

## **Local Services Bulletin No. 2010-02: Health and Safety Requirements for Programs Working with Children and Adolescents ■ October 6, 2010**

TO: All Certified and/or Funded Providers and Local Governmental Units (LGUs)

RE: Clarification on provider responsibilities when working with adolescents and children.

**SPECIAL ATTENTION TO: All providers of any services to individuals aged 18 and under.**

### **PURPOSE**

This Local Services Bulletin has been developed to clarify provider responsibilities when working with adolescents and children. In addition to OASAS regulations, there are several State and Federal regulations which apply when working with this population.

### **APPLICABILITY**

This LSB applies to OASAS certified and/or funded providers of chemical dependence services who work with children and adolescents. This would include all programs that regularly interact with children and adolescents, whether they are clients or not, including (but not limited to) prevention, outpatient/residential/inpatient treatment, programs that serve parents and children, programs that provide day care services, etc.

### **BACKGROUND**

OASAS providers that have “potential for regular and substantial” contact with children and adolescents (individuals under 18 years of age) have specific duties under a variety of Federal and New York State laws and regulations. It is important that all agencies understand these law and regulations. The laws and regulations outline specific requirements for ensuring the health and safety of children and adolescents, as well as rules for certain types of interventions with children and adolescents. Agencies should also understand their own liability exposure if the agency is not in compliance with the laws and regulations.

### **Agency Responsibilities**

Agencies serving children and adolescents have special responsibilities to ensure their health and safety. Concerns about child abuse, sexual abuse, maltreatment, the use of corporal punishment, etc. have led to regulatory and statutory requirements designed to address and prevent harm to children. These state and federal requirements are described

in this LSB. Links to various resources are also provided. Agency boards of directors have the responsibility to ensure that the agency is adhering to all of the requirements. Failure to do so puts the agency at risk for litigation, insurance claims, and loss of assets if the insurer determines that the agency was not in compliance with the insurance contract, as well as damage to the agency's reputation. Most importantly, however, is the prevention of harm to children and adolescents under the agency's care. Boards should review and approve policies and processes to ensure that their agency is in compliance with the various requirements.

Agency boards of directors have significant responsibilities for ensuring that their agency is in compliance with all of the various laws and regulations which govern their programs. A key element of their role is their awareness of serious incidents that occur in the programs. Agencies should notify their board officers whenever a serious allegation of abuse or maltreatment occurs. In addition, agencies should provide their boards with, at minimum, an annual report on incidents (abuse allegations, run-a-ways, sexual activity, crimes, etc.). This keeps the Board in touch with what is going on within the programs and potential liabilities of the agency. Receipt and review of such reports should be reflected in the board meeting minutes.

**In addition to reporting allegations of abuse, maltreatment, or neglect to the appropriate state hotline (and law enforcement agency when necessary) agencies must also report the allegation to the OASAS Field and Counsel's Office.**

## **Staffing**

It is the responsibility of the agency to ensure that there is sufficient staffing to monitor the activities of the children/adolescents. This would include providing adequate coverage to evening and night shifts for residential programs. Staffing plans and procedures should also include plans for dealing with emergencies (medical, behavioral, physical plant, etc.) Agencies may incorporate technology such as video equipment, door alarms, etc. as appropriate to assist in supervision.

Additionally, agencies are required to take reasonable efforts to ensure that the staff, volunteers, and other individuals who have regular contact with children/adolescents do not pose substantial risks.

## **Child Abuse and Maltreatment Screening Guidelines**

The New York State Child Protective Services Act of 1973<sup>i</sup> created a comprehensive program of child protective services, including the establishment of criteria for reporting and investigation of allegations of child abuse and maltreatment and a State Central Register of Child Abuse and Maltreatment ("SCR").<sup>ii</sup> A key purpose of the SCR is to maintain a central record of reports of child abuse and maltreatment that are determined, following investigation, to be "indicated." An "indicated" report is a report for which there is determined to be some credible evidence that child abuse or maltreatment occurred and is attributed to the conduct of by an individual or individuals named as subject(s) of the report. **Any alleged sexual activity between staff, volunteers, consultants, adult clients and children/adolescents is reportable to the SCR.**

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<sup>i</sup>Chapter 1039 of the Laws of 1973; Title 6 of Article 6 of the Social Services Law

<sup>ii</sup> See also, 18 NYCRR Part 432 (Child Abuse and Maltreatment).

Chapter 480 of the Laws of 1980 amended the Child Protective Services Act to add Section 424-a of the Social Services Law. The purpose of this provision was to improve the prevention of child abuse and maltreatment by requiring authorized agencies to inquire whether persons actively considered for employment in child-caring positions were subjects of an indicated report of child abuse or maltreatment. Section 424-a of the Social Services Law(s) was subsequently amended in 1983, 1984, and 1985<sup>iii</sup> to improve “the assessment and evaluation of persons who will have the potential for regular and substantial contact with children being cared for by child-caring agencies, programs, or facilities, through increased access to screening persons with the State Central Register of Child Abuse and Maltreatment”.

### **Who should be screened through the Statewide Central Register (SCR)?**

In 1997, Section 424-a of the Social Services Law was amended to include programs and facilities certified by the Office of Alcoholism and Substance Abuse Services (OASAS) and requires or allows them to access information contained in the Statewide Central Register of Child Abuse and Maltreatment as follows.

- A. Under Social Services Law Section 424-a it is the responsibility of programs and facilities certified by the Office of Alcoholism and Substance Abuse Services to ensure that Form LDSS-3370 (Statewide Central Register Form) is completed and submitted to the SCR for:
  1. Any person who is being actively considered for employment and who will have the potential for regular and substantial contact with children; and
  2. Any prospective individual contractors providing goods or services who will have the potential for regular and substantial contact with children. (NOTE: this refers only to those contractors who perform their service on-site at the agency. It does not apply to services such as (clinics, hospitals, private practices) provided off site. If, however, the agency does frequent business with a particular provider, a Business Agreement that attests to the compliance with all regulations may be appropriate.
  
- B. Programs and facilities certified by the Office of Alcoholism and Substance Abuse Services should *require* that form LDSS-3370 be completed and submitted by:
  1. Current and new employees who have the potential for regular and substantial contact with children.
  2. Current and prospective consultants and volunteers who have the potential for regular and substantial contact with children.
  3. Current individual contractors providing goods and services who will have the potential for regular and substantial contact with children.

In order for programs to screen utilize the State Central Registry they need to have registered with the Office of Children and Family Services , this will allow them to receive a Resource Identification Number (RID), which will identify them as a program needing to screen staff through the SCR.

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<sup>iii</sup>. Child Abuse Prevention Act of 1985(Chapters 676 and 677 of the Laws of 1985

Please follow the following instructions to obtain a RID number:

Send an electronic e-mail request to the Office of Children and Family Services at: [ocfs.sm.conn\\_app@ocfs.state.ny.us](mailto:ocfs.sm.conn_app@ocfs.state.ny.us).

Please include the following information so they can determine if issuance of a RID is appropriate: The name, address and telephone number of your organization and a contact person within your organization;

1. A statement of which of the categories listed above your organization falls under;
2. The name and telephone number of a contact person in your licensing agency who can verify the status of your organization; and
3. A copy of your license, certification or other official documentation of approval by the relevant State or local agency.

If someone is working, and the results of the inquiry have not yet been received, the agency must ensure that the individual does not have unsupervised contact with youth under the age of 18.

If the inquiry reveals that the person has an indicated report, the agency is not necessarily prohibited from hiring the person or continuing their employment. The agency should, however, document its reasons for making the hire or continuing the employment. Consultation with the OASAS Field Office and CQC is recommended. Agencies may also consider regular updates of inquiries, as someone's status may have changed unbeknown to the agency.

Electronic copies of the forms are located at: <http://www.ocfs.state.ny.us/main/forms/cps/>

For Further Guidance on the Child Abuse and Maltreatment Screening Requirements please follow the link below:

<http://www.ocfs.state.ny.us/main/prevention/fags.asp>

### **Mandated Reporting of Suspected Child Abuse and Maltreatment**

Per the requirements of the New York State Social Services law, as amended by Chapter 323 of the Laws of 2008, OASAS considers all State and community agency staff and volunteers to be mandated reporters who are required to adhere to the reporting requirements. If a mandated reporter has reasonable concern that child abuse or maltreatment (even and especially at their own institution) may have occurred, that person is mandated to report the allegation to the Statewide Central Register Hotline.

Since October 1, 2007, those mandated reporters who work in an OASAS setting, and who have direct knowledge of any allegation(s) of suspected child abuse or maltreatment, must personally make a report to the Statewide Central Register and then notify the person in charge of the institution or his/her designated agent that a report has been made. The person in charge, or the designated agent of such person, is then responsible for all subsequent internal administration necessitated by the report. This may include providing follow-up information (e.g., relevant information contained in the child's educational record) to the body investigating the allegation.

The Statewide Central Registry Hotline telephone number is: (800) 342-3720

For further information and clarification please see LSB 2007-08 *Mandated Reporting of Suspected Child Abuse or Maltreatment* at the following link:

<http://www.oasas.state.ny.us/mis/bulletins/lb2007-08.cfm>

Free on-line Mandated Reporter Training is available at:

<http://nysmandatedreporter.org/>

### **Institutional Abuse and Neglect**

Chapter 323 of the Laws of 2008 took effect on January 17, 2009. This law amends the definitions of abuse and neglect pertaining to children and youth in a residential setting and expanded the definition of residential setting to include OASAS residential programs serving youth under the age of 18.

For additional information on Chapter 323 of the Laws of 2008 please see the following links;

- Summary of the Changes to the Definitions of Abused and Neglected Child in Residential Care: <http://www.oasas.state.ny.us/mis/bulletins/documents/lb2010-02SumC323.pdf>

### **Commission on Quality of Care and Advocacy for Persons with Disabilities (CQC)**

The Child Abuse Prevention and Treatment Act (CAPTA) of 1986, as amended (N.Y. Social Services Law Article 6, Title 6, and corresponding legislation found at N.Y. Mental Hygiene Law §45.07(c) 2. - 5.), with few exceptions, charges the Commission on Quality of care and Advocacy for Persons with Disabilities, or "CQC," with investigating allegations of child abuse and neglect reported in residential mental hygiene facilities (including OASAS Residential Programs serving children/adolescents). Investigations are commenced within 24 hours of the reporting of an allegation through a hotline to the SCR. The Commission's first priority upon receipt of all such reports is to ensure the child's safety.

OASAS certified programs must allow CQC investigators access to all patients, staff, records and facilities when an investigation is being conducted. At admission, all adolescents should sign an authorization for release of information to CQC in case there is an investigation.

Comprehensive investigative activities may include site visits, interviews with children and staff members, and consultations with medical and psychiatric professionals. Credible allegations which, if true, reveal criminal conduct are referred to local law enforcement authorities. Within 60 days, the Commission makes a recommendation to the N.Y.S. Office of Children and Family Services (OCFS) to either "indicate" (substantiate) or "unfound" the report. If the findings of indicated reports are challenged, special hearings are conducted by OCFS.

The Commission's findings in any given report are forwarded to the mental hygiene agency that certifies the facility: the State Office of Mental Health (OMH), Office of People with Developmental Disabilities (OPWDD) or the Office of Alcoholism and Substance Abuse

Services (OASAS). In addition, under its oversight authority, the Commission reviews the treating facility's investigation, closing each case with a letter to the facility director with comment addressing particular and systemic issues reviewed (both problematic and praiseworthy), and the quality of the facility's internal investigation.

In addition, Commission staff are often called upon to provide technical assistance to programs on investigation procedures and to review the adequacy of facility investigations into reports not accepted by the SCR. Coordination of such activities with the appropriate licensing agency is routine protocol.

Allegations of child abuse or neglect occurring in mental hygiene residential facilities must be reported to the Child Abuse Hotline: 1-800-342-3720 (voice only); 1-800-638-5163 (TTY/TDD)

Investigations will be commenced within 24 hours of the reporting of the allegation to initially seek to ensure the child's safety.

### **Reporting Potential Crimes to Law Enforcement**

When an allegation involves the potential of the commission of a crime, agencies are required to report the allegation to law enforcement as well as to the state hotline. Actions that would be considered crimes would include (but are not limited to):

- Any sexual contact between an adult staff member, volunteer, contractor, consultant, etc. and a child/adolescent.
- Sexual activity involving a youth aged 16 years or under and a youth older than 16. Individuals aged 16 or younger are, by law, considered unable to give their consent.
- Sexual activity involving two (or more) youths aged 16 years or under that involves force or coercion
- Assaults on youth by adults or other youths

If the agency is not sure, it should consult with SCR and/or local law enforcement. It is always better to be careful and report, rather than to risk problems with not reporting.

### **Prohibition of Restraint, Seclusion and Corporal Punishment**

Federal Regulations [42 CFR 482.13 (e) (2006)] establish strict rules for the use of restraint and seclusion for programs receiving Medicaid and or Medicare.

- *Standard: Restraint or seclusion. All patients have the right to be free from physical or mental abuse, and corporal punishment. All patients have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Restraint or seclusion may only be imposed to ensure the immediate physical safety of the patient, a staff member, or others and must be discontinued at the earliest possible time.*

The regulations define restraint and seclusion at 42 C.F.R. §482.13(e) (2006) as follows:

(1) *Definitions.* (i) *A restraint is—*

- (A) Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely; or
- (B) A drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard treatment or dosage for the patient's condition.
- (C) A restraint does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a patient for the purpose of conducting routine physical examinations or tests, or to protect the patient from falling out of bed, or to permit the patient to participate in activities without the risk of physical harm (this does not include a physical escort).

*Seclusion is defined as follows*

- (ii) *Seclusion is the involuntary confinement of a patient alone in a room or area from which the patient is physically prevented from leaving. Seclusion may only be used for the management of violent or self-destructive behavior.*

As these rules establish the “best practice” in this area, OASAS considers the rules to cover all OASAS programs.

OASAS strongly supports the prohibitions against restraint and seclusion. Programs are required to adhere to these rules. While not strictly restraint or seclusion, some programs have incorporated behavioral interventions that restrict and/or isolate individuals from the rest of the treatment milieu. While these practices may have some therapeutic value, it is critical that their use be carefully defined and not be initiated as punishment. Appropriate use of such an intervention should be defined in procedure manuals and must involve:

1. Clearly defined reasons for use of the intervention
2. Identification of which staff may place/remove an individual on/from the intervention.
3. Use of the intervention only as a short term “time out” for the individual to calm down, reflect on their behavior and identify what they need to improve their behavior. The goal of the intervention should be the re-integration of the individual into the community. The duration of the intervention should involve the earliest possible return to the community. If an individual is being discharged from the program, and there is concern that they would be disruptive to the community, the program may separate them from the group until they can be transported away from the program. If the individual is cooperative and following directions, it would be appropriate for them to sit in a room, watch television, read, etc. while they are waiting. If the wait is going to be of a very long duration, the program should ensure that the individual receives some programming, and is able to participate in the milieu as appropriate for their behavior.
4. Clear definition of the length of the intervention or what can/must happen to end the intervention.
5. Opportunities for individuals who are the subject of the intervention to speak to staff to demonstrate that they are ready to end the intervention and re-enter the milieu.
6. Clear direction that the intervention cannot involve the infliction of pain (corporal punishment), the denial of food, access to a restroom, access to

necessary health services, denial of sleep (during normal sleeping time) or be demeaning to the individual in any way.

7. Each use of such an intervention, the reason for use, duration, and the individual's response should be documented in the clinical record.
8. Staff should be trained in the appropriate use of such interventions and the agency should have a process by which program administration reviews its use for appropriateness.

OASAS does not consider the isolation of a client from his or her peers because they are under the influence of a substance, including alcohol or because of a physician order to isolate the client because of a medical condition or because they are physically unable to comply with programming to fall within the requirements of this section.

### **Parental Consent for Treatment**

Mental Hygiene Law, Title D, Article 22, Section 22.11 Treatment of Minors, acknowledges the role of family in the treatment of minors by requiring parental consent for treatment for any individual less than 18 years of age seeking services from an inpatient, residential or outpatient Chemical Dependency program and prescribes the procedures required for admission and discharge of minors.

For a copy of this law please follow the following link

[http://www.law.justia.com/newyork/codes/mental-hygiene/mhy022.11\\_22.11.html](http://www.law.justia.com/newyork/codes/mental-hygiene/mhy022.11_22.11.html)

### **Reporting Requirements**

#### **From *Local Services Bulletin No. 2007-06: "Jonathan's Law" (Chapter 24 of the Laws of 2007)***

On May 5, 2007, the Governor signed a new law, known as "Jonathan's Law" (Chapter 24 of the Laws of 2007), which became effective immediately. This new law, stimulated by the tragic death of 13-year old Jonathan Carey while in residential care, makes changes in the way in which certain notifications are made and information is shared, regarding incidents involving the health and safety of patients, as well as allegations of abuse in mental hygiene facilities, including those operated or certified by OASAS. Since Jonathan's Law applies to all facilities operated or certified by OASAS, we are providing the following summary of the law to assist you in developing your compliance plans and strategies

For a complete copy of this LSB please follow the following link:

<http://www.oasas.state.ny.us/mis/bulletins/lbs2007-06.cfm>

### **Program Policies Related to Physical and Mental Health of Adolescents and Children**

It is important to note that in developing policies relative to the health and safety of adolescents in your care, the board of directors' should play a key role in approving those policies and protecting the agency from liability. The board of director's has a responsibility of protecting the both the interest of the children/adolescents as well as the agency.

### *Screening and Assessment of Complicated Medical/Mental Health Conditions*

Programs frequently admit children/adolescents who have significant medical and/or mental health issues. Agencies should have an initial screening process that can identify any significant issues that need to be assessed and responded to upon admission. While OASAS regulations may identify certain timeframes for medical/nursing assessments, the provider should have a process to ensure that individuals have access to an expedited assessment if necessary. Examples of such situations include: medications, diabetes, history of mental health concerns/treatment, high risk allergies (food, bee stings, etc.), etc. The provider should consult with their medical staff to develop protocols for screening and access to expedited medical/mental health assessment and treatment.

### *Medication Monitoring/Dispensing*

Many adolescents in treatment for substance use are prescribed various medications by family, specialist, or program physicians. Programs have a responsibility to ensure that the medications are safely stored, that only the intended patient receives the medication, and that the administration of medication is documented. These elements are critical to ensure that patients receive their medications when required, that medication is not diverted, and to reduce risk of medication abuse. If a program has individuals who are prescribed a “controlled substance”, the program must adhere to NEW YORK PUBLIC HEALTH LAW ARTICLE 33: NEW YORK STATE CONTROLLED SUBSTANCES ACT:

[http://www.health.state.ny.us/regulations/public\\_health\\_law/article/33/docs/33.pdf](http://www.health.state.ny.us/regulations/public_health_law/article/33/docs/33.pdf)

### *Protocol for Medical Emergency*

All programs serving children and adolescents should have a written Protocol for Medical Emergency. The protocol should include the following information:

- The hours when medical staff is on site and their location
- When to call the 911 – a 911 call must be made in the event of a medical emergency including but not limited to cardiac/respiratory arrest, severe allergic reactions, fractures, head injuries, blood loss or other severe injuries occurring in the absence of on-site medical staff. (Note: there should be a follow up procedure for notifying medical staff and agency leadership in the event of 911 being called).
- Who to call when medical staff is off-site or otherwise unavailable

*Protocol for Medical Emergency should be posted in all Clinical Offices and In the Agency Log Book – along with the list of Emergency Phone Numbers and Contact Information for the staff to be called.*

The Medical Emergency Protocol should also address what happens when a minor is sent to the emergency room for a medical emergency, which is defined as an injury or illness that is acute and poses an immediate risk to the minor’s life or long term health.. The protocol should include the following:

- What paperwork should accompany the client (i.e., personal Information, insurance cards, consent to release confidential information, medical transfer agreement, and list of current medications).
- Who accompanies the client to the emergency room – parents or guardians should be immediately notified of the medical emergency and requested to meet the client

in the emergency room where possible. In the absence of a parent or guardian, they should be accompanied, or met by an agency staff person (medical staff person, clinical staff, youth worker or agency administrator) at the hospital, provided that the agency staff person has made telephone contact with the emergency room staff to inform them of the situation. This allows for the agency to provide the hospital staff with any information, authorization to treat, parent contact info, etc. In the situation where the agency staff person is meeting the client at the emergency room, the client may be escorted by a peer to the emergency room provided they are later met at the emergency room by the agency staff person. Notification of parent or guardian and documentation of the event occurring should appear in both the agency log book as well as the individuals chart.

The policy should also speak to notification of parent or guardian and documentation of the event occurring should appear in both the agency log book as well as the individuals chart.

#### *Client Leaves the Building against Clinical Advice*

Programs serving individuals under the age of 18 need to have a policy on how to handle youth leaving the building against clinical advice, that should include;

- A procedure for calling the local law enforcement agency
- Identification of agency staff to be notified and timeframes for notification
- Identification of agency staff who are to notify the parents/guardians and timeframes for notification
- A procedure as to how to handle the youth's return in a clinically appropriate manner.

The policy should also speak to the need to have signed releases for local law enforcement at the time of admission, a section on how the incident is to be documented in the individual chart as well as any other agency paperwork, or OASAS incident report. A youth leaving the building unsupervised and against clinical advice should be taken seriously at all times. As soon as the youth is reported missing, proper procedures and notifications should take place.

#### *Policy and Procedure for Off-site Outings/Recreational Activities*

Agencies providing services to youth should have a policy and procedure for off-site outings/recreational activities. The policy should state who approves of the outings or recreational activities, the number of staff per group of youth necessary to ensure proper supervision, and identify the staff person in charge of the outing.

OASAS strongly recommends that the policy should clearly state the following;

- Number of clients/youth that constitutes a group for the purposes of the offsite activity. This number should take into account the clinical profile of the youth in care.
- The staff to client ratio required to supervise the group should be a minimum of one clinical staff person to 12 clients. Staff to client ratio should be determined, as previously stated, taking into account the type of activity and client profile. A procedure as to who approves the outing (i.e.: the Clinical Director or Program Director) A procedure as to who approves the outing (i.e.: the Clinical Director or Program Director).

- A process for maintaining contact with the agency and process for what happens in case of an emergency.
- Special Note for Swimming – Programs should only allow individuals to swim in approved areas under the supervision of certified lifeguards.

### *Policy regarding Transportation of Clients*

Agencies providing services to youth should have policy and procedure for transportation of youth. The policy should include how youth are to be transported, and by whom.

### **Training and Documentation**

Due to the critical nature of these issues, all agency staff, volunteers, and others who fit the definition of “potential for regular and substantial contact” with children and/or adolescents should be trained in their responsibilities regarding appropriate and inappropriate interactions, as well as their responsibilities for reporting allegations of possible abuse or mistreatment. The agencies should also provide regular updates to all to ensure that procedures are correctly followed in case of an incident.

Agencies should document in each person’s personnel file that a State Central Register check was completed (with the outcome of that check). Agencies should also maintain records of staff/volunteers/others completion of initial training and updates.

OASAS also strongly recommends that agencies have all covered individuals sign an attestation that they are aware of prohibitions on abusing/mistreating children or adolescents served by the agency, as well as their responsibilities to report allegations of potential abuse. This documentation will provide evidence that the agency is meeting the requirements of the various laws, should they be investigated.

### **CONTACT**

Questions regarding this bulletin should be directed to the OASAS Counsel’s Office, (518-485-2312) Treatment Bureau (518-457-7077) or Local Field Office. Please be reminded that OASAS cannot provide legal advice to agencies. Please contact your agency counsel for questions requiring legal advice.

Copies of all active Local Services Bulletins are available on the OASAS Web Site at:

<http://www.oasas.state.ny.us/mis/bulletins/index.cfm>

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