

NYS LEGISLATURE ESTABLISHES STATE JUSTICE CENTER FOR THE PROTECTION OF PEOPLE WITH SPECIAL NEEDS

Labor & Employment Alert
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The Justice Center for the Protection of People With Special Needs opened on June 30, 2013. The center, established by the Protection of People with Special Needs Act, monitors and oversees state operated, licensed, or certified programs and facilities that serve more than one million New Yorkers with developmental disabilities, mental illness, substance abuse disorders, and children in residential facilities. The center has jurisdiction over six agencies: The Department of Health (DOH), the Office of Mental Health (OMH), the Office for People with Developmental Disabilities (OPWDD), the Office of Children and Family Services (OCFS), the Office of Alcoholism and Substance Abuse Services (OASAS), and the State Education Department (SED). According to the Wall Street Journal, the center logged more than 5,000 calls to its hotline within its first three weeks.

The following facilities and/or programs are covered by the act:

- Facilities and programs that are operated, certified, or licensed by the OPWDD
- Facilities and programs that are operated, certified, or licensed by the OMH, except Article 10 Secure Treatment Facilities and programs located in correctional facilities
- Facilities and programs that are operated, certified, or licensed by the OASAS
- Adult homes or enriched housing programs licensed by the DOH that have over 80 beds, and where at least 25 percent of the residents are diagnosed with a serious mental illness and have fewer than 55 percent beds designated as assisted living program beds
- Overnight summer day and traveling summer day camps for children with developmental disabilities under the jurisdiction of the DOH
- New York State School for the Blind, New York State School for the Deaf, state-supported schools that have a residential component, special act school districts, and in-state private residential schools approved by NYSED
- Facilities and programs operated by the OCFS for youth placed in the custody of the commissioner of OCFS
- OCFS licensed or certified residential facilities that care for abandoned, abused, neglected, and dependent children; persons in need of supervision (PINs); or juvenile delinquents

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- Family-type homes for adults
- OCFS certified runaway and homeless youth programs
- OCFS certified youth detention facilities

The center tracks, investigates, and prosecutes allegations of abuse and neglect against vulnerable individuals. The act defines reportable incidents to include physical abuse, psychological abuse, deliberate inappropriate use of restraints, use of aversive conditioning, obstruction of reports of reportable incidents, unlawful use of or administration of a controlled substance, neglect, or any other significant incident. Any reportable incident can be made through the center's statewide Vulnerable Persons Central Register (VPCR) hotline. Once a report is made to the center, it is assessed and serious allegations of abuse or neglect will be assigned to either a center investigator or a local law enforcement agency for an investigation.

The act also denotes individuals who are mandated reporters and who must report abuse, neglect, or significant incidents involving vulnerable persons to the VPCR hotline. Custodians and human services professionals are mandated reporters.

Custodians include employees, volunteers, directors, and operators of covered facilities and programs and external staff who have regular and substantial contact with the people being served. Human services professionals comprise of a range of professionals and include these categories: physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; psychologist; registered nurse; licensed practical nurse; nurse practitioner; social worker; emergency medical technician; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed psychoanalyst; licensed speech/language pathologist or audiologist; licensed physical therapist; licensed occupational therapist; hospital personnel engaged in the admission, examination, care, or treatment of persons; Christian Science practitioner; school official; social services worker; any other child care or foster care worker; mental health professional; person credentialed by the OASAS; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; and other law enforcement official.

Mandated reports must be made when a reporter has reasonable cause to suspect a reportable incident involving a vulnerable person. The report must be made to the VPCR hotline immediately upon discovery.

Other significant developments from the act include:

- The center's adoption of a code of conduct, which must be read and signed by custodians who have regular and direct contact with individuals receiving services.
- The establishment of a database, which includes central register reports, investigation results, and corrective actions taken.
- A consolidated and centralized procedure to conduct background checks for facilities or service providers overseen by the OMH, the OPDD, and the OCFS. The center includes a Criminal Background Check Unit, which reviews criminal history for prospective employees and volunteers and makes the initial determination regarding an individual's suitability for employment.
- A requirement that private facilities and programs licensed or certified by the state to serve individuals with disabilities and special needs follow transparency guidelines based on the Freedom of Information Law for information requests.

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In addition, corresponding emergency regulations have been issued by the agencies under the jurisdiction of the center to address the creation of the center. Employers may be faced with concerns under the new law and regulations such as compliance and audit issues and complex labor and employment questions.

