



STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

44 HOLLAND AVENUE
ALBANY, NEW YORK 12229-0001
(518) 473-1997 • TDD (518) 474-3694
www.omr.state.ny.us

M E M O R A N D U M

TO: Executive Directors of Voluntary Agencies
DDSO Directors

FROM: Kathy Broderick, Associate Commissioner
Steve Smits, Associate Commissioner

DATE: November 14, 2007

RE: Requirements related to intervention in alleged abuse/neglect situations outside the scope of service provision

Suggested distribution:

Administrators
Quality/compliance managers and staff
Incident/abuse investigators
Members of standing committees to review and monitor reportable incidents, serious reportable incidents and allegations of abuse
Medicaid Service Coordinators and MSC supervisors
DDSO incident coordinators and incident management staff

Background: Chapter 536 of the Laws of 2005, as amended by Chapter 356 of the Laws of 2006, revised requirements related to reporting and the responsibility to intervene when abuse to adults is alleged outside the scope of service provision.

Purpose: This memorandum explains the effect of the referenced laws on provider responsibilities and reiterates OMRDD requirements in this area.

Requirements for intervention: Longstanding OMRDD regulations and policy have required providers (including DDSOs) to investigate and intervene concerning allegations of abuse of adults who currently receive services from the provider, in situations involving familial abuse or other situations outside the scope of service provision. These requirements can be found in 14 NYCRR Part 624 and the OMRDD Part 624 Handbook.

The recent change in the law referenced in the background section above establishes that the primary responsibility for intervention in these situations rests with the provider agency or DDSO and not with the Local Departments of Social Services (LDSS) -- Protective Services for Adults (PSA) program (sometimes referred to as Adult Protective Services). This has necessitated some changes in how providers intervene in particular situations.

In accordance with a specific requirement in the new law, OMRDD and the New York State Office of Children and Family Services (OCFS) developed the attached Memorandum of Understanding (MOU), which details the respective responsibilities of OMRDD and its providers; and LDSS -- PSA. All of the LDSS and DDSOs have already signed the MOU or will sign the MOU in the near future.

Please refer to the MOU to determine the responsibilities of the provider, DDSO and PSA in various situations. A few of the highlights are detailed in this memorandum.

In situations involving alleged abuse of an adult who is currently receiving services, referrals to PSA should only occur when effective investigation or intervention requires specific actions by the PSA related to legal actions or services which are unavailable in the OMRDD system. These include petitioning the court for an order to gain access or a short term involuntary protective services order. Occasionally services not generally available in the OMRDD system, such as housekeeping, may be accessed through the PSA.

A provision of the new law [Mental Hygiene Law Sec. 16.19(d)(2)] enables DDSOs to access records maintained by PSA in certain circumstances. If a voluntary provider needs to access information in these records to effectively investigate or intervene, the provider should request that the DDSO seek to obtain the records from PSA.

Similarly, a provision of the Mental Hygiene Law (MHL Sec. 16.01) allows DDSOs to seek hospital records related to abuse allegations. If it is necessary to access hospital records for the investigation of an abuse allegation (whether or not related to service provision), the voluntary provider should contact the DDSO for assistance.

Furthermore, each DDSO has been directed to establish a liaison with each LDSS – PSA. If problems are encountered in interactions with PSA, this person may be able to assist in their resolution.

Providers must fulfill the responsibilities for reporting and intervention that are specified in the MOU in order to be in compliance with the law and OMRDD regulations/policy.

Please refer to 624.5(d)(2) to help determine which agency is responsible, if individuals are receiving services from more than one agency.

The MOU also specifies that OMRDD is primarily responsible for intervening in situations involving alleged abuse of individuals who are not currently receiving services in the OMRDD system, but who have received any service in the OMRDD system on or after January 1, 2005. If voluntary agencies become aware of such situations, a referral should be made to the DDSO. If it is unclear whether the person has received services in the OMRDD system or when he or she stopped receiving services, a referral should be made to the DDSO so that it can check relevant records. If the person has not received services, even if the person has or may have a developmental disability, the referral should be made to PSA. The DDSO should be informed when such a referral is made.

If you have any questions regarding the topics discussed in this memo, or need a copy of the Part 624 Handbook, please contact the Regulatory Affairs Unit.

In addition to the other requirements, the new statute requires OMRDD and OCFS to report to the Governor and Legislature annually regarding implementation of the law and associated topics. The required topics include: a description of systemic issues; a summary of strategies used for intervening in such cases; an evaluation of the success of such strategies; and recommendations to protect adults from abuse or mistreatment. Please contact the Regulatory Affairs Unit if you have any suggestions for inclusion in the report.

For your information, the recent law described above, MOU and Part 624 Handbook revision are attached.

Thank you.

Cc: Barbara Brundage
Max Chmura
Helene DeSanto
Patricia Martinelli
Deb VanExel
Janis Steven
Statewide Standing Committee on Incident Review
Central Office Leadership Team
Provider Associations

Attachments
RAU Ref: 11-13-07