

GUIDANCE MEMORANDUM

To: New York State Office of Mental Health (“OMH”) Licensed and/or Funded Residential Providers (“Providers”)

From: Robert Myers, PhD., Senior Deputy Commissioner, Director of Adult Services, State Psychiatric Centers and Managed Care

Date: April 22, 2014

Re: Requirement to Obtain OMH Written Approval Prior to the Sale or Disposition of Real Property Acquired Through State Aid Grants; 14 NYCRR Part 521

Since the late 1980s, OMH, acting in its own behalf and as agent for the Dormitory Authority of the State of New York, has worked cooperatively with Providers to develop various types of safe, stable housing throughout the State, both transitional and permanent, for individuals with mental illness. Recipients now enjoy a wealth of residential choices with varying levels of supportive services and OMH is very pleased to have been a part of this development through its policy of granting State aid pursuant to Part 521 of the OMH regulations. Additionally, OMH recognizes and appreciates the innovative efforts of Providers and their consultants that have led to complex yet highly effective, multiple source funding structures for housing development, further increasing the number of residential units in the community for recipients.

As noted above, OMH’s regulatory authority to make State aid grants for capital acquisition and construction is set forth in Part 521. Tied to this monetary support for capital acquisition and construction are certain assurances and conditions with which all applicants for such grants must comply. For instance, applicants must enter into a lien in favor of OMH upon receiving a grant and must seek OMH written approval for any conveyance or further encumbrance of real property acquired through a grant.

This Guidance Memorandum is intended to explain to all Providers that even after a lien has been satisfied, OMH expects that the facilities constructed with State aid granted through Part 521 will

continue to serve individuals living with serious mental illness. The intent of Part 521 is clear: to provide State resources to establish a system of community mental health services for individuals with mental illness by encouraging Providers to acquire property for the development of facilities, to set forth conditions regarding the grant of State aid, and to set forth conditions and requirements for facility development and operation. The majority of grants made under Part 521 have been for the acquisition, construction, renovation or rehabilitation of residential facilities. The State aid afforded to Providers to develop such facilities carries with it an obligation to ensure that the residents of the facilities remain in stable and safe housing, and it is OMH's position that this housing, having been paid for with State funding, should continue to benefit individuals with mental illness notwithstanding the satisfaction of a lien or other security obligation. OMH thus strongly favors the continued utilization of residential facilities acquired or constructed with State aid by the Provider (or a successor in interest Provider) for the benefit of recipients. OMH will continue its practice of making subsequent grants pursuant to Part 521 for renovations to facilities in order to fulfill this goal.

However, OMH recognizes that there may be infrequent instances where disposition of a property and facility may be warranted and in the best interest of recipients. Part 521, Section 521.10(b) specifically requires that Providers who receive State aid "may not transfer, sell, assign, lease or encumber, in whole or in part, the real property acquired through a state aid grant....without the prior written approval of the OMH." This regulation has the full force and effect of law and is not limited to the term of a lien or other security interest. Providers should ensure that any disposition plan for real property that was acquired through State aid receives review and approval from OMH. OMH is committed to working with Providers to identify appropriate plans for the proceeds of any disposition, with the goal of continuity of residential opportunities for recipients being the paramount focus when the sale or other disposition is of a residential facility.

Accordingly, a request for OMH written approval should include a specific and detailed plan illustrating how the proceeds from the proposed disposition will be reinvested consistent with the

purpose for which the grant was originally made. For residential facilities, Providers should present a plan that has the effect of preserving or expanding housing options for recipients in a manner consonant with OMH housing policies intended to maximize residential opportunities for persons with mental illnesses. At a minimum, any disposition should optimally result in the creation of at least the same number of comparable units. Furthermore, OMH will consider the plan in light of the mandate of the Americans with Disabilities Act to provide services for persons with disabilities in “the most integrated manner appropriate” to their needs, as interpreted by the U.S. Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999). OMH will review plans for reinvestment in housing on a case by case basis and may require that modifications to requests be made in light of the factors identified herein.

Properties should not be marketed and sold until such approval is given.

In those occasional instances in which a disposition of residential facility property is approved, Providers are expected to make reasonable plans for the relocation of all the affected recipients. The relocation must be to clinically appropriate residential settings that are comparable in quality to the settings where the recipients previously resided and recipient preferences shall be taken into account.

All questions regarding this Guidance Memorandum should be directed to John Reisinger, Assistant Counsel, 518-474-1331.