



**Office for People With
Developmental Disabilities**

Andrew M. Cuomo, Governor
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To: Provider Associations
Voluntary Provider Agency Executive Directors
Regional Office and State Operations Directors
IBR Director

From: Megan O'Connor-Hebert, Deputy Commissioner
Division of Quality Improvement

Date: June 18, 2015

Subject: OPWDD Guidance on Protocols for Interviewing Individuals who Receive Services when Investigating Reportable Abuse and Neglect

Effective July 1, 2015

Suggested distribution:

Incident coordinators
Quality assurance/Quality improvement staff
Members of standing committees
Administrators responsible for oversight of incidents

Background:

In accordance with Chapter 394 of the Laws of 2014 amending Executive Law 553, the NYS Justice Center for the Protection of People with Special Needs (Justice Center) developed protocols that are to be followed when interviewing individuals receiving services during an investigation for reports of abuse or neglect. These protocols are effective July 1, 2015, and apply to all investigations of reportable incidents of abuse or neglect accepted by the Justice Center, and within the jurisdiction therein.

Purpose:

The purpose of this document is to provide additional guidance to providers in the OPWDD system relative to the protocols for interviewing people who receive services.

Nothing in this memorandum is to impede the Justice Center, OPWDD or a service provider's statutory obligation to conduct timely investigations of reportable incidents of abuse or neglect or to take immediate investigatory actions to ensure the safety of individuals receiving services

In addition, although the protocols are not required to be followed in criminal investigations, if a criminal investigation is conducted by Justice Center investigators, the protocols will serve as a guide for how investigators conduct interviews with individuals receiving services.

Terms Contained Herein

The term individual receiving services who is the subject of the report or a potential witness of alleged abuse/neglect is used throughout this document to mean an individual who resides in a certified residential facility, is enrolled in a certified day program or who receives any services from a state-operated provider. Notifications to meet the requirements of Chapter 394 are not required for potential witnesses who are individuals receiving services but receive only noncertified services from a voluntary provider.

In addition, a potential witness is an individual receiving services known by the service provider to be physically present in the place and at the time where the abuse/neglect is alleged to have occurred. A potential witness also includes any individual receiving services who may have information that could be useful to an investigation. Please note it is sometimes difficult to determine who may be a “potential witness” dependent upon the setting the alleged abuse/neglect is reported to have occurred in. This will be determined by the investigator.

The term personal representative for individuals receiving services under the age of 18 is used throughout this document to mean: a legal guardian, an actively involved spouse, a parent, an actively involved adult sibling, an actively involved adult family member, or a local commissioner of social services with custody of the person. For individuals over the age of 18, the term personal representative shall mean a legal guardian, an actively involved spouse, an actively involved parent, an actively involved adult child, an actively involved adult family member, and the Consumer Advisory Board for Willowbrook Class members who are fully represented.

Notifications

Service providers who are required to provide notifications pursuant to Mental Hygiene Law 33.23 (Jonathan’s Law) must do so regardless of the notification requirements in the Justice Center Protocols for Interviewing People who Receive Services. The notifications required by Jonathan’s Law satisfy this requirement. However, if no qualified person as defined in MHL 33.16 is available, then notification should be made to an available personal representative listed above.

There shall be no notification if the individual receiving services is 18 or older and does not have a personal representative, or if such parties are not reasonably available or if there is written advice that such parties do not want to be notified, or if the individual receiving services who is the subject of the report or a potential witness objects to such notification. Objections to notification of a personal representative should be reviewed on an individual basis consistent with the existing standards a service provider uses to determine the ability of a service recipient to consent to services, programs and treatment. No notification of the personal representative is to be made if providing such notification to the personal representative would compromise the investigation, violate relevant confidentiality laws, be contrary to court order, or otherwise contrary to the best interests of the alleged victim or potential witness.

The personal representative should be asked if there is additional information about the most effective ways to communicate with the service recipient to support the interview process.

If the subject of the report or the potential witness does not have a personal representative, there is no need for the service provider to comply with these requirements.

When a service provider is notified that a report of alleged abuse or neglect has been accepted by the Justice Center about a reportable incident of abuse/neglect in a program certified or operated by OPWDD, the service provider shall immediately attempt to notify the subject of the report and their personal representative that an interview may take place. “Immediately” shall mean within 24 hours for the subject of the report and 48 hours for the potential witness following the notification to the provider that an incident of reportable abuse/ neglect has been accepted into the Justice Center’s Vulnerable Persons Central Register (VPCR). This notification is based on the date and time of the first report to the provider or the creation of the incident in the Incident Report and Management Application (IRMA). If this occurs after 5 p.m. on a Friday or on a state holiday, the service provider must attempt to make such notification on the next business day. If circumstances exist that do not allow such notification within the required timeframe, this shall not delay the interview of an individual receiving services who is the subject of the report. The reason will be documented on the OPWDD Form 163 Interview Protocol Notifications.

Required notifications may be completed through oral communication or in writing. All attempts to make notifications must be documented on OPWDD Form 163 Interview Protocol Notifications. A diligent effort to make such notification means that **more than one attempt** must be made. This documentation must be included as part of the investigative record which is submitted via the Web Submission of Investigation Record (WSIR).

In cases that the provider is not completing the investigation and does not have access to the investigative record, the OPWDD Form 163 is to be provided to the investigator for inclusion in the investigative record. If, the subject of the reports or potential witnesses who are individuals receiving services personal representative is not notified, the provider must document the reason on the OPWDD Form 163. As noted above, providers required to make notifications pursuant to Section 33.23 of the Mental Hygiene Law (Jonathan’s Law) are not required to provide additional notification under the Justice Center Protocols for Interviewing People who Receive Services if notifications under Chapter 394 will meet the requirement for these notifications.

Providers of services must make an inquiry of the personal representative of the subject of the report and potential witnesses only the first time the personal representative is contacted to provide notification. The inquiry is to include asking the personal representative if he or she has additional information regarding the most effective ways to communicate with the individual receiving services in order to support the interview process. The inquiry and response must be documented in the record of the individual receiving services in the manner determined by the service provider.

An investigator may identify additional subjects of a report and additional potential witnesses during the course of an investigation. If this occurs, the service provider must promptly notify these individuals receiving services and their personal representatives and document using the OPWDD Form 163.

Interviews

An investigator must determine if an interview of an individual receiving services can be conducted in a safe and timely manner. A formal clinical assessment is not required. Factors that may be considered by an investigator include but are not limited to: ascertaining the individual’s diagnosis, consulting with the licensed health professional or clinician, and/or engaging in preliminary inquiries with the individual receiving services in order to determine if the individual has the ability to provide information to assist in the investigation.

Information from service provider. If the investigation is not conducted by the service provider the investigator must notify the service provider if he or she will need specific information to determine whether to proceed with an interview. The information is to be supplied to the investigator within 72 hours of the service provider receiving the request.

Exceptions. If conducting an interview of an individual receiving services would be clinically contraindicated, the interview shall not take place unless certain circumstances exist. These circumstances include but shall not be limited to: the individual potentially possessing information relevant to maintaining the safety of individuals receiving services; possible destruction of evidence; and/or an investigator has been directed by his or her supervisor to proceed with the interview. The investigator must document in the investigative record the reason why it was appropriate to proceed with the interview.

Communication. If it is determined by the investigator that there may be difficulty in communication with the individual receiving services during the interview, the investigator will work with the service provider to assist the individual.

Presence of personal representative. If the personal representative requests to be present for an interview of an individual receiving services who is either the subject of the report or a potential witness, the personal representative may not be present for any portion of the interview that is related to specific information about the investigation which is confidential. If the individual receiving services objects to the personal representative being present during the interview or if the investigator believes the presence of the personal representative would impede the investigation, the personal representative should not be present. Further, the personal representative must not interfere with the interview. If the investigator believes that the personal representative is interfering with the interview, the investigator should stop the interview. If an investigator determines that a personal representative should not be present or should leave an interview once it is underway, the investigator must document the rationale for such decision in the investigative record.

During the introduction phase of the interview, the investigator should explain to the subject/potential witness the purpose of the investigation. This might include information such as the requirement to investigate certain situations to ensure that individuals receiving services feel safe, are able to offer information, and to help prevent future similar incidents. This introduction should also include that the information discussed will be kept confidential by the investigator.

During the closing of the interview, the investigator should explain to the subject/potential witness that the investigator has completed their interview but may need to speak to them again. This might also include informing the individual that if they remember additional information about the situation they should contact the investigator, that they should not discuss specific information with anyone other than the investigator, and to ask if they have any other questions about the process.

The Protocols for Interviewing People who Receive Services, as well as a narrated PowerPoint for investigators and administrators, are available on the Justice Center website at the following link.

<http://www.justicecenter.ny.gov/media/news/justice-center-protocols-interviewing-people-who-receive-services>

If you have any questions about these new procedures, contact the Incident Management Unit at Incident.Management@OPWDD.ny.gov.

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