NEW YORK STATE OF OPPORTUNITY. Office of Mental Health

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Guidance for Directing Calls for Assistance and Frequent Callers

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In the New York State public mental health treatment system, there are numerous oversight and advocacy groups available to receive various kinds of complaints from patients and their families. Examples include the NYS Justice Center for the Protection of People with Special Needs (Justice Center), Disability Rights NY, Mental Hygiene Legal Service, and the federal Office for Civil Rights. It is important that people in need of assistance are made aware of how to obtain it in the most effective manner.

Unfortunately, the abundance of posters and informational brochures can unintentionally make it difficult to discern which organization is the appropriate contact for a specific need. When a call needs to be redirected, delays for the individual in obtaining the assistance they seek can result. In addition, resolving misdirected calls creates administrative disruption within our agencies, as our resources are being directed away from our primary mission. A different but related concern involves persons in care that make frequent, often false, allegations to the Office of Mental Health (OMH) or the Justice Center. It is the position of OMH that all allegations of abuse and neglect must be taken seriously At the same time, however, experiential data shows that the Justice Center routinely receives reports directly from patients receiving care from facilities under the jurisdiction of OMH that are not credible, either because they are obviously preposterous complaints by symptomatic patients (e.g., abduction by aliens) or because they are part of a pattern of reports that, in fact, are not genuine but rather are reflective of various motivations or unmet needs.

This guidance is applicable to facilities operated or licensed by OMH and is intended to:

- assist providers in managing these circumstances to ensure that individuals' needs are being addressed, be they clinical or situational;
- help providers identify and effectively address the clinical needs of individuals who have demonstrated difficulty identifying relevant and appropriate avenues to obtain needed assistance;
- encourage providers to be mindful that in all of these cases, the behavior may signal a need for clinical review and attention;
- assist providers in managing the situations wherein individuals make frequent, misdirected ("non-NYJC") calls to the Justice Center, while respecting their right to make reports to the Justice Center;
- help providers identify and effectively address the clinical needs of individuals who have a demonstrated pattern of making false allegations on a frequent basis.

It is important to note that this guidance in no way is meant to discourage or prevent individuals from reporting incidents. This guidance must not be interpreted as a request or suggestion that an individual's communication should be blocked or restricted in a way that violates their rights under NYS Mental Hygiene Law Sections 33.02 and 33.05, and corresponding implementing regulations.

A. Effective Call Management:

Upon notification or observation that an individual in care is or has been making frequent calls seeking assistance from programs or agencies that cannot assist him or her (including calls to the Justice Center that are deemed "non-NYJC" calls), the treatment program should take the following steps:

1) ensure that the treating clinicians/teams are aware of the frequency and general nature of the calls;
2) ensure that the individual is aware that although they are entitled to make the calls, if they are not going to the appropriate place, their efforts will not result in them getting what they need;
3) provide the necessary education/information to the individual, including a review of who to call/contact for what issues, relevant and appropriate contact information, etc.; and
4) ensure that if this is not an educational issue, and rather a clinical issue, that the team is aware and will review or adjust the individual's treatment plan accordingly.

B. Individuals that make frequent calls to the Justice Center with false reports

For those individuals who have called the Justice Center repeatedly with reports or complaints which subsequently have been with reports of abuse or neglect that have subsequently been unsubstantiated, and/or other reports or complaints that have been unfounded, the following guidance is offered:

- It is important to remember that an unsubstantiated allegation has been unsubstantiated does not mean that the report was false; it just means that there was not a preponderance of the evidence that whatever occurred, if anything, constituted abuse or neglect. With this understanding, providers are nonetheless

permitted to take into account a demonstrated pattern of contacting the Justice Center to report unsubstantiated allegations when determining appropriate protective action upon learning the individual has made a new report of abuse or neglect directly to the Justice Center. ***However, every new report must be responsibly evaluated, regardless of any past pattern of reporting.***

- Providers must maintain a list of the allegations made by individuals that were determined to be unsubstantiated or unfounded, and must review them on a monthly basis to identify any trends or patterns within individuals that warrant a more detailed review of the clinical circumstances of the individual making the reports.

- In making the determination that an individual is a "frequent false reporter," there must be a minimum of 5 reports made within a 2 month period that were subsequently found to be unsubstantiated or unfounded by the Justice Center or the designated investigative entity if the incident is deemed a significant incident.

- When an individual reports an allegation of a reportable incident to a mandated reporter, OMH Incident Management Program regulations at 14 NYCRR Section 524.8 require that incidents be reported within 24 hours of their occurrence, or discovery. However, in cases where individuals have a ***documented*** historical pattern of making reports that are not actually reportable incidents, or individuals are experiencing exacerbation of symptomatology resulting in the making of allegations that appear to be incredible, a detailed review of the allegation and the mental status and circumstances of the individual to determine if there is reason to suspect a reportable incident occurred may be made within the 24 hour period, and a decision can then be made as to whether the alleged incident must be reported to the Justice Center (e.g., after this initial review, is there "reasonable cause to suspect" that a reportable incident occurred).
  For example, if a person reports that he/she was "raped in the day room by 6 staff," a review of the allegation may be completed by the program clinical risk manager to determine if there is an actual basis for the report before the report is made to the Justice Center VPCR. ***In every such case, the review must be documented, regardless of whether or not a report is subsequently made.*** If there is a reasonable cause to suspect the allegation occurred, "discovery" will be deemed to occur when a decision is made that there is reasonable cause to

suspect a reportable incident occurred. Consistent with 14 NYCRR Section 524.8, the incident must then be reported within 24 hours after such discovery.

If, however, it is determined that the report by the individual is not credible or the event did not occur, the event need not be reported, but a record must be maintained of the allegation, the review, and the decision to not report (including the factual basis for concluding that there was no "reasonable cause").

- Providers must maintain a list of the allegations made that do not result in a report to the VPCR, and must review them on a monthly basis to identify any trends or patterns within programs that warrant a more detailed review of determinations that the allegations failed to meet the reliability criteria for reporting.

- For all patients identified as "frequent false reporters," providers must ensure that each such patient's treatment team is made aware of the frequency of the calls and/or the unreported allegations, provide the necessary information/education to each patient to include a review of who to call for various matters, and furnish appropriate contact information as warranted. The goal of this review is to ensure that the frequent calls do not result from misunderstanding or misinformation, and, if they are clinically based, that the treatment team is made aware and is attempting to address the matter in the patient's treatment plan.

- For all allegations identified on the list of allegation that do not result in a report to the VPCR, a provider must maintain supporting documentation explaining why a report to the Justice Center was not made, what efforts were undertaken to determine the underlying reasons for the patient's behavior, and identify any adjustments to the treatment plan that were indicated, which shall be made available to OMH on request.

C. Restriction of Communication

Occasionally, it may be determined that the nature and/or extent of the individual's telephone use is clinically contraindicated and should be restricted. Examples of conduct that might, given an individual's clinical presentation, support a determination to restrict calling rights include continuous threats against government officials, repeatedly making unsubstantiated reports that create anxiety or frustration when they aren't acted

upon, or making inappropriate calls (e.g. obscene, threatening or harassing calls) that are counter-therapeutic to a person's recovery. In these instances, such access may be restricted, provided that the restriction is done in accordance with Mental Hygiene Law Section 33.02 and 14 NYCRR Part 527, and include:

- The restriction must be documented within the patient's treatment plan via a written order signed by a physician.
- The order must detail the clinical justification for the restriction, as well as the specific period of time in which the restriction will be in effect.
- The treatment team must discuss the restriction, and the reason behind it, with the patient and his or her family (if the patient does not object), and/or other authorized representative of the patient, and advise such person(s) of the patient's right to appeal this decision to the Facility Director in accordance with 14 NYCRR Section 27.8.