



**Office for People With
Developmental Disabilities**

ANDREW M. CUOMO
Governor

THEODORE KASTNER, M.D., M.S.
Commissioner

ROGER BEARDEN, J.D.
Executive Deputy Commissioner

May 15, 2020

The Honorable Andrew M. Cuomo
Governor of New York State
NYS Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

Attached is the Office for People With Developmental Disabilities' comments on the Office of the State Comptroller's final audit report 2017-S-67 entitled "Compliance With Jonathan's Law."

This response is being submitted to you in accordance with Section 170 of the Executive Law.

Sincerely,

Theodore Kastner, MD, MS
Commissioner

**Office for People With Developmental Disabilities' Response to
the Office of the State Comptroller's Final Audit Report
(No: 2017-S-67): "Compliance with Jonathan's Law."**

I. INTRODUCTION

The New York State Office for People With Developmental Disabilities ("OPWDD") provides services and support to approximately 138,000 individuals with developmental disabilities throughout New York State. This OSC audit focused on adherence to notifications and disclosures required by Mental Hygiene Law Sections 33.23 and 33.25 (commonly referred to as "Jonathan's Law"), as carried out by both state and not-for-profit-operated programs certified by OPWDD.

Jonathan's Law was enacted in 2007 to allow certain qualified persons to receive notification and documentation after an incident involving a person who receives care at a facility operated or certified by OPWDD, the Office of Mental Health or the Office of Addiction Services and Supports. Jonathan's Law was amended in August 2017 to expand the definition of "qualified persons" to include that person's adult siblings.

OSC evaluated the compliance of three OPWDD state-operated and three not-for-profit-operated programs regarding notification and documentation provided to "qualified persons" (i.e., specified relatives or guardians of individuals receiving services) pursuant to Jonathan's Law. Specifically, OSC evaluated the programs' compliance regarding each of the following requirements:

1. Providing telephone notification to qualified persons within 24 hours of the initial report of an incident;
2. Providing a copy of the written incident report promptly to qualified persons upon request;
3. Offering to hold a meeting with the qualified persons to further discuss the incident;
4. Within 10 days of the initial incident report, providing a written report to qualified persons on the actions taken to address the incident; and
5. Providing records pertaining to allegations and investigations of abuse, neglect, or mistreatment upon written request within 21 days of the conclusion of an investigation, provided that certain required redactions be made to the records prior to disclosure.¹

OSC's audit covers the period of April 1, 2015 through April 25, 2019.

In response to the OSC audit report, OPWDD has implemented additional steps to oversee compliance with Jonathan's Law in its newly adopted Agency Review Process. OPWDD believes the actions outlined below have strengthened its oversight and will meet the underlying intent of the Comptroller's recommendations with respect to monitoring compliance with Jonathan's Law.

RESPONSE TO OSC'S RECOMMENDATIONS

Recommendation #1: Provide updated guidance to Facilities on their responsibilities related to Jonathan's Law requirements – including clear and consistent implementation procedures– and require Facilities to follow procedures.

¹ See Mental Hygiene Law §§ 33.23, 33.25.

OPWDD Response: In May 2018, OPWDD posted on its website a clear, updated, summary of Jonathan's Law Requirements. This document provides (i) an updated definition of "qualified person" under the statute, including adult siblings; (ii) provides guidance regarding those records that must be disclosed; and (iii) the criteria for when an incident is considered closed. OPWDD also updated its regulations to reflect this definition change (14 NYCRR 624.6 and 624.8). In response to the audit finding that some programs were using the wrong criteria for the incident closure date, the managers of those programs were given refresher guidance on the required and proper procedures. Presently, all policies and procedures that are posted on OPWDD's website, as well as those in practice, are fully up to date.

Recommendation# 2: Take steps to improve the use and quality of data in IRMA, including:

- a) Implementing procedures for quality assurance and timely input of incident data; and
- b) Incorporating additional fields to capture information on the request for and release of records.

OPWDD Response: Beginning April 1, 2019, OPWDD instituted a quality improvement program as part of its regularly scheduled onsite facility surveys, whereby reviews are conducted for compliance with Jonathan's Law notifications and disclosures. This survey includes a review of all written requests for records. If findings arise from such inspections, the non-compliant program is notified and corrective actions are sought.

OPWDD does not believe that additional data fields in IRMA are necessary to improve its present monitoring of compliance with Jonathan's Law. OPWDD continues to maintain documentation for the telephone notice and responses received, including the identity and position of the party providing the notice, the name of the party receiving the notice, the time of the original call or attempted call, the time of subsequent attempted calls if the initial call was not successful, and the time of follow-up calls if the notice occurred in more than one call. IRMA is a large and complex database system, utilized primarily for incident management and other purposes that extend well beyond compliance with Jonathan's Law. Modifications to this complex database to include information that is already contained within the supporting documentation would pose an unnecessary and expensive undertaking.

Recommendation #3: Implement procedures to perform periodic analysis of IRMA data to identify patterns and/or areas of concern that may be indicative of non-compliance with Jonathan's Law.

OPWDD Response: As noted above, OPWDD has instituted a quality improvement program that will routinely test for and provide assurance of compliance with Jonathan's Law. These procedural alternatives will allow OPWDD to more accurately monitor Jonathan's Law compliance, in lieu of evaluating IRMA data.