



May 23, 2013

Justice Center for the Protection of
People with Special Needs:
***Implementation Overview for OMH
Licensed Providers***

Dear Colleague:

This letter provides information regarding the implementation of Governor Cuomo's "Protection of People with Special Needs Act" (Chapter 501 of the Laws of 2012) and its impact on providers licensed and operated by the New York State Office of Mental Health (OMH).

The law establishes new standards and practices for protecting people with special needs and creates a new Justice Center for the Protection of People with Special Needs (Justice Center). The expectation is that the Justice Center will investigate a portion of the reported abuse and neglect allegations, as well as other incidents deemed significant, from facilities and provider agencies that are operated, certified, or licensed by six different state agencies, including OMH.

Part 524 Title 14 NYCRR—OMH's Incident Management Regulation has been re-drafted to be consistent with the new regulations establishing the Justice Center. As soon as the draft regulations have been approved, they will be distributed to you along with guidelines for implementation. Please check the following websites for more information about the Justice Center legislation and the current status of its development:

www.governor.ny.gov/assets/justice4specialneeds/LBDCinfo.htm
www.Justice4SpecialNeeds.com
<http://omh.ny.gov/omhweb/dqm/jc/index.html>

As we approach the June 30, 2013 implementation date, the following is a list of information you need to be aware of:

1. The Justice Center will investigate a portion (but not all) of abuse and neglect allegations
When an abuse, neglect or significant incident is called or transmitted to the Justice Center 24/7 hotline (by mandated reporters, custodians or other witnesses) it will be entered into a statewide database called the Vulnerable Persons Call Registry (VPCR). The VPCR is a tool which the Justice Center will use to track and monitor reportable incidents and corrective action plans, as well as to spot trends.

Once received, the Justice Center will then decide whether the incident will be investigated by the Justice Center or by OMH. In addition, they will make an independent determination regarding the notification of law enforcement agencies, as appropriate. It is likely that the Justice Center will investigate incidents that it determines to be egregious in nature e.g. allegations of abuse or neglect where there is serious injury to a patient or more than one patient, or crimes committed by a staff person where a patient was the victim. For all reported allegations, the Justice Center will require that OMH ensure that the situation where the incident occurred has been secured.



2. Of the incidents delegated for investigation by the Justice Center to the OMH, OMH will investigate incidents that occur in state-operated programs. Incidents occurring in OMH licensed programs may be investigated by OMH or will be delegated to providers for investigation within their own programs.
OMH will receive notification of all calls from the VPCR that pertain to its licensed or operated programs. OMH staff will be on-call 24/7 to receive notifications of allegations of abuse or neglect from the VPCR. OMH staff will need to contact an administrator at each licensed agency 24/7 to ensure that the situation where the incident was alleged to have occurred has been secured, that all appropriate measures have been taken to address the safety of the person who was the victim of the allegation, and that the investigation starts as soon as possible.
3. All OMH operated and licensed providers will be required to furnish OMH with contact information for administrators who can be called 24/7 to ensure safety. This information should include cell phone numbers and agency e-mail address. This information must be provided to Ms. Nancy Flanagan at 518-474-3619 or Nancy.Flanagan@omh.ny.gov by June 10, 2013. Failure to provide this information and to have a reliable off hours on-call process will result in licensing sanctions.
4. OMH will continue to operate NIMRS, the current incident management and reporting system.
All accepted allegations of abuse and neglect as well as significant incidents will be entered into the VPCR, by the Justice Center after being notified by either a phone call or via a web-based form ("significant incidents" will be further defined in a subsequent notice). A file has been developed which will permit information exchange between the VPCR and NIMRS. When an incident of abuse, neglect or a significant incident is loaded into the VPCR, the information will be downloaded into NIMRS. Any information that is obtained throughout the course of the investigation will be fed through NIMRS back into the VPCR. Your organization will continue to use NIMRS for incidents that are not immediately reportable to the Justice Center and to keep OMH apprised of the progress of investigations. (Employees working for OMH licensed providers will not have direct access to the VPCR). OMH staff will monitor completeness of alleged abuse or neglect investigations in NIMRS and will ensure that documentation passes between providers and the VPCR via NIMRS.
5. Reports of child abuse in institutional settings will no longer be made to the Statewide Central Register of Child Abuse and Maltreatment (SCR). Instead, allegations of abuse and neglect of children in institutional settings (such as inpatient facilities licensed or operated by OMH) are to be made to the VPCR, and investigations will be conducted by the Justice Center. Note, however, that mental health providers and their staff remain required to comply with NYS Social Services Law Section 413 and the requirements of the NYS Office of Children and Family Services (OCFS) regarding mandatory reporting of the abuse and neglect of children by a parent or caretaker in a family or foster care setting; these reports will continue to be made to the SCR.
6. A series of training opportunities will be forthcoming:
 - Mandated Reporting: All directors, operators, employees, volunteers, consultants and contractors that have regular and substantial contact with persons served by the provider, are called "custodians." All custodians and human service professionals are "mandated reporters" and are required to report

suspected abuse, neglect, and significant incidents to the VPCR immediately upon discovery. There are penalties for failure to report; e.g. if a mandated reporter who is a human service professional fails to report an incident of abuse and neglect, he or she could be charged with a Class A Misdemeanor. The Justice Center is preparing an attestation for all persons who are custodians and mandated reporters. OMH requires each custodian to read and sign this attestation and then that it be placed in personnel files. **This attestation must be completed and placed in personnel files by June 30, 2013.** Personnel files will be checked for this document in future licensing visits.

- Code of Conduct: All individuals working with people with special needs or disabilities will be held accountable to a code of basic ethical standards. The Code of Conduct must be read and signed by any custodian, at the time of employment and at least annually thereafter. The Justice Center is in the process of developing the Code. OMH will distribute this as soon as it is available. OMH requires that each custodian read and sign this attestation and that it be placed in personnel files. **This attestation must be completed and placed in personnel files by June 30, 2013.** Personnel files will be checked for this document in future licensing visits.
- Investigations: The Justice Center has developed basic training information on how to conduct investigations according to their standards. This information is available on the Justice Center and OMH websites:
<http://omh.ny.gov/omhweb/dqm/jc/index.html>. **We recommend that you view this information before June 30 to familiarize yourself with NYJC standards.** Throughout the summer, OMH staff will be providing in-person investigation training in all regions throughout the state. While staff may have received training previously by OMH Central Office, it is important that staff be re-trained in Justice Center standards.

7. Centralization of the Criminal Background Check Process and Staff Exclusion List (SEL)

On May 8, 2013, communication from OMH and Justice Center was sent out regarding centralization of the Criminal Background Check (CBC) process and SEL. There are two more letters coming in the near future to further explain changes in this area.

- The SEL is a list that contains the names of people who have been deemed ineligible to work in a position involving regular and substantial contact with a service recipient. The law now requires that prior to requesting a criminal background check, the SEL must be checked when considering an applicant for employment. The Justice Center will conduct the SEL check upon request of the person authorized by the provider (AP). (See "Dear Colleague" letter of May 8, 2013 on the OMH website at: <http://omh.ny.gov/omhweb/dqm/jc/index.html>)
- For OMH providers, there will be minimal change to the existing criminal background check process. Funded and licensed providers will request a CBC for each prospective employee or volunteer who will have regular and substantial unsupervised contact with consumers. Authorized persons will be required to request that the SEL be checked. Providers will also be required to check the SCR if appropriate. OMH will conduct the fingerprint process at current locations. After June 30, the Division of Criminal Justice Services (DCJS) will send the

results to the Justice Center which will then review the information and advise the provider about the results.

- OMH will continue the current practice to ensure that providers have completed criminal history checks.

8. Criminal Penalties

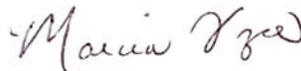
The Justice Center will have a team of investigators and lawyers, including a special prosecutor who will investigate and prosecute allegations of abuse and neglect that rise to the level of criminal offense. Additionally, the new legislation has established stronger criminal penalties for endangering the welfare of people with disabilities and special needs, and gives support for the prosecutor to prove that any of these individuals in a facility operated, licensed or certified by the state was a victim of sexual abuse.

As soon as we receive the Justice Center materials regarding Mandated Reporting and the Code of Conduct, we will distribute them via the Mental Health Program Data Exchange (MHPD), the OMH website: <http://omh.ny.gov/omhweb/dqm/jc/index.html>, to professional organizations and via regular mail. Please read all of the material carefully. Please continue to refer to the OMH website, as we will continue to post new information as it becomes available.

We are committed to working with you to make the transition to the Justice Center as smooth as possible. If you have questions or concerns, please feel free to contact myself at 518-474-6587 or Marcia.Fazio@omh.ny.gov, or Jack Smitka at 518-474-3619 or Jack.Smitka@omh.ny.gov.

Thank you in advance for your cooperation in implementing this important new initiative.

Sincerely,



Marcia Fazio
Deputy Commissioner

cc: Kristin Woodlock
John Tauriello
Field Office Directors
Jeff Wise
Jay Kiyonaga