Abuse Prevention Sample Policy
A resource for Provider Agencies Serving People with Special Needs

This sample policy was created by the NYS Justice Center for the Protection of People with Special Needs as a resource for provider agencies. It is not all-encompassing and does not constitute legal advice. It is intended to be used as a guide that may be modified as needed to apply to particular types of programs and specific age groups of vulnerable people. Providers should consult with their agency counsel to resolve any questions on the legal implications of specific provisions.

PURPOSE

PROVIDER is committed to providing safe and respectful environments that support the health and well-being of all people receiving our services. PROVIDER seeks to institute guidelines and resources for staff and enforce zero tolerance for those actions which may jeopardize the health, safety or welfare of any person receiving services. This policy establishes that a thoughtfully crafted abuse prevention policy is necessary to balance effective safety measures with efforts to empower people receiving services to lead self-directed, meaningful lives.

DEFINITIONS

Staff: any individual who is employed by PROVIDER.
Mandated Reporter: all staff and volunteers at PROVIDER, but not a person receiving services.

New York Social Service Law § 488 defines abuse and neglect of people receiving services in broad terms, including acts which both cause actual harm and create the risk of harm. The following is a list of terms and examples. (See New York Executive Law, Article 20, Protection of People with Special Needs Act for full descriptions of each item)

Reportable Incidents:

Physical Abuse
Conduct by staff that is intentional or reckless, causing physical injury or serious or protracted impairment of the physical, mental or emotional condition of the vulnerable person or causing the likelihood of injury or impairment.
Examples: hitting, kicking, biting, slapping, shoving, throwing, punching, dragging, shaking, choking, smothering, burning, cutting, or the use of corporal punishment.
Note/Exception: Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any person.

Psychological Abuse
Conduct by a staff (Verbal or non-verbal) that is intentional or reckless that adversely affects and results in or is likely to cause a substantial diminution of the vulnerable person's emotional, social, or behavioral condition.
Examples include, but are not be limited to, taunts, derogatory comments or ridicule, intimidation, threats, the display of a weapon or other object that could reasonably be perceived by a person receiving services as a means for infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury.

Non-verbal conduct, a substantial diminution of a person receiving services' 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.

Sexual Abuse

Conduct by staff that constitutes certain crimes under the New York Penal Law.

Examples include rape (forcible compulsion or physical helpless or incapable of consent), forcible, inappropriate touching, indecent exposure, sexual assault, prostitution offenses (such as promoting, compelling, or permitting prostitution), and "sexual performance" offenses (such as inducing a person receiving services to engage in sexual conduct in any play, motion picture, photograph, or any other visual representation before an audience).

Note: A person with a developmental disability who is or was receiving services and is also a staff or volunteer of a service provider shall not be considered a staff if he or she has sexual contact with another person receiving services who is a consenting adult who has consented to such contact.

Deliberate misuse of restraint or seclusion

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 person receiving services' individual treatment plan or behavioral intervention plan, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies.

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. Note/Exception: 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 it is not abuse.

Controlled Substances

Administration of a controlled substance without a prescription; or other medication not approved for any use by the federal food and drug administration, by a staff to a vulnerable person.

Staff unlawfully using or distributing a controlled substance at the workplace or while on duty is also covered.

Controlled substance is defined by article thirty-three of NYS public health law.

Aversive conditioning

The application of a physical stimulus with the intent to induce pain or discomfort in order to modify or change the behavior of a person receiving services.

The stimulus is applied without person-specific authorization by the operating, licensing or certifying state agency pursuant to governing state agency regulations.

Examples: 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, 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.

Obstruction

Conduct by staff that impedes the discovery, reporting or investigation of the treatment of a person receiving services by:

- Falsifying records related to the safety, treatment or supervision of a person receiving services;
- 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;
- 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
- A mandated reporter who is a staff as defined above, failing to report a reportable incident upon discovery.

Neglect

Any breach of staff's duty, which includes action, inaction, or lack of attention on the part of the staff that results in or is likely to result in physical injury or serious or protracted impairment to the person's physical, mental, or emotional condition of the vulnerable person.

Examples include failure to provide:

- Supervision resulting in conduct between persons receiving services that would otherwise constitute abuse as defined above if committed by a staff;
- Adequate food, clothing, shelter as required by rules and regulations;
- Adequate healthcare (i.e., medical, dental, optometric or surgical care) as required by rules and regulations; and
- Access to an educational instruction as required by rules and regulations or the individual's Individualize Education Program (IEP)

Significant incident

Any 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:

(1) Conduct between persons receiving services that would constitute abuse as described in Protection of People with Special Needs Act, Part B, Section 488, 1. paragraphs (a) through (g) if done by a staff; or

(2) Conduct on the part of staff, which is inconsistent with a person receiving services, individual treatment plan, or individualized educational program, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies 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:

(A) Unauthorized seclusion

(B) Unauthorized use of time-out

(C) Administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription or order issued by a licensed, qualified health care practitioner and which has an adverse effect on a person receiving services. 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 person receiving services

(D) Inappropriate use of restraints

(3) Any other conduct identified in regulations of the state oversight agency, pursuant to guidelines or standards established by the executive director.

POLICY GUIDELINES

Personnel Screening and Selection

Screening and hiring procedures provide safeguards to strive to eliminate from consideration any candidate who demonstrates behavior that indicates a high risk for violating this policy. Screening and background information required to comply with New York State law depend on the position and its level of involvement with people receiving services. The procedures outlined in this section pertain to those who have regular contact, or that level as required by law, with people receiving services. However, agencies may decide to use these processes for all prospective employees.

Candidates for positions that involve regular interaction with people receiving services are screened and selected as follows:

- Standard employment application that includes signed authorization to perform necessary background checks;
- Justice Center Staff Exclusion List clearance [for all programs required by NYS law to conduct this check] for positions that may have regular and substantial contact;
- Criminal background checks for those who will have regular and substantial unsupervised or unrestricted contact as required by law [accessed via NYS Justice Center for all programs required by law to conduct this check] including signed authorization to perform the check;
- Sexual offender registry checks in any and all states where the candidate has lived;
- Where possible, Statewide Central Register of Child Abuse and Maltreatment (SCR) in states where the candidate has lived.
- Where possible, Adult Protective Services (APS) in states where the candidate has lived.
- Department of Motor Vehicles records and any applicable certification pertinent to the position, if the position requires the transportation of people receiving services;
- In-person interview of the candidate that includes questions about experiences and thoughts on how to handle challenging behaviors, conflicts, or other unexpected circumstances when providing care, as well as how they feel about providing care to this vulnerable group. Any remarks indicating unwillingness to accept NYS legal definitions of abuse and neglect and related reporting procedures are thoroughly explored.
- Three professional references and two personal references are required, contacted directly via telephone and asked questions from an established reference check guideline.
- If hired, sexual offender registry checks are conducted every 2-3 years for those who have regular contact with people who receive services.

All information collected about any candidate is reviewed to determine if the candidate is appropriate for the respective position. If hired, all information collected during the hiring process is included in the staff's permanent file.

Structural Guidelines

All programs are designed to encourage safe interactions between staff and people receiving services. The following guidelines are meant to maintain effective safeguards while upholding the dignity of the individual, and respecting their ability to direct their own life.

Staff to Person Receiving Services Ratio: Programs have an established staff to person receiving services ratio consistent with identified individual needs for services and supervision and with applicable state and federal regulations.

One to One Alone Time: Programs clearly define parameters and safeguards for "alone time" – occasions when a staff and a person receiving services are alone and cannot be observed by others. Parameters for alone time include circumstances that can be anticipated and planned for in task assignment books/logs, such as provision of personal care (i.e. bathing, toileting, dressing, individuals), as well as those that cannot be planned for, such as a request for privacy to discuss something personal, a toileting accident, etc.

-The specific conditions (i.e., time, duration, location, how assistance is provided), for anticipated alone activities are known and documented.

-Whenever possible, staff directly communicate to co-workers when they will be alone with an individual for a particular reason, where, and for how long. This information is shared immediately prior to the alone time, or as soon as possible afterwards to allow for individual flexibility while ensuring safety.

Team Communication: Programs establish and maintain mechanisms for staff to communicate with members of their team as needed (this includes supervisors, co-workers, clinicians, etc.)

-Regularly scheduled supervisory, and/or team meetings, include planning for and review of circumstances that require staff to spend time alone with an individual.

-Informal, impromptu opportunities are available for staff to speak with their supervisor, co-worker, clinician, etc., to address concerns or questions that arise in the course of performing their duties.

- At the end of each shift, staff transitioning off duty brief the incoming staff on activities and any significant occurrences that incoming staff should be aware of at the onset of their shift.

- Management promotes and models a culture of respect, collaboration, honesty and accountability.

Individual Treatment Plans: Staff receive training on individual treatment plans prior to working with the individual and follow the protocol identified within an individual's plan including documentation of progress and effectiveness of staff interventions.

Program/Activity Changes: New activities or programs with a known risk of harm receive prior approval by the supervisor and/or personal representative where required when the person is unable to provide their own consent. Whenever possible, staff seek approval from their supervisor or consult with co-workers when a supervisor is unavailable, before implementing new activities or programs for people receiving services that have no known risk for physical or emotional harm. Documentation of new activities or programs is included in communication logs and communicated to management in a timely manner.

Welcoming Visitors: All visitors check in with staff and share the purpose of their visit. Programs identify procedures for staff to notify the individual that they have a visitor, identify appropriate

location for the visit and reject/set limits with visitors whom the person does not want to see. Particulars of the visits are documented in the program log book and individual progress notes, including names of visitors, time and length of visit.

Community Integration: Programs provide guidelines for staff on how to respectfully safeguard individuals when supporting them in their community.

Safeguarding Valuables: Programs encourage safeguarding of valuables and have an established, effective process for doing so.

Training

Abuse prevention training is provided to ensure that staff understand what constitutes abuse, signs and symptoms of abuse, and their responsibilities to protect people receiving services from abuse and neglect as defined above. The training includes guidance on how to step in and stop an incident, as well as procedures to assess the impact of an incident on the individual, to monitor the individual for behavioral changes following an incident, and to identify and address any negative impact on other people receiving services in this program.

Each program provides refresher trainings on abuse prevention annually.

Staff receive training on the Justice Center's reporting requirements and retaliation protections outlined below prior to allowing a new hire to provide care to people receiving services, and annually thereafter.

Staff receive training on the Justice Center's Code of Conduct for Custodians of People with Special Needs. Programs ensure staff sign the Code of Conduct, when they are hired and on an annual basis.

Staff training on topics including professional boundaries, stress management and conflict resolution are provided as necessary based on the needs of each program. Program training needs are identified through team discussion, supervision and incident management recommendations.

Staff receive training on treatment plans that delineate how to interact with an individual based on their individual treatment needs, including any required training on restrictive interventions.

People receiving services receive abuse prevention information and/or training. Provider sites are given material and the means to provide the level and amount of training that is appropriate for people receiving services at their site.

Interactions and Conduct

The Code of Conduct outlines expectations for staff to exercise safe, responsible and respectful behavior in their interactions with people receiving services. The agency culture modeled by all levels of management reinforces the Code of Conduct.

The following standards are meant to further guide staff during their interactions with people receiving services. These guidelines do not and cannot outline every situation encountered while on

the job, thus requiring staff to act with a certain degree of personal discretion. Because a certain action is not prohibited in this section does not mean it is acceptable behavior. PROVIDER reserves the right to take disciplinary action against staff whose actions are found to be inappropriate regardless of whether they appear in this section.

Respectful Interactions:

- Staff treat all people who receive services with respect and consideration. Treatment must be fair and equitable, and must not impose bias due to gender, race, religion, sexual orientation, or economic or social status, or disability.
- Diligent effort is made to avoid preferential treatment or the appearance of such.
- Staff do not use harsh, demeaning or inappropriate language, degrading punishment or any type of unauthorized restraining device in the name of behavior management.
- Staff do not participate in or allow others to engage in any form of hazing, unwelcome teasing, ostracism or bullying.

Social Boundaries:

- Staff do not intentionally connect with a person receiving services outside of the course of their work and limit unintentional contact to brief greetings and conversation.
- Staff do not connect with a person receiving services via social media.
- Staff do not share sleeping locations with people who receive services, except as deemed necessary by the individual's treatment team and guardian to meet the individual's current needs. This includes beds, tents, hotel rooms and other similar areas. Staff may sleep in open areas with people who receive services as long as the area is large enough for the staff to have their own defined sleeping areas and other staff are also present.

Physical Boundaries:

- Staff do not engage in certain types of physical contact that may be unwelcome or misconstrued by the individual or others. This includes bear hugs, pats on head, pinching cheeks, pat on the buttocks, etc. Staff may provide supportive, affectionate physical contact, as indicated by each individual's needs and preferences, and as defined in the agency's professional boundary and other related training. For example, those who benefit from supportive touch are provided with it in a manner that best meets their individual needs and that is discussed, clearly defined, and documented.
- Staff, to their best ability, identify when circumstances are beyond their capacity to address in a productive manner, and request support from peers or a supervisor to manage any risk of abusing or neglecting a person receiving services.
- Staff intervene and provide support when they observe co-workers exhibiting a loss of ability to safely and effectively manage a challenging behavior, or other circumstances involving a person(s) they are providing care for.
- Staff do not use physical punishment in any form. The only time physical force is allowed with a person who receives services is when their actions are placing themselves or others at an immediate risk for serious harm, consistent with agency crisis management policies and procedures.

Sexual Boundaries:

- Staff do not have any sexual contact with people who receive services, including touching of non-sexual body parts for the purpose of sexual stimulation for either party.

- Staff address and manage their own sexual reactions to a person receiving services by: requesting support from their supervisor as needed, requesting limited contact or no 1:1 contact as needed, or other safeguards to maintain appropriate professional boundaries.
- Staff do not dress, undress, shower or bathe with, or in the presence of people who receive services.
- Staff do not discuss their own sexual history, preferences or fantasies, nor their use of illicit or pornographic materials while in the company of people who receive services.
- Staff do not possess any sexually oriented materials (i.e., books, magazines, videos, clothing) when conducting business in the name of PROVIDER.

Alcohol/Drug Use:
While representing PROVIDER, staff do not possess, distribute, use or allow others to use any alcohol or drugs except as allowed by agency policies.

If, for any reason, a staff makes an exception to the above guidelines, they discuss it with their supervisor as soon as possible. Any reportable incidents are reported in accordance with reporting requirements and protocol. Supervisors document and address circumstances that do not rise to reportable incident but fail to follow the above, or other established agency guidelines.

Reporting Requirements and Process

Reporting Requirements: Social Service Law Section 491 outlines a mandated reporter's duty to report incidents to the NYS Justice Center. Mandated reporters must report allegations of reportable incidents to the Vulnerable Persons' Central Register (VPCR).

Reporting Protocol: Reports of harm or potential of harm of a person receiving services are made as soon as possible, within 24 hours of discovery, at any time of the day or night and on any day of the week, by telephone to the Vulnerable Persons' Central Register toll-free hotline at 1-855-373-2122, TTY: 1-855-373-2123 If an individual is in immediate danger you will be asked to hang up and call 9-1-1.

Internal Reporting Protocol: Staff respond immediately to discovery of an incident. This includes first ensuring immediate safeguards for the individual. Phone numbers and website addresses for reporting are located in known, accessible and visible areas of each program site. Steps for completing an incident report are clearly defined. Management promptly ensures safeguards are in place and that appropriate entities investigate reportable incidents when they occur.

Protections: The law provides protections against the disclosure of a reporter's identity, subject to limited exceptions such as consent from the reporter, or in the event of a court order. The law grants immunity to voluntary reporters and Mandated Reporters from any legal claims which may arise from a good faith act of providing information to the Vulnerable Persons' Central Register. An employer or agency is prohibited from taking any retaliatory action against a person who has made a good faith act of providing information to the hotline.

Analysis of Trends: Incidents and trends are analyzed to identify and address program deficiencies and other safety concerns in order to remediate the circumstances to prevent future incidents of harm.

Monitoring and Supervision of Staff

Programs develop monitoring and supervision standards for supervisors, and train supervisors on these standards to actively monitor and supervise their staff, to ensure that abuse prevention measures outlined in the policy and elsewhere in the agency are followed, and to identify any conditions that interfere with staff providing a safe, responsible and respectful environment. The following measures are intended to ensure necessary supervision and monitoring and follow up:

-Management presence – supervisors regularly engage with staff and people receiving services in their natural environments within their program – ex. dining room, living room, kitchen, and yard.

-Regularly scheduled supervision and team meetings - supervisors are accessible to staff via both informal, in person, or other correspondence, as well as regularly scheduled individual supervision and/or team meetings.

-Supervisors demonstrate responsiveness to staff needs for support and refer staff to appropriate resources when they are experiencing burnout, personal difficulties, reactions to challenging events or other circumstances impacting their ability to provide care. Staff are aware of the chain of command and supported in using it to appropriately access higher level management when necessary to resolve an issue.

-Random spot checks – programs should establish a standard frequency and process for unannounced spot checks on staff performance of duties that supervisors implement themselves or with assistance of other designated supervisory staff.

-Buddy systems – programs with more than one site or with isolated areas of programming implement buddy systems that require staff in different areas to have required check-in times with each other, such as overnight staff in two residences making phone calls to each other every 1-2 hours.

Environmental Safeguards

The design and use of the facility is evaluated by administration for its protective features and modified to improve prevention of abuse and neglect as needed. Any area where a higher number of incidents of untoward events are noted is reviewed to identify alternate options.

Facility is physically accessible to the individuals served.

General considerations include: increased lighting, remove obstacles to field of vision, as appropriate (i.e., moving a bookshelf that obstructs view of a common area from another room), appropriate degree of privacy when/where expected.

Exterior doors and windows are secured during sleep and other hours, and at other times as appropriate, as well as considering door alarms and surveillance cameras in common areas as appropriate.

Each building and grounds area is assessed to determine if modifications are necessary or beneficial for abuse prevention efforts. This assessment occurs annually and subsequent to untoward events.

Specific environmental needs of each person receiving services are met. This may include the following: medication storage and protocol for distribution, pica safeguards as needed, fire safety protocol, etc.

Any person receiving services who is not capable of providing consent (i.e., youth, adult with established guardian) will only be released to a parent, legal guardian or a person designated by a parent or legal guardian.

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STAFF AGREEMENT

If you have any uncertainty or questions regarding the content of this policy, you are required to consult your supervisor. This should be done prior to signing and agreeing to the PROVIDER Abuse Prevention Policy.

I have read and understand PROVIDER ’s Abuse Prevention Policy and agree to abide by its terms and conditions throughout the course of my employment. I understand that my failure to follow the terms of this policy could result in disciplinary action, including termination.

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Staff Signature Date

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Supervisor Signature Date