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ADMINISTRATIVE MEMORANDUM #2009-04

TO: Executive Directors, Voluntary Agencies
 Provider Associations
 DDSO Directors
 IBR Director
 Commissioner's MR/DD Advisory Council
 Statewide Standing Committee on Incident Review.

FROM: Patricia Martinelli *Patricia Martinelli*
 Deputy Commissioner and Counsel
 OMRDD

DATE: December 11, 2009

SUBJECT: Administrative Appeal Process for Denials of Records Requested Pursuant to the 14 NYCRR Part 624 Incident/Abuse Reporting, Notification and Investigation Process

Suggested Distribution:

Quality Assurance Directors
Incident Management Coordinators

Background

Chapter 24 of the Laws of 2007, also known as Jonathan's Law, created new Mental Hygiene Law sections 33.23 and 33.25.

Section 33.23 provides that following notification to a qualified person of an incident, the qualified person must be offered the opportunity to meet with designated agency staff to discuss the incident and be provided a written report on actions taken to address the incident. Upon request, a redacted copy of the written incident report (Form 147) must be provided to the qualified person.

Section 33.25 requires facilities to release records and documents pertaining to allegations and investigations of abuse upon request to a qualified person. The names and other information tending to identify employees and individuals who receive services must be redacted prior to disclosure.

Final regulations have been adopted that revise Part 624, Title 14 of the NYCRR, to implement the notification and release of records requirements of Chapter 24. Two new provisions, Subdivisions

624.6(k) and 624.8(h), provide for an administrative appeal when records requested pursuant to Part 624 are denied by the agency.

This administrative directive sets forth the process to be followed when an agency denies a request for access to records made under Sections 624.6 and 624.8.

Procedure

When an agency denies, in whole or in part, a request for records made pursuant to 14 NYCRR Sections 624.6 or 624.8, the agency must inform the requestor in writing of the opportunity to appeal such denial to the OMRDD Incident Records Appeals Officer.

The agency shall inform the requestor of the opportunity to send his or her written appeal to the OMRDD Incident Records Appeals Officer, Office of Counsel, 44 Holland Avenue, Albany, NY 12229.

Upon receipt, the Incident Records Appeals Officer shall notify the agency of the appeal and request the agency to submit all relevant information concerning the denial within 10 business days of the request.

The Incident Records Appeals Officer may also request additional information necessary to resolve the appeal from the requestor.

The Incident Records Appeals Officer will render a determination within 10 business days of the receipt of complete information, or within 20 business days of making the request for information to the agency if the agency does not respond to the Officer's request within 10 business days. The Incident Records Appeals Officer will provide the requestor and the agency with a written determination about whether the records denied by the agency should be released and include an explanation of the reasons for such determination.

If directed by the Incident Records Appeals Officer, the agency shall provide the requested records to the requestor.

Contact information:

If you have any questions, please contact Cheryl Mugno, Assistant Counsel, at Cheryl.Mugno@omr.state.ny.us or (518) 474-7700.

Ref: RAU 12-4-09

Cc: Barbara Brundage
Cheryl Mugno