



June 11, 2018

**OASAS Designation of the Justice Center as Authorized Representative
to Conduct Abuse & Neglect Investigations**

Dear Programs/Providers,

OASAS is providing the following information to assist providers in fulfilling their reporting obligations to the Justice Center, while simultaneously disclosing patient-information in accordance with the federal confidentiality law, 42 CFR Part 2. OASAS is advising all applicable programs and providers that OASAS has delegated the Justice Center for the Protection of People with Special Needs (Justice Center) as a designated representative of OASAS for the investigation of alleged incidents of abuse and neglect in OASAS-certified or funded facilities.

OASAS Investigation authority

Since its inception, OASAS has had the authority to investigate and inspect OASAS-certified and funded programs. If services for persons suffering from chemical abuse or dependence are being provided in violation of the law OASAS is statutorily required to promptly investigate the matter MHL §32.25.

Consistent with federal law, OASAS, or its designated representative, has the authority under the federal confidentiality law to obtain patient identifying information in relation to an investigation or administrative enforcement activating under the audit and evaluation provision of 42 CFR Part 2, §2.53(c)(2)

While conducting investigations of OASAS-certified providers, OASAS has the authority to examine clinical, medical service and financial records of facilities to determine whether such providers of services are complying with the provisions of applicable laws, rules, and regulations MHL§32.13. In conducting investigations, OASAS has the right to examine facility patients, subpoena witnesses, compel their attendance, examine witnesses under oath, inspect facilities, conduct examinations, interviews, and obtain such other information as may be required to carry out its responsibilities MHL§32.15, §32.17(d), §32.19.

Justice Center Authority to Investigate Incidents of Abuse and Neglect

The Justice Center is a state oversight agency charged with taking reports of, investigating and prosecuting allegations of abuse and neglect. The Justice Center is responsible for ensuring that service recipients at OASAS-certified and funded facilities are protected from abuse, neglect and related harms and for investigating alleged incidents that occur at these facilities.

Justice Center Access to Information: "Consistent with Federal law," OASAS-certified facilities and providers are required to provide the Justice Center with access to facilities and records that the Justice Center needs to carry out its responsibilities.

OASAS Delegation of OASAS' authority to the Justice Center

OASAS has delegated authority to investigate incidents of abuse and neglect to the Justice Center on OASAS' behalf for all OASAS-certified providers. By delegating OASAS' authority, OASAS allows the Justice Center to exercise all statutory authority that OASAS possesses to investigate allegations of neglect and abuse.

As you are aware, all provider staff, as mandated reporters, are now required to submit all reportable incidents directly to the Justice Center.

OASAS is statutorily authorized to provide the Justice Center with any information related to patients, including the identification of patients, clinical records or clinical information tending to identify patients MHL§ 33.13 (c)(4).

Consistent with federal and state confidentiality laws and regulations, OASAS-certified providers have a duty to assist both OASAS, or its designated representative, in carrying out their respective and joint regulatory functions MHL§32.17(a)

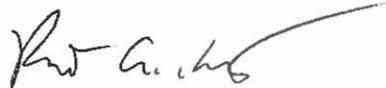
As designees of OASAS' authority Justice Center staff are legally entitled to review client records of any individuals involved in a reported incident without the consent of the clients. The investigators may also photocopy and remove those copies from the facility. However, the investigators cannot further disclose the information contained in the records, except to the program or client(s) without an appropriate consent from the relevant client(s) or unless they obtain a court order which complies with the requirements of 42 CFR Part

Similarly, Justice Center staff are legally entitled to conduct interviews of program clients. Program staff are not required to obtain consent(s) from the subject client before they speak with the State investigator. However, again information which would identify an individual as a client of the program cannot be further disclosed unless such disclosure is consistent with the provisions of 42 CFR Part2, § 2.66.

Consequently, OASAS is issuing this letter to ensure that all applicable OASAS-certified and funded providers understand their obligation to cooperate with Justice Center investigators in the same manner that you would assist OASAS inspectors.

Questions should be directed to the Legal mailbox at Legal@oasas.ny.gov.

Sincerely,



Robert A. Kent
General Counsel