

Andrew M. Cuomo, Governor



Laurie A. Kelley, Acting Commissioner

NYS Office For People With Developmental Disabilities

Putting People First

MHL 16.34 Webinar

December 09 and 10, 2013



**Mental Hygiene Law (MHL) 16.34
became effective June 30, 2013 as part
of the Protection for People with Special
Needs Act (PPSNA)**



- MHL 16.34 is applicable only to **prospective** employees and volunteers who apply on and after June 30 2013
- If a person was an existing employee or volunteer of an agency prior to June 30, 2013 and continues in service, no MHL check is to be completed. These employees and volunteers are “grandfathered” in.
- Some contractors are also included as “deemed” employees or employees of registered providers



"Deemed" employee is defined in 633.22(b)(5)

- (5) Employee. For the purposes of this section only, any party who is:
 - (i) directly employed by the agency or provider of services or registered provider; or



- (ii) used by the agency or provider of services or registered provider to provide services substantially similar to those that are or could be provided by someone who is directly employed by the agency or provider of services. Such parties shall be deemed to be employees of the agency or provider of services and shall include, but not be limited to, those who are employed by other entities on behalf of or for the benefit of the agency or provider of services.



- If a CBC is requested, then an MHL 16.34 check is required
- The exception to this rule is Family Care providers, respite/substitute family care providers and adults who reside in a family care home. These individuals do not require an MHL 16.34 check



Improvements to the MHL background check system will be implemented effective Wednesday, December 11, 2013

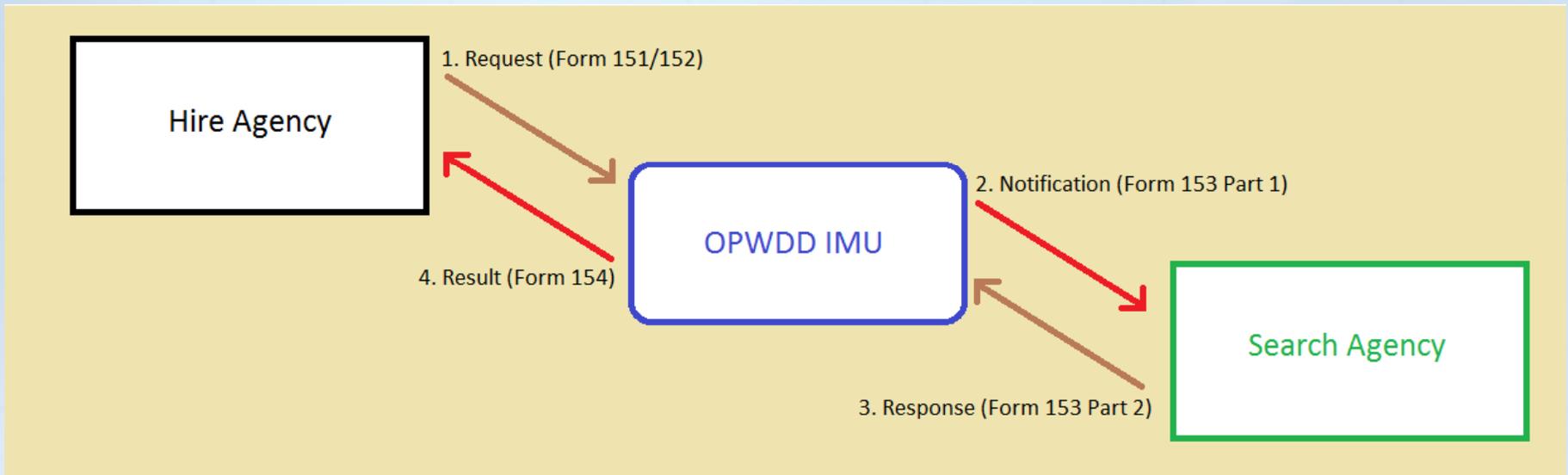
- No OPWDD Forms 151, 152 and 153 will be accepted via email effective December 11, 2013
- Fax requests have not and will not be accepted



- Forms submitted prior to December 11, 2013 will be processed. These do not need to be resubmitted.
- OPWDD Form 151 Request for MHL 16.34 Abuse/Neglect History Check and OPWDD Form 152 Applicant Information will be Web based



MHL 16.34 web based process





DEMO



Authorized Person

- Must be the same person authorized to submit CBC requests
- Form to establish authorized person was submitted to the NYS Justice Center for the Protection of People With Special Needs (JC)



- Both the person submitting the form on behalf of the authorized person and the authorized person will receive an email confirmation of the submission



- If an applicant has no OPWDD history, the authorized person may certify the prospective employee has no OPWDD experience and the person hired immediately without any restrictions. The OPWDD Form 152 with this certification is to be maintained by the agency as a record.



- In the case of a rehire, after submitting the OPWDD Forms 151 and 152, if a search is required from the agency then a link to the OPWDD Form 153

Directive to Search Abuse/Neglect Records will be sent via email within 24 hours

If your agency is directed to do a search for any applicant, an email with a link to the Form 153 will be sent.



- Agencies who receive an OPWDD Form 153 Directive to Search Abuse/Neglect Records must comply with OPWDD regulations and perform a reasonably diligent search and respond to this directive within 10 working days so no delays are encountered by agencies awaiting the results of the searches.
- All 153s must be returned to OPWDD whether or not the applicant was in your employ. Answer no to number 13 and 14 to indicate this.



DEMO 153



- If any voluntary provider agency is not an at will employer please contact IMU at mhlcheck@opwdd.ny.gov.



- During the week of December 16th, OPWDD will send a report on pending requests to each agency that OPWDD has pending requests for.



Information that will be routinely sent to agencies

- Agencies will receive routine updates of where in the process requests are, such as;
- OPWDD has received and entered request as of this date
- OPWDD has sent out request for search
- OPWDD has received a response back



Criteria for Disclosure

- Criteria for determining whether information concerning a **substantiated** allegation of abuse or neglect can be disclosed.



ALL of the following criteria must be met:

- 1. The substantiated report must be from a program operated or certified by OPWDD.
- 2. The substantiated report concerns abuse or neglect that occurred and was discovered prior to June 30, 2013.



- 3. The substantiated report must be for one (or more) of the following:
 - Physical abuse (as defined in Part 624 prior to June 30, 2013)
 - Sexual abuse (as defined in Part 624 prior to June 30, 2013)



- Psychological abuse (as defined in Part 624 prior to June 30, 2013)
- Serious neglect – “Intentional acts or omissions that endanger the life or health of a person receiving services.” (Note that this is different from the definition of neglect that was in OPWDD regulations prior to June 30, 2013.)



- If a **substantiated** allegation of abuse or neglect meeting **all** criteria for disclosure is found, an OPWDD Form 157 Substantiated Allegation of Abuse or Neglect Found-Summary Report must be completed and submitted to OPWDD IMU via the MHL check mailbox at mhlcheck@opwdd.ny.gov
- *Please note that all OPWDD Form 157s must be redacted with the exception of the name of the person the search is being completed for



- For disclosure of substantiated abuse and neglect at DDSOs-the person must have been found guilty in a disciplinary proceeding or admitted guilt in a settlement agreement
- OPWDD will be exploring further automating this process in the near future



- All emails sent by OPWDD will be sent using ZIX, OPWDD's secure messaging system.
- When replying to an OPWDD email sent using ZIX, the response is also secure. Please note these emails will include **Secure:** in the subject line. Do not alter the subject line when replying.
- To avoid delays in the process, agencies are encouraged to use Zix and not other secure messaging products



- OPWDD has encountered difficulties with emails to agencies being caught in SPAM filters. Agencies should discuss this with their IT resources to ensure this does not occur as it will cause delays in the process.



- Links to find and complete web based forms as well as all other forms for the MHL 16.34 process are found on the OPWDD Website on the Incident Management page