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	Section:		
	Patient Care		
Directive:			Residential Search Policy
Policy Owner:			Division of Child and Adult State Operations

A. Applicability

This policy directive is applicable to all Office of Mental Health operated residential programs with the exception of Office of Mental Health research facilities; Central New York Psychiatric Center and Secure Treatment and Rehabilitation Centers.

B. Policy Statement

The Office of Mental Health (OMH) is committed to providing a safe environment for all residents, staff, and visitors. In certain circumstances, this responsibility may necessitate searching residents, their living areas and/or their personal effects. The purpose of this policy directive is to ensure that such searches are reasonable, justified, and are conducted with proper respect to ensure everyone’s privacy and dignity. To prevent the introduction of illegal or restricted items to any part of an OMH facility, all staff, residents and visitors are expected to adhere with rules and policies which govern security and safety. The rights of all individuals will be fully protected as searches are completed in a respectful manner to ensure each resident’s privacy and dignity during the implementation of this policy. Individuals under the care of OMH facilities are encouraged to refrain from bringing any restricted or illegal items to the residence. This policy supersedes all previous guidance on residential restricted or illegal items, contraband, or searches.

C. Relevant Statutes and Standards

- 14 NYCRR 595.10 Rights of Residents
- 14 NYCRR 527.5 Notice of Recipients’ Rights

Searches of residents or resident belongings are conducted only when there is a reasonable and articulable suspicion that the individual possesses a restricted or illegal item that poses a risk to the safety, clinical care or operations of the residential program. Searches can be voluntary or involuntary if certain criteria contained within this policy are met and must be clinically or operationally indicated and conducted in a trauma-informed manner that is least intrusive and consistent with resident rights and in a way that maintains the safety of residents, staff, and the facility. Searches must be reasonably related in scope to the circumstances which justified the suspicion in the first place.

D. Definitions

1. **Reasonable Suspicion** means the standard that allows OMH staff to conduct searches of a resident, a resident's room, or a resident's belongings based on a specific set of articulable facts that would lead any objectively reasonable person to conclude that the individual has violated the law or the rules of the residence, by possessing restricted or illegal items that present a risk to safety, clinical care, or the operations of the residence. Reasonable suspicion cannot rely on vague feelings, unsubstantiated beliefs or unreliable tips about a resident. Reasonable suspicion requires more than a "mere hunch," or gut feeling. Reasonable suspicion must be grounded on staff's concrete observations of a resident or the totality of the circumstances and requires staff to document and articulate facts that justify their actions.
2. **Restricted Items** means items that are legal to possess but have the potential to pose a substantial risk to the safety of residents and staff within the residence or have the potential to significantly interfere with program operations or an individual's residential goals. Restricted items are prohibited within a residence and should be safely stored in residential storage lockers to allow for their use in the community but not in the residence. While restricted items are prohibited in the residence, they must be maintained as the property of the individual and not destroyed. Any other action would be considered an imposition on the individual's rights as a citizen.

Examples of restricted items include but are not limited to: cigarettes/cigars/vaping and other smoke/vapor producing nicotine products, cannabis – under 3 ounces or 24 grams of marijuana concentrate, fire-starting implements (e.g. lighters, matches), combustible substances, alcohol, edged or bladed implements under 4 inches, and drug paraphernalia.

3. **Illegal items** means items that New York State has determined to be illegal to possess within the community at large and/or on New York State owned property. Illegal items are prohibited within a residence, resident storage lockers. A resident's storage locker may be searched when reasonable suspicion exists that it contains illegal items. Illegal items will be confiscated and relinquished to law enforcement/safety office for disposal or storage.

Examples of illegal items include, but are not limited to: any legally owned or illegally obtained firearm (with or without a permit), ammunition, Illegal weapons (e.g. electronic dart gun, electronic stun gun, switchblade knife, pilum ballistic knife, metal knuckle knife, undetectable knife, cane sword, billy club, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, wrist-brace type slingshot or slungshot, shirken, or "Kung Fu star," dagger, edged or bladed implements over 4 inches, imitation firearms), illegal drugs (e.g. cocaine, psychedelics, synthetic cannabis, amphetamines, barbiturates, benzodiazepines, opiates.), cannabis – over 3 ounces or 24 grams of marijuana concentrate.

4. **Resident storage lockers** means lockers that are typically located at the entrance to the residence and allow residents to securely store restricted items that are not allowed in the program. The purpose of a resident's storage locker is to offer a safe alternate placement for restricted items that prevent their introduction into the residence. Resident storage lockers may only be searched for illegal items when reasonable suspicion exists and may not be searched for restricted items.
5. **Trauma Informed Approach** means an approach that recognizes the impact of trauma on individuals and integrates this understanding into staff actions and aims to create a supportive environment that avoids causing further harm by anticipating how a resident may respond to a search.
6. **Articulate facts** means specific, objective, and observable details that residential staff can clearly explain to justify their search of a resident, their belongings, or room. Articulate facts must create a "reasonable suspicion" that a resident has restricted or illegal items in the residence, distinguishing them from mere hunches or guesses.

E. Body of the Directive

This policy directive consists of 15 components:

1. General Principles
2. Establishing Reasonable Suspicion through Direct Staff Observations
3. Establishing Reasonable Suspicion through the Totality of Circumstances
4. Standards for Searches
5. Staff Roles for Searches
6. Types of Searches
7. Search Procedures
8. Notification and Documentation of Searches
9. Visual Inspection of a Resident's Belongings Upon Admission to the Residence
10. Visual Inspections of Common Areas for Fire, Safety and Environmental Hazards
11. Visual Inspections of Resident Rooms for Fire, Safety Environmental Hazards and Skill Building Activities
12. Random, Routine and Suspicion-less Searches
13. Staff Training
14. Ongoing Policy Review
15. Example Scenarios

1) General Principles

- (a) Residential staff will ensure that residents are informed of this search policy upon orientation and admission to the residence including, what items are not allowed in the residence. Residential staff will ensure residents are aware that the possession of illegal items may result in law enforcement involvement and legal charges.

- (b) Searches must be justified by a reasonable and articulable suspicion and are guided by the need to maintain safety and order within the residence.
- (c) OMH residential staff must first clearly establish and document their reasonable suspicion before conducting any search and outcome following the search, except when exigent circumstances require staff to take immediate action. Where staff have conducted an exigent search of a resident or their belongings, documenting the reason for and outcome of the search will occur as soon as possible. Staff shall be responsible for documenting the justification for the search within a resident's record.
- (d) Searches cannot be punitive, retaliatory or for the convenience of staff.
- (e) Searches should observe the least intrusive and restrictive approaches.
- (f) OMH staff should provide an opportunity for a resident to voluntarily consent to and observe the search if a resident is present and will not disrupt the search process or impact the safety of staff or others.
- (g) OMH staff may conduct an involuntary search when reasonable suspicion has been established and a resident refuses a voluntary search, is not present for the search, is or would be disruptive to the search process, or whose presence would likely impact the safety of staff or others and/or when exigent circumstances exist that require immediate action.
- (h) Searches must use a trauma-informed approach that seeks to minimize the impact of the search experience on a resident's emotions and relationships, is supportive, not punitive, and avoids causing further harm.
- (i) Searches must be consistent, documented, and reviewable.

2) Establishing Reasonable Suspicion through Direct Staff Observations

Reasonable Suspicion is established when staff directly observe:

- (a) Restricted or illegal items in plain view; or
- (b) Strong odors of what staff reasonably believe are restricted or illegal substances (e.g. alcohol, marijuana, etc.) in the vicinity of a resident.

All observations must be specific, contemporaneous, objective, and documented.

3) Establishing Reasonable Suspicion through the Totality of Circumstances

Where direct staff observation alone is insufficient to establish reasonable suspicion to conduct a search of a resident, their room and/or belongings, staff shall consider the

totality of the circumstances by weighing several factors that would lead an objectively reasonable person to conclude that a resident has violated the law or rules of the residence by having a restricted or illegal item within the residence. These factors include:

- (a) Reliable Information or a tip from a credible source, which can be corroborated through additional observation, investigation or other credible reports, may form the basis to begin establishing reasonable suspicion. Credible sources can include clinical provider(s), other OMH staff, peer(s), family, friends or others who have specific, direct first-hand knowledge through their own observations that a resident possess a restricted or illegal item within the residence;
- (b) General Suspicion: OMH staff may question a resident based on general suspicion to further establish a greater degree of reasonable suspicion from the responses obtained and demeanor of a resident during questioning. A Resident's silence or lack of participation in questioning may not establish reasonable suspicion in the absence of other factors;
- (c) Observable Behaviors OMH staff may consider a resident's current demeanor and behaviors as another factor in establishing reasonable suspicion (e.g. acute decompensation, threatening/aggressive/secretive behavior that is a deviation from the norm, slurred speech, unsteady movement, or altered mental status), or a resident attempting to conceal what staff reasonably believe are restricted or illegal items or substances from their view;
- (d) Contextual Factors such as time, location and proximity to recent untoward incidents may be considered (e.g. resident was observed by staff leaving the room of a peer who claims items have been stolen.);
- (e) Training and Experience – OMH staff's use of common sense, training and life experience, along with other identified factors, may contribute to establishing reasonable suspicion; and
- (f) Historical Factors that include documented prior incidents that are similar to the current concern (e.g. prior substance use, prior incidents of possessing restricted or illegal items, prior criminal activity).

4) Standards for Searches

- (a) Searches shall only be conducted when a reasonable and articulable suspicion exists that:
 - i. A resident has violated the law or rules of the residence by currently possessing restricted or illegal items; and

- ii. By possessing these restricted or illegal items within the residence, a resident presents a potential risk to safety, clinical care, or program operations.
- (b) Staff must consult with and obtain authorization from identified facility leadership or designee before conducting any search, except when exigent circumstances exist that pose an immediate risk to the safety of the individual or other residents.
- (c) Searches shall not be conducted at random, routinely, as retaliation, or for staff convenience.

5) Staff Roles for Searches

All staff share responsibility for maintaining a culture of safety and are expected to remain alert, observant, and mindful of their surroundings while on duty. When a search is indicated, it will generally be conducted by direct care program staff (e.g. residential program assistants, mental health therapy aides), following the policies outlined below. In situations where there is a reasonable belief of imminent danger, the presence of a weapon, or suspected criminal activity, program staff shall not intervene and will instead contact Safety or local law enforcement as appropriate.

6) Types of Searches

(a) Voluntary searches

Asking a resident's permission to conduct a search is respectful, trauma informed, and should be sought whenever a resident is present or could be present if time allows. If present for the search, a resident should be informed of the reasonable suspicion and the items being sought. Voluntary consent should be obtained in writing whenever possible, or verbal consent documented by a minimum of two staff witnesses.

(b) Involuntary searches

If a resident declines a voluntary search or is unavailable to consent at time the search is conducted, or whose presence would disrupt the search process or impact the safety of staff or others, and reasonable suspicion exists, staff may conduct an involuntary search of a resident's belongings or room. Residential staff may not conduct an involuntary search of a resident's person or body.

(c) Searches of Belongings or Room

Searches of a resident's belongings or room must be limited to specific items or areas related to the reasonable suspicion and within the control of a resident. Searches of shared rooms cannot extend to belongings, items, or areas beyond the direct control of the suspected resident. Staff may only search a suspected resident's roommate's

belongings or area if separate reasonable suspicion has been established, and search procedures followed or voluntary permission to search is obtained from the suspected resident's roommate.

(d) Searches of a Person

- i. When reasonable suspicion exists that a resident has restricted or illegal items on their person, and in the judgement of residential staff or identified facility leadership such voluntary request will not impact staff safety, the safety of a resident, or others, staff may ask a resident to voluntarily turn over the restricted or illegal item(s), remove contents of pockets, remove jackets, hats, lift sleeves or pant legs, remove shoes and socks, in order to locate the restricted or illegal item.
- ii. When reasonable suspicion exists that a resident has restricted or illegal items on their person, and they are refusing to voluntarily turn over items, and in the judgement of residential staff or identified facility leadership such voluntary request will impact staff safety, the safety of a resident, or others, residential staff, in consultation with facility leadership, may enlist the assistance of local law enforcement and/or OMH safety, who will conduct the physical search of a resident with residential staff observing.
- iii. When exigent circumstances exist where a resident is unconscious, residential staff should activate their emergency response procedures. During this emergency response, residential staff may need to involuntarily remove a resident's outerwear such as jackets, hats, lift sleeves or pant legs, remove shoes and socks, to render aid. Any restricted or illegal items discovered on a resident during an emergency response should be secured and/or disposed of.

7) Search Procedures

- (a) Residential program staff must consult with and obtain authorization from identified facility leadership or designee before conducting any search, except when exigent circumstances exist that pose an immediate risk to the safety of the individual, staff or other residents.
- (b) Identified facility leadership, or their designee, must confirm with staff that reasonable and articulable suspicion exists that a resident has an illegal or restricted item within the residence.
- (c) When the focus of the search is a firearm, ammunition or other weapon, OMH Safety and/or local law enforcement must be consulted and assist in conducting the search to ensure staff safety and secure the weapon.
- (d) In circumstances where an firearm, ammunition or other weapon is unexpectedly discovered during a search for other restricted or illegal item(s); the item(s) should be

- left in place, the belongings/room/area secured and residents removed from the immediate area if practicable, and OMH Safety and/or Local Law Enforcement contacted to help secure the illegal items(s).
- (e) Staff should attempt to obtain voluntary consent from a resident prior to performing a search, if the presence of a resident would not be disruptive to the search process or impact safety of staff or others.
 - (f) If a resident is present for the search, staff will inform a resident of their reasonable suspicion, what illegal or restricted item(s) they are seeking and where they intend to search.
 - (g) If staff reasonably believe that a resident may disrupt or interfere with the search, staff should consider conducting the search without the presence of a resident and/or should enlist the support of OMH Safety or Local Law Enforcement as necessary.
 - (h) When conducting a search, at least two staff must be present. Typically, one staff will complete the search, and the other will observe.
 - (i) Staff may invite a resident to observe the search, if available, and their presence would not be disruptive to the search process or impact the safety of staff or others.
 - (j) Staff searches of a resident's belongings or room must be limited to specific items or areas related to the reasonable suspicion and within the control of a resident. Searches of shared rooms cannot extend to belongings, items, or areas beyond the direct control of the suspect resident. Staff may only search a suspected resident's roommate's belongings or area if separate reasonable suspicion has been established, and search procedures followed or voluntary consent obtained from the subject resident's roommate.
 - (k) Staff should wear proper personal protective equipment, such as gloves or facemask, when conducting a search of a resident's room or belongings.
 - (l) Staff will return a residents' room and belongings to an orderly condition when search is complete.
 - (m) For residential sites on the grounds of PCs, the safety office is to be informed of the intent to search and invited to participate as warranted.
 - (n) Any illegal items that are confiscated during the search shall be turned over to Safety or local law enforcement.
 - (o) Restricted items identified during a search shall be placed by staff or a resident in a designated storage area (e.g. resident storage locker) or voluntarily surrendered by a resident for disposal.

- (p) Identified facility leadership or their designee will ensure a process for debriefing a resident about the reasons and results of the search.

8) Notification and Documentation of Searches

- (a) Residential staff will document their reasonable suspicion for a search of a resident, their belongings or room, and obtain written approval from identified facility leadership or their designee, using a form identified by facility leadership and state operations.
- (b) Residential staff will document in a resident's chart and residential communication log, the basis for the search, reasonable suspicion observed, the type and scope of search conducted, items found (if any), resident response, name and title of staff involved, any follow-up action, including but not limited to clinical notification or referrals to appropriate services, and any other information relevant to the search.
- (c) Any restricted items that were confiscated but are the property of a resident and are not illegal or perishable may be stored for later return to a resident, returned to a resident to dispose or store outside the residence, or voluntarily surrendered by a resident for disposal by staff. Illegal items will be confiscated by Safety Officers and disposed of according to safety department procedures.
- (d) All restricted or illegal items that are confiscated will be documented using the procedure identified by facility leadership and state operations (e.g. Alchemer Reporting Restricted and Illegal Items).
- (e) Any incident or search of a resident that involves illegal items or contraband that meets 14 NYCRR Part 524 requirements must also be directly reported to the Justice Center's Vulnerable Persons' Central Register.

9) Visual Inspection of a Resident's Belongings Upon Admission to the Residence

- (a) To ensure a safe living environment in the residence, free of bed bugs and other environmental hazards, residential staff may conduct a visual inspection of an individual's belongings upon admission.
 - (a) Residential staff will follow requirements of subdivision 7) paragraphs d) through i) and paragraphs k) through p) when conducting a visual inspection of a resident's belongings upon admission to the residence.
 - (b) Resident belongings that have evidence of bed bugs or other environmental hazards will be confiscated, cleaned and returned to a resident, safely stored with resident belongings, or disposed of.

- (c) Restricted items discovered upon visual inspection of a resident's belongings at admission will be placed in a designated storage area, resident storage locker, returned to resident for disposal or voluntarily surrendered by a resident for disposal by staff.
- (d) Illegal items discovered upon visual inspection of a resident's belongings at admission will be turned over to OMH Safety or local law enforcement.

10) Visual Inspections of Common Areas for Fire, Safety and Environmental Hazards

- (a) Residential staff will make regular, daily visual inspections of common areas within and around the residence. Staff will investigate anything which may seem suspicious, address fire, safety and environmental hazards, ensure cleanliness, and secure or confiscate any illegal/restricted items found in common areas.
- (b) In circumstances where an illegal or dangerous weapon is unexpectedly discovered during a regular visual inspection of common areas for fire, safety and environmental hazards, the weapon should be left in place, the belongings/room/area secured, residents removed from the immediate area as practicable, and OMH Safety and/or Local Law Enforcement contacted to help secure the illegal weapon.

11) Visual Inspections of Resident Rooms for Fire, Safety Environmental Hazards and Skill Building Activities

- (a) In addition to the above policy for searches, residential staff will make regular inspections of resident rooms for the purpose of addressing fire, safety, environmental hazards, ensuring room cleanliness, and assisting a resident with resident skill building activities to support maintaining their environment. Staff are expected to promptly note and address any fire, safety, environmental hazards or room cleanliness. Clinical supports should be engaged when and where appropriate to help address specific resident concerns. Resident specific support and skill building to improve any of these areas of concern should be incorporated into their individual service plan.
- (b) In circumstances where an illegal or dangerous weapon is unexpectedly discovered during a regular visual inspection of a resident's room for fire, safety and environmental hazards, the weapon should be left in place, the belongings/room/area secured, residents removed from the immediate area, and OMH Safety and/or Local Law Enforcement contacted to help secure the illegal weapon.

12) Random, Routine and Suspicion-less Searches

Random, routine, and suspicion-less searches in OMH-operated programs are generally not permitted. Broader, pattern-based concerns such as repeated non-compliance with contraband rules or credible safety information (e.g. unspecific community reports that

someone may have something dangerous somewhere in the residence), may warrant a search. However, review and approval from OMH central office leadership, including leadership in State Operations and the Office of Counsel, must be obtained first. Staff who identify pattern-based concerns should contact State Operations for next steps. These reviews will be expedited.

13) Staff Training

All staff shall be trained on this search policy, use of personal protective equipment and related procedures at hire and annually thereafter.

14) Ongoing Policy Review

This policy shall be reviewed regularly to ensure it remains effective, trauma-informed, and aligned with current clinical and safety standards.

15) Example Scenarios

- (a) Mike, a resident of ABC Community Residence, has been noticeably withdrawn for two days. He skipped a group, is pacing more than usual, is not agitated or threatening to peers or staff, but provides short responses when spoken to.

Is there reasonable suspicion for a search of Mike, his room or belongings?

- i. No, there is insufficient reasonable suspicion based on the totality of the circumstances, to conduct a search of Mike, his room or belongings.
 - ii. Rationale: Changes in behavior alone do not justify a search. Clinical concerns should first be address through engagement and assessment. Staff should note Mike’s behavioral changes in the record and notify residential management and Mike’s clinical provider of changes in baseline behavior. Staff should increase observation and supportive engagement.
- (b) During a regular visual inspection of all resident rooms for fire, safety and environmental hazards, staff observe an open bottle of vodka sitting on Martha’s desk in her room.

Is there a reasonable suspicion for a search of Martha, her room or belongings?

- i. Yes, there is reasonable suspicion.
- ii. Rationale: Since the bottle of vodka is in “plain-view” during a regular visual inspection for fire, safety and environmental hazards, staff may confiscate the bottle of vodka.

- (c) Nick, a resident of ABC Residence, tells staff that “I heard that Ben has drugs in his room”, but Nick cannot provide any details and admits he is upset with Ben after an argument.

Is there reasonable suspicion for a search of Ben’s room or belongings?

- i. No, there is no reasonable suspicion to conduct a search.
- ii. Rationale: The report from Nick should be documented, and staff should monitor for corroborating factors that, in the totality of circumstances, would support a search. However, uncorroborated or retaliatory reports do not meet the standards for a search.

- (d) Jack and Jill, residents at ABC residence, inform staff that they witnessed Malcolm, just now in the day room, with a bag of a white powder and acting strange. Staff immediately go into the day room and observe Malcolm quickly shove an object into his backpack. Malcolm appears visibly agitated and has a recent history of self-harm. When asked what he put away, Malcolm refuses to answer.

Is there reasonable suspicion for a search of Malcolm’s room or belongings?

- i. Yes, the totality of the circumstances would lead to a reasonable suspicion that Malcolm is hiding a restricted item.
- ii. Rationale: Explain the concern clearly to Malcolm, the reasonable suspicion and ask for his voluntary consent to search his bag. The concealment, clinical history, and the visible agitation are articulable and should be documented.

- (e) John, a resident of ABC Residence, comes to the medication room and states, “I can’t do this anymore, I don’t want to live” and staff observe what appears to be a boxcutter protruding from John’s pocket.

Is there reasonable suspicion for a search of John?

Yes, staff should address John’s imminent risk, provide support and ask John to voluntarily empty his pockets and turn over any restricted items, then seek support in having John psychiatrically evaluated. Should John refuse a voluntary search, staff should enlist the support of OMH Safety or local police to help conduct a search of John’s person.