleged abuse or neglect of a person receiving services.

Any party who has been assigned to investigate an occurrence or incident which he or she recognizes a potential conflict of interest in the assignment, shall report this information to the agency. Head Injury Association shall relieve the assigned investigator of the duty to investigate if it is determined that there is a conflict of interest in the assignment.

No one may conduct an investigation in which he or she was directly involved, in which his or her testimony is incorporated or his or her spouse, domestic partner, or immediate family member was directly involved or provides supervision to the program where the incident took place or provides supervision to directly involved parties.

Members of an incident review committee (IRC) shall not routinely be assigned the responsibility of investigating incidents or occurrences.

No party in the direct line of supervision of staff who are directly involved in the occurrence or incident may conduct the investigation of such an incident or occurrence, except for the Chief Executive Officer.

Although the Chief Executive Officer is in the direct line of supervision of all staff, the Chief Executive Officer (not a designee) may conduct the investigation of a reportable incident, serious notable occurrence or serious reportable incident unless he or she is the immediate supervisor of any staff who are directly involved in the reportable incident or serious notable occurrence.

If additional external reporting is required, the Chief Operating Officer in conjunction with Chief Compliance Officer will assign a staff member to contact the appropriate external reporting agency (e.g. LIDDSO, CQC, Police, District Attorney, Coroner, MHLS, Agency attorney), as well as consumer, guardian and qualified person if applicable.

5.5 Review / investigation by OPWDD and the Justice Center

OPWDD and the Justice Center have the right to review and/or investigate any reportable incident, and/or notable occurrence regardless of the source of the information. All relevant records, reports and/or minutes of meetings at which the incident or occurrence 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.

When an incident or occurrence is investigated or reviewed by OPWDD and/ or the Justice Center and recommendations are made to the agency concerning any matter related to the incident or occurrence (except during survey activities), Head Injury Association shall either:

- implement each recommendation in a timely fashion and submit documentation of the implementation to OPWDD and / or the Justice Center
- in the event that Head Injury Association does not implement a particular recommendation, the agency will submit written justification to OPWDD and / or the Justice Center, within a month after the recommendation is made, and identify the alternative means that will be undertaken to address the issue, or explain why no action is needed.

When the Justice Center makes findings concerning matters referred to its attention and the Justice Center issues a report and recommendations to the agency regarding such matters, the agency shall make a written response, within ninety days of receipt of such report, of action taken regarding each of the recommendations in the report.

In the event that OPWDD or the Justice Center conducts an investigation, the agency may be responsible to conduct some investigatory activities.

5.6 **Timeframe for completion of the investigation (OPWDD)**

The designee of the Chief Executive Officer, who is investigating the incident, shall keep the LIDDSO for individuals under the auspices of OPWDD informed on at least a monthly basis of the progress or results of the investigation until the investigation is closed. Such information may be in any form that provides adequate precise information.

Effective June 30, 2013, where Head Injury Association is responsible for the investigation, investigations of all occurrences and incidents shall be completed no later than 30 days after the occurrence or incident is reported to the Justice Center and OPWDD. An investigation shall be considered complete upon completion of the investigative report.

Investigations that occurred before June 30, 2013 shall be completed no later than July 29, 2013. However, this does not apply to incidents that occurred before June 30, 2013 but were not discovered until on or after June 30, 2013.

Head Injury Association may extend the timeframe for completion of a specific investigation beyond 30 days if there is adequate justification to do so. The agency shall document its justification for the extension. Circumstances which may justify an extension include (but are not limited to):

- whether a related investigation is being conducted by an outside entity (e.g. law enforcement) which has requested that the agency delay necessary investigatory actions; and
- whether there are delays in obtaining necessary evidence which are beyond the control of the agency (e.g. an essential witness is temporarily unavailable to be interviewed and/or provide a written statement)

5.7 **OPWDD Timeframes For Release of Records:**

Records subject to release concerning allegations of abuse which occurred prior to June 30, 2013:

Head Injury Association is required to release all records and documents pertaining to allegations and investigations into abuse as defined in applicable OPWDD regulations in effect at the time the allegation occurred under the auspices of the agency or sponsoring agency to eligible requestors who make a request in accordance with the provisions of this section.

Records subject to release concerning reportable incidents which occurred on or after June 30, 2013:

Head Injury Association is required to release all records and documents pertaining to

reportable incidents to eligible requestors who make a request in accordance with the provisions of this section.

Eligible requestors shall submit a written request to Director of Residential Care, Chief Compliance Officer or Chief Executive Officer. If the request is made prior to the closure of the incident, the Chief Compliance Officer shall provide the requested records no later than 21 days after the closure of the incident. If the request is made at or subsequent to the closure of the incident, Head Injury Association 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.

The closure of the incident will occur when the incident review committee, OPWDD or the Justice Center has determined a finding of substantiated or unsubstantiated.

5.8 **Redaction:**

Documents that are provided in conformance with the Jonathan's Law requirements will not include the names of employees or people receiving services, or other information tending to identify those individuals. If any name or any such information is on the form or in the report, it will be redacted, unless the person receiving services or employee authorizes disclosure. If disclosure is authorized, the names or other information tending to identify that person must be disclosed, unless redaction is necessary because it might tend to identify a different employee or person receiving services or for another mandated purpose. All redaction of documents will be completed by the Chief Compliance Officer, Chief Executive Officer or designee with approval of legal counsel if indicated.

Prior to the release of records, Head Injury Association shall redact the names of employees who are involved in the incident or the investigation or who were 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.

5.9 **Administrative appeal process - denial of requested records/documents**

A requestor denied access to the records and documents requested may appeal, in writing, such denial to the incident records appeals officer designated by OPWDD.

If Head Injury Association denies a request for access to records, HIA will inform the requestor in writing of the opportunity to appeal the denial to the OPWDD Incident Records Appeal Officer to OPWDD Incident Records Appeal Officer, Office of Counsel, 44 Holland Avenue, Albany, New York 12229.

The Appeals Officer will notify HIA of the request and HIA will submit all relevant information concerning the denial within 10 business days of the request.

The Appeals Officer will render a determination within 10 business days of the receipt of complete information, or within 20 business days of making the request for information to HIA. The Officer will provide the requestor and HIA with a written determination and

explanation about whether the records denied by HIA should be released. If directed by the Officer, HIA shall provide the requested records to the requestor.