

INDEPENDENT LIVING, INC. (ILI)

INCIDENT REPORTING POLICY AND PROCEDURE

The purpose for reporting, investigating, reviewing, correcting and monitoring certain events or situations are to enhance the quality of care and services provided to consumers at Independent Living, Inc., and to ensure their safety and physical and emotional wellbeing.

The primary function of the reporting of certain events or situations is to enable administrators and managers to become aware of problems, to take corrective measures and to minimize the potential for recurrence of the same or similar events or situations. The prompt reporting of alleged program participant abuse could ensure that immediate steps are taken to protect other consumers/participants from being exposed to the same or similar risk.

The reporting of certain events or situations in an orderly and uniform manner facilitates identification of trends, which ultimately allows for the development and implementation of preventative strategies.

All Internal Recordable Incidents, will be reported, investigated and tracked internally within Independent Living, Inc. (ILI), in accordance with the relevant internal policy and procedures related to ILI's Incident Management Policy and Procedures. All Incidents that fall under that are classified as Part 625 Incidents, Minor Notable Occurrences, Serious Notable Occurrences, Reportable Incidents, and Significant Incidents occur to participants of ILI's programs which are regulated and/ or certified by the NYS Office for People With Developmental Disabilities (OPWDD) will be reported in accordance with Sections 624 and 625 of Mental Health Hygiene Law.

Purpose and Intent

At Independent Living, Inc., the staff members who work in the ILI OPWDD regulated and/or certified programs will be trained and informed of the pertinent OPWDD and internal agency policies and procedures related to serious incidents in order to:

1. Ensure the quality of care provided to participants and mitigate risk to the greatest extent possible.
2. Establish a database that documents trends and identifies specific areas of concern in order to identify and develop training and policies aimed at increasing provider skills in the prevention, identification, and investigation of incidents.
3. Recognize trends in incidents within ILI, take corrective measures to minimize the probability of a recurrence of the same or similar situations, and to develop and implement appropriate staff training programs.
4. Training of staff who work in the ILI OPWDD regulated and/or certified programs will be provided within 30 days of hire and annually thereafter. This includes review and signing of the NYS Justice Center Code of Conduct.

Incident Classifications

Internal Recordable Incidents

- I- Incidents that occur during service delivery that do not rise to the occasion of Part 625 or Part 624 incidents.
- II- These incidents are recorded on the Independent Living internal incident report by all staff that either witness or are involved in the event.
- III- Required notifications:
 - A. Program Manager
 - B. At the program manager’s discretion additional notifications may be made to:
 - i. Involved individuals parent/ guardian;
 - ii. Residential provider;
 - iii. Agency Administration.
- IV- Incidents are investigated by the program manager unless the agency administration reassigns the investigation to another staff member.
- V- Recordable incidents are reviewed by the standing Incident Review Committee within three (3) months of occurrence and are included in the annual trend report.
- VI- If at any time the details surrounding an internal recordable incident change or new information is discovered which elevates the incident to a Part 625 or Part 624 incident, the shall be reclassified immediately and the protocol for the new classification shall be followed.

Part 625- For OPWDD Funded/ Regulated Programs

- I- ILLI Staff are required to intervene and report the situations that come to staff attention if it falls under one of the following classifications but did not occur under the auspices of the agency:
 - A. 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.
 - B. Sexual Abuse- Non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.
 - C. 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.
 - D. 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.
 - E. 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.
 - F. 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.

G. 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.

H. Death- The end of life, expected or unexpected, regardless of cause. All deaths regardless of manner or program must be reported to the Justice Center.

II- Interventions may include:

- A. Notification to family, APS, Law Enforcement, etc.
- B. Offers to make referrals to service providers, clinicians, other state agencies, etc.
- C. Interview of the individual or witnesses.
- D. Assessment or monitoring the individual
- E. Record review
- F. Education to the individual about choices.

III- Required reporting paperwork

- A. Appropriate ILI staff shall enter in all information related to the incident into IRMA.
- B. An OPWDD 150 will be generated from the IRMA system.

IV- Required Notifications:

- A. ILI Director of Programs- immediately;
- B. ILI Director of Corporate Compliance- immediately;
- C. Consumer Advisory Board if individual involved is a member of the Willowbrook class- immediately;
- D. Police (if a crime is believed to have been committed)- immediately upon discovery;
- E. Involved participants Medicaid Service Coordinator- 24 hours;
- F. Individual's advocate/ guardian if applicable unless the participant involved is a capable adult who objects to such notification- within 24 hours unless this individual is the target of the incident.

Part 624- For OPWDD Funded/ Regulated Programs

I- **Minor Notable Occurrences**- Staff are required to intervene and report the following situations under Minor Notable Occurrences:

- A. Injury- requiring more than first aid but not requiring a hospital admission.
 - i. Requires entry into IRMA
 - ii. No OPWDD notification
- B. Theft/ Financial Exploitation- value must range from \$15-\$100.
 - i. Requires entry into IRMA
 - ii. Immediate OPWDD notification
- C. Additional Required reporting of a Minor Notable Occurrence
 - i. ILI Director of Programs- immediately;
 - ii. ILI Director of Corporate Compliance- immediately;
 - iii. Consumer Advisory Board if individual involved is a member of the Willowbrook class- immediately;

- iv. Police (if a crime is believed to have been committed- immediately upon discovery;
 - v. Involved participants Medicaid Service Coordinator- within 24 hours;
 - vi. Individual’s advocate/ guardian if applicable unless the participant involved is a capable adult who objects to such notification- within 24 hours unless this individual is the target of the incident.
 - vii. Adult Protective Services or Child Protective Services- within 24 hours.
- II- **Serious Notable Occurrences-** Staff are required to intervene and report the following situations under Serious Notable Occurrences:
- A. Injury- requiring hospitalization;
 - B. Unauthorized absence (for 4+ hours);
 - C. Choking with no known risk;
 - D. Theft/ Financial Exploitation (\$100 or more and/or credit, debit, or benefit card);
 - E. Sensitive situation- a situation that does not fit into another category but due to the nature of the situation, the agency wishes to report it;
 - F. ICF Violation- based on federal mandates.
 - G. Death
 - i. All death’s must be reported to the Justice Center regardless of the program (certified or not)
 - ii. The number to report a death to the Justice Center is 1-855-373-2124. (different from the number to call for abuse)
 - iii. If the death is tied to an allegation of abuse, both Justice Center numbers must be contacted.
 - iv. Must report within 24 hours of occurrence/ discovery
 - v. Must submit into IRMA within 5 working days
 - vi. The death must be reported regardless if the death occurred under the auspices of the agency or not.
 - H. Reporting Requirements for Serious Notable Occurrences
 - i. ILI Director of Programs- immediately;
 - ii. ILI Director of Corporate Compliance- immediately;
 - iii. Police (if a crime is believed to have been committed- immediately upon discovery;
 - iv. Consumer Advisory Board if individual involved is a member of the Willowbrook class- immediately;
 - v. OPWDD- immediately;
 - vi. Entry into IRMA- within 24 hours;
 - vii. Involved participants Medicaid Service Coordinator- within 24 hours;
 - viii. Individual’s advocate/ guardian if applicable unless the participant involved is a capable adult who objects to such notification- within 24 hours.
- III- **Reportable Incidents-**
- A. Physical abuse- which shall mean 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 a service recipient 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 person.

- B. Sexual abuse- which shall mean any conduct by a custodian that subjects a person receiving services to any offense defined in article one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law; or any conduct or communication by such custodian that allows, permits, uses or encourages a service recipient to engage in any act described in articles two hundred thirty or two hundred sixty-three of the penal law. For purposes of this paragraph only, a person with a developmental disability who is or was receiving services and is also an employee or volunteer of a service provider shall not be considered a custodian if he or she has sexual contact with another service recipient who is a consenting adult who has consented to such contact.
- C. Psychological abuse- which shall mean conduct by a custodian intentionally or recklessly causing, by verbal or non-verbal conduct, a substantial diminution of a service recipient's emotional, social or behavioral development or condition, supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor, or causing the likelihood of such diminution. Such conduct may include but shall not be limited to intimidation, threats, the display of a weapon or other object that could reasonably be perceived by a service recipient as a means for infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury, taunts, derogatory comments or ridicule.
- D. Deliberate inappropriate use of restraints- which shall mean 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 a service recipient's individual treatment plan or behavioral intervention 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 person. For purposes of this subdivision, 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.
- E. Use of aversive conditioning- which shall mean the application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change the behavior of a person receiving services in the absence of a person-specific authorization by the operating, licensing or certifying state agency pursuant to governing state agency regulations. Aversive conditioning may include but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, blindfolds, the withholding of meals and the provision of substitute foods in an unpalatable form and movement limitations used as punishment, including but not limited to helmets and mechanical restraint devices.
- F. Obstruction of reports of reportable incidents- which shall mean 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 a service recipient, actively persuading a mandated reporter from making a report of a reportable incident to the statewide vulnerable persons' central register 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 governing state agency regulations, policies or procedures; or, for a mandated reporter who is a custodian as defined in subdivision two of this section, failing to report a reportable incident upon discovery.

- G. Unlawful use or administration of a controlled substance- which shall mean any administration by a custodian to a service recipient of: a controlled substance as defined by article thirty-three of the public health law, without a prescription; or other medication not approved for any use by the federal food and drug administration. It also shall include a custodian unlawfully using or distributing a controlled substance as defined by article thirty-three of the public health law, at the workplace or while on duty.
- H. Neglect- which shall mean any action, inaction or lack of attention that breaches a custodian's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental or emotional condition of a service recipient. Neglect shall include, but is not limited to: (i) failure to provide proper supervision, including a lack of proper supervision that results in conduct between persons receiving services that would constitute abuse as described in paragraphs (a) through (g) of this subdivision if committed by a custodian; (ii) failure to provide adequate food, clothing, shelter, medical, dental, optometric or surgical care, consistent with the rules or regulations promulgated by the state agency operating, certifying or supervising the facility or provider agency, provided that the facility or provider 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 individuals; or (iii) failure to provide access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction in accordance with the provisions of part one of article sixty-five of the education law and/or the individual's individualized education program.
- I. Required Notification for Reportable Incidents:
 - i. ILI Director of Programs- immediately;
 - ii. ILI Director of Corporate Compliance- immediately;
 - iii. OPWDD- immediately;
 - iv. Consumer Advisory Board if individual involved is a member of the Willowbrook class- immediately;
 - v. Justice Center (For incidents occurring in the CIP day habilitation program only)- immediately;
 - vi. Entry into IRMA- within 24 hours;
 - vii. Police (if a crime is believed to have been committed- immediately;
 - viii. Adult Protective Services or Child Protective Services as necessary- within 24 hours;
 - ix. Involved participants Medicaid Service Coordinator- within 24 hours;

- x. Individual's advocate/ guardian if applicable unless the participant involved is a capable adult who objects to such notification- 24 hours unless this individual is the target of the investigation.

- IV- **Significant Incidents**- Shall mean an incident, other than an incident of abuse or neglect, that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety or welfare of a person receiving services and shall include but shall not be limited to:
- A. Conduct between persons receiving services that would constitute abuse as described in reportable incidents if committed by a custodian; or
 - B. conduct on the part of a custodian, which is inconsistent with a service recipient's individual treatment plan or individualized educational program, 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 a person receiving services, including but not limited to:
 - i. Seclusion- which shall mean the placement of a person receiving services in a room or area from which he or she cannot, or perceives that he or she cannot, leave at will;
 - ii. Unauthorized use of time-out, which shall mean 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 but shall not include the use of a time-out as an emergency intervention to protect the health or safety of the individual or other persons;
 - iii. Except as provided for in paragraph (g) of subdivision one of this section, the administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription or order issued for a service recipient by a licensed, qualified health care practitioner, and which has an adverse effect on a service recipient. For purposes of this paragraph, "adverse effect" shall mean the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the well-being of a service recipient;
 - iv. Inappropriate use of restraints, which shall mean 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 a service recipient's individual plan, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies. For the purposes of this subdivision, 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; or
 - v. Other mistreatment, which shall mean other conduct on the part of a custodian, that is inconsistent with the individual's plan of services, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies, and that impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare

of an individual receiving services, except as described in clauses (i) through (iv) of this subparagraph;

- C. Self-Abusive Behavior with Injury- which results in an injury requiring more than first aid.
- D. Missing person- who is a danger to themselves.
- E. Choking with known risk noted in plan.
- F. Required Notification for Significant Incidents:
 - i. ILI Director of Programs- immediately;
 - ii. ILI Director of Corporate Compliance- immediately;
 - iii. OPWDD- immediately;
 - iv. Consumer Advisory Board if individual involved is a member of the Willowbrook class- immediately;
 - v. Justice Center (For incidents occurring in the CIP day habilitation program only)- immediately;
 - vi. Police (if a crime is believed to have been committed- immediately;
 - vii. Entry into IRMA- within 24 hours;
 - viii. Adult Protective Services or Child Protective Services as necessary- within 24 hours;
 - ix. Involved participants Medicaid Service Coordinator- within 24 hours;
 - x. Individual's advocate/ guardian if applicable unless the participant involved is a capable adult who objects to such notification- 24 hours unless this individual is the target of the investigation.

Investigations by ILI

ILI shall designate at least one individual to be responsible for conducting a thorough and objective investigation. The investigator is required to have experience and/or training in conducting investigations. ILI may choose to contract with another agency to perform the investigation. However, the contracted agency must not have any involvement or stake in the outcome of the investigation. The decision of the contracted agency is binding. The results of the investigation are presented to the Incident Review Committee, which will determine if the investigation is complete, the appropriate action and necessary follow-up.

Individuals conducting the investigation shall not include:

- A. Individuals directly involved in the incident;
- B. Individuals whose testimony is incorporated in the investigation;
- C. Individuals who are the supervisor, supervisee, spouse, significant other or immediate family member of anyone involved in the investigation;
- D. Individuals who are members of the agency's Incident Review Committee;
- E. Immediate supervisors and parties in the chain of command of staff who are targets in an incident.

An investigation of an incident shall contain the following information:

- A. A clear and objective description of the event under investigation. This will include a description of the people involved in the alleged incident, the names of all witnesses and the time and place the incident occurred;
- B. Identification of whether this was a unique occurrence or if this is believed to be related to previously reported incidents;

- C. Details of structured interviews with all individuals involved in the events and all witnesses;
- D. The investigator's conclusions if the allegation is substantiated, unsubstantiated or whether no definitive conclusions can be reached. The reasoning behind this decision will be included; and
- E. The investigator's recommendations for action. This action may be directed towards individual employers or the participant, or may address larger program concerns such as training, supervision or agency policy.

Timeframe for Completion of the Investigation

- a- The investigation shall be completed no later than 30 days after the incident is discovered or reported (whichever is later);
- b- Independent Living may extend the timeframe for completion of a specific investigation beyond the 30 days in the event there is adequate justification to do so. In these situations, the justification for the extension will be documented. Possible reasons for an extension of an investigation can include but is not limited to:
 - i. An outside entity (i.e.- law enforcement) has requested that the agency delay the investigation due to a related investigation by another entity;
 - ii- Delays in obtaining necessary evidence that are beyond Independent Living's control.

Incident Review Committee

An agency-wide standing committee shall review and monitor Internal Reportable Incidents, Part 625 Incident, Minor Notable Occurrences, Serious Notable Occurrences, Reportable Incidents, and Significant Incidents consisting of, at least, six (6) individuals including:

- a- At least one (1) management staff,
- b- At least one (1) administrative staff,
- c- At least one (1) direct care staff,
- d- At least one (1) member of the Board of Directors,
- e- At least one (1) parent of a service recipient, and
- f- At least one (1) service recipient.
- g- Note: The Executive Director shall not serve as a member of the Committee, but may be consulted by the Committee in its deliberations

If the committee is unable to secure one of the above individuals to participate in the review of incidents, efforts to fill that role shall be documented routinely.

The committee shall meet on, at least, a quarterly schedule and, for more demand responsive situations, will meet **within thirty (30) days** of a Reportable Incident or Significant Incident.

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/herself from participating in the committee review of the incident or occurrence in question.

A standing Committee shall review Internal Reportable Incidents, Part 625 Incident, Minor Notable Occurrences, Serious Notable Occurrences, Reportable Incidents, and Significant Incidents:

- I. Ensure that Internal Reportable Incidents, Part 625 Incident, Minor Notable Occurrences, Serious Notable Occurrences, Reportable Incidents, and Significant Incidents were reported, managed, investigated, and documented consistent with the provisions of this policy and with Independent Living, Inc. policies and procedures and to make written recommendations to the appropriate staff and/or the administration of Independent Living, Inc., to correct, improve or eliminate inconsistencies.
- II. Ascertain that necessary and appropriate corrective, preventative, and/or disciplinary action has been taken to protect consumers receiving services from further harm and to safeguard against the recurrence of similar incidents, serious reportable incidents or alleged abuse and to make written recommendations in order to correct, improve or eliminate inconsistencies.
- III. Ascertain if further investigation or if additional corrective, preventative and/or disciplinary action is necessary, and if so, to make appropriate written recommendations to the Executive Director relative to the Internal Reportable Incidents, Part 625 Incident, Minor Notable Occurrences, Serious Notable Occurrences, Reportable Incidents, and Significant Incidents.
- IV. Identify trends in Internal Reportable Incidents, Part 625 Incident, Minor Notable Occurrences, Serious Notable Occurrences, Reportable Incidents, and Significant Incidents (e.g. by type, person, and/or allegations of abuse, site, employee/volunteer involvement, times, date, circumstances, etc.) and to recommend appropriate corrective, preventive, and/or disciplinary action to the Executive Director in order to safeguard against such recurring situations of Internal Reportable Incidents, Part 625 Incident, Minor Notable Occurrences, Serious Notable Occurrences, Reportable Incidents, and Significant Incidents
- V. Ascertain and ensure the adequacy of Independent Living, Inc. reporting and review practices, including the monitoring of the implementation of approved recommendations for corrective and preventive action.

Findings of Reports of Abuse or Neglect:

- I. For every report of abuse or neglect, a finding shall be made. The agency 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:
 - A. the report of 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
 - B. the report of 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.

- II. Concurrent finding. In conjunction with the possible findings identified in paragraph (1) of this subdivision, a concurrent finding may be made that a systemic problem caused or contributed to the occurrence of the incident.
- III. Justice Center review of findings for reports of abuse or neglect in facilities and programs that are certified or operated by OPWDD. When the investigation is conducted by an agency or by OPWDD, findings made by the agency or OPWDD are not considered final until they are reviewed by the Justice Center. The Justice Center may amend findings made by an agency or OPWDD. Findings made by the Justice Center are considered final.

Meeting Minutes

- I. The Chairperson of the Standing Committee shall ensure that minutes are kept for all meetings.
- II. Minutes addressing the review of specific serious reportable incidents and/or allegations of abuse will clearly state in the filing number of the identification code of the report (if used), and provide a brief summary of the situation (including date, location and type), that used the report to be generated, committee findings (including reclassification of event, if applicable) and recommendations, and actions taken on the part of Independent Living, Inc. as a result of such recommendations. Full names of all parties involved are to be recorded (not initials).
- III. Minutes are to be shared with the Executive Director and otherwise maintained in a manner that ensures confidentiality.

Record Retention

Independent Living shall retain records pertaining to incidents and occurrences as follows:

- I. 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 generated in accordance with requirements of this Part, and documentation regarding compliance with the requirements of this Part.
- II. Records shall be retained for a minimum period of seven years from the date that the incident or occurrence is closed. However, when there is a pending audit or litigation concerning an incident or occurrence, agencies shall retain the pertinent records during the pendency of the audit or litigation.

Release of Records

Independent Living has policies and procedures concerning the process for requesting the release of records which are as follows:

I- Eligible requestors- Persons receiving services or who formerly received services, and guardians, parents, spouses, and adult children of such persons are eligible to request the release of records as established by this section, subject to the following restrictions:

A- In the event that an otherwise eligible requestor is an alleged abuser, such requestor is not eligible to receive any records or documents pertaining to the specific allegation or investigation of the event or situation in which he or she was the targeted alleged abuser, regardless of the conclusion.

B- If the person receiving services or who formerly received services is a capable adult and objects to the provision of records and/or documents to an otherwise eligible requestor, such requestor is not eligible to receive those records or documents.

II- Records subject to release concerning reports of abuse that occurred prior to June 30, 2013.

A- Independent Living 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.

B- Independent Living is required to release records and documents pertaining to allegations of abuse which occurred or were discovered on or after May 5, 2007, regardless of the date of the submission of the written request.

C- Independent Living is required to release records and documents pertaining to allegations of abuse which occurred or were discovered on or after January 1, 2003 but prior to May 5, 2007, if the written request is submitted on or before December 31, 2012.

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

A- Independent Living 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.

B- Eligible requestors shall submit a written request to Independent Living's Director of Corporate Compliance and Quality Assurance. If the request is made prior to the closure of the incident, Director of Corporate Compliance and Quality Assurance 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, the agency shall provide the requested records no later than 21 days after the request is made. The written request shall specify the records that are requested.

IV- Redaction of Records

A- Prior to the release of records, Independent Living shall redact the names of employees who are involved in the incident or the investigation or who are interviewed as a part of the investigation, persons receiving services (or who formerly received services), and any information tending to identify such employees or persons. Redaction shall be waived if the employee or person authorizes disclosure, unless redaction of the specific information is necessary because it tends to identify another employee or person who has not authorized disclosure or for another reason specified in this subdivision.

B- In addition, if any records which are subject to release identify a particular party as having made a child abuse or maltreatment report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation, that name as well as any information tending to identify the party shall be redacted.

V- Cover letter and dissemination restrictions: The release of records to recipients shall be in accordance with the following:

A- The release of records shall be accompanied by a cover letter to the recipient which includes the following statement: "pursuant to section 33.25 of the Mental Hygiene

Law, the enclosed records and reports shall not be further disseminated, EXCEPT that you may share the report with:

- i- a health care provider;
- ii- a behavioral health care provider;
- iii- law enforcement, if you believe a crime has been committed; or
- iv- your attorney.”

B- Pursuant to New York State law, the recipient, parties with whom the recipient shared records or the individual receiving services may use records and documents released in accordance with this section in any legal action or proceeding brought by or on behalf of the individual receiving services.

VI- Documentation: The written request for the release of records shall be maintained and the time the request was received shall be documented. A copy of the redacted records that were released shall be maintained and the time the records were provided shall be documented.

VII- Administrative appeal process - denial of requested records/documents

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

B- Upon receipt of the appeal, the agency issuing the denial will be notified of the appeal and given an opportunity to submit relevant information to the incident records appeals officer, including the reasons for denial, within 10 business days of the receipt of such appeal. The incident records appeals officer may also request additional information from the requestor as may be necessary to resolve the appeal.

C- Within 10 business days of the receipt of complete information, the incident records appeals officer will make a determination about whether the requested records and/or documents should be released. The incident records appeals officer will issue his or her determination with an explanation of the reasons for the determination to the requestor and the agency. If so directed by the incident records appeals officer, the agency shall provide the requested records and/or documents to the requestor.

Confidentiality of Records: All records generated in accordance with the requirements of this Part 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.

Retaliation: Independent Living 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 section and/or if the employee or agent cooperates with the investigation of a report made to the VPCR or OPWDD.