



August 7, 2013

Dear Colleagues,

I would like to take this opportunity to provide you with updated information regarding the Justice Center. We are about 6 weeks into implementation and guidance is coming fairly quickly. I urge you to keep your eye on the Justice Center website for new information:

www.justicecenter.ny.gov/.

Attachment 1: Required Notifications to Vulnerable Persons and/or Personal Representatives

Please see the attached memorandum from Jeffrey Wise. The Justice Center is requiring that OMH and its providers notify vulnerable persons or their personal representatives when an allegation of abuse or neglect involving the vulnerable person is reported to the Justice Center. Agencies with allegations of abuse and neglect in the system through the current date, will be notified by OMH separately so that we can ensure that you are notifying individuals appropriately. From this date forward, you will need to monitor the Justice Center Import Queue in NIMRS to identify possible victims of abuse or neglect so that they may be notified.

As you know, Mental Hygiene Law 33.23 ("Jonathan's Law") requires that providers notify "qualified persons" (which includes vulnerable persons or, for those that are minors or who are legally incompetent, their personal representatives) of incidents via telephone, including an offer to meet and the provision of a 10 day report of immediate actions taken. When the incident requiring this notification is an allegation of abuse or neglect, you may elect to notify them of the Justice Center report at that time, (if you are aware that such a report has been made). However, if you would prefer not to combine the two notices, a separate notification of the Justice Center report can be made. Regardless of how the notification is made, please ensure all such notifications are documented so you can demonstrate compliance as required. It is important to keep in mind the Justice Center has delegated this responsibility to OMH and its providers given our ability to provide these notifications in a manner that is consistent with the clinical needs of the persons we serve.

Attachment 2: Clarification of Reporting and Investigating Deaths

The Justice Center has provided new guidance on death reporting and investigation. Basically, all deaths in licensed or certified programs under the jurisdiction of the Justice Center must report deaths to the Justice Center. (*This mandate applies to licensed programs; funded programs are not required to make these reports*). To report a death, call the Death Reporting line at: 855-373-2124 **and then follow up with the required form** within 5 business days. OMH providers should use NIMRS to electronically submit the required information, rather than use the form. The Justice Center may or may not investigate the death. Regardless of whether they investigate, agencies need to complete their own investigation into circumstances surrounding the death as you have done in the past. If there is any reason to suspect abuse or neglect in the death, then a separate report needs to be made to the Vulnerable Persons Central Registry (VPCR) at 855-373-2122.



Attachment 3: Process Change for Investigators of Abuse/Neglect to Notify Suspects at the Start of Investigations

Under the Justice Center's legislative authorization the subject(s) of an allegation of abuse/neglect must be notified that an investigation is being conducted unless notifying the subject would impede the investigation. This notification should only be made if it is determined that such a notification will not impede the investigation.

Attachment 4: Interim Process for Provider Staff Exclusion List (SEL) Checks

The Justice Center has responded to feedback it has received from the provider community and has developed an interim process for checking the SEL during this period of time when there are no names on the list. Until a person is placed on the SEL, providers may comply with Social Services Law 495(2) which requires a check of the SEL, by visiting www.justicecenter.ny.gov and clicking on the red banner near the top of the home page, then printing and saving a copy of the dated Interim Request for Staff Exclusion List Check page along with the employment application for each applicant for whom a provider or agency is mandated to conduct a SEL check. This document must be available for auditing purposes by OMH licensing staff during a survey if requested. See Attachment 4 for further details.

Statewide Central Registry (SCR)

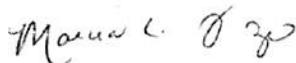
The Office of Children and Family Services (OCFS) operates the SCR. OMH does not issue Resource ID Numbers (RID#) nor do we provide access to the SCR. An agency that currently has access to the SCR and has previously obtained clearances on staff from any of their programs may continue to seek clearances for any new staff. These agencies would submit requests using the current agency RID# and do not need additional 'accounts'. An agency that has not previously had authorization to access the SCR must first obtain a RID# from OCFS. They must submit the agency name, agency address and phone number as well as a contact person for follow up if needed. They must identify by which agency(ies) they are licensed, funded or certified and, for OMH providers, a scanned copy of an Operating Certificate is helpful to verify the exact agency name and the fact that they are indeed licensed. This information should be submitted electronically to: ocfs.sm.conn_app@ocfs.ny.gov. If you are experiencing difficulties with this process, please let us know.

Incident Review Committee Members

We understand you are all struggling with incident review committee composition, particularly with confidentiality and external members. We have developed guidance on this and have asked the Justice Center for approval. As soon as they approve our approach, we will forward guidance on how to approach this.

Thank you for your continuing cooperation with this important initiative. Please direct questions to Keith McCarthy at Keith.McCarthy@omh.ny.gov

Sincerely,



Marcia L. Fazio
Deputy Commissioner



Memorandum

TO: Kristin M. Woodlock, RN, MPA, Acting Commissioner
FROM: Jeff Wise, Executive Director *Wise*
DATE: July 17, 2013
SUBJECT: Required Notifications to Vulnerable Persons and/or Personal Representatives

As you may know, under the Justice Center's legislative authorization the vulnerable person or their personal representative must be notified when an allegation of abuse/neglect is reported to the Justice Center. Upon further consideration of this legislative requirement and the practical needs of the persons receiving services within our systems, the Justice Center is requiring that your Agency or its providers make these notifications to vulnerable persons or their personal representatives when abuse or neglect allegations are reported to the Justice Center. We believe this solution will more adequately serve the needs of the persons receiving services because the direct service providers are in the best position to identify the communication needs and channels most suited to your service recipients based on their individual care plans, and to answer critical questions related to the care and protections put in place for vulnerable persons related to the reported abuse or neglect.

Effective immediately, this approach will require two actions on the part of your State Oversight Agency:

- 1) Notifying vulnerable persons or their appropriate family members/personal representatives for any new abuse/neglect cases initiated moving forward using your existing protocols/practices for such communications; and,
- 2) Notifying vulnerable persons or their appropriate family members/personal representatives in cases that have been initiated to date since June 30, 2013, if you have not done so already. To facilitate this action, we have compiled the attached list of cases initiated from June 30 to July 16 for your State Oversight Agency.

Please note that the Justice Center is required by law to protect the confidentiality of the reporter of abuse/neglect allegations, therefore please do not disclose this information in your communications to the vulnerable person or their personal representative. Also, please ensure that a record of these communications is maintained for reporting purposes related to this requirement. Please contact us with any questions or concerns.

We recognize that this is a newly communicated requirement for you to implement. However, we believe this process will have the best results for the individuals that are being served and their families, and is consistent with your practices pre- June 30th. Thank you for your continued support and cooperation.

Cc: Jay Kiyonaga, Justice Center
Marcia Fazio, OMH

TO:
FROM: Jay Kiyonaga, Executive Deputy Director
DATE: July 30, 2013
SUBJECT: Clarification of Reporting and Investigating Deaths
Effective Date: June 30 2013

The purpose of this memorandum is to clarify requirements for reporting deaths to the Justice Center.

Administrative Reporting Requirement

1. All deaths of individuals receiving services from a state-operated, licensed or certified facility or program under the jurisdiction of the Justice Center must be reported to the Justice Center. In addition, known deaths of individuals who had received services from such a provider in the 30 day period preceding death must also be reported.
2. To report a death, providers must call the Justice Center Death Reporting Line at (855) 373- 2124 to make an initial report, and then follow up with the required death related information using the prescribed form within five business days. OPWDD and OMH programs will continue to be able to utilize IRMA or NIMRS to electronically submit the required information (rather than use the form)
3. The Justice Center will review all reports of death and may conduct its own investigation.
4. Unless notified by the Justice Center, SOAs and providers should continue to review/investigate deaths in their programs as they have done in the past.

Abuse & Neglect Reporting Requirement

1. If there is any reason to suspect abuse or neglect related to a death, in addition to the administrative death report, this must also be separately reported to the Vulnerable Person's Central Registry (VPCR) Hotline at (855) 373-2122 in accordance with the Justice Center mandated reporting requirements.

Further information about reporting deaths to the Justice Center, including the required reporting forms, can be found in the "Forms" tab on the Justice Center's website, www.justicecenter.ny.gov/.

Please contact Andrew Johnson at (518) 549-0200 with any further questions.

Cc: Jeff Wise
Tony Bruno
John Rybaltowski
Andy Johnson



Memorandum

TO: Marcia Fazio, OMH

FROM: Jay Kiyonaga, Executive Deputy Director

DATE: August 1, 2013

SUBJECT: Process Change for Investigators of Abuse/Neglect to Notify Suspects at the Start of Investigations

As you may know, under the Justice Center's legislative authorization the suspect(s) of an allegation of abuse/neglect must be notified that an investigation is being conducted unless notifying the suspect would impede the investigation. This memorandum confirms the responsibility of the assigned investigator to determine whether such a notification would impede the investigation and to issue the notification if it will not impede the investigation. A sample notification template is attached to this memorandum for your convenience.

The below guidelines are in affect for all cases of abuse and neglect reported on or after June 30, 2013, through the Justice Center VPCR Hotline. If your agency's investigators have not already done so, please ensure that these notifications are sent for all investigations already underway and for all investigations assigned by the Justice Center moving forward.

When Are Notifications Sent to the Suspect(s)?

Notifications should be sent to the suspect(s) of an allegation of abuse or neglect reported to the Justice Center only if the State Operating Agency (SOA) investigator, in conjunction with his or her supervisor, determines that notifying the suspect(s) of the allegation of abuse or neglect will NOT impede the investigation. The notification to suspects should be sent at the beginning of the investigation or as soon as the suspect's contact information is known. If, in conjunction with his or her supervisor, the investigator decides that a notification should not be sent to the suspect, a note should be added to the Notes tab of the VPCR record indicating why the notification will not be sent.

Who Sends the Notification to Suspect(s)?

The primary investigator within each State SOA/provider will send the notification to suspects as soon as possible after receiving the case and confirming the suspect's contact information. The notification must be recorded/uploaded into the VPCR once it is sent.

What Should Be Included in the Notification to Suspect(s)?

The attached template provides an example of the information that can be included in the notification to the suspect regarding the investigation. The notification should NOT include the reporter's name, any personally identifying information (PII), or preliminary conclusions regarding the investigation.

Please contact the Justice Center at incidentreview@justicecenter.ny.gov with any further questions.

Attachment

cc: Jeff Wise
Anthony Bruno
Patricia Gunning
Robin Forshaw

**Investigations Notice to Suspect or Subject of Abuse or Neglect
That an Investigation Has Been Initiated**

Date

Name of Suspect or Subject of Abuse/Neglect Investigation
Address

Re: Case Serial Number

Dear <Name of Suspect>:

This is to inform you that you have been named as the subject of a report of abuse or neglect received by the New York State Justice Center for the Protection of People with Special Needs (Justice Center). The report alleges that you are responsible for an incident of abuse or neglect on or about [insert date] at the following setting:

(Name of facility or provider)

Within 60 days of the date of the report, and barring extenuating circumstances, the Justice Center will enter its findings in the Vulnerable Persons Central Register [VPCR]. The Justice Center will notify you in writing of its determination of the investigation.

If the report is determined to be "unsubstantiated" it will be sealed. A sealed report may only be made available to you, to a State agency for investigative, monitoring or licensing purposes and to the persons or entities under the circumstances noted in Social Services Law §496(1). Access to unsubstantiated reports includes limits on re-disclosure of the information contained in the report.

If the report is determined to be "substantiated," it will be assigned a category of seriousness, from Category 1 to Category 4. One Category 1 substantiated case of abuse or neglect, or two Category 2 substantiated cases of abuse or neglect within three years of each other, will result in your name being placed permanently on the VPCR Staff Exclusion List. Such a listing will bar you from obtaining employment in New York caring for vulnerable persons, and subject you to termination from current employment in accordance with any applicable collective bargaining agreement.

A substantiated report is confidential and can only be released to certain authorized persons as indicated in Section 496(2) of the Social Services Law. As the subject of a report, you have a right to request a copy of the information in the VPCR that concerns you. However, the Justice Center may withhold information identifying the person making the report or cooperating in the subsequent investigation.

After the investigation is completed, and if the report is determined to be "substantiated," you have the right to request the amendment of the finding and a review by an administrative law judge of the finding contained in the record of the report, if you believe that it is inaccurate or incorrect. You are entitled to legal representation in the appeals process, at your own expense. The request to amend and appeal must be in writing and made by you within 30 days of mailing of the notice that the report is "substantiated." Ten days leeway is given to allow for mailing by both you and the Justice Center.

Sincerely,

<Name of Investigator/Investigating Agency>

cc: File



Memorandum

TO: Providers within Justice Center SEL Check Jurisdiction
FROM: Jeff Wise, Executive Director
DATE: August 6, 2013
SUBJECT: Interim Process: Provider Staff Exclusion List Checks

As you know, the Justice Center is responsible for maintaining a statewide register known as the Staff Exclusion List (SEL) which will contain the names of individuals found responsible for serious or repeated acts of abuse and neglect. Individuals on the SEL are subject to hiring restrictions as prescribed by law for any state operated, certified or licensed agencies or providers that serve people with special needs. As of June 30, 2013, the law requires most providers to check the SEL prior to allowing a prospective applicant to have regular and substantial contact with a service recipient.

We are cognizant of the fact that no one is currently on the SEL. The Justice Center values the input from the provider community as we work to ensure that people with special needs are protected from abuse, neglect and mistreatment. To alleviate the processing burden associated with checking the SEL, the Justice Center has considered suggestions for changing the SEL check request protocol and has decided to make available an Interim Request for Staff Exclusion List Check page on the Justice Center's website for providers to access, instead of requiring a SEL check for each individual applicant, until such time as someone is placed on the SEL.

Until a person is placed on the SEL, providers may comply with Social Services Law §495(2), which requires a check of the SEL, by visiting www.justicecenter.ny.gov and clicking on the red banner near the top of the home page, then printing and saving a copy of the dated Interim Request for Staff Exclusion List Check page along with the employment application for each applicant for whom a provider or agency is mandated to conduct a SEL check. This document must be available for auditing purposes by your program's State oversight agency.

When someone is placed on the SEL, the webpage will change to reflect that fact and providers will then be required to submit an SEL Check Request form for every applicant and receive a Justice Center response before proceeding with the hiring process or otherwise allowing that person to have regular and substantial contact with a service recipient.

Please note: the Justice Center has interpreted the relevant statutory language to provide that an SEL Check Request should only be submitted on a person a provider is seriously considering hiring or otherwise permitting to have regular and substantial contact with a service recipient. An SEL Check Request form should not be submitted for everyone that a provider may interview.