

A new Part 704 is added to Title 14, NYCRR, to read as follows:

Part 704 INCIDENT REVIEW COMMITTEE REQUIREMENT

Sec.

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§ 704.1 Background and Intent

(a) The Protection of People with Special Needs Act (the “Act”), enacted as Chapter 501 of the Laws of 2012, seeks to create durable, consistent safeguards for vulnerable persons to protect against abuse, neglect and other conduct that may jeopardize their health, safety and welfare.

(b) To accomplish this goal, the Act provides that each state oversight agency as defined in the Act establish procedures and requirements relating to incident management programs, including establishment of incident review committees, and authorizes the state oversight agency to grant an exemption from this requirement when appropriate, based on the size of the facility or provider agency or other relevant factors.

(c) This regulation identifies appropriate methods that may be used to attain compliance with the incident review committee requirement and further defines relevant factors to consider in determining whether it is appropriate to grant an exemption from the incident review committee requirement.

§ 704.2 Applicability

This regulation applies to state oversight agencies as defined in subdivision (4-a) of section 488 of the Social Services Law, and facilities and provider agencies, as defined in subdivision (4) of section 488 of the Social Services Law.

§ 704.3 Legal Authority

(a) Section 490 of the Social Services Law mandates that each state oversight agency as defined in the Act promulgate regulations that contain procedures and requirements consistent with guidelines and standards developed by the Justice Center, relating to incident management programs, including

establishment of an incident review committee, and permits authorization of an exemption from the incident review committee requirement when appropriate.

§ 704.4 Definitions

Whenever used in this Part:

- (a) “State oversight agency” shall have the same meaning as expressed in subdivision (4-a) of section 488 of the Social Services Law.
- (b) “Facility” or “provider agency” shall have the same meaning as expressed in subdivision (4) of section 488 of the Social Services Law.
- (c) “Vulnerable person” shall have the same meaning as expressed in subdivision (15) of section 488 of the Social Services Law.

§ 704.5 Appropriate Methods to Attain Compliance with Incident Review Committee Requirement

- (a) A state oversight agency may allow a facility or provider agency’s incident review committee to be shared with another facility or provider agency or performed by another facility or provider agency on its behalf if a facility or provider agency is co-located within another organization or agency, or is part of a larger organization or agency, or has a larger “parent” or “umbrella” organization or agency. A state oversight agency may also allow compliance with the incident review committee requirement in circumstances where a facility or provider agency is able to combine with one of more others to form a shared committee, or where an appropriate sponsor is able to form an incident review committee for the facility or provider agency.
- (b) A state oversight agency may allow additional time for a facility or provider agency to comply with the incident review committee requirement, if the facility or provider agency shows that good faith efforts have been made to fulfill the incident review committee membership requirement.

§ 704.6 Authorization to Establish Exemption from Incident Review Committee Requirement and Relevant Factors

- (a) Each state oversight agency is authorized to establish in its discretion an exemption from the incident review committee requirement and grant an exemption from the requirement pursuant to paragraph (f) of subdivision (1) of section 490 of the Social Services Law when appropriate.
- (b) State oversight agencies that authorize an exemption to the incident review committee requirement may consider the following in determining whether to grant a facility or provider agency an exemption including, but not limited to:

(1) Size of the facility or provider agency, nature of the program, size of the program, and whether the program is a seasonal program or is operational year round; and, if the program is a seasonal program, the length of the season;

(2) Existence of a larger parent facility or agency, or a parent facility or agency with a year round presence that can form an incident review committee.

(c) In order to authorize an exemption from the incident review committee requirement, risk of harm to the vulnerable person must be considered, and a determination must be made that compliance with the requirement would result in undue hardship to the facility or provider agency.

§ 704.7 Procedure for Authorizing Exemption from Incident Review Committee Requirement and Renewal of Request

(a) Each state oversight agency shall be authorized to establish an application procedure for a facility or provider agency to follow when seeking an exemption from the incident review committee requirement and if such procedure is established, the facility or provider agency shall be required to provide sufficient documentation and information to demonstrate that the exemption should be granted.

(b) Each state oversight agency shall be authorized to establish an internal procedure for granting an exemption to the incident review committee requirement without requiring an application, where the exemption is based upon a particular classification or type of facility or provider and the state oversight agency determines upon its own review that such an exemption is appropriate.

(c) If an exemption to the incident review committee requirement is established, the state oversight agency shall determine the length of time that an approved exemption shall remain in effect, the circumstances for revocation of approval, and the procedure for renewal, if required.

§ 704.8 Alternative Requirements

(a) A state oversight agency authorizing an exemption from the incident review committee requirement shall establish a process to ensure appropriate review and evaluation of any reportable incidents that occur in the exempt facility or provider agency and responses to such incidents.