New York State
Office of Mental Health

Sharon E. Carpinello, RN, Ph.D.
Commissioner

44 Holland Avenue
Albany, New York 12229

January 3, 2005

Dear Colleague:

As you may know, Chapter 575 of the Laws of 2004 requires that criminal history information be obtained from the Division of Criminal Justice Services (DCJS) before certain providers of mental health services can hire or engage prospective employees/volunteers who will have Aregular and substantial unrestricted physical contact@ with clients. The Office of Mental Health (OMH) is now actively working to implement the provisions of this statute, which is effective April 1, 2005.

Chapter 575 requires providers of mental health services, including those that are licensed, who contract with, or who are otherwise approved by OMH, to request OMH to obtain criminal history information from DCJS concerning each prospective employee or volunteer who will have regular and substantial unsupervised or unrestricted contact with the providers= clients. Prospective licensed operators of mental health services will be required to have a criminal background check through this process as well.

Each provider subject to these requirements must designate one or more Aauthorized persons@ who will be empowered to request, receive, and review this information. Before a prospective employee or volunteer who will have regular, unsupervised client contact can be permanently hired or retained, he or she must consent to having his/her fingerprints taken and a criminal history check performed. The fingerprints will be by an OMH designated fingerprinting entity and sent to OMH, who will then submit them to DCJS. DCJS will provide criminal history information for each person back to OMH.

OMH will then review the information and will advise the provider whether or not the applicant has a criminal history, and, if so, whether the criminal history is of such a nature that the person cannot be hired or retained, (e.g., the person has a felony conviction for a sex offense or a violent felony). In some cases, a person may have a criminal background that does not rise to the level where OMH will require the employment/volunteer service application to be terminated. Here, although, the criminal history Arap sheet@ cannot legally be shared with the provider, OMH plans to share sufficient information with the provider to enable it to make its own determination as to whether or not to employ or retain such person. There will also be instances in which the criminal history information reveals an arrest or felony charges without a

final disposition. In those cases, OMH must notify the provider that the application will be held in abeyance until the charge is resolved.

It should be noted that before OMH can advise a provider that it intends to require that the employee or volunteer not be hired or retained, it must afford that individual an opportunity to explain, in writing, why his or her application should not be denied. If OMH nonetheless maintains its determination to advise the provider to terminate the application of the employee or volunteer, the provider must notify the person that this criminal history information is the basis for the denial of employment or service.

There are other requirements for mental health providers in the statute. For example, a provider must notify OMH when an individual for whom a criminal history has been sought is no longer subject to such check. Providers must also ensure that prospective employees or volunteers who will be subject to the criminal background check are notified of the provider=s right to request his/her criminal history information, and that he or she has the right to obtain, review, and seek correction of such information in accordance with DCJS regulations.

OMH is actively working on creating the structure to manage this new system. We are also required under the law to promulgate implementing regulations to carry out the provisions of Chapter 575. To this end, we will strive, as decisions are made, to get information out to the affected provider community in a timely fashion. We are in the process of developing a web page on the OMH internet site, upon which we will post letters to the field, regulations, training information, FAQs and other relevant information as it becomes available. We would also encourage affected providers and/or the many mental health trade associations within the state to post this information on their own websites.

In the meantime, a copy of Chapter 575 of the Laws of 2004 is attached for your quick reference. We encourage you to read through this legislation, and to advise us if you have any specific questions or concerns. Over the ensuing weeks, we plan to seek input from the provider community as we develop the technological processes and systems by which this law will be implemented. Additional information in this regard will be forthcoming from OMH Central Office.

We do realize that this is a new process for all of us, and that it will require dedication of existing resources and effort on everyone=s part. We will do our best to construct a process that works quickly and efficiently, so as to ensure its effectiveness.

Sincerely,

Julie Anne Rodak, Director
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