



IMPORTANT: PLEASE READ CAREFULLY!!

April 24, 2013

Dear Colleague:

The Justice Center for the Protection of People with Special Needs (Justice Center) was recently created in response to the recognized need to strengthen and standardize the safety net for vulnerable persons who receive care from New York State's human services agencies. It becomes operational on June 30, 2013.

Prior to the passage of the Protection of People with Special Needs Act (Act) see, Chapter 501 of the Laws of 2012, some human services agencies were authorized, by law, to conduct criminal history information checks of certain individuals. This was not true for OASAS, but rather OMH, OPWDD and others. The Act added OASAS to the criminal history information check and suitability determination process. These reviews and determinations for OASAS certified providers will be conducted by OASAS.

The Act also establishes a Vulnerable Persons Central Register (VPCR). The VPCR will contain a Staff Exclusion List (SEL) which will contain the names of individuals deemed ineligible to work in a position having regular and substantial contact with a service recipient. The law requires that an OASAS certified provider request a check of the SEL when considering an applicant for employment and that the SEL check be done prior to requesting the criminal history background check.

If the result of the SEL check does not prohibit an applicant from being hired by a provider, the Act then requires that any OASAS certified provider required to conduct an SEL check shall also conduct a check of the State Central Registry for Child Abuse and Neglect (SCR).

For OASAS providers, this will mean significant change to existing OASAS criminal background check analysis. In the past this type of information was only gathered as part of the credentialing process by request and consent. This process will now include more individuals than just those seeking a credential and it will be mandatory and obtained upon consent and will be conducted through the NYS Division of Criminal Justice Services (DCJS) fingerprint based background check system. Beginning June 30, 2013, prospective employees or volunteers who will have regular, unsupervised client contact must have their fingerprints taken and a criminal history check performed through this new process. The fingerprints will be taken by a state contractor, L1 Services/MorphoTrust, and submitted to the DCJS. DCJS will then provide criminal history information to OASAS. OASAS will review the criminal history and make a determination regarding suitability for employment or credentialing.

OASAS will then advise the provider or the applicant for a credential whether or not the applicant has a criminal history, and, if so, whether the criminal history is of such a nature that the person cannot be hired, retained or credentialed. In some cases, a person may have a criminal background that does not rise to the level which would preclude them being

hired, retained or credentialed. OASAS will conduct these reviews consistent with Article 23-A of the Correction Law. Although, the criminal history "rap sheet" cannot legally be shared with the provider, OASAS will share sufficient information, in summary form, with the provider to enable it to make its own determination as to whether or not to employ or retain such person. There will also be instances in which the criminal history information reveals an arrest or criminal charges without a final disposition. In those cases, OASAS will instruct the provider on whether the application will be held in abeyance until the charge is resolved and further information is gathered.

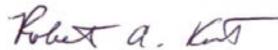
Prior to making a determination to deny an application or directing a provider to deny employment, OASAS will afford that individual an opportunity to explain, in writing, why his or her application should not be denied. If after reviewing any materials submitted by the applicant, OASAS determines that employment or volunteer opportunity should be denied, the provider must notify the person that this criminal history information is the basis for the denial of employment or service.

An application may be withdrawn at any time and all criminal history data destroyed upon the applicant's consent. Providers shall notify OASAS when an individual for whom a criminal history has been sought is no longer subject to such a check. Providers must also ensure that prospective employees or volunteers who will be subject to the criminal background check are notified of the provider's right to request his/her criminal history information, and that he or she has the right to obtain, review, and seek correction of such information in accordance with DCJS regulations.

OASAS is actively working on creating the structure to manage this new system. We are also required to promulgate new implementing regulations to carry out the provisions of the Act. To this end, we will strive, as decisions are made, to get information out to the affected provider community in a timely fashion. We are in the process of developing a web page on the OASAS and Justice Center internet site, upon which we will post letters to the field, regulations, training information, FAQs and other relevant information as it becomes available. We would encourage affected providers and/or the professional trade associations to post this information on their websites.

In the meantime, a link to Chapter 501 of the Laws of 2012 is provided below for your reference. We encourage you to read through this legislation, and to advise us if you have any specific questions or concerns. Over the ensuing weeks, we plan to seek input from the provider community as we develop the technological processes and systems by which this law will be implemented. <http://www.governor.ny.gov/Justice4SpecialNeeds/home>

Sincerely,



Robert A. Kent
General Counsel