NYS Conference of Local Mental Hygiene Directors, Inc.

41 State Street, Suite 505, Albany, NY 12207 • (518) 462-9422 • www.clmhd.org

Regarding the local Director of Community Services (DCS) duty to receive and investigate reports from mental health practitioners pursuant to Mental Hygiene Law 9.46 in the "NY SAFE Act"

The Law: Chapter 1 of the laws of 2013, also known as the "NY SAFE Act," includes a new Section 9.46 of NYS Mental Hygiene Law which requires all mental health practitioners to report to the local Director of Community Services (DCS) or their designee, any person they are treating who they believe is likely to engage in conduct that would result in serious harm to self or others. The DCS or designee at that point would be required to assess the practitioners report to determine if the DCS agrees that the person is likely to engage in such conduct, confirm that the reporter is in fact a "mental health practitioner" as defined under MHL 9.46 (a physician, psychologist, RN, or LCSW), and to then pass on the potentially dangerous individual's name and other non-clinical information to the NYS Division of Criminal Justice Services. This new legal mandate takes effect on March 16, 2013.

The Problem: Initial discussions regarding this new provision of law with hospitals across the State indicate that it is their belief that all admissions to psychiatric units (whether voluntary or involuntary) will require a report pursuant to 9.46 to be filed with the DCS or designee. The most recent available hospital data show **over 210,000 psychiatric discharges** in the year 2010 alone.[1] This will likely translate into over 200,000 reports to be received, evaluated, and passed on to DCJS from hospitals alone; and this number does not include the numerous others who might meet the 9.46 criteria who are not admitted to hospitals and whose names will be reported to the DCS or designee by practitioners in other settings, such as outpatient clinics and private practices.

Local Mental Health offices are simply not set up to do this type of reporting so the need to receive and assess all of these new reports will require the hiring of at least hundreds, if not more than a thousand, of additional local staff on a statewide basis. This will cost local governments millions of dollars per year. In addition, due in part to the poor way in which the new statute is drafted, New York City and the other 57 counties in the state could become liable for damages and legal costs resulting from lawsuits which will be brought by persons affected by the DCS's agreement or disagreement with the diagnosis of the mental health professional.

This provision is an **unfunded mandate** of an unknown and potentially disastrous magnitude, for which localities are neither equipped nor funded to implement. If the statute's intent is simply to gather names, then the mental health professionals can report directly to DCJS. If the intent is to really assess each of these reports then that should be done by a state agency. To require local authorities to take on this huge responsibility and enormous potential liability with no resources in the current financial atmosphere is both unrealistic and unfair.

The Solution: Remove the Director of Community Services reporting requirement from Mental Hygiene Law 9.46, and allow mental health practitioners to file reports directly with the Division of Criminal Justice Services. This process would be analogous to the Child Abuse Central Registry and to reports that will be filed under the new Justice Center legislation, beginning in July of 2013.

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[1] NYS Department of Health SPARCS dataset, accessed January 31, 2013
http://www.health.ny.gov/statistics/sparcs/annual/ip/2010/t2010_02.htm