Justice Center for the Andrew M. Cuomo, Governor Protection of People

with Special Needs Memorandum

To: SOA AIMM Representatives/SOA General Counsel

From: allegations

of reportable incidents to the
Justice Center's Vulnerable Persons' Central Register (VPCR) immediately upon discovery. Under the law, discovery occurs when the mandated reporter either directly observes the reportable incident, or when he or she receives notice from another person that provides the mandated reporter with reasonable cause to suspect1 that an individual was subjected to a reportable incident.2 There is no statutory provision that would relieve a mandated reporter from this reporting obligation in circumstances when he or she is aware that someone else has already reported an incident to the VPCR. Moreover, the law provides for sanctions against a mandated reporter who fails to report a reportable incident. 3

While there may be evidentiary value in requiring each witness to an incident to report what he or she saw or heard as early as possible, concerns have been raised about the burdens that this multiple reporting requirement places on staff and provider agencies. As a result, the Justice Center authorized state oversight agencies (SOAs) the option of including in their incident reporting regulations a protocol to relieve mandated reporters of this multiple reporting obligation. Two SOAs (OMH and OASAS) have included this protocol in their regulations. 4

1 More information on what is meant by "reasonable cause to suspect" is available on the Justice Center's website by clicking on "Custodian" and selecting the option "Learn more about a Custodian's responsibility as a mandated .reporter" which will bring up "Resources for Mandated Reporters."

2 See Social Service law (SSL)§ 491(1)(a),(b). For definitions of reportable incidents, see SSL§ 488(1), and for a definition of a mandated reporter, see SSL § 488(5), (5-a).

'See SSL§§ 491(3), 488(1)(f).

4 See 14 NYCRR § 524.8(e), and NYCRR § 836.6(c), respectively.

This memorandum is intended to provide additional guidance to mandated reporters in programs operated, licensed or certified by OMH and OASAS and, EFFECTIVE beginning on June 1, 2017, also to adopt the same protocol for mandated reporters who may discover a reportable incident in a program of OPWDD, OCFS, SEO and DOH. For all of these programs, mandated reporters may be relieved of the requirement to report

If you are a mandated reporter, and you find yourself in a situation falling under the
multiple reporter exception discussed in this memorandum, you are not required to report the allegation to the VPCR. 5 If this exception applies and you in good faith have made a reasonable decision not to make a report, you will not be charged with obstruction for failing to make a report. However, if you feel unsure as to your ability to explain the basis for your decision not to report, how the exception applies to you, or are otherwise uncertain of your responsibility in a unique circumstance - such as a concern that the incident was not accurately reported - it is always an acceptable practice to make a duplicate report to the VPCR.

In order to ensure that adoption of this protocol does not impact the health, safety and welfare of service recipients, the Justice Center will randomly audit whether easing the multiple reporter requirement has caused incidents to be classified incorrectly because the facts and circumstances reported to the VPCR are not accurate or the seriousness of the incident minimized.

5 Agency staff should continue to follow their own agency's regulations or protocols for internal reporting or reporting to the SCR.

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