

Can records or documents obtained by a qualified person be shared?

Yes. An amendment to Jonathan's Law, which became effective in 2013, permits the qualified person(s) who receive records and documents pertaining to reportable incidents to share them with:

- Health care providers;
- Behavioral health care providers;
- Law enforcement agencies (if the qualified person believes a crime has been committed); and/or
- The qualified person's attorney.

Where can I find more information or assistance?

- Information about Jonathan's Law can be found in NY Mental Hygiene Law sections 33.23 and 33.25.
- The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012).
- Additional requirements for access to records and documents within the OPWDD system can be found in 14 NY Codes, Rules, and Regulations sections 624.6 and 624.8.
- Additional requirements for access to patient records and the redisclosure of such records within the OASAS system can be found in 42 Code of Federal Regulations Part 2.
- OPWDD's "Learning About Incidents" brochure contains information about access to records. It is available on OPWDD's website at www.opwdd.ny.gov/node/395.
- OPWDD's information line is 1-866-946-9733 / TTY: 1-866-933-4889 and the website is www.opwdd.ny.gov.
- The Justice Center's Information and Referral Unit's toll-free number is 1-800-624-4143 (Voice/Spanish/TTY) and the email address is infoassistance@justicecenter.ny.gov.



Jonathan's Law

Incident Notification and Records Access:

A Guide for Individuals, Parents and Legal Guardians



Andrew M. Cuomo, Governor

Introduction

This brochure will assist you in understanding the process for obtaining information about incidents involving persons receiving services. This is a guide and not a legal document. For more details about Jonathan's Law, please consult the resources listed at the end of this brochure.

What is Jonathan's Law?

Jonathan's Law established procedures that facilities must follow to notify and inform parents and legal guardians of children and adults receiving services of incidents involving their loved ones. It also allows qualified persons to access certain documents pertaining to such incidents.

Who is a qualified person?

Under the law, qualified persons include:

- Parents or other legal guardians of minor patients;
- Parents, legal guardians, spouses, or adult children of adult patients who are legally authorized to make health care decisions on behalf of the adult patient; or
- Adult patients who have not been determined by a court to be legally incompetent.

What facilities does the law cover?

All facilities operated, licensed or certified by the following state agencies must adhere to the requirements of Jonathan's Law:

- Office for People With Developmental Disabilities (OPWDD)
- Office of Mental Health (OMH)
- Office of Alcoholism and Substance Abuse Services (OASAS)

What is an "incident" and what is a "reportable incident"?

- An "incident" is defined as an accident or injury that affects the health or safety of a person receiving services. A significant incident is defined as an incident that has the potential to result in harm to the health, safety or welfare of a person receiving services.
- A "reportable incident" is defined as conduct that a mandated reporter is required to report to the NYS Justice Center for the Protection of People with Special Needs (Justice Center). Such conduct includes abuse, neglect, and significant incidents.

Who will be notified if an incident has occurred?

- A facility will inform the qualified person(s) by telephone of accidents or injuries that affect the health or safety of an individual receiving services within 24 hours of the initial report of the incident.
- If requested by a qualified person, the facility must promptly provide a copy of the written incident report.
- The facility must also offer to meet with the qualified person to further discuss the incident.

Who will be informed of actions taken to address an incident?

The director of the facility must provide the qualified person(s) with a written report on the immediate actions taken to address the incident (e.g., steps taken to protect the involved individual) within 10 days of the initial report of the incident.

Are other records or documents about the incident available?

Jonathan's law requires facilities to provide records and documents pertaining to allegations and investigations into abuse, neglect, and significant incidents (reportable incidents) to the qualified person(s) upon written request.

At the conclusion of an investigation of an abuse or neglect incident reported to the Justice Center, the Justice Center will notify the service recipient or their personal representative of the finding of the investigation.

Reports of abuse and neglect are either substantiated or unsubstantiated.

Upon written request to the provider, the qualified person(s) may obtain records and documents pertaining to the investigation of an abuse or neglect incident reported to the Justice Center within 21 days of the conclusion of the investigation.

Can any information be withheld?

Yes. The names or information that identifies other persons receiving services and employees will be redacted unless these individuals authorize disclosure.

Federal laws or regulations may pose additional restrictions on the release of records or information contained in those records. For example, federal law prohibits OASAS providers from releasing any records or information that would identify a person as receiving services without the specific consent of the person receiving services (whether an adult or a minor) or a court order compliant with federal law. If a patient is a minor and is receiving services to which a parent or guardian has also consented, both the minor and the parent or guardian must consent to disclosure.

How should requests for records and documents be made?

Requests for incident and investigation records must be made to the provider that was providing services to the individual at the time of the incident.

When allegations of abuse or neglect (reportable incident) are investigated by the Justice Center, the Justice Center will coordinate with the provider so that the disclosure of records and documents will be made in compliance with Jonathan's Law and the Protection of People with Special Needs Act.

When will records be made available?

When the qualified person(s) makes a written request for records and documents pertaining to a reportable incident, the facility must respond to this request within 21 days of the conclusion of an investigation.