

March 21, 2005

Dear *Article 28 Provider*:

As you may know, Chapter 575 of the Laws of 2004, which requires that certain prospective employees or volunteers of providers of mental health services undergo criminal history background checks, includes an exemption for "a hospital as defined in the Public Health Law." The Office of Mental Health (OMH) has received many inquiries seeking clarification of the extent of this exemption in cases where mental health services are operated by providers licensed under Article 28 of the Public Health Law.

Please be advised that it is our understanding that this exemption is intended to apply to any mental health services that are included as part of the Article 28 certification, even if those services are also certified under Article 31 of the Mental Hygiene Law by the Office of Mental Health. Such mental health services would include, for example, an inpatient psychiatric unit of an Article 28 hospital or any outpatient mental health clinics that are encompassed within the Article 28 license, including: (1) outpatient clinics located on the hospital campus; (2) extension clinics which are a component of a general hospital sponsored ambulatory care program, or a diagnostic and treatment center sponsored ambulatory care program, offering services of a non-emergent nature and located on premises other than those of the hospital or diagnostic and treatment center which operates it; and (3) part-time clinic sites that are ambulatory care program sites operating less than 60 hours per month by a general hospital or a diagnostic or treatment center which is approved to operate part-time clinics.

However, there are certain mental health services that, although operated by Article 28 hospitals, are not included within the hospital's Article 28 certification. These services would not be exempt from the criminal history background check requirements of Chapter 575. Examples of these services include community residences or unlicensed, OMH funded mental health services. Thus, in order to determine to what extent it is subject to compliance with Chapter 575 of the Laws of 2004, each Article 28 hospital that operates mental health services must review those services to determine whether or not they are included within its Article 28 certification.

If, after undergoing such self review, your organization has determined that all of your mental health services fall within the Article 28 certification, you do not need to participate in the OMH fingerprinting implementation initiative, which has been the

subject of several recent “Dear Colleague” letters that you may have received as a provider of mental health services.

If, however, you have determined that you do, in fact, operate mental health services that are not included in your Article 28 certification, those services are not exempt from compliance with Chapter 575. In this case, it is imperative that you promptly designate an Authorized Person, via the Authorized Person Designation Form which was previously sent to you. This designation is required in order to access the OMH's web-based Criminal History Tracking System and receive the information resulting from a criminal history background check.

It is also essential that you notify the Office of Mental Health of your determination as to whether or not the mental health services provided by your organization are exempt from compliance with Chapter 575 of the Laws of 2004. This is to ensure that OMH staff who are performing compliance reviews know whether or not to expect compliance from your organization. Therefore, please promptly complete and sign the attached Article 28 Participation Form indicating whether or not any of the mental health services that you provide are, or are not, subject to the requirements of Chapter 575 of the Laws of 2004 and return either by Fax (518) 408-2879 or mail to Ms. Gail Meehan, Associate Personnel Administrator, NYS Office of Mental Health, HRM - Bureau of Criminal History Information, 44 Holland Avenue, Albany, New York 12229 by March 31, 2005.

If you have any questions please call Ms. Meehan or myself at (518) 402-4723. Thank you for your cooperation in this matter.

Sincerely,

Mark A. Heller  
Director  
Bureau of Criminal History Information

Attachment

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