



Office of Mental Health

ANDREW M. CUOMO

Governor

ANN MARIE T. SULLIVAN, M.D.

Commissioner

MARTHA SCHAEFER

Executive Deputy Commissioner

September 14, 2015

Dear Colleague:

As you may know, the Protection of People with Special Needs Act, or PPSNA (Chapter 501 of the Laws of 2012) created the Justice Center for the Protection of People with Special Needs ("Justice Center"). The PPSNA created a set of consistent safeguards for vulnerable persons served by systems under the jurisdiction of 6 State agencies, including the Office of Mental Health (OMH), to protect them against abuse, neglect, and other dangerous conduct, to investigate and address instances of neglect and abuse, and to provide fair treatment to employees upon whom vulnerable persons depend for their care.

In June of 2013, in accordance with PPSNA requirements, OMH promulgated emergency regulations outlining incident management requirements for State operated and licensed providers under its jurisdiction. In the fall of 2014, OMH developed guidance for providers with respect to implementing these requirements, the purpose of which was to clarify incident reporting requirements for OMH and the Justice Center. This guidance is available on OMH's public website via the following link: <http://www.omh.ny.gov/omhweb/dqm/jc/training-aids/omh-incident-management.pdf>

In this guidance, OMH indicated that it would be submitting a Notice of Emergency Adoption and Proposed Rulemaking to finalize amendments to 14 NYCRR Part 524 (Incident Management Programs). The purpose of this communication is to advise you that such Notice has, in fact, been submitted to the *New York State Register* for publication. The proposed regulations are available on OMH's public website via the following link: http://www.omh.ny.gov/omhweb/policy_and_regulations/

In large part, the Proposed Rulemaking is identical to the emergency regulations under which providers under OMH's jurisdiction have been functioning since June of 2013. The following two important *substantive changes* have been made to 14 NYCRR Part 524:

- **Section 524.8(e):** A provision has been added to modify the requirement that all mandated reporters who witness the same event must report the event. Instead, in cases where multiple mandated reporters have direct knowledge of the same reportable incident, each reporter is required to report the incident unless s/he knows that the report has been made by another mandated reporter and s/he has been named as a person with knowledge of the incident in the report. Written protocols to implement this provision are required.

- **Section 524.8(f):** OMH will develop protocols, in consultation with the Justice Center, to assist providers in appropriately and therapeutically responding in circumstances where patients have a demonstrated pattern of frequently reporting allegations of abuse or neglect that are not reasonably reliable (i.e., there is no possibility that an allegation is true).

Several other changes have been made to clarify language or achieve consistency with regulations of other State Operating Agencies under the jurisdiction of the Justice Center. The following changes are of note:

GENERAL DEFINITIONS:

- **Section 524.4(b):** The definition of "Allegation" was deleted, and the definition of "Discovery" was amended to incorporate the concept of "reasonable cause to suspect," to achieve consistency with the PPSNA.
- **Section 524.4(c):** The definition of "Employee or Staff" was amended to exclude employees or volunteers who are also a provider's patients.
- **Section 524.4(j)(2):** The list of human service professionals included within the definition of "Mandated Reporter" was updated to reflect changes in law that have occurred since 2013.
- **Section 524.4(k):** A definition of "Minor Injury or Harm" has been added.
- **Section 524.4(q):** The definition of "Serious" has been changed to "Serious Injury or Harm."

INCIDENT CATEGORY DEFINITIONS:

- **Section 524.5(a):** The definition of "Physical Abuse" has been amended to mirror the PPSNA, which is consistent with other State Operating Agency regulations. Incidents formerly included in OMH's definition of "Physical Abuse" that no longer meet the PPSNA definition have been recategorized as a "Significant Incident" under the category of "Wrongful Conduct" (Section 524.5(w)).
- **Section 524.5(a)(7):** "Aversive Conditioning," though prohibited in facilities under OMH jurisdiction, has been restored as a category of Abuse, consistent with the PPSNA.
- **Section 524.5:** "Choking" has been removed as a discrete incident category.
- **Section 524.5(h):** The condition of resulting harm has been removed from the category of "Fire Setting."
- **Section 524.5(w):** A new category of "Wrongful Conduct" has been included to capture some incidents that would have formerly been reported by OMH providers as physical abuse but which were beyond the PPSNA definition of physical abuse.

SPECIAL INVESTIGATIONS:

- A new Section **524.14** has been added to identify provider responsibilities with respect to Special Investigations. Though a new section in the regulations, these provisions are intended to capture existing OMH requirements with respect to these investigations.

OMH encourages providers to review the Proposed Rulemaking and submit public comments to the regulations in accordance with the State Administrative Procedure Act.

Sincerely,



Christopher Tavella, Ph.D.
Deputy Commissioner
Division of Quality Management

cc: Ann Marie T. Sullivan, M.D.
Martha Schaefer Hayes
Joshua Pepper
Julie A. Rodak