

Guidance for Recent Legislative Change Permitting Limited Re-disclosure of Records and Reports by Qualified Persons under Jonathan's Law

An amendment to Jonathan's Law (Mental Hygiene Law §33.25), by Chapter 395 of the Laws of 2013, became effective on October 21, 2013. Previously, the law forbade qualified persons who received records and reports under Jonathan's Law from "further disseminat[ing]" those records. As a result of Chapter 395, the law now permits qualified persons to share disclosed records and reports released to them under Jonathan's Law with certain other persons. These persons include: (i) a health care provider; (ii) a behavioral health care provider; (iii) law enforcement, if the recipient believes that a crime has been committed; or (iv) the recipient's attorney.

The statute requires that notice of this limited permission to re-disclose be provided in writing with each release of records. The law specifically requires that each release under Jonathan's Law be accompanied by a cover letter that states the following:

"PURSUANT TO SECTION 33.25 OF THE MENTAL HYGIENE LAW, THE ATTACHED RECORDS AND REPORTS SHALL NOT BE FURTHER DISSEMINATED, EXCEPT THAT YOU MAY SHARE THE REPORT WITH: (i) A HEALTH CARE PROVIDER; (ii) A BEHAVIORAL HEALTH CARE PROVIDER; (iii) LAW ENFORCEMENT, IF YOU BELIEVED A CRIME HAS BEEN COMMITTED; OR (iv) YOUR ATTORNEY."

Please be advised that this notice requirement is effective beginning on October 21, 2013, for each release of reports or records under the authority of Jonathan's Law (MHL §33.25).

OASAS providers:

** If you receive a request for records (anything that identifies a patient as a patient in your program) that is identified as a request pursuant to Jonathan's Law from a "qualified person" (individual receiving services, i.e., patient; his/her legal guardian, parent, spouse or adult child who has authority to provide consent for care and treatment; MHL 33.16(a)(6) and 33.16(b)(4)), please follow these procedures:

1. Release to the qualified person must be compliant with 42 CFR Part 2 requirements for patient consent or other exception;
2. If released to a qualified person – except the patient him/herself – release should be accompanied by 42 CFR Part 2 compliant instructions regarding prohibition against re-disclosure unless specified in the consent/court order;
3. If released to a patient, release should be accompanied by a cover letter including the language stated above regarding restricted re-disclosure.

**If you receive a request for records that identify a patient as a patient in your program and such request is NOT identified as a "Jonathan's Law request", please comply with 42 CFR Part 2 in full.