



June 21, 2018

Dear Provider,

OASAS has recently received reports that marketing staff from outside providers have been permitted to enter and, unsolicited, to advertise their programs to patients receiving substance use disorder treatment services in OASAS certified programs. This activity is a violation of confidentiality protections, OASAS regulations and may be a violation of ethical standards for licensed or credentialed professionals.

42 CFR Part 2 and Article 33 of the NYS Mental Hygiene Law protect the confidentiality of all individuals receiving services from a substance use disorder treatment program. This is a core component of the entire substance use disorder system. Allowing marketing staff from an outside program to enter the premises of a treatment facility to approach patients, when the patient did not request, or consent to such outreach, violates federal confidentiality requirements. A program must obtain consent from a patient to conduct outreach to a particular program that may fit the patient's needs as they progress through the continuum of care.

Further, every patient has a right to patient centered treatment with an individualized treatment/recovery plan that the patient has assisted in creating and updating. This permits a patient and clinician to assess the individual's needs and goals for recovery and identify resources most appropriate for their situation. While providers must ensure that patients have access to visitors, such access should only be provided to other treatment programs where the patient has requested such a connection with that treatment program and/or such connection is otherwise within the patient's discharge plan. Access should not be provided for marketing activities by other treatment providers that have not been requested by the patient. Further, marketing staff should not serve as an alternative to the creation of a viable discharge plan for the patient's continued care. Use of marketing staff, in place of clinically appropriate treatment planning, may lead to inappropriate, inadequate or unnecessary care being provided.

Finally, OASAS certified providers are prohibited from advertising, or otherwise soliciting patients, in false, deceptive or misleading ways. Likewise, OASAS credentialed individuals are prohibited from exploiting patients or giving or receiving a benefit in exchange for the referral of a patient. It is misconduct subject to disciplinary action for a credentialed staff person to receive a benefit in exchange for allowing marketing staff access to patients.

Failure to adhere to the laws and rules that govern treatment may subject the individual and/or the program to additional action against their credential, funding or operating certificate.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Kent".

Robert A. Kent
General Counsel