

 <p>New York State <b>omh</b> Office of Mental Health</p> <p>State of New York OFFICE OF MENTAL HEALTH</p> <hr/> <p><b>OMH</b> OFFICIAL POLICY MANUAL</p>	DATE ISSUED 6/29/09	T.L. 09-04	PAGE 1 OF 26	SECTION # QA-515
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## A. Policy Statement

### 1) Purpose

The purpose of this Policy Directive is to further assure the health, safety and welfare of patients by delineating the responsibilities of staff of State-operated psychiatric centers to report allegations of child abuse, maltreatment, and neglect to the New York State Office of Children and Family Services (OCFS) Statewide Central Register of Child Abuse and Mistreatment (SCR).

As mandated reporters, certain OMH staff working in any State operated direct care setting have a legal responsibility to report suspected child abuse and maltreatment by parents or persons legally responsible for the care of children to the SCR, if such persons appear before them in their professional capacity. Furthermore, under the Social Services Law, certain acts or omissions by staff of OMH facilities that provide inpatient/residential care to children (which are characterized as “residential facilities” in the Social Services Law) can be investigated as possible acts of abuse or neglect of a child in residential care. This Policy Directive addresses both circumstances.

This policy directive reflects changes made to the Social Services Law in 2007 and 2008. Chapter 193 of the Laws of 2007 affects the procedures for mandated reporters on the staff of any medical or other public or private institution, school, facility or agency in New York State. This law went into effect on October 1, 2007.

Chapter 323 of the Laws of 2008 made changes with respect to the type of acts that are considered “child abuse or neglect” in inpatient/residential facilities, to ensure that the definitions focus on the actions of the employee rather than the degree of harm to the child. These changes became effective in January of 2009. As a result of these changes, a determination that there is credible evidence that certain actions occurred, which previously could not be “indicated” because there was no resultant serious physical injury, will now result in an indication of child abuse, just based on the nature of the action itself.

### 2) Applicability

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This Policy Directive applies to all programs under the auspices of State-operated psychiatric facilities.

**B. Relevant Statutes and Standards**

Mental Hygiene Law, Sections 7.21(b), 29.29, 45.07  
 Social Services Law, Title 6 of Article 6, Sections 411, 412, 412-a, 413, 422, 423  
 Family Court Act Section 1012  
 Penal Law, Sections 130, 230, 255, 263  
 OMH Policy Manual, QA-510, Clinical Risk Management and Incident Management Plans  
 OMH Policy Manual, QA-530, Reporting Requirements for Events Which May Be Crimes  
 OMH Policy Manual, QA-535, Sentinel Events  
 OMH Policy Manual, PC-527, Employee/Patient Relationships

**C. Definitions:**

The following definitions are specific to this Policy Directive and apply only for the purposes of reporting child abuse and neglect to the New York State Office of Children and Family Services (OCFS) Statewide Central Register of Child Abuse and Mistreatment (SCR). It must be noted that incidents involving patients who are children must separately be reported and investigated in accordance with the definitions and provisions of OMH Official Policy Directive QA-510, notwithstanding the fact that a report may (or may not) have been made to the SCR.

In this respect, the definitions of “abuse” and “neglect” in this Policy Directive differ from the definitions in Policy Directive QA-510. This is because the definitions of child abuse and neglect, in both the familial and residential care contexts, are established in the New York State Social Services Law to set forth the parameters for investigations by OCFS and/or the Commission on Quality Care and Advocacy for Persons with Disabilities (CQCAPD) OMH has separate authority under the Mental Hygiene Law to establish clinical risk management (incident) management programs, and it is for this purpose that Policy Directive QA-510 was developed and applies.

Thus, staff should ensure that any matter reported to and investigated by OCFS or CQCAPD under this Policy Directive, in which a staff person is an actor, is also separately reported within OMH as an incident in accordance with the terms and definitions set forth in Policy Directive QA-510. In all adverse events involving children, both this Policy Directive and Policy Directive QA-510 should be consulted to ensure the matter is appropriately reported and

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investigated.

For purposes of this Policy Directive:

- 1) Child: means an individual under the age of 18 years<sup>1</sup>.
- 2) Child in residential care: means a child who is receiving care provided in a residential facility licensed or operated by OMH or the Office of Mental Retardation and Developmental Disabilities, but does not include family care homes or family based treatment programs.
- 3) Child Abuse by Parent or Person Legally Responsible for Care: means any of the following acts or occurrences involving a child and a parent or other person legally responsible for the child's care (e.g., a guardian):
  - a) a physical injury inflicted or allowed to be inflicted by a parent or other person legally responsible for a child's care, by other than accidental means which causes death or creates a substantial risk of death, serious protracted disfigurement, protracted impairment of physical or emotional health, or protracted loss or impairment of the function of any organ;
  - b) a substantial risk of physical injury created or allowed to be created by a parent or other person legally responsible for a child's care, by other than accidental means which would be likely to cause death or serious protracted disfigurement, protracted impairment of physical or emotional health or protracted loss or impairment of the function of any organ; or
  - c) a sexual offense, act or conduct described in Penal Law, Sections 230.00, 230.25, 230.30, 230.32, 255.25, or 263 which is committed, allowed to be committed or is encouraged by a parent or other person legally responsible for a child's care.
- 4) Child Abuse in Residential Care: also referred to as "institutional child abuse," means an occurrence in which a child in residential care:
  - a) is subjected to any of the following acts by a staff person, regardless of whether such act results in injury, when such act is not accidental and does not constitute emergency physical intervention necessary to protect the safety of any person:

<sup>1</sup> Social Services Law Section 412-a also includes, in the definition of "child," an individual with a handicapping condition (as defined in Section 4401 of the Education Law) who is 18 years of age or older, and who is in residential care, in a school or facility described in section 432.12(b) of Title 8 NYCRR (including, but not limited to, care provided in a residential facility licensed or operated by OMH or OMRDD).

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- 1) being thrown, shoved, kicked, burned, struck, choked, smothered, pinched, punched, shaken, cut, or bitten;
  - 2) the display of a weapon, or other object that could reasonably be perceived by the child as a means for the infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury;
  - 3) the use of corporal punishment;
  - 4) the withholding of nutrition or hydration as punishment; or
  - 5) the unlawful administration of any controlled substance as defined in Article 33 of the Public Health Law, or any alcoholic beverage, as defined in Section 3 of the Alcoholic Beverage Control Law, to the child; or
- b) is inflicted, by other than accidental means, with a reasonably foreseeable injury that causes death or a creates a substantial risk of death, serious or protracted disfigurement, serious or protracted impairment of his or her physical, mental or emotional condition, or serious or protracted loss or impairment of the function of any organ; or
  - c) is subjected to a reasonably foreseeable and substantial risk of injury, by other than accidental means, which would be likely to cause death or serious protracted disfigurement, protracted impairment of physical or emotional health or protracted loss or impairment of the function of any organ; or
  - d) is the victim of any sexual offense, act or conduct described in Penal Law, Sections 130, 255.25, 255.26, or 255.27 or is allowed, permitted, or encouraged to engage in any act described in Article 230 of the Penal Law; or is allowed or used to engage in acts or conduct described in Article 263 of the Penal Law, provided that the corroboration and age requirements found in Articles 130, 230, and 263 and any age-based element of any of these crimes shall not apply.
- 5) **Credible Evidence:** means evidence that is worthy and capable of being believed, based on established facts that would lead a person exercising ordinary care and prudence to conscientiously entertain the belief that a child in residential care may have been the victim of child abuse or neglect.
  - 6) **CQCAPD:** means the NYS Commission on Quality of Care and Advocacy for Persons with Disabilities.

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7) Indicated (or Founded) Report : means a report made to the SCR, after which an investigation by CQCAPD or OCFS results in a determination by OCFS that there is some credible evidence of the alleged child abuse, abuse of a child in residential care, maltreatment, or neglect of a child in residential care.

8) Maltreatment by Parent or Person Legally Responsible for Care means any of the following acts or occurrences by a parent, or person legally responsible for the child’s care (e.g., a guardian):

- a) failure to exercise a minimum degree of care, causing the impairment or imminent danger of impairment of the child’s physical, mental or emotional condition;
- b) failure to supply the child with adequate food, clothing, shelter or education in accordance with the provisions of part 1 of article 65 of the Education Law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or
- c) in providing the child with proper supervision or guardianship, the unreasonable infliction or allowance of the infliction of harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; or
- d) abandonment of the child; or
- e) physical injury inflicted upon the child by other than accidental means.
- f) Mandated Reporter: means a certain person or professional, identified in Social Services Law Section 413, who is required to report instances of suspected child abuse or maltreatment when presented with reasonable cause to suspect child abuse or maltreatment in his/her professional role. OMH considers all licensed mental health professionals and direct care staff to be “mandated reporters<sup>2</sup>.”

<sup>2</sup> Mandated reporters are listed in Social Services Law Section 413, and include:

- Physician, Surgeon;
- Registered Physician Assistant;
- Medical Examiner, Coroner;
- Dentist, Dental Hygienist;
- Osteopath;
- Optometrist;

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10) Mental or emotional injury or impairment and impairment of mental or emotional condition: means a substantial diminution of a child's psychological or intellectual functioning as confirmed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker, or licensed mental health counselor.

11) Neglect of a child in residential care: also referred to as "institutional child neglect," means any act or failure to act by a staff member, as a result of which a child in residential care:

a) experiences an impairment of his or her physical, mental or emotional condition or is subjected to a substantial risk of such impairment, because he or she has not received:

1) adequate food, clothing, shelter, medical, dental, optometric or surgical care, consistent with the rules and regulations of OMH, provided that the facility has reasonable access to the provision of such services and that any necessary consents precedent to the provision of such services have been sought and obtained from the appropriate individuals;

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- Chiropractor;
  - Podiatrist;
  - Resident, Intern;
  - Psychologist;
  - Registered Nurse;
  - Social Worker;
  - Emergency Medical Technician;
  - Licensed Creative Arts Therapist;
  - Licensed Marriage and Family Therapist;
  - Licensed Mental Health Counselor;
  - Licensed Psychoanalyst;
  - Hospital personnel engaged in the admission, examination, care or treatment of persons;
  - Christian Science practitioner;
  - School official (e.g. ,teacher, guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate);
  - Social Services worker;
  - Day Care Center worker;
  - School-Age Child Care worker;
  - Provider of family or group family day care;
  - Employee or volunteer in a residential care facility defined in Social Services Law Section 412-a.
  - any other child care or foster care worker;
  - Mental Health Professional;
  - Substance Abuse or Alcoholism Counselor, all persons credentialed by the Office of Alcoholism and Substance Abuse Services; or
  - Peace Officer; Police Officer; District Attorney or Assistant District Attorney; investigator employed in the office of a District attorney; or other law enforcement official.

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2) access to educational instruction in accordance with the provisions of Part 1 of Article 65 of the Education Law; or

3) proper supervision or guardianship, consistent with the rules or regulations of OMH; or

b) is inflicted with a physical, mental, or emotional injury, excluding minor injury, by other than accidental means, or is subjected to the substantial risk of a physical, mental, or emotional injury, excluding minor injury, by other than accidental means, where such injury or risk of injury was reasonably foreseeable; or

c) is inflicted with a physical, mental, or emotional injury, excluding minor injury, by other than accidental means, or is subjected to the substantial risk of a physical, mental, or emotional injury, excluding minor injury, by other than accidental means, as a result of a lack of compliance with applicable standards of OMH for the care and treatment of such child or an agreed upon plan of prevention and remediation, arising from abuse or neglect of a child in residential care, including, but not limited to, the provision of supervision, food, clothing, shelter, education, medical, dental, optometric or surgical care;

d) is subjected to the intentional administration of any prescription or non-prescription drug other than in substantial compliance with a prescription or order issued for the child by a licensed, qualified health care practitioner.

12) OCFS: means the NYS Office of Children and Family Services

13) OMH: means the NYS Office of Mental Health.

14) Person Legally Responsible for a Child's Care: means the child's custodian, guardian, or any other person responsible for the child's care at the relevant time. The term "custodian" may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or maltreatment of the child, but, for purposes of this Policy Directive, does not include a staff person or director of an inpatient or residential facility in which a child is receiving care.

15) Physical injury or impairment and impairment of physical condition: means any confirmed harm, hurt or damage resulting in a significant worsening or diminution of the child's physical condition.

16) Reasonable Cause: means a conclusion based upon report, observation, professional training and/or experience.

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17) Residential Care: means a hospital, inpatient, or residential facility or program.

18) SCR: means the Statewide Central Register of Child Abuse and Maltreatment established in accordance with Section 422 of the NYS Social Services Law.

19) Staff Person or Staff: means any administrator, employee, consultant, volunteer or student affiliated with a program under the auspices of a State-operated psychiatric facility, or any person who is an employee or volunteer of an entity which provides goods and services and has regular and substantial contact with children who are patients of a State-operated psychiatric facility or program operated under the auspices of such facility.

20) Unfounded Report : means any report made after an investigation by CQCAPD or OCFS after which a determination by OCFS is made that there is no credible evidence of the alleged abuse, neglect or maltreatment.

#### D. Body of the Directive

This policy directive consists of four components:

- 1) Facility Responsibilities Regarding Institutional Child Abuse or Neglect
- 2) Facility Responsibilities regarding Child Abuse or Maltreatment by Parents or Persons Legally Responsible for Care
- 3) Child Abuse/Neglect Investigations in Family Care/Family Based Treatment/Day Treatment Settings
- 4) Training Requirements

##### 1) Facility Responsibilities Regarding Institutional Child Abuse or Neglect:

a) Reporting to the Statewide Central Register of Child Abuse and Maltreatment ( SCR):

- i) Who reports: Pursuant to Social Services Law Section 413, mandated reporters at OMH-operated facilities must immediately make a report by telephone to the New York State Office of Children and Family Services (OCFS) Statewide Central Register of Child Abuse and Maltreatment (SCR), when they have direct knowledge of any incident , in which there is reason to suspect child abuse or neglect by staff.

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- A. Mandated reporters may be liable under civil and criminal laws for failure to report.
- B. While Social Services Law is the binding authority for such reporting, careful consideration should be given to reporting to the SCR any allegation of abuse or neglect, as defined in OMH Policy Directive QA-510, when the patient involved is a child<sup>3</sup>.
- C. The SCR telephone number, as of the issuance of this policy directive, is (800) 635-1522 (mandated reporter) or (800) 342-3720 (main number).
- D. It is important to remember that the definitions for abuse or neglect in family settings (i.e., by a parent or guardian) are not the same as the definitions for abuse in residential care. Therefore, acts that may not be considered abuse if committed by a family member may be considered abuse if committed by staff of a residential care setting.
- ii) What Information is reported: The telephone report shall include the following information:
- A. the name and age of the child or children involved;
  - B. the name, title and other identifying information of the staff person(s) alleged to have engaged in child abuse or neglect;
  - C. the names of patient witnesses;
  - D. the names of both the staff person filing the report and the staff person(s) who reported or witnessed the incident (if different);
  - E. the name, title and contact information for every staff person of the facility that is believed to have direct knowledge of the allegation contained in the report;

<sup>3</sup> It is important to remember that all OMH operated providers must follow Official OMH Policy QA-510. This policy directive defines adverse events of abuse or neglect much more broadly than the definitions of “child abuse or neglect” in the Social Services Law. All cases of abuse or neglect, as they are more broadly defined in OMH policy, must be reported in accordance with these OMH standards, even if separate reports are also made to the SCR under the Social Services Law

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- F. a narrative description of the incident being reported;
  - G. medical information, or lack thereof, regarding any injuries; and
  - H. other information as requested by the SCR staff person receiving the report.
- iii) Facility Director Notification: The mandated staff member must immediately notify the facility director that a report has been made.
  - iv) Facility Director Responsibilities:
    - A. The facility director shall assure that staff who are mandated reporters have fulfilled their obligations to immediately make a telephone report to the SCR of all incidents in which there is reason to suspect child abuse or neglect by staff in accordance with this section. If a staff member who is a mandated reporter has already made the report to the SCR, this report shall suffice as the facility's report to the SCR. In the event that multiple mandated reporters witness the same event, review the guidance prepared by OCFS that is attached to this policy directive and, if additional assistance is needed, contact Counsel's Office for further guidance.
    - B. The facility director is responsible for all subsequent internal administration necessitated by the SCR report.
  - v) No Retaliation: No facility shall take retaliatory personnel action against an employee who made a report to the SCR.
  - vi) No Conditions on Reporting: No facility shall impose any conditions, including prior approval or prior notification, upon a member of its staff who is mandated to report suspected child abuse or maltreatment to the SCR.
  - vii) Acceptance of the Report by SCR:
    - A. The SCR will determine, at the time the incident is reported, whether or not to accept the allegations as a report of suspected child abuse or neglect, using the standards and definitions of abuse or neglect of a child in residential care set forth in Social Services Law Section 412-a . Regardless of the determination of the SCR, the facility director shall assure that all

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notification, reporting and investigation requirements related to alleged abuse or neglect are complied with as outlined in the Clinical Risk Management and Incident Management Plans Policy Directive, QA-510.

B. If it is determined by the SCR that the allegation does meet the Social Services Law definition of abuse or neglect of a child in residential care, the SCR will produce a computer-generated report of the allegation and transmit the report to the appropriate investigative authority. The facility director shall assure compliance with the additional procedures prescribed in this directive.

b) Investigation.

- i) Who investigates: Pursuant to the Social Services Law, reports of suspected abuse or neglect of a child in residential care by any staff person of a facility licensed or operated by OMH will be investigated by the Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD), unless the facility is co-located with a facility licensed by OCFS, in which case the OCFS has investigative responsibility. The following process assumes investigation by CQCAPD:

A) The initiation of such an investigation shall not alter the facility's responsibility to investigate the incident in accordance with Policy Directive QA-510.

B) As mandated by statute, the staff person named in the report will be notified directly in writing by CQCAPD that s/he is under investigation. Such notification will indicate:

1. the nature of the incident being investigated;
2. that the report is confidential;
3. that as the subject of the report, the staff person has the right to request a copy of all information related to the investigation contained in the SCR; and
4. that if OCFS determines, that there was not some credible evidence of abuse or neglect, the report will be unfounded and legally sealed in accordance with the provisions of the Social

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Services Law. If OCFS determines that there is some credible evidence and indicates the report is founded, but the staff person disagrees with the determination, the staff person may, within the timeframes set forth in the “Notice of Indication” issued by investigating authority, appeal the decision and request the Commissioner of OCFS to amend the report.

C) CQCAPD will also notify the facility director of the existence of the report and of the outcome of the investigation.

- c) Report Determination. In cases where CQCAPD investigates the matter, it shall make a recommendation to OCFS with respect to whether or not the report is to be indicated or unfounded; OCFS will make the final determination. In cases where OCFS itself investigates the matter, it will issue its own determination.
- i) Within 60 days of receipt of a report of child abuse or neglect by the SCR, the following determinations will be made by CQCAPD and included in its recommendation to OCFS :
- A. Is the report indicated or unfounded?
  - B. Is there a basis for a familial report to the SCR? If so, CQCAPD must make a separate report to the SCR, unless such a report has already been made.
  - C. Does it appear likely that a crime may have been committed against the child? If so, CQCAPD must transmit a report of the allegations and findings to the appropriate law enforcement authority or confirm that such a report has already been transmitted.
  - D. Does it appear that there was a statutory or regulatory violation relative to the care and treatment of individuals receiving services? If so, CQCAPD must provide that information to the facility director .
- ii) Any staff person alleged to have engaged in child abuse or neglect will receive written notification from OCFS regarding the final determination of the investigation. (This determination is separate from any determination and personnel actions taken by the facility director related to the reporting and investigation of the incident as required by Policy Directive QA-510).
- iii) Unfounded reports: If an investigation indicates that there is no credible

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evidence to determine that abuse or neglect occurred (i.e., "is unfounded"), the staff person who is the subject of the investigation will receive written notification from OCFS of the final determination of the report. All records related to the reporting and investigating of alleged child abuse or neglect under the Social Services Law will be legally sealed.

A. The records which are sealed do not include the NIMRS Incident Report or other documents related to the OMH incident reporting and investigation process.

B. A sealed record will be maintained by the SCR and expunged ten years after the date upon which the report was called in. Sealed records may only be unsealed and made available as follows:

1. to specified agencies and persons for purpose of investigating a subsequent report of suspected abuse or neglect involving persons named in the unfounded allegation;

2. to the OCFS for specific purposes identified in Title 6 of Article 6 of the Social Services Law;

3. to the subject of the unfounded report, upon request;

4. to OCFS for the purpose of supervising a social services district;

5. to OCFS and local or regional fatality review team members for the purpose of preparing a fatality report pursuant to the Social Services Law; and

6. to a district attorney, an assistant district attorney, an investigator employed in the office of a district attorney, or to a sworn officer of the division of state police, of a city, county, town or village police department or of a county sheriff's office when such official verifies that the report is necessary to conduct an active investigation or prosecution of a violation of subdivision three of Section 240.55 of the Penal Law.

C. In special limited circumstances specified in Title 6 of Article 6 of the Social Services Law, the OCFS may, in its discretion, grant a request to expunge an unfounded report.

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- iv) Indicated reports: If an investigation indicates that there is some credible evidence that abuse or neglect did occur (i.e., the report is indicated or founded), the staff person who is the subject of the investigation will receive notification from the OCFS of the final determination of the report. The staff person has the right, within 90 days after receipt of the final report, to request the Commissioner of the OCFS to appeal the determination, if the staff person disagrees with the determination. The review standard on appeal will be whether or not there is a preponderance of the evidence to support the allegation that abuse or neglect occurred. Procedures for making a determination regarding the staff person's request are specified in Title 6 of Article 6 of the Social Services Law.
- A. The SCR record of all indicated reports of child abuse or neglect will be expunged ten years after the 18th birthday of the youngest child named in the report, as required by the Social Services Law;
- B) CQCAPD (or, in the case of co-located OCFS facilities, OCFS) will notify the facility director of the conclusion of the investigation. If a report is indicated, within 10 days of receipt of such report, if it has not already done so, the facility must: develop and begin implementation of a plan of action for, as applicable:
1. initiating appropriate disciplinary action against the staff person named in the report;
  2. removing any volunteer;
  3. assuring the continued health and safety of children who may be exposed to abuse or neglect; and
  4. correcting failures to comply with applicable standards for facility operation; and preventing future acts of abuse or neglect.
- v) In addition to the above actions, CQCAPD or OCFS, as a result of its investigation, may recommend certain preventive or remedial actions. These recommendations must be considered by the facility. A written response to the recommendations and report on implementation of any recommendations which are accepted by the facility must be made to the investigative agency (i.e., CQCAPD or OCFS, as applicable), within 90 days of receipt of the report.

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A copy of this response must be sent by the facility director to the OMH Bureau of Quality Improvement.

2) Facility Responsibilities Regarding Child Abuse or Maltreatment by Parents or Persons Legally Responsible for Care

- a) When mandated reporters must report: Pursuant to Section 413 of the Social Services Law, mandated reporters at OMH-operated facilities must immediately report all cases of suspected child abuse or maltreatment by parents or persons legally responsible for the child's care<sup>4</sup> (i.e., not involving staff) to the SCR in the following circumstances:
  - i) when they have reasonable cause to believe that a child coming before them in their professional capacity as an OMH staff member is an abused or maltreated child; or
  - ii) when they have reasonable cause to suspect that a child is an abused or maltreated child because, in the course of coming before them in their professional capacity, a parent, guardian, custodian or other person legally responsible for such child states, from personal knowledge, facts, conditions, or circumstances which, if correct, would render the child an abused or maltreated child.
- b) Notification of facility director. The mandated staff member shall then notify the facility director that a report has been made. The facility director or the administrator on duty is responsible for all subsequent internal administration necessitated by the SCR report, including the timely notification of local law enforcement authorities when it appears a crime may have been committed against a person receiving services.
- c) Who investigates: Except as outlined in Policy Directive QA-510, the facility shall not have responsibility for investigating allegations of abuse or maltreatment by family members or other persons legally responsible for the child's care. OCFS will investigate these matters in accordance with Section 412 of the Social Services Law.

<sup>4</sup> Again, keep in mind that the definitions of abuse or neglect in family settings (i.e., by a parent or guardian) are not the same as the definitions for abuse in residential care. Therefore, acts that may be considered abuse if committed by staff of a residential setting may not be considered abuse if committed by a family member.

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3) Child abuse/neglect investigations in Family Care/Family Based Treatment/Day Treatment settings:

i) Who Investigates: In cases where a report to the SCR is made (either as required by a mandated reporter or from any other source) alleging child abuse or neglect by a custodian or person age 18 or older who is “legally responsible for” a child receiving care in a Family Care, Family Based Treatment, or Day Treatment setting, OMH investigates the report pursuant to Social Services Law Section Section 424-b. The definitions of abuse and mistreatment by a Parent or Person Legally Responsible for Care, (Social Services Law Section 412) apply.

ii) Report Determination. In cases where OMH investigates the matter, it shall make a recommendation to OCFS with respect to whether or not the report is to be indicated or unfounded.

A. Unfounded reports: If an investigation indicates that there is no credible evidence to determine that abuse or neglect occurred (i.e., "is unfounded"), the person who is the subject of the investigation will receive written notification from OCFS of the final determination of the report. All records related to the reporting and investigating of alleged child abuse or neglect under the Social Services Law will be legally sealed. The records which are sealed do not include the NIMRS Incident Report or other documents related to the OMH incident reporting and investigation process. Sealed records may only be unsealed and made available, in accordance with the same procedures as described in Section 1) c) iii) of this policy directive.

B. Indicated reports: If an investigation indicates that there is some credible evidence that abuse or neglect did occur (i.e., the report is indicated or founded), the person who is the subject of the investigation will receive notification from the OCFS of the final determination of the report. The person has the right, within 90 days after receipt of the final report, to request the Commissioner of the OCFS to appeal the determination, if the person disagrees with the determination. The review standard on appeal will be whether or not there is a preponderance of the evidence to support the allegation that abuse or neglect occurred. Procedures for making a determination regarding the person's request are specified in Title 6 of Article 6 of the Social Services Law.

1. The SCR record of all indicated reports of child abuse or neglect will be

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expunged ten years after the 18th birthday of the youngest child named in the report, as required by the Social Services Law;

2) OMH will notify the program director of the conclusion of the investigation. If a report is indicated, within 10 days of receipt of such report, if it has not already done so, the program must: develop and begin implementation of a plan of action for, as applicable:

- a. initiating appropriate disciplinary action against the person named in the report;
- b. removing any volunteer;
- c. assuring the continued health and safety of children who may be exposed to abuse or neglect; and
- d. correcting failures to comply with applicable standards for program operation; and preventing future acts of abuse or neglect.

C. Other actions: In addition to the above actions, OMH, as a result of its investigation, may recommend certain preventive or remedial actions. These recommendations must be considered by the program. A written response to the recommendations and report on implementation of any recommendations which are accepted by the program must be promptly made to the OMH Bureau of Quality Improvement.

#### 4) Training Requirements.

Each facility shall assure that any staff that may be subject to the requirements of this directive receive orientation and instructions with respect to compliance with this policy. Facilities shall ensure that written information explaining the responsibilities of mandated reporters is made available to staff.

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## Informational Letter

<b>Transmittal:</b>	08-OCFS-INF-01
<b>To:</b>	Commissioners of Social Services, Executive Directors of Voluntary Authorized Agencies, Directors of Day Care Centers and School-age Child Care Programs, and Directors of Residential & Non-Residential Domestic Violence Programs
<b>Issuing Division/Office:</b>	Strategic Planning and Policy Development
<b>Date:</b>	January 18, 2008
<b>Subject:</b>	Mandated Reporters; Chapter 193 of the Laws of 2007 (replaces 07-OCFS-INF-07)
<b>Suggested Distribution:</b>	Directors of Services and Child Protective Services Supervisors
<b>Contact Person(s):</b>	See Page 8
<b>Attachments:</b>	No
<b>Attachment Available Online:</b>	n/a

## Filing References, if applicable

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
07-OCFS-INF-07	07-OCFS-INF-07	18 NYCRR 414.10 (c), 418-1.10 (c), 441.8 (c)	NYS SSL 413	CPS Program Manual, Section VII A. Mandated Reporters	

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## I. Purpose

The purpose of this Informational Letter (INF) is to advise commissioners, directors, and staff members of local departments of social services (LDSS's), voluntary authorized agencies (VA's), day care centers and school-age child care programs, and residential and non-residential domestic violence (DV) programs of the provisions contained in Chapter 193 of the Laws of 2007, which amended section 413 of the New York State Social Services Law (SSL). This act, which affects the procedures for mandated reporters on the staff of any medical or other public or private institution, school, facility or agency in New York State, became law on July 3, 2007, and went into effect on October 1, 2007.

This INF will also provide guidance from the Office of Children and Family Services (OCFS), based on its interpretation of the law, on how mandated reporters and organizations that come under the auspices of the new law may fulfill their responsibilities when there is more than one mandated reporter from a single organization who has reasonable cause to suspect child abuse or maltreatment regarding the same incident or situation.

## II. Background

Prior to the implementation of Chapter 193 of the Laws of 2007, section 413 of the SSL required that “[w]hensoever such person is required to report under this title in his or her capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, he or she shall immediately notify the person in charge of such institution, school, facility or agency, or his or her designated agent, who then also shall become responsible to report or cause reports to be made.” Problems cited regarding this previous requirement included the questionable accuracy of second- or third-hand information being reported to the Statewide Central Register of Child Abuse and Maltreatment (SCR); concerns that persons in charge of institutions, schools, facilities or agencies, or their designated agents, do not make reports to the SCR when mandated reporters in their organization advise them of circumstances which should be reported; and the timeliness of some reports made with this protocol, which could affect the subsequent ability of the child protective services (CPS) worker to follow up with the original source of the report and his or her designee in a timely manner. Chapter 193 addresses these issues, as outlined in Section III below.

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On September 12, 2007, OCFS issued Informational Letter 07-OCFS-INF-07 to inform agencies of the provisions of Chapter 193. However, many inquiries followed about whether *every* mandated reporter in an institution, school, facility, or agency who suspects child abuse or maltreatment must make a separate report directly to the SCR, which could result in multiple reports being made for a single incident and could also require significant time away from routine duties for staff members who are needed on duty. This INF is replacing 07-OCFS-INF-07 in order to add guidance on recommended procedures when there are multiple mandated reporters who suspect abuse or maltreatment regarding the same incident or circumstance that may relieve the necessity for multiple reports.

### III. Program Implications

#### Summary of Provisions Introduced in Chapter 193 of the Laws of 2007

Beginning October 1, 2007, mandated reporters who work for a school, child care center or school-age child care program, foster care facility, residential care facility, hospital, medical institution, mental health facility, residential or non-residential program for victims of domestic violence, or other agency or organization that employs mandated reporters and who, through their work, have direct contact with a child or with the parent or other person who is legally responsible for a child that causes them to have reasonable cause to suspect that a child has been abused or maltreated, must *personally* make a report to the SCR. They must then immediately notify the person in charge of the institution, school, facility or agency where they work or the designated agent of the person in charge that a report has been made. The mandated reporter's report to the SCR must include (to the best of his/her knowledge) the name, title, and contact information for every staff person of the institution, school, facility or agency believed to have direct knowledge regarding the allegations in the report. Once the report is made, the person in charge at the institution, school, facility or agency, or the designated agent of such person, is responsible for all subsequent administration necessitated by the report. This may include providing follow-up information (e.g., relevant information contained in the child's educational record) to CPS, and will also include completing the form LDSS 2221A, which requires listing the names, titles, and contact information of all staff of the institution, school, facility, or agency who are believed to have knowledge of the allegations contained in the report.

These procedures differ from those required prior to the implementation of Chapter 193 in that the law now requires that a mandated reporter who has

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direct knowledge of possible child abuse or maltreatment, and not the person in charge of the institution, school, facility or agency, who does not have direct knowledge of the alleged abuse or maltreatment, must make the initial report to the SCR.

Chapter 193 also specifies that no medical or other public or private institution, school, facility or agency shall take any retaliatory personnel action against an employee who made a report to the SCR. Furthermore, no school, school official, child care provider, foster care provider, residential care facility provider, hospital, medical institution provider or mental health facility provider shall impose any conditions, including prior approval or prior notification, upon a member of their staff mandated to report suspected child abuse or maltreatment.

Chapter 193 also amends section 413 of the SSL to clarify that the term “school official” includes school teachers, guidance counselors, school psychologists, school nurses, school social workers, school administrators and other school personnel required to hold a teaching or administrative license or certificate in the list of individuals classified as mandated reporters and therefore required to report cases of suspected child abuse or maltreatment to the SCR.

Residential and non-residential DV programs may employ staff members who are explicitly listed as mandated reporters under section 413 of the SSL. Additionally, employees working at residential and non-residential programs for victims of domestic violence are required to report cases of suspected child abuse or maltreatment pursuant to OCFS regulations at 18 NYCRR 452.9(e) and 462.8. As such, the provisions of Chapter 193 would be applicable in residential and non-residential DV programs.

#### Recommended Procedures When Multiple Mandated Reporters Suspect Abuse or Maltreatment

The following is guidance from OCFS on what OCFS considers to be the proper interpretation of the requirements of section 413 of the SSL in light of the amendments to the statute made by Chapter 193 of the Laws of 2007. The mandated reporter statute (section 413 of the SSL) requires all defined mandated reporters who have reasonable cause to suspect child abuse or maltreatment to make or cause a report to be made to the SCR. The ability that existed under prior law to discharge the mandated reporter responsibility

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by notifying the person in charge of an institution, school, facility or agency or the designated agent of that person so that the person in charge or designated agent was responsible to make the report, was removed from the statute by Chapter 193 of the Laws of 2007. However, the statute continues to provide that more than one report is not required from any institution, school, facility or agency.

The area of concern is situations in which multiple mandated reporters have direct knowledge of and/or have reasonable cause to suspect child abuse or maltreatment concerning a particular incident, situation or occurrence. For example, multiple mandated reporters may respond to a particular incident or be aware of an incident and as a result multiple mandated reporters have reasonable cause to suspect abuse or maltreatment. OCFS interprets the new law to mean that each of the mandated reporters in that type of situation does not necessarily have to make a separate call to the SCR. An institution, school, facility or agency may establish a policy that complies with the statute so long as one mandated reporter with direct knowledge of the possible abuse or maltreatment and reasonable cause to suspect child abuse or maltreatment has called in a report to the SCR and the report was accepted by the SCR. Once one mandated reporter has done so, any other mandated reporters in the institution, school, facility or agency with direct knowledge of the possible abuse or maltreatment who know that such report was made are not required to make a separate additional report. (OCFS recommends that any such policy be in writing so the policy will be clear to all staff.) The mandated reporter who made the report may advise the other mandated reporters that the call was made to the SCR and whether a report was accepted or not accepted. In addition, mandated reporters may ask other mandated reporters with direct knowledge of the possible abuse or maltreatment if they made a call to the SCR and whether a report was accepted or not accepted. Mandated reporters must not compare or discuss the specifics of the incident with the intent or purpose of falsifying, conspiring or colluding in preparing any report of the alleged abuse or maltreatment.

The mandated reporter who makes the call to the SCR is required to advise the SCR of the name, title, and contact information for every staff person of the institution, school, facility or agency who the mandated reporter believes has direct knowledge of the alleged abuse or maltreatment. The mandated reporter should also note which, if any, of these persons are also mandated reporters. The mandated reporter who is making the call to the SCR should

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not delay making the call to the SCR in order to attempt to determine a complete list of all staff members who also have direct information about the alleged abuse or maltreatment or to determine which other mandated reporters also have reasonable cause to suspect abuse or maltreatment. The mandated reporter should provide information on other staff with direct knowledge and other mandated reporters in the institution, school, facility or agency based on what the mandated reporter knows at the time the mandated reporter determines that he or she has reasonable cause to suspect and makes the call to the SCR.

A mandated reporter who makes a report must immediately notify the person in charge of the institution, school, facility or agency, or the designated agent of the person in charge and provide the information reported to the SCR, including the names of other persons identified as having direct knowledge of the alleged abuse or maltreatment and other mandated reporters identified as having reasonable cause to suspect. All other mandated reporters with direct knowledge of the incident also must notify the person in charge or designated agent of the information they have about the alleged abuse or maltreatment, including the fact that a report was made to the SCR and who made the report. If a mandated reporter who did not make the call to the SCR is told by the mandated reporter who called the SCR that a report was not accepted by the SCR, and the mandated reporter who did not make the call believes that he or she has reasonable cause to suspect child abuse or maltreatment, the mandated reporter who did not call the SCR must call the SCR and attempt to make a report, being sure to advise the SCR of any information that might not have been provided by the mandated reporter who previously made the call. As with the initial call to the SCR, the mandated reporter may advise other mandated reporters that the call was made to the SCR and whether a report was accepted or not accepted, and other mandated reporters in the institution, school, facility or agency may ask other mandated reporters with direct knowledge of the incident if they made a call to the SCR and whether a report was accepted or not accepted based on that call.

Mandated reporters must also comply with their employer's policies and procedures concerning any other required actions or documentation regarding an incident or situation which may be child abuse or maltreatment. The mandated reporter may, for example, also be responsible for completing incident reports, making log entries, or making entries in a child's case record concerning the incident at issue in the report to the SCR.

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The person in charge or designated agent, when advised by a mandated reporter that the report was made to the SCR by another mandated reporter, shall confirm with the mandated reporter who made the call that a report was made and accepted by the SCR. The institution, school, facility or agency should establish a policy as to how this confirmation will be accomplished. Please note that, for reasons of confidentiality, the SCR cannot confirm to a different mandated reporter or other caller whether a report was accepted, so calling the SCR to confirm that a report was accepted is not an option. However, when a report is accepted, the SCR will advise the mandated reporter who made the report of the SCR number assigned to the report. Thus, one way for an institution, school, facility or agency to confirm that a report was accepted is to obtain the SCR report number from the mandated reporter who made the report. If the report was made and accepted, the person in charge or designated agent must gather all necessary information from each of the mandated reporters with direct knowledge of the incident and determine if a subsequent call should be made to the SCR to provide additional or follow-up information. If the person in charge or designated agent believes there is reasonable cause to suspect child abuse and maltreatment and is unable to confirm that the report was made and accepted, the person in charge or designated agent must immediately personally make a report to the SCR.

The person in charge or designated agent, once notified that a report has been made to the SCR, becomes responsible for all subsequent administration concerning the report, including preparation and submission of the form DSS 2221A. The person in charge or designated agent may fulfill this responsibility directly or through delegation to another person, but the responsibility for the subsequent administration lies with the person in charge or designated agent. The person in charge or designated agent may prepare and submit one form DSS 2221A on behalf of all of the mandated reporters. No more than one form DSS 2221A is required from an institution, school, facility or agency concerning a given incident or allegation of child abuse or maltreatment. The form must include the names and contact information for all persons with direct knowledge of the alleged abuse or maltreatment and should identify all mandated reporters on whose behalf the form is submitted.

Nothing in such a policy may preclude any person, including other mandated reporters who have knowledge of and/or who reasonably suspect child abuse

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or maltreatment, from making a separate report to the SCR. However, the policy may establish reasonable protocols for staff making reports so that adequate staff coverage and supervision of children is maintained. This is true of both the initial call to the SCR and any subsequent calls made by other mandated reporters who believe they have reasonable cause to suspect child abuse or maltreatment. These protocols must provide for maintaining necessary staff coverage and applicable staff-to-child ratios. Although calls to the SCR should be made as soon as is reasonably possible once the mandated reporter has reasonable cause to suspect abuse or maltreatment, the statute does not set forth a specific time frame within which calls to the SCR must be made. Accordingly, the policy should make provision for adequate staff coverage and child care consistent with enabling the mandated reporter to make the call to the SCR within a reasonable time frame.

Any policy should also reiterate the statute's requirement that no conditions, prior approvals, or prior notification requirements may be placed on mandated reporters related to calling in reports to the SCR. Lastly, any policy should state that any retaliatory personnel action, as defined by Labor Law Section 740, against any employee who makes a report to the SCR is in violation of the law and is not permitted. Section 740 of the Labor Law defines "retaliatory personnel action" as discharge, suspension, demotion, or any other adverse employment action involving the terms or conditions of employment.

The ability of an institution, school, facility or agency to establish a policy under which every mandated reporter on the staff of the institution, school, facility or agency need not make a separate call to the SCR about the same alleged abuse or maltreatment does not exempt mandated reporters outside the institution, school, facility or agency from making their own reports to the SCR. For example, if a residential facility has multiple mandated reporters on staff who have reasonable cause to suspect abuse or maltreatment, and one or more of those mandated reporters knows that the police and a hospital are also involved and most likely also have reasonable cause to suspect abuse or maltreatment, one mandated reporter at the residential facility may make one report to the SCR on behalf of all of the mandated reporters in the facility, but the police and hospital staff would still have the independent responsibility as mandated reporters to make their own reports to the SCR. The one exception to this would be the situation where a mandated reporter becomes aware of alleged abuse or maltreatment through information they receive by being

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contacted by the local child protective service or social services district as a result of an existing report of alleged child abuse or maltreatment. For example, if the local child protective service contacts the police for purposes of conducting a joint investigation of an existing report, the police would not be required to call in their own report after interviewing the child or alleged subject. If a referral is made to a preventive services agency or other service provider because of the report of alleged abuse or maltreatment, the service provider would not be required to make a separate report after contacting the family. In such situations, the mandated reporter knows that a report has been made and so another report would be unnecessarily duplicative.

LDSS commissioners, executive directors of voluntary agencies, directors of OCFS- licensed day care centers and registered school-age programs, and directors of residential and non-residential DV programs should notify their respective staff of the provisions contained in Chapter 193 of the Laws of 2007, as outlined above.

#### IV Contact Persons

Questions concerning this Informational Letter may be directed to:

- Buffalo Regional Office – Mary Miller - - - - - (716) 847-3145  
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*/s/ Nancy W. Martinez*

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