

 Office of Mental Health		Official Policy Manual Directive		Section Quality Assurance – Reporting and Investigation	Section # QA-515
Prepared by Julie A. Rodak, Associate Counsel		T.L. 18-03	Title Facility Responsibilities Regarding Child Abuse and Neglect		
Commissioner's Approval Ann Marie T. Sullivan, M.D.		Date Issued 10/29/2018		Supersedes 6/29/09	

A. Policy Statement

1) Purpose

The purpose of this Policy Directive is to further assure the health, safety and welfare of patients by delineating the responsibilities of staff of State-operated psychiatric centers to report allegations of child abuse, maltreatment, and neglect to the New York State Office of Children and Family Services (OCFS) Statewide Central Register of Child Abuse and Mistreatment (SCR).

As mandated reporters, certain OMH staff working in any State operated direct care setting have a legal responsibility to report suspected child abuse and maltreatment by parents or persons legally responsible for the care of children to the SCR, if such persons appear before them in their professional capacity.

This policy directive reflects changes made to the Social Services Law with the passage of the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012). As a result of this legislation, certain acts or omissions by staff of OMH facilities that provide inpatient/residential care to children could be reported to the SCR and investigated as possible acts of abuse or neglect of a child in residential. However, effective June 30, 2013, mandatory reporting of abuse and neglect by custodians, as defined in section 524.4 of Part, could not be accepted by the SCR and must be made to the Vulnerable Persons' Central Register in accordance with the provisions of 14 NYCRR Part 524.

2) Applicability

This Policy Directive applies to all programs under the auspices of State-operated psychiatric facilities.

B. Relevant Statutes and Standards

Mental Hygiene Law, Sections 7.21(b), 29.29,
Social Services Law, Title 6 of Article 6, Sections 411, 412, 413, 422, 423
Family Court Act Section 1012
Penal Law, Sections 130, 230, 255, 263
14 NYCRR Part 524
OMH Policy Manual, QA-530, Reporting Requirements for Events Which May Be Crimes
OMH Policy Manual, QA-535, Sentinel Events
OMH Policy Manual, PC-527, Employee/Patient Relationships

C. Definitions:

The following definitions are specific to this Policy Directive and apply only for the purposes of reporting child abuse and neglect to the New York State Office of Children and Family Services (OCFS) Statewide Central Register of Child Abuse and Mistreatment (SCR). It must be noted

that allegations of abuse or neglect by custodians involving patients who are children must be reported and investigated in accordance with the definitions and provisions of 14 NYCRR Part 524,

For purposes of this Policy Directive:

- 1) Child: means an individual under the age of 18 years.
- 2) Child Abuse by Parent or Person Legally Responsible for Care: means any of the following acts or occurrences involving a child and a parent or other person legally responsible for the child's care (e.g., a guardian):
 - a) a physical injury inflicted or allowed to be inflicted by a parent or other person legally responsible for a child's care, by other than accidental means which causes death or creates a substantial risk of death, serious protracted disfigurement, protracted impairment of physical or emotional health, or protracted loss or impairment of the function of any organ;
 - b) a substantial risk of physical injury created or allowed to be created by a parent or other person legally responsible for a child's care, by other than accidental means which would be likely to cause death or serious protracted disfigurement, protracted impairment of physical or emotional health or protracted loss or impairment of the function of any organ; or
 - c) a sexual offense, act or conduct described in Penal Law, Sections 230.00, 230.25, 230.30, 230.32, 255.25, or 263 which is committed, allowed to be committed or is encouraged by a parent or other person legally responsible for a child's care.
- 3) Credible Evidence: means evidence that is worthy and capable of being believed, based on established facts that would lead a person exercising ordinary care and prudence to conscientiously entertain the belief that a child in residential care may have been the victim of child abuse or neglect.
- 4) Indicated (or Founded) Report: means a report made to the SCR, after which an investigation by OCFS results in a determination by OCFS that there is some credible evidence of the alleged child abuse, abuse of a child in residential care, maltreatment, or neglect of a child in residential care.
- 5) Maltreatment by Parent or Person Legally Responsible for Care means any of the following acts or occurrences by a parent, or person legally responsible for the child's care (e.g., a guardian):
 - a) failure to exercise a minimum degree of care, causing the impairment or imminent danger of impairment of the child's physical, mental or emotional condition;
 - b) failure to supply the child with adequate food, clothing, shelter or education in accordance with the provisions of part 1 of article 65 of the Education Law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or
 - c) in providing the child with proper supervision or guardianship, the unreasonable infliction or allowance of the infliction of harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs or alcoholic beverages to the extent that he loses self-control of his

actions; or by any other acts of a similarly serious nature requiring the aid of the court; or

- d) abandonment of the child; or
 - e) physical injury inflicted upon the child by other than accidental means.
- 6) Mandated Reporter: means a certain person or professional, identified in Social Services Law Section 413, who is required to report instances of suspected child abuse or maltreatment when presented with reasonable cause to suspect child abuse or maltreatment in his/her professional role. OMH considers all licensed mental health professionals and direct care staff to be “mandated reporters¹.”
- 7) Mental or emotional injury or impairment and impairment of mental or emotional condition: means a substantial diminution of a child’s psychological or intellectual functioning as confirmed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker, or licensed mental health counselor.
- 8) OCFS: means the NYS Office of Children and Family Services

¹ Mandated reporters are listed in Social Services Law Section 413, and include:

- Physician, Surgeon;
- Registered Physician Assistant;
- Medical Examiner, Coroner;
- Dentist, Dental Hygienist;
- Osteopath;
- Optometrist;
- Chiropractor;
- Podiatrist;
- Resident, Intern;
- Psychologist;
- Registered Nurse;
- Social Worker;
- Emergency Medical Technician;
- Licensed Creative Arts Therapist;
- Licensed Marriage and Family Therapist;
- Licensed Mental Health Counselor;
- Licensed Psychoanalyst;
- Hospital personnel engaged in the admission, examination, care or treatment of persons;
- Christian Science practitioner;
- School official (e.g., teacher, guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate);
- Social Services worker;
- Day Care Center worker;
- School-Age Child Care worker;
- Provider of family or group family day care;
- Employee or volunteer in a residential care facility defined in Social Services Law Section 412-a.
- any other child care or foster care worker;
- Mental Health Professional; Substance Abuse or Alcoholism Counselor, all persons credentialed by the Office of Alcoholism and Substance Abuse Services; or
- Peace Officer; Police Officer; District Attorney or Assistant District Attorney; investigator employed in the office of a District attorney; or other law enforcement official.

- 9) OMH: means the NYS Office of Mental Health.
- 10) Person Legally Responsible for a Child's Care: means the child's custodian, guardian, or any other person responsible for the child's care at the relevant time. The term "custodian" may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or maltreatment of the child, but, for purposes of this Policy Directive, does not include a staff person or director of an inpatient or residential facility in which a child is receiving care.
- 11) Physical injury or impairment and impairment of physical condition: means any confirmed harm, hurt or damage resulting in a significant worsening or diminution of the child's physical condition.
- 12) Reasonable Cause: means a conclusion based upon report, observation, professional training and/or experience.
- 13) SCR: means the Statewide Central Register of Child Abuse and Maltreatment established in accordance with Section 422 of the NYS Social Services Law.
- 14) Unfounded Report: means any report made after an investigation by OCFS after which a determination by OCFS is made that there is no credible evidence of the alleged abuse, neglect or maltreatment.

D. Body of the Directive

This policy directive consists of two components:

- 1) Facility Responsibilities regarding Child Abuse or Maltreatment by Parents or Persons Legally Responsible for Care
- 2) Training Requirements
 - 1) **FACILITY RESPONSIBILITIES REGARDING CHILD ABUSE OR MALTREATMENT BY PARENTS OR PERSONS LEGALLY RESPONSIBLE FOR CARE**
 - a) When mandated reporters must report: Pursuant to Section 413 of the Social Services Law, mandated reporters at OMH-operated facilities must immediately report all cases of suspected child abuse or maltreatment by parents or persons legally responsible for the child's care (i.e., not involving staff) to the SCR in the following circumstances:
 - i) when they have reasonable cause to believe that a child coming before them in their professional capacity as an OMH staff member is an abused or maltreated child; or
 - ii) when they have reasonable cause to suspect that a child is an abused or maltreated child because, in the course of coming before them in their professional capacity, a parent, guardian, custodian or other person legally responsible for such child states, from personal knowledge, facts, conditions, or circumstances which, if correct, would render the child an abused or maltreated child.

- b) **Notification of facility director.** The mandated staff member shall then notify the facility director that a report has been made. The facility director or the administrator on duty is responsible for all subsequent internal administration necessitated by the SCR report, including the timely notification of local law enforcement authorities when it appears a crime may have been committed against a person receiving services.
- c) **Who investigates:** The facility shall not have responsibility for investigating allegations of abuse or maltreatment by family members or other persons legally responsible for the child's care. OCFS will investigate these matters in accordance with Section 412 of the Social Services Law.

2) TRAINING REQUIREMENTS.

Each facility shall assure that any staff that may be subject to the requirements of this directive receive orientation and instructions with respect to compliance with this policy. Facilities shall ensure that written information explaining the responsibilities of mandated reporters is made available to staff.