



Andrew M. Cuomo, *Governor*
Jeff Wise, *Executive Director*



Overview of the Justice Center

November 15, 2013

Staten Island Developmental Disabilities Council

Vision

People with special needs shall be protected from abuse, neglect and mistreatment. This will be accomplished by assuring that the state maintains the nation's highest standards of health, safety and dignity; and by supporting the dedicated men and women who provide services.

Agenda

- Justice Center Overview
- Pre-Employment Background Checks
- Code of Conduct
- Incident Reporting & Review
- Adjudication
- Summary of New Requirements for Providers



For the Protection
of People with
Special Needs

Justice Center Overview

Key Drivers That Led to the Justice Center

- Inconsistent laws, rules, regulations, requirements and standards across service systems
- No way to prevent staff who committed acts of abuse from getting another job working with people with special needs
- Limited capacity for statewide oversight
- No ability to identify and predict future areas of risk

Key Elements of the *Protection of People with Special Needs Act*

- Creates the Justice Center
- Creates consistent definitions of abuse and neglect
- Provides for proportional and progressive discipline including termination, for staff responsible for abuse or neglect
- Strengthens penal laws

What does the Justice Center do?

- Maintains a 24/7 hotline for reporting incidents
- Ensures allegations of abuse and neglect are fully investigated
- Ensures that individuals found responsible for criminal acts are arrested and prosecuted
- Analyzes trends to predict and prevent abuse
- Develops and implement consistent standards for investigative activities
- Advocates on behalf of people with disabilities and special needs
- Operates an information hotline to respond to general disability-related inquiries
- Makes policy recommendations relating to disability issues
- Monitors the quality of care in facilities
- Consolidates pre-employment checks
- Prevents individuals found responsible for egregious or repeated acts of abuse from working in human services by maintaining a Staff Exclusion List



State Oversight Agencies

Certain facilities or programs that are **operated, licensed or certified** by:



— OPWDD —

State-operated and certified/licensed providers for individuals with developmental disabilities.



— OMH —

State –operated and certified/licensed providers for people with mental illness.



— OASAS —

State-operated and certified/licensed providers of substance abuse services.



— DOH —

Overnight summer camps for children with developmental disabilities and adult homes with 80 or more beds and 25% or more of the residents have a serious mental illness.



— OCFS —

State-operated and certified/licensed residential programs for youth including juvenile justice detention facilities, group homes and Residential Treatment Centers.



— SED —

Residential schools serving students with disabilities, including schools outside of NYS.

Pre-Employment Checks

Staff Exclusion List Check (SEL)

Criminal Background Checks (CBC)

Statewide Central Register of Child Abuse and Maltreatment (SCR)

Who Must Have Background Checks?

- “Any person” who will have “regular and substantial contact” with a service recipient.
- “Any person” can include an employee, administrator, consultant, intern, volunteer, or contractor.

All forms are available at www.justicecenter.ny.gov

Staff Exclusion List (SEL) Check

- ✓ The **first** check that must be conducted is a check of SEL

If the applicant IS on the SEL

- The employer shall **not** hire or otherwise allow such a person to have regular and substantial contact with a service recipient.
- No Criminal Background Check (CBC) check or Statewide Central Register of Child Abuse and Maltreatment (SCR) inquiry is required if an applicant is on the SEL.

If the applicant is NOT on the SEL

- A CBC check and an inquiry of the SCR must be conducted if the applicant is not on the SEL.

SCR Inquiry

- The inquiry of the SCR is conducted through OCFS
- Justice Center is not involved with SCR inquiry
- Having an “indicated report” is not a bar to hiring

For assistance, contact OCFS at 518-474-1567, ext. 19586
or e-mail OCFS at ocfs.sm.ocs.user.assistance@ocfs.state.ny.us.



For the Protection
of People with
Special Needs

Code of Conduct

Justice Center Code of Conduct

Justice Center Obligation

The Justice Center adopted a Code of Conduct for all custodians, defined as anyone who has **regular and substantial** contact with individuals receiving services from an entity subject to the Justice Center's jurisdiction.

SOA Codes

The Code of Conduct augments existing codes at State Oversight Agencies (e.g., OASAS, OPWDD).

Code Provisions

Governs the conduct of custodians in areas of safety, dignity, respect, community inclusion and protection.

Code Process

Custodians are required to sign a document acknowledging they have read and understand the Code, promise to abide by it, and also pledge to report incidents involving individuals receiving services.



For the Protection
of People with
Special Needs

Incident Reporting & Review

Reportable Incidents

Reportable incidents can consist of either:

- Abuse and neglect
- Significant incidents

State Oversight Agencies (e.g. OPWDD) issued regulations defining incidents and reporting requirements.

Abuse / Neglect

| CATEGORIES | DEFINITIONS |
|--|--|
| Physical Abuse | Intentional contact, (hitting, kicking, shoving, etc.) corporal punishment, injury which cannot be explained and is suspicious due to extent or location, the number of injuries at one time, or the frequency over time |
| Psychological Abuse | Taunting, name calling, threatening words / gestures |
| Sexual Abuse | Inappropriate touching, indecent exposure, sexual assault, taking or distributing sexually explicit pictures; voyeurism or other sexual exploitation |
| Neglect | Failure to provide supervision, or adequate food, clothing, shelter, health care, or access to an educational entitlement |
| Deliberate misuse of restraint or seclusion | Use of these interventions with excessive force, as a punishment, or for the convenience of staff |
| Controlled Substances | Using, administering or providing any controlled substance contrary to law |
| Aversive conditioning | Unpleasant physical stimulus used to modify behavior without person-specific legal authorization |
| Obstruction | Interfering with the discovery, reporting or investigation of abuse / neglect, falsifying records, intentionally making false statements |

Significant Incidents

The Act defines a **significant incident** as an incident that is not abuse or neglect, but has the potential to result in harm to the health, safety or welfare of a person receiving services.

- Use of restraint when it is avoidable, involves a banned technique, or is used by inadequately trained staff;
- Unauthorized seclusion or time-out;
- Harmful interactions between people receiving services that could reasonably be prevented;
- Administration of a medication contrary to a medical order that causes an adverse impact; or
- Any other conduct identified in regulations of the State Oversight Agency, pursuant to guidelines or standards established by the Executive Director.

Mandated Reporters: Custodians

- Employees, volunteers, directors and operators of covered facilities and programs who have regular and substantial contact with the people receiving services.
- Examples *may* include:
 - Direct support employees
 - Administrative staff
 - Board members
 - Volunteers
 - Janitorial staff
- The employer must determine, based upon their knowledge of the type and frequency of contact, who has regular and substantial contact with people receiving services.

**regular and
substantial
contact**

Mandated Reporter (cont.)

Custodians and Human Service Professionals:

- Physicians (including specialists)
- Registered physician assistants
- Surgeons
- Medical examiners or coroners
- Dentists and dental hygienists
- Registered nurses, licensed practical nurses or nurse practitioners
- Social workers
- Emergency medical technicians
- Licensed therapists
- Hospital personnel
- Christian Science practitioners
- School officials
- Child care or foster care workers
- Alcohol and substance abuse credentialed personnel
- Peace officers
- Police officers, District Attorneys, investigators or other law enforcement officials

When to Report Incidents

- Whenever a mandated reporter has reasonable cause to suspect a reportable incident involving a person with special needs, s/he is required to make a report immediately upon discovery.
- Anyone may report an incident, not just mandated reporters.

How to Report Incidents

- Call the Vulnerable Persons Central Register (VPCR)
1-855-373-2122
- Custodians may submit a web form that is available on
www.justicecenter.ny.gov
- A report to the Justice Center shall include the name, title and contact information of every person known to the mandated reporter to have the same information as the mandated reporter concerning the reportable incident.

Abuse and Neglect: Required Notification

Providers must notify the person receiving services and/or their representative when an allegation of abuse or neglect is reported to the Justice Center.

Incident Review Committee

- Required by as part of each agency's incident management review process
- Members of the governing body of the facility, including some members of the following:
 - Direct support staff;
 - Licensed health care practitioners;
 - Service recipients; and
 - Representatives of family, consumers and other advocacy organizations, but not the director of the facility or provider agency.

Incident Review Committee (cont.)

The State Oversight Agency may:

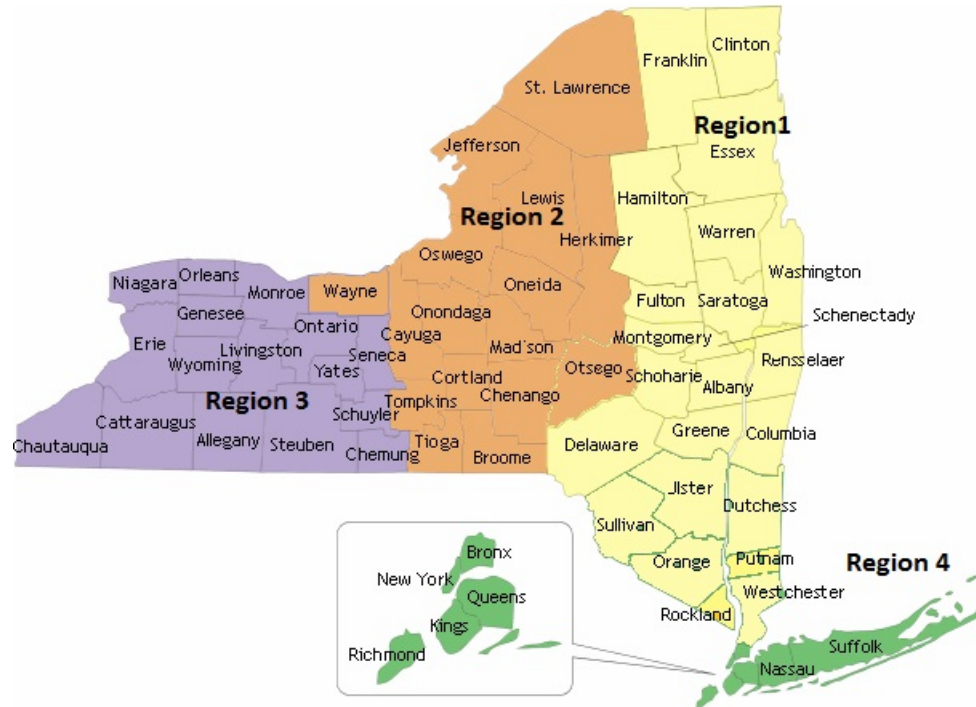
- Waive the requirement to have an IRC if there is a compelling need (e.g. a small family-based treatment setting)
- Allow an agency to borrow or share members with other agencies, or to function, on a temporary basis, without a particular type of member, as long as the agency is making diligent efforts to recruit an individual to fill that role.

The statutory requirement for committee membership can not be waived, unless the agency is unable to recruit all of the members who are required to participate.

New Disclosure Requirements for Providers

- Records of facilities or provider agencies pertaining to abuse or neglect must be available to the public
- Justice Center will receive requests in writing, and review and coordinate the release of such records from the appropriate facilities or provider agencies
- Proposed regulations, which provide for the prompt response to such requests, are available on the Justice Center website
- Facilities or provider agencies must cooperate with the Justice Center and provide records that the Justice Center determines are subject to disclosure

Justice Center Regions



Contacts:

- Region 1 -- Acting Assistant Chief Michaelleen Campbell 518-795-5684
- Region 2 -- Assistant Chief Mike Daly 518-795-4070
- Region 3 -- Assistant Chief Mark Case 518-925-3390
- Region 4 -- Assistant Chief Mark Smith 518-429-3341

Support Coordinator for Individuals and Families

- Dedicated to assisting with questions or concerns about allegations of abuse and neglect.
- Works with people receiving services and/or family members.
- Provides guidance if required to appear as a witness or file victim statements.

Contact: Dee Levy 518-549-0200



For the Protection
of People with
Special Needs

Adjudication

Administrative Appeals

Step 1: paper review

- The subject of a **substantiated** report of abuse or neglect has the right to request an amendment of the report.
- The Administrative Appeals Unit reviews the record on appeal which includes:
 - investigative file;
 - substantiated report;
 - subject's request for amendment; and
 - any additional evidence submitted by the subject.

Administrative Appeals (cont.)

- The Administrative Appeals Unit determines whether there is a **preponderance of the evidence** to find that the subject committed an act or acts of abuse or neglect as indicated in the substantiated report.
- If the report of abuse or neglect is substantiated, the subject has the right to a hearing before an Administrative Law Judge (ALJ).
- If the report of abuse or neglect is unsubstantiated, the report will be amended to unsubstantiated and sealed.

Administrative Hearing

Step 2: in-person review

- After the Administrative Appeals Unit's review, the subject of a substantiated report of abuse or neglect has the right to a hearing before an ALJ.
- The Subject may retain counsel for the pre-hearing conference and the hearing.
- At the hearing, the Justice Center will be required to produce evidence to support the findings of the substantiated report by a preponderance of evidence.
- The questions to be addressed at the hearing are whether there is a preponderance of evidence to support a finding of abuse or neglect, and the category level of abuse or neglect.

Administrative Hearing (cont.)

- At the conclusion of the hearing, the ALJ issues a report and recommendation to the Executive Director.
- The Executive Director or his designee makes a **final determination** (issued in the form of an Order), which is not subject to further administrative review.
- The Subject has the right to seek review of the Order pursuant to Article 78 of the Civil Practice Law and Rules.

NOTE

- The Justice Center will hold regional hearings.
- Adopted regulations (14 NYCRR 700):
www.justicecenter.ny.gov/regulations-guidance/regulations/adopted/aapscan



For the Protection
of People with
Special Needs

Summary of New Requirements for Providers

Summary:

New Requirements for Providers

- ✓ Report all incidents to the Justice Center
- ✓ Carry out investigations of abuse and neglect or significant incidents delegated to providers by State Oversight Agencies
- ✓ Adhere to the Justice Center's Code of Conduct
- ✓ Check Staff Exclusion List for all potential job applicants and perform other required background checks
- ✓ Comply with new disclosure and notification requirements related to abuse / neglect
- ✓ Maintain records of staff training and Justice Center Code of Conduct attestations

Compliance with Justice Center policies and procedures may be linked to provider certification and licensure, as appropriate.



For the Protection
of People with
Special Needs

Thank you

www.justicecenter.ny.gov

Report abuse or neglect: 1-855-373-2122

Information & Referral: 1-800-624-4143

General information line: 1-518-549-0200