

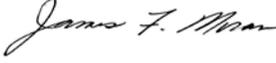
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To: Provider Associations
Voluntary Provider Agency Executive Directors
DDSO Directors
IBR Director
Commissioner's Advisory Council
DDPC Consumer Caucus
OPWDD Required Regulations Mailing List

From: James F. Moran 
Acting Executive Deputy Commissioner

Kerry A. Delaney 
Deputy Commissioner and General Counsel

Date: August 18, 2011

Re: Protocol for Reporting Potential Crimes to Law Enforcement

Suggested distribution:

Agency Administrators
Incident Coordinators
Quality Assurance Staff
Investigators

Background:

Sections 13.21(b) and 16.13(b) of the New York State Mental Hygiene Law require that providers notify law enforcement officials if it appears that a crime may have been committed against an individual who receives services from the provider.

14 NYCRR Section 624.6(d) requires that in the case of any reportable incident, serious reportable incident or allegation of abuse where a crime may have been committed, law enforcement officials must be notified.

The Federal Centers for Medicare and Medicaid Services (CMS) issued a memorandum on June 17, 2011, entitled, "Reporting Reasonable Suspicion of a Crime in a Long-Term Care Facility (LTC): Section 1150B of the Social Security Act" (Ref: S&C: 11-30-NH). This memorandum applies to ICF/DD facilities in the OPWDD system, and establishes requirements for reporting to law enforcement officials. (It does not apply to other services in the OPWDD system.) The memorandum was revised August 12, 2011.

In addition, it should be noted that A.8325 passed both houses of the New York State Legislature and will be sent to the Governor for his approval or veto in the near future. This bill amends the provisions of the Mental Hygiene Law cited above to change the required timeframe for reporting certain potential crimes to law enforcement.

Purpose: New York State Law has required providers to report potential crimes against individuals receiving services to law enforcement for more than 25 years. This requirement is also mirrored in longstanding OPWDD regulations. However, OPWDD has become aware that DDSOs and providers may not be consistently reporting all potential crimes to law enforcement. OPWDD is issuing the attached guidance document to give providers additional guidance regarding this responsibility to report to law enforcement as a part of its efforts to improve compliance with the requirement to report.

OPWDD developed the attached Protocol in consultation with the New York State Police in a series of meetings over the past several months.

In developing this document, OPWDD compared the definitions of abuse in Part 624 with the definitions of various crimes in the New York State Penal Law. The Protocol identifies the events and situations that meet the criteria for abuse that might also constitute a crime. Reporting all of the events or situations specified in the Protocol will allow the law enforcement officials receiving the notification to determine what law enforcement response may be necessary.

Please note that the Protocol supersedes any contradictory guidance formerly issued by OPWDD.

Recent memoranda issued by OPWDD directed the field to report potential crimes immediately (May 13, 2011 memo from James Moran, March 11, 2011 memo from Sheila McBain, and March 13, 2011 memo from Sheila McBain). The timeframe specified in the memoranda is superseded by the Protocol in only one limited respect, regarding the timeframe in which a necessary sexual consent determination may be completed. (See paragraphs 7 & 8 in the Protocol.) Otherwise, in accordance with the recent memoranda, notification to law enforcement must be made immediately for all situations specified in the protocol.

As noted above under “Background,” there have been several recent developments related to the timeframe for reporting potential crimes – the directive issued by CMS and the legislation which has passed in both houses. OPWDD expects to send future guidance about the timeline for reporting to law enforcement in conformance with the CMS directive and pending legislation, should it be enacted into law. However, until future guidance is issued, providers must continue to comply with the provisions of the three memoranda cited in the preceding paragraph.

OPWDD also wants to make providers aware that the OPWDD Incident Management Unit can serve as a resource for questions about reporting potential crimes to law enforcement. If questions arise, please email incident.management@opwdd.ny.gov or call (518) 474-3625.

Thank you.