

**To:** Provider Associations  
Voluntary Provider Agency Executive Directors  
Developmental Disabilities State Operations Office Directors  
Developmental Disabilities Regional Office Directors  
IBR Director

**From:** Barbara Brundage, Director  
OPWDD Regulatory Affairs  
Co-Chair, OPWDD Statewide Committee on Incident Review

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Co-Chair, OPWDD Statewide Committee on Incident Review

**Date:** June 28, 2013

**Re:** Requirements of Section 16.34 of the Mental Hygiene Law

**Effective: June 30, 2013**

**Please visit the OPWDD website at  
[http://www.opwdd.ny.gov/opwdd\\_resources/incident\\_management/home](http://www.opwdd.ny.gov/opwdd_resources/incident_management/home)  
for the required forms associated with Section 16.34 of the Mental Hygiene Law**

**Suggested Distribution:**

Administrators and Management Staff  
Incident Coordinators and Investigators  
Quality Assurance/Quality Improvement Staff  
Human Resources/Personnel Staff

Effective June 30, 2013, Section 16.34 of the New York State Mental Hygiene Law (MHL) requires a background check for prospective employees and volunteers in the OPWDD system, which is referred to as a MHL 16.34 check throughout this memorandum. The MHL 16.34 check will give agencies that are considering an applicant for employment or volunteer activity information about substantiated reports of abuse and neglect that occurred prior to June 30, 2013 involving the applicant as a target. (Such agencies are known as the requesting agencies in this memorandum.) The information contained in the MHL 16.34 check supplements information provided through the required check of the “Staff Exclusion List” (SEL) maintained by the Justice Center, which concerns “category one” substantiated allegations of abuse or neglect that occurred or were discovered on or after June 30, 2013.

The provision of information about prior substantiated allegations of abuse or neglect by OPWDD through a MHL 16.34 check process will enable potential employers to screen out applicants who are not appropriate for employment or volunteer work that involves contact with individuals receiving services in the OPWDD system. Following is more specific information about OPWDD's process to implement Section 16.34 of the MHL.

**General requirements:**

- The MHL 16.34 check is requested after the SEL check.
- The MHL 16.34 check is requested when a criminal history record check (CBC) is also being requested for the applicant.
- Requests are only made for applicants who are prospective employees and volunteers (not Family Care providers, contractors, etc.).
- Requests are made by voluntary agencies and registered providers (providers who are registered pursuant to 14 NYCRR 633.22 who request criminal history record checks).
- The requesting agency is not permitted to allow the applicant to have unsupervised contact with individuals until the results of the MHL 16.34 check are received.

**Process for submitting a request for a MHL 16.34 check:**

- The authorized person (person authorized to submit a CBC request) at the requesting agency submits 2 completed forms:
  1. Form OPWDD 151 Request for MHL 16.34 abuse/neglect history check
  2. Form OPWDD 152 Applicant information
- The request is made by sending completed forms to the OPWDD Incident Management Unit (IMU) via secure email to the email address listed on the form.
- The forms are on the OPWDD website.
- Applicant information includes information about past employment & volunteer experience.

**OPWDD initial steps:**

- OPWDD will maintain a database of past search results. It will check the database to see if a prior search was conducted concerning the applicant. If a prior search was conducted, OPWDD will respond to the request based on the results of the prior search.

- If there is no information in the database from prior searches, OPWDD IMU will determine if the applicant had any past employment/volunteer experience in OPWDD system.
- If yes - Section 16.34 of the MHL requires a “reasonably diligent search” for records of substantiated abuse/neglect.

**“Reasonably diligent search” by past employers:**

- OPWDD IMU transmits a request to search records to each past employer in the OPWDD system identified by the applicant (same for volunteer experience).
- Both DDSOs and Voluntary providers will receive requests from OPWDD IMU.
- Past employers have 10 working days to send the response back to OPWDD IMU.

**Criteria for substantiated allegations that must be submitted to OPWDD IMU:**

Section 16.34 of the MHL limits information that can be disclosed about past substantiated allegations of abuse or neglect in several ways.

- The substantiated allegation must be from a program certified or operated by OPWDD. (Substantiated allegations from voluntary operated non-certified programs may not be disclosed.)
- The substantiated allegation must be for physical abuse, sexual abuse, psychological abuse or “serious neglect.” “Serious neglect” means intentional acts or omissions that endanger the life or health of a person receiving services.
- The subject of the substantiated allegation must have been an employee or volunteer only (e.g. not a contractor, consultant, family care provider, family member, etc.).
- For past OPWDD employees, the employee must have been found guilty in a disciplinary proceeding or there must have been a settlement agreement in which the employee admitted guilt. (This would also apply to a voluntary agency if it had similar procedures.)
- If the information about the substantiated allegation can be disclosed, the past employer prepares a “summary report” (the summary report form will be provided when OPWDD IMU transmits a request to search records to each past employer) and sends the summary report to OPWDD IMU with a completed Form OPWDD 153 *Agency Response to OPWDD Request to Search Abuse/Neglect History Records*.

**Disclosure of MHL 16.34 check results to the requesting agency:**

- Once responses are received from all past employers, OPWDD will send the results to the authorized person at the requesting agency.

- If the search did not find any substantiated allegations or found substantiated allegations which cannot be disclosed, OPWDD will send a “no results” form (Form OPWDD 154) to the authorized person at the requesting agency.
- If the search found any substantiated allegations that can be disclosed, OPWDD will send a “substantiated allegation of abuse or neglect found” form (Form OPWDD 155) to the authorized person at the requesting agency with a copy of the summary report(s). OPWDD will also send a copy of the summary report(s) to the applicant.
- The requesting agency is required to review the information provided and to make a decision about whether to hire or otherwise allow the party to have regular and substantial contact with an individual receiving services. Such decision and the rationale for the decision must be documented.

Additional information about the process to implement Section 16.34 of the MHL and the requirements of this Law is also posted on the OPWDD website. This includes the forms for requesting an MHL 16.34 check and the provisions of the law. If you have any questions about the material in this memorandum or on the website, please contact the OPWDD Incident Management Unit at [Incident.Management@OPWDD.ny.gov](mailto:Incident.Management@OPWDD.ny.gov).