



To: Executive Directors, Provider Agencies  
Directors, State Operations and Regional Offices

From: Leslie Fuld, Director   
Incident Management Unit, Division of Quality Improvement

Date: October 15, 2013

Subject: Mental Hygiene Law 16.34 Process

As you know on June 30, 2013, the NYS Justice Center for the Protection of People with Special Needs became operational. The implementation of the Protection of People with Special Needs Act (PPSNA), while imperative for the protection of individuals served by OPWDD and other state oversight agencies, has presented some challenges. OPWDD has processed over 8,000 requests for Mental Hygiene Law (MHL) 16.34 checks since June 30, 2013 and are working to improve the process. OPWDD is also providing guidance on what constitutes a reasonably diligent search and are requesting that providers pay particular attention to the following when submitting requests for MHL 16.34 checks;

1. Please use forms currently posted on the OPWDD website at <http://www.opwdd.ny.gov/node/4637> each time submissions to OPWDD are made. OPWDD will be making additional revisions to further improve this process. Instructions for the process are also found at this address.
2. Prior to sending the OPWDD Form 151 Abuse/Neglect History Check and OPWDD Form 152 Applicant Information, please ensure the applicant has provided each full agency name (not acronyms) and location including the address of prior employment/volunteer experience in the OPWDD system. For each applicant, a total of 3 pages (OPWDD Form 151 and 152) must be sent to initiate the process for a prospective employee or volunteer. All information on the forms must be clearly printed or typed and will be returned if not legible as they cannot be processed. Please note incomplete or illegible forms can significantly delay the process.
3. Ensure the applicant's signature is on the OPWDD Form 152.
4. If an applicant has no OPWDD work or volunteer history, ensure the agency certification on the bottom of the OPWDD Form 152 is also signed. If this is completed, the applicant may be immediately hired by the agency. For these applicants, you will not receive a response back from OPWDD. You are required to maintain these forms for your agency records. The applicant will be entered into the OPWDD MHL 16.34 database for future reference.
5. If an applicant is a being rehired by the agency, also include the OPWDD Form 153 Agency Response to OPWDD Request to Search Abuse/Neglect History Records when sending the OPWDD Form 151 and 152. If this is completed and the applicant has no other OPWDD experience, the applicant may be immediately hired by the agency. For these applicants, you

will not receive a response back from OPWDD. The applicant will be entered into the OPWDD MHL 16.34 database for future reference.

6. Email the [mhlcheck@opwdd.ny.gov](mailto:mhlcheck@opwdd.ny.gov) mailbox. The incident management mailbox does not accept requests for MHL 16.34 checks.
7. Use secure email to transmit your request. No faxes or paper mail will be accepted. If your agency does not have the ability to send secure email, please send an email to [mhlcheck@opwdd.ny.gov](mailto:mhlcheck@opwdd.ny.gov) explaining this and an email will be sent in response using ZIX. Zix is OPWDD's secure email. Agencies may attach the forms in a response to the email sent using ZIX from OPWDD for secure transmission.
8. If an applicant withdraws after a MHL 16.34 check has been requested but prior to receiving any results, please send an email notification to [mhlcheck@opwdd.ny.gov](mailto:mhlcheck@opwdd.ny.gov) so that the request can be deleted.

**An email was recently sent requesting contact information at each agency for those parties authorized by each agency to receive the results of the MHL 16.34 search. Please send any updated information to the mhlcheck mailbox so that the OPWDD contact list for MHL 16.34 may be revised accordingly.**

It is imperative that agencies who receive an OPWDD Directive to Search Abuse/Neglect Records comply with OPWDD regulations and respond within 10 working days of the time the request was sent so that no unnecessary delays are encountered by agencies awaiting the results of these searches.

OPWDD will work, in conjunction with the Justice Center and providers, to continue to improve and streamline implementation efforts related to the many new requirements of the PPSNA in order to better support and afford protections to individuals with developmental disabilities served by OPWDD.

Cc: Provider Associations  
Willowbrook Task Force  
Central Office Leadership

### **Reasonably Diligent Search**

Mental Hygiene Law (MHL) 16.34 requires that providers conduct a “reasonably diligent search” for substantiated reports of conduct in which the prospective employee or volunteer engaged that constitute abuse or serious neglect prior to June 30, 2013.

The information provided by OPWDD to the provider to conduct a “reasonably diligent search” includes the applicant’s name, social security number, date of birth and approximate dates of employment or volunteer activity, as reported by the applicant. Conducting a satisfactory search is dependent upon a number of factors, including whether or not records exist and if they are in a condition that can be searched.

Many questions have arisen as to what constitutes a “reasonably diligent search.” For some providers information will be maintained in personnel or human resources records, while other agencies may use incident management records or both types of records. Whether or not a “reasonably diligent search” has been performed will depend upon the facts and circumstances based on the different methods that agencies use to manage, store and retrieve incident and personnel information.

The following examples demonstrate what OPWDD would consider to be a “reasonably diligent search”:

1. In cases where agencies have records that are cross-linked or easily searchable by the name of the “subject of the report” during the identified time, OPWDD expects the agency to search these records for substantiated reports of abuse or serious neglect associated with the name of the applicant to comply with the directive.
2. If an agency maintains electronic records which can be queried by the name of the “subject of the report” for the specified period of time or a portion of the period of time, OPWDD expects the agency to query the electronic records. If the records can be queried by other factors that can limit the search to a reasonable number of reports, such as the name of the facility in which the applicant worked or timeframe, OPWDD expects the agency to use this method to search its records.
3. In cases where providers do not have electronic records or databases to assist in searching records, a manual search of the records must be completed, subject to the considerations listed below:
  - If these records are organized and stored in a manner that is retrievable by the name of the “subject of the report,” the records must be searched. For example, an agency that maintains employee personnel history files must search files for the “subject of the report” by name and review personnel history to ascertain whether there are any referenced incidents which require a report to OPWDD or a further review of agency records.

- If agencies maintain paper or microfiche incident records which are not retrievable by the name of the “subject of the report,” the requirement to search the records may apply to the particular situation depending on several factors. In cases where records are not in electronic form and not organized and sorted in a manner that is retrievable by the name of the “subject of the report,” the records must be searched if the number of records can be reduced to a manageable number (e.g. by limiting the search to records of the facility where the applicant worked). In all cases, agencies are expected to use appropriate diligence in determining the universe of records to be reviewed where records are voluminous and/or not organized in a manner than can be easily searched.
- To the extent that an agency is unable to fully perform a search due to the nature of the records, the archival system, or the volume of records, then agencies must document why it is not possible to perform a full search of available records.

In accordance with OPWDD regulations, voluntary providers are required to retain incident records for seven years after the occurrence or discovery of the incident. State and voluntary providers may have policies that require record retention for a longer period of time. If agencies have disposed of records after the required retention period or if the records were destroyed or damaged (i.e. Hurricane Sandy), then the agency will not have any records to search if the approximate dates of employment or volunteer activity have occurred prior to that time. These issues should be documented accordingly.

Further questions on Mental Hygiene Law 16.34 should be directed to the Incident Management Unit at (518)473-7032.