



**Office for People With  
Developmental Disabilities**

ANDREW M. CUOMO  
Governor

THEODORE KASTNER, MD, MS  
Commissioner

March 29, 2021

Mr. Daniel Towle  
Audit Manager  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street – 11<sup>th</sup> Floor  
Albany, NY 12236-0001

Dear Mr. Towle:

Attached is the Office for People With Developmental Disabilities' comments on the Office of the State Comptroller's follow-up audit report 2020-F-26 entitled "Compliance with Jonathan's Law."

Sincerely,

Anthony J. Dolan, CPA  
Principal Internal Auditor

**Office for People With Developmental Disabilities’ Response to  
the Office of the State Comptroller’s Follow-up Audit Report  
(No: 2020-F-26): “Compliance with Jonathan’s Law.”**

**I. INTRODUCTION**

The New York State Office for People With Developmental Disabilities (“OPWDD”) appreciates the opportunity to respond to the Office of the State Comptroller’s (“OSC”) Follow-up Audit Report (2020-F-26) entitled “Compliance with Jonathan’s Law.” OPWDD provides services and support to over 130,000 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.

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 licensed 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 adult siblings.

OSC evaluated the compliance of three OPWDD state-operated and three not-for-profit-operated programs regarding providing notification and documentation 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 required elements:

1. Providing telephone notification within 24 hours of the initial report of an incident;
2. Providing a copy of the written incident report promptly 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 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.<sup>1</sup>

In November 2019, OSC issued its original audit report (2017-S-67) “Compliance with Jonathan’s Law” covering the period April 1, 2015 through April 25, 2019. In February 2021, OSC completed a follow-up audit (2020-F-26) to assess the level of implementation of the three recommendations contained in its original audit report.

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<sup>1</sup> See Mental Hygiene Law §§ 33.23, 33.25.

## **II. OPWDD RESPONSE TO OSC’S FOLLOW-UP DETERMINATIONS**

**OSC Original Report 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.

**OSC Follow-Up Observation:** Recommendation implemented.

**OPWDD Response:** OPWDD is pleased OSC determined Recommendation #1 was implemented.

**OSC Original Report Recommendation # 2:** Take steps to improve the use and quality of data in the Incident Reporting Management Application (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.

**OSC Follow-Up Observation:** Recommendation not implemented.

**OPWDD Response:** The OSC recommendation focuses on utilizing IRMA, a large and complex database system designed for multiple purposes well beyond compliance with Jonathan’s Law. OPWDD concluded the IRMA system presently does not contain many data fields necessary to monitor Jonathan’s Law compliance. For example, there are no data fields in IRMA to collect information on written requests for records, nor are there fields to capture the timeframes for acceptable delays (e.g., additional time needed to gather more information to determine if Jonathan’s Law applies, such as when hotline reports are incomplete or vague).

Modifications to IRMA for capturing such data would pose an unnecessary and expensive undertaking. Instead, OPWDD instituted a quality improvement program as part of its agency review whereby comprehensive assessments are conducted for compliance with Jonathan’s Law, including a review of 100 percent of written requests for records. If findings arise from these document inspections, the program found to be non-compliant will be notified and corrective actions sought.

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

**OSC Follow-Up Observation:** Recommendation not implemented.

**OPWDD Response:** As noted above, OPWDD has instituted a quality improvement program to monitor agencies’ compliance with Jonathan’s Law. This monitoring system was implemented as an alternative to OSC’s suggestion that OPWDD modify the IRMA data collection process, for reasons outlined above. The result meets the underlying recommendation of more comprehensive monitoring and quality assurance oversight.

In summary, although the ratings in the OSC follow-up report conclude two out of three recommendations were not implemented, this does not adequately reflect the overall picture of OPWDD's system or the steps taken to address issues identified in the underlying audit report. OPWDD has implemented a practical system that provides a full spectrum of coverage for all Jonathan's Law requirements.