



**Justice Center for the
Protection of People
with Special Needs**

Andrew M. Cuomo, Governor

Memorandum

To: SOA AIMM Representatives/SOA General Counsel

From: Robin A. Forshaw, General Counsel

Date: May 19, 2017

Subject: New Guidance – Relief from Requirement for Multiple Reporting of Reportable Incidents -- to become **EFFECTIVE on June 1, 2017.**

The law requires mandated reporters to report allegations of reportable incidents to the Justice Center's Vulnerable Persons' Central Register (VPCR) immediately upon discovery. Under the law, discovery occurs when the mandated reporter either directly observes the reportable incident, or when he or she receives notice from another person that provides the mandated reporter with reasonable cause to suspect¹ that an individual was subjected to a reportable incident.² There is no statutory provision that would relieve a mandated reporter from this reporting obligation in circumstances when he or she is aware that someone else has already reported an incident to the VPCR. Moreover, the law provides for sanctions against a mandated reporter who fails to report a reportable incident.³

While there may be evidentiary value in requiring each witness to an incident to report what he or she saw or heard as early as possible, concerns have been raised about the burdens that this multiple reporting requirement places on staff and provider agencies. As a result, the Justice Center authorized state oversight agencies (SOAs) the option of including in their incident reporting regulations a protocol to relieve mandated reporters of this multiple reporting obligation. Two SOAs (OMH and OASAS) have included this protocol in their regulations.⁴

¹ More information on what is meant by "reasonable cause to suspect" is available on the Justice Center's website by clicking on "Custodian" and selecting the option "Learn more about a Custodian's responsibility as a mandated reporter" which will bring up "Resources for Mandated Reporters."

² See Social Service Law (SSL) § 491(1)(a),(b). For definitions of reportable incidents, see SSL § 488(1), and for a definition of a mandated reporter, see SSL § 488(5), (5-a).

³ See SSL §§ 491(3), 488(1)(f).

⁴ See 14 NYCRR § 524.8(e), and NYCRR § 836.6(c), respectively.

This memorandum is intended to provide additional guidance to mandated reporters in programs operated, licensed or certified by OMH and OASAS and, **EFFECTIVE beginning on June 1, 2017**, also to adopt the same protocol for mandated reporters who may discover a reportable incident in a program of OPWDD, OCFS, SED and DOH. For all of these programs, mandated reporters may be relieved of the requirement to report in the following circumstance:

Where multiple reports to the VPCR would be made regarding the same incident, a mandated reporter is not required to report the allegation to the VPCR when both of the following elements are met:

- a. when the mandated reporter has actual knowledge that the incident was already reported to the VPCR; and
- b. the mandated reporter has actual knowledge that he or she was named in the report as a person with knowledge of the incident.

To have “actual knowledge,” the mandated reporter must have a direct and clear awareness that the report was made, such as witnessing, reading or overhearing the report being made to the VPCR. Having actual knowledge may also include those circumstances in which someone who has reported an incident to the VPCR informs the would-be reporter that the report was made to the VPCR and that the would-be reporter was named in the report. If the mandated reporter maintains any doubts as to whether the report was made, or whether he or she was named in the report that was made, the mandated reporter should report the incident him or herself.

To protect the mandated reporter from a possible allegation that he or she impermissibly failed to report an incident to the VPCR, the Justice Center recommends that a mandated reporter document the basis for his or her decision not to report. The location and form of this documentation is left to the discretion of the provider agency and mandated reporter. Although not required, obtaining the “confirmation number” from the person who reported the incident may be a good way to document the basis for a mandated reporter’s decision not to make a duplicate report to the VPCR. And, of course, to avoid such questions, the mandated reporter may always report a reportable incident, even if he or she knows that the above criteria are met. Moreover, a provider agency may not, in any manner, restrict or attempt to restrict a mandated reporter from making a report to the VPCR in any circumstance.

As noted above, with the approval of the Justice Center, OMH and OASAS have already adopted this exception to the multiple reporter requirement in their regulations. The Justice Center supports other state oversight agencies adopting similar regulations, or these SOAs may simply rely on the adoption of this exception based on this Guidance Memorandum.

If you are a mandated reporter, and you find yourself in a situation falling under the multiple reporter exception discussed in this memorandum, you are not required to report the allegation to the VPCR.⁵ If this exception applies and you in good faith have made a reasonable decision not to make a report, you will not be charged with obstruction for failing to make a report. However, if you feel unsure as to your ability to explain the basis for your decision not to report, how the exception applies to you, or are otherwise uncertain of your responsibility in a unique circumstance – such as a concern that the incident was not accurately reported – it is always an acceptable practice to make a duplicate report to the VPCR.

In order to ensure that adoption of this protocol does not impact the health, safety and welfare of service recipients, the Justice Center will randomly audit whether easing the multiple reporter requirement has caused incidents to be classified incorrectly because the facts and circumstances reported to the VPCR are not accurate or the seriousness of the incident minimized.

⁵ Agency staff should continue to follow their own agency's regulations or protocols for internal reporting or reporting to the SCR.