1 service recipient-identifiable information contained in the conduct of
2 the audit.
3 (i) Information pertaining to the substance or content of any psycho-
4 logical, psychiatric, therapeutic, clinical or medical reports, evalu-
5 ations or like materials or information pertaining to such vulnerable
6 person or such person's family shall not be made available to such offi-
7 cers and employees unless disclosure of such information is absolutely
8 essential to the specific audit activity and the justice center gives
9 prior written approval.
10 (ii) Any failure to maintain the confidentiality of service reci-
11 pient-identifiable information shall subject such comptroller or officer
12 to denial of any further access to records until such time as the audit
13 agency has reviewed its procedures concerning controls and prohibitions
14 imposed on the dissemination of such information and has taken all
15 reasonable and appropriate steps to eliminate such lapses in maintaining
16 confidentiality to the satisfaction of the justice center. Such justice
17 center shall establish the grounds for denial of access to records
18 contained under this section and shall recommend as necessary a plan of
19 remediation to the audit agency. Except as provided in this section,
20 nothing in this subparagraph shall be construed as limiting the powers
21 of such comptroller or officer to access records which he or she is
22 otherwise authorized to audit or obtain under any other applicable
23 provision of law. Any person given access to information pursuant to
24 this subparagraph who releases data or information to persons or agen-
25 cies not authorized to receive such information shall be guilty of a
26 class A misdemeanor;
27 (u) an entity with appropriate legal authority in another state to
28 license, certify or otherwise approve prospective foster and adoptive

1 parents where disclosure of information regarding the prospective foster
2 or adoptive parents and other persons over the age of eighteen residing
3 in the home of such prospective parents is required by paragraph twenty
4 of subdivision (a) of section six hundred seventy-one of title forty-two
5 of the United States Code;
6 (v) a social services official who is investigating whether an adult
7 is in need of protective services in accordance with the provisions of
8 section four hundred seventy-three of this chapter or a child is in need
9 of child protective services pursuant to the provisions of title six of
10 article six of this chapter, when such official has reasonable cause to
11 believe that such reports and information are needed to further the
12 present investigation; and
13 (w) for reports alleging abuse or neglect of children, members of a
14 citizen review panel as established pursuant to section three hundred
15 seventy-one-b of this chapter; provided, however, such members shall not
16 disclose to any person or governmental official any identifying informa-
17 tion which the panel has been provided and shall not make public other
18 information unless otherwise authorized by statute.
19 2. (a) The executive director, in consultation with the applicable
20 state oversight agency may disclose information regarding the abuse or
21 neglect of a vulnerable person as set forth in this section, and the
22 investigation thereof and any services related thereto, if otherwise
23 permitted by applicable federal law and if he or she determines that
24 such disclosure shall not be contrary to the best interests of the
25 vulnerable person and any one of the following factors are present:
26 (i) the subject of the report has been charged in an accusatory
27 instrument with committing a crime related to a report maintained in the
28 vulnerable persons' central register; or

1 (ii) the investigation of the abuse or neglect of the vulnerable
2 person or the provision of services by the facility or provider agency
3 has been publicly disclosed in a report required to be disclosed in the
4 course of their official duties, by a law enforcement agency or offi-
5 cial, a district attorney, any other state or local investigative agency
6 or official, or by judge of the unified court system; or
7 (iii) there has been a prior knowing, voluntary, public disclosure by
8 an individual concerning a report of abuse or neglect in which such
9 individual is named as the subject of the report as defined by subdivi-
10 sion thirteen of section four hundred eighty-eight of this article; or
11 (iv) the vulnerable person named in the report has died or the report
12 involves the near fatality of a vulnerable person. For the purposes of
13 this section, "near fatality" means an act that results in the vulner-
14 able person being placed, as certified by a physician, in serious or
15 critical condition.
16 (b) For the purposes of this section, only the following information
17 may be disclosed:
18 (i) the name of the abused or neglected vulnerable person;
19 (ii) the determination by the justice center and the findings upon
20 which such determination was based;
21 (iii) identification of services provided or actions, if any, taken
22 regarding the vulnerable person named in the report and his or her fami-
23 ly as a result of any such report or reports;
24 (iv) whether any report of abuse or neglect regarding such vulnerable
25 person has been "substantiated" as maintained by the vulnerable persons'
26 central register;
27 (v) any actions taken by the state oversight agency or the facility or
28 provider agency in response to reports of abuse or neglect of the

1 vulnerable person to the vulnerable persons' central register, including
2 but not limited to actions taken after each and every report of abuse or
3 neglect of such person and the dates of such reports; and
4 (vi) any extraordinary or pertinent information concerning the circum-
5 stances of the abuse or neglect of the vulnerable person and the inves-
6 tigation thereof, where the executive director, in consultation with the
7 commissioner of the applicable state oversight agency determines such
8 disclosure is consistent with the public interest.
9 (c) Information may be disclosed pursuant to this section as follows:
10 (i) information released prior to the completion of the investigation
11 of a report shall be limited to a statement that a report is "under
12 investigation";
13 (ii) when there has been a prior disclosure pursuant to paragraph (a)
14 of this subdivision, information released in a case in which the inves-
15 tigation of the report has been completed but not substantiated, infor-
16 mation shall be limited to the statement that "the investigation has
17 been completed and the report has been disconfirmed or inconclusive";
18 (iii) if the report has been "substantiated" then information may be
19 released pursuant to paragraph (a) of this subdivision.
20 (d) Any disclosure of information pursuant to this section shall be
21 consistent with the provisions of paragraph (b) of this subdivision.
22 Such disclosure shall not identify or provide an identifying description
23 of the source of the report, and shall not identify the name of the
24 abused or neglected vulnerable person's siblings or children, the parent
25 or other person legally responsible for such person or any other members
26 of such person's household.
27 (e) In determining, pursuant to paragraph (a) of this subdivision,
28 whether disclosure will be contrary to the best interests of the vulner-

1 able person, the executive director shall consider the interest in
2 privacy of the vulnerable person and such person's siblings or children,
3 the parent or other person legally responsible for such person or any
4 other members of such person's household.
5 (f) Except as it applies directly to the cause of the abuse or neglect
6 of the vulnerable person, nothing in this section shall be deemed to
7 authorize the release or disclosure of the substance or content of any
8 psychological, psychiatric, therapeutic, clinical or medical reports,
9 evaluations or like materials or information pertaining to such person
10 or such person's family. Any such information that applies directly to
11 the cause of the abuse or neglect of the vulnerable person may be
12 disclosed only if disclosure is not otherwise restricted by applicable
13 federal or state laws.
14 3. A person given access to the names or other information identifying
15 the subject of the report or other persons named in the report shall not
16 divulge or make public such identifying information unless he or she is
17 a district attorney or other law enforcement official and the purpose is
18 to initiate court action or the disclosure is necessary in connection
19 with the investigation or prosecution of the subject of the report for a
20 crime alleged to have been committed by the subject against another
21 person named in the report. Nothing in this section shall be construed
22 to permit any release, disclosure or identification of the names or
23 identifying descriptions of persons who have reported suspected abuse or
24 neglect to the vulnerable persons' central register or the state over-
25 sight agency, facility or provider agency or other entity where such
26 persons are employed or with which they are associated without such
27 persons' written permission except to persons, officials, and agencies
28 enumerated in paragraphs (f), (g), (l), (m) and (v) of subdivision one

1 of this section. To the extent that persons or agencies are given
2 access to information pursuant to paragraphs (c), (d), (e), (k), (l),
3 (m), (n) and (p) of subdivision one of this section, such persons or
4 agencies may give and receive such information to each other in order to
5 facilitate an investigation conducted, or the provision of services, by
6 such persons or agencies.
7 4. Unless an investigation of a report conducted pursuant to this
8 article determines that there is a preponderance of the evidence of the
9 alleged abuse or neglect, all information identifying the subject of the
10 report and other persons named in the report shall be sealed forthwith
11 by the vulnerable persons' central register. Such reports may only be
12 unsealed and made available, consistent with any other applicable state
13 or federal law, to:
14 (a) the state agency operating, licensing or certifying a facility or
15 program for the purpose of monitoring or licensing such facility or
16 program;
17 (b) any state agency operating, licensing, or certifying a facility or
18 provider agency when investigating a report of suspected abuse or
19 maltreatment involving the subject of a previously sealed report
20 accepted by the vulnerable persons' central register;
21 (c) the subject of the report;
22 (d) a court of relevant jurisdiction or a law enforcement official
23 when such court or official verifies that the report is necessary to
24 conduct an active investigation or prosecution of a violation of subdi-
25 vision four of section 240.50 of the penal law; or
26 (e) the justice center medical review board, for the purposes of
27 preparing a fatality report pursuant to section five hundred fifty-six
28 of the executive law.

1 When a report is unsealed, persons given access to it shall not redis-
2 close such reports except as necessary to conduct such appropriate
3 investigation or prosecution and shall request that the court redact any
4 copies of such reports produced in any court proceeding to remove the
5 names of those persons irrelevant to the proceeding such as the source
6 of the report, the name of the subject, or and other persons named in
7 the reports; or that the court issue an order protecting the names of
8 the subjects and other persons named in the reports from public disclo-
9 sure.
10 § 497. Immunity from liability. Any person participating in good faith
11 in making a report, taking photographs, conducting or overseeing an
12 investigation, operating the vulnerable persons' central register or
13 disclosing information in compliance with this article shall have immu-
14 nity from any liability, civil or criminal, that might otherwise result
15 by reason of such actions. For the purpose of any proceeding, civil or
16 criminal, the good faith of any such person required to perform any of
17 such functions in accordance with this article shall be presumed,
18 provided such person, was acting in discharge of his or her duties and
19 within the scope of his or her employment or responsibilities, and that
20 such liability did not result from the willful misconduct or gross
21 negligence of such person.
22 § 2. This act shall take effect April 1, 2013; provided, however, that
23 effective immediately, the addition, amendment or repeal of any rule or
24 regulation necessary for the implementation of this act on its effective
25 date is authorized to be made on or before such date.

26 PART C

1 Section 1. Subdivisions 6 and 7 of section 677 of the county law,
2 subdivision 6 as amended by chapter 491 of the laws of 1987, subdivision
3 7 as added by chapter 477 of the laws of 1979 and paragraph (a) of
4 subdivision 7 as amended by chapter 330 of the laws of 1993, are amended
5 to read as follows:
6 6. The coroner, coroner's physician or medical examiner shall promptly
7 provide the chairman of the correction medical review board and the
8 commissioner of correctional services with copies of any autopsy report,
9 toxicological report or any report of any examination or inquiry
10 prepared with respect to any death occurring to an inmate of a correc-
11 tional facility as defined by subdivision three of section forty of the
12 correction law within his county; and shall promptly provide the execu-
13 tive director of the justice center for the protection of people with
14 special needs with copies of any autopsy report, toxicology report or
15 any report of any examination or inquiry prepared with respect to the
16 death of any service recipient occurring while he or she was a resident
17 in any facility operated, licensed or certified by any agency within the
18 department of mental hygiene, the office of children and family
19 services, the department of health or the state education department.
20 If the toxicological report is prepared pursuant to any agreement or
21 contract with any person, partnership, corporation or governmental agen-
22 cy with the coroner or medical examiner, such report shall be promptly
23 provided to the chairman of the correction medical review board [and
24 to], the commissioner of correctional services or the executive director
25 of the justice center for people with special needs, as appropriate, by
26 such person, partnership, corporation or governmental agency.
27 7. (a) Upon the written request of the commissioner of mental health,
28 the commissioner of [mental retardation and] the office for persons with

1 developmental disabilities, the director of the mental hygiene legal
2 service, [the chairman of the commission on quality of care for the
3 mentally disabled] the executive director of the justice center for the
4 protection of people with special needs or the director of a mental
5 hygiene facility, as defined in subdivision two of section [45.01] five
6 hundred fifty of the [mental hygiene] executive law, at which the
7 deceased was a patient or resident, the coroner, coroner's physician or
8 medical examiner shall provide such person with a copy of all reports
9 and records, including, but not limited to, autopsy reports and toxico-
10 logical reports related to the deceased prepared by a person, partner-
11 ship, corporation or governmental agency pursuant to any agreement or
12 contract with the coroner or medical examiner with respect to the death
13 of a patient or resident receiving services [for a mental disability] at
14 such a mental hygiene facility.
15 (b) Upon the written request of the commissioner of mental health, or
16 commissioner of [mental retardation and] developmental disabilities, or
17 a director of a departmental facility as defined in section 1.03 of the
18 mental hygiene law, or the [chairman of the commission on quality of
19 care for the mentally disabled] executive director of the justice center
20 for the protection of people with special needs, the coroner, coroner's
21 physician or medical examiner shall transmit to the commissioner, or
22 such director, [or chairman,] or any member of the [mental hygiene]
23 justice center medical review board [designated by the chairman of such
24 commission], original autopsy slides, tissue materials and specimens
25 taken from the body of a deceased patient or resident as defined in
26 paragraph (a) of this section. Such original materials may be used and
27 tested by such office of the department of mental hygiene, or such
28 director, and [mental hygiene] justice center medical review board

1 pursuant to its authority under section [45.17] <u>five hundred fifty-six</u>
2 of the [mental hygiene] <u>executive</u> law. Such slides, materials and spec-
3 imens may be retained for a reasonable time, and shall be returned to
4 the office of the coroner or medical examiner in good condition allowing
5 for reasonable use for study and testing purposes.
6 § 2. Subdivisions (a) and (d) of section 7.09 of the mental hygiene
7 law, subdivision (a) as added by chapter 978 of the laws of 1977 and
8 subdivision (d) as added by chapter 477 of the laws of 1979, are amended
9 to read as follows:
10 (a) The commissioner shall exercise all powers vested in the office.
11 He may delegate any function, power, or duty assigned to him or to the
12 office of mental health to a director of a facility operated by such
13 office or to any other officer or employee of such office, unless other-
14 wise provided by law. He may enter into agreements with the <u>executive</u>
15 <u>director of the justice center for the protection of people with special</u>
16 <u>needs or the</u> other commissioners of the department in order to ensure
17 that programs and services are provided for all of the mentally disa-
18 bled.
19 (d) The commissioner and directors of office facilities may request
20 and upon such request the coroner, coroner's physician or medical exam-
21 iner shall provide to such persons access to original autopsy slides,
22 tissue materials and specimens derived from any autopsy or inquiry with
23 respect to the death of a patient or resident in a mental hygiene facil-
24 ity, as defined in [section 45.01 of this chapter] <u>subdivision two of</u>
25 <u>section five hundred fifty of the executive law</u>. Such original materials
26 shall be preserved intact, except for unavoidable changes due to neces-
27 sary scientific testing, and shall be returned to the coroner, coroner's
28 physician or medical examiner.

1 § 3. Subdivision (b) of section 7.21 of the mental hygiene law, as
2 amended by chapter 558 of the laws of 2011, is amended to read as
3 follows:
4 (b) Such director shall have the responsibility of seeing that there
5 is humane treatment of the patients at his or her facility and shall
6 investigate, or cause to be investigated, every case of alleged patient
7 abuse or [mistreatment] neglect. In accordance with article eleven of
8 the social services law, the director shall require that allegations of
9 abuse or neglect are reported to the vulnerable persons' central regis-
10 ter, which shall screen and immediately forward reports that appear to
11 allege crimes to the appropriate law enforcement agency. [The director
12 shall notify immediately, and in any event within three working days,
13 the board of visitors of the facility and the mental hygiene legal
14 service located in the same judicial department as the hospital, school,
15 or institution of every complaint of patient abuse or mistreatment and
16 shall inform the board and the mental hygiene legal service of the
17 results of his investigation. If it appears that a crime may have been
18 committed, the director shall give notice thereof to the district attor-
19 ney or other appropriate law enforcement official as soon as possible,
20 and in any event within three working days unless it appears that the
21 crime includes an employee, intern, volunteer, consultant, contractor,
22 or visitor and the alleged conduct caused physical injury or the patient
23 was subject to unauthorized sexual contact, or if it appears the crime
24 is endangering the welfare of an incompetent or physically disabled
25 person pursuant to section 260.25 of the penal law, or if the crime was
26 any felony under state or federal law, then the district attorney or
27 other appropriate law enforcement official must be contacted immediate-
28 ly, and in any event no later than twenty-four hours.]

1 § 4. Subdivisions (a) and (c) of section 13.09 of the mental hygiene
2 law, subdivision (a) as added by chapter 978 of the laws of 1977 and
3 subdivision (c) as added by chapter 477 of the laws of 1979, are amended
4 to read as follows:
5 (a) The commissioner shall exercise all powers vested in the office.
6 He or she may delegate any function, power, or duty assigned to him or
7 her or to the office to any officer or employee of the office, unless
8 otherwise provided by law. He or she may enter into agreements with
9 other commissioners of the department in order to ensure that programs
10 and services are provided for all of the mentally disabled.
11 (c) The commissioner and directors of office facilities may request
12 and upon such request the coroner, coroner's physician or medical exam-
13 iner shall provide to such persons access to original autopsy slides,
14 tissue materials and specimens derived from any autopsy or inquiry with
15 respect to the death of a patient or resident in a mental hygiene facil-
16 ity, as defined in [section 45.01 of this chapter] subdivision two of
17 section five hundred fifty of the executive law. Such original materials
18 shall be preserved intact, except for unavoidable changes due to neces-
19 sary scientific testing and shall be returned to the coroner, coroner's
20 physician or medical examiner.
21 § 5. Subdivision (b) of section 13.21 of the mental hygiene law, as
22 amended by section 3 of part J of chapter 56 of the laws of 2012, is
23 amended to read as follows:
24 (b) Such directors shall have the responsibility of seeing that there
25 is humane treatment of individuals with developmental disabilities
26 receiving services in settings operated, licensed, certified, funded or
27 approved by this office and shall investigate, or cause to be investi-
28 gated, every case of alleged patient abuse or neglect. In accordance

1 with article eleven of the social services law, the director shall
2 require that allegations of abuse or neglect are reported to the vulner-
3 able persons' central register, which shall screen and immediately
4 forward reports that appear to allege crimes to the appropriate law
5 enforcement agency. [A director of a state operations office shall noti-
6 fy immediately, and in any event within three working days, the board of
7 visitors of the facility and the mental hygiene legal service located in
8 the same judicial department as the state operations office of every
9 complaint of patient abuse or mistreatment and shall inform the board
10 and the mental hygiene legal service of the results of his or her inves-
11 tigation. If it appears that a crime may have been committed, such state
12 operations director shall give notice thereof to the district attorney
13 or other appropriate law enforcement official as soon as possible, and
14 in any event within three working days unless it appears that the crime
15 includes an employee, intern, volunteer, consultant, contractor, or
16 visitor and the alleged conduct caused physical injury or the patient
17 was subject to unauthorized sexual contact, or if it appears the crime
18 is endangering the welfare of an incompetent or physically disabled
19 person pursuant to section 260.25 of the penal law, or if the crime was
20 any felony under state or federal law, then the district attorney or
21 other appropriate law enforcement official must be contacted immediate-
22 ly, and in any event no later than twenty-four hours.]
23 § 6. Subdivision 2 of section 13.34 of the mental hygiene law is
24 REPEALED and subdivisions 3, 4, 5 and 6 are renumbered subdivisions 2,
25 3, 4 and 5.
26 § 7. Subdivisions 1 and 2 of section 13.34 of the mental hygiene law,
27 subdivision 1 as amended by section 16 of part J of chapter 56 of the
28 laws of 2012, subdivision 2 as amended by chapter 542 of the laws of

1 2011 and such subdivision as renumbered by section six of this act, are
2 amended to read as follows:
3 1. There shall be at each developmental center facility listed in
4 section 13.17 of this article, an ombudsman who shall be an employee of
5 the [commission on quality of care and advocacy for persons with disa-
6 bilities] justice center for the protection of people with special needs
7 under article [forty-five] twenty of [this chapter] the executive law
8 and who shall be responsible for receiving and responding to any
9 complaints regarding [individual clients] individuals receiving services
10 residing in such facility. The ombudsman shall have the following powers
11 and duties:
12 i. to advise and consult with individuals receiving services, parents,
13 guardians, correspondents and other interested persons with respect to
14 any complaints, or issues related to [the conditions of clients' resi-
15 dents] individuals receiving services;
16 ii. to review and attempt to remedy specific complaints with responsi-
17 ble and appropriate staff;
18 iii. where it appears that care has not been rendered as required by
19 applicable standards to refer the complaint to the appropriate agency or
20 body for its attention;
21 iv. to receive and keep confidential any complaint, information or
22 inquiry from any source. The records of the ombudsman shall be confiden-
23 tial, and shall not be available to the public;
24 v. to advise and consult with the board of visitors served by the
25 ombudsman with respect to any complaints or issues relating to condi-
26 tions of client's residence, treatment and care and to regularly attend
27 the meetings of such board; and

1 vi. to meet with the commissioner, or a representative of the commis-
2 sioner, on a quarterly basis regarding systemic issues in the ombuds-
3 man's jurisdiction.
4 2. The ombudsman shall be afforded initial training and orientation by
5 the [commission on quality of care and advocacy for persons with disa-
6 bilities] justice center for the protection of people with special
7 needs.
8 § 8. Subdivision (b) of section 16.13 of the mental hygiene law is
9 REPEALED and a new subdivision (b) is added to read as follows:
10 (b) Making reports of cases of abuse or neglect in accordance with
11 article eleven of the social services law to the vulnerable persons'
12 central register, which shall screen and immediately forward allegations
13 that appear to allege crimes to the appropriate law enforcement agency.
14 Similarly, making reports of significant incidents, as defined in subdi-
15 vision twelve of section four hundred eighty-eight of the social
16 services law, which shall be addressed pursuant to the standards set
17 forth in section four hundred ninety-one of the social services law and
18 regulations of the office.
19 § 9. Section 16.29 of the mental hygiene law, as amended by chapter 24
20 of the laws of 2007, subdivision (b) as amended by chapter 37 of the
21 laws of 2011, is amended to read as follows:
22 § 16.29 [Child abuse and maltreatment in residential care] Abuse,
23 neglect, and significant incidents involving vulnerable
24 persons.
25 (a) The commissioner, in consultation with the executive director of
26 the justice center for the protection of people with special needs,
27 shall promulgate regulations establishing standards for the protection
28 of [children in residential] service recipients in the care of facili-

1 ties and provider agencies operated, licensed or certified by the office
2 from abuse [and maltreatment], neglect, and significant incidents pursu-
3 ant to article eleven of the social services law, including procedures
4 for:
5 (1) [reviewing and evaluating the backgrounds of and information
6 supplied by any person applying to be an employee, a volunteer or
7 consultant,] consistent with appropriate collective bargaining agree-
8 ments and applicable provisions of the civil service law[. Such review
9 and evaluation shall include but not be limited to the following
10 requirements: that the applicant set forth his or her employment histo-
11 ry, provide personal and employment references and relevant experiential
12 and educational information and, sign a sworn statement whether, to the
13 best of his or her knowledge, he or she has ever been convicted of a
14 crime in this state or any other jurisdiction], assisting the justice
15 center for the protection of people with special needs with its review
16 and evaluation of criminal background checks of prospective employees,
17 as set forth in subdivision five of section five hundred fifty-three of
18 the executive law;
19 (2) establishing minimal experiential and educational qualifications
20 for employees that are consistent with appropriate collective bargaining
21 agreements and applicable provisions of the civil service law;
22 (3) assuring adequate and appropriate supervision of employees, volun-
23 teers and consultants;
24 (4) demonstrating that appropriate action is taken to assure the safe-
25 ty of [the child] a service recipient who is [reported] alleged to have
26 been abused or neglected in a report to the [state] vulnerable persons'
27 central register, in accordance with section four hundred ninety-two of
28 the social services law, as well as other [children] persons in care,

1 immediately upon notification that a report of [child] an allegation of
2 abuse or [maltreatment] neglect has been made [with respect to a child
3 in a residential facility];
4 (4-a) consistent with applicable collective bargaining agreements,
5 assuring that an individual who has committed a category one offense, as
6 defined in paragraph (a) of subdivision five of section four hundred
7 ninety-three of the social services law, that is included on the vulner-
8 able persons' central register is not hired or otherwise used in any
9 position in which such individual would have regular and substantial
10 contact with a service recipient in any program operated, licensed or
11 certified by the office;
12 (5) removing a [child] service recipient when it is determined that
13 there is a risk to such [child] person if he or she continues to remain
14 in a [residential] facility; and
15 (6) taking appropriate preventive and remedial action, including legal
16 action, consistent with appropriate collective bargaining agreements and
17 applicable provisions of the civil service law. [Such] The commissioner
18 shall adopt standards [shall also establish as a priority] as estab-
19 lished by the justice center for the protection of people with special
20 needs, that:
21 (i) administrators, employees, volunteers and consultants receive
22 training in at least the following: [child] abuse prevention and iden-
23 tification, safety and security procedures, the principles of child
24 development, the characteristics of [children] persons in care and tech-
25 niques of group [and child] management including crisis intervention,
26 the laws, regulations and procedures governing the protection of [chil-
27 dren] vulnerable persons from abuse [and maltreatment], neglect, and
28 significant incidents, and other appropriate topics provided, however,

1 that the office may exempt administrators and consultants from such
2 requirements upon demonstration of substantially equivalent knowledge or
3 experience; and
4 (ii) [children] service recipients receive instruction consistent with
5 their age, needs and circumstances as well as the needs and circum-
6 stances within the facility or program, in techniques and procedures
7 which will enable [such children] them to advocate and protect them-
8 selves from abuse [and maltreatment], neglect, and significant
9 incidents.
10 The commissioner, in consultation with the executive director of the
11 justice center for the protection of people with special needs, shall
12 take all reasonable and necessary actions to assure that employees,
13 volunteers and consultants in [residential care] facilities operated or
14 overseen by the office are kept apprised on a current basis of all poli-
15 cies and procedures of the office relating to the protection of [chil-
16 dren from abuse and maltreatment] vulnerable persons, and shall monitor
17 and supervise the provision of training to such administrators, employ-
18 ees, volunteers, children and consultants. Standards developed pursuant
19 to this subdivision shall, to the extent possible, be consistent with
20 those promulgated by other state agencies for such purposes.
21 (b) The commissioner shall provide necessary assistance to the [state
22 commission on quality of care and advocacy for persons with disabili-
23 ties] justice center for the protection of people with special needs in
24 the conduct of investigations pursuant to [section 45.07 of this chap-
25 ter] article eleven of the executive law, shall consider its recommenda-
26 tions for appropriate preventive and remedial action including legal
27 actions, and shall provide or direct a residential facility licensed or
28 operated by the office for people with developmental disabilities to

1 provide written reports thereon to the [commission] justice center as to
2 the implementation of plans of prevention and remediation approved by
3 such office.
4 (c) The commissioner shall provide for the development and implementa-
5 tion of a plan of prevention and remediation with respect to [an indi-
6 cated] a substantiated report of [child] abuse or [maltreatment]
7 neglect. Such action shall include:
8 (i) within ten days of receipt of [an indicated] a substantiated
9 report of [child] abuse or [maltreatment] neglect, development and
10 implementation of a plan of prevention and remediation to be taken [with
11 respect to a custodian or the residential facility in order] to assure
12 the continued health [and], safety and welfare of [children] service
13 recipients and to provide for the prevention of future acts of abuse [or
14 maltreatment], neglect, or significant incidents; and
15 (ii) development and implementation of a plan of prevention and reme-
16 diation, in the event an investigation of a report of alleged [child]
17 abuse or [maltreatment determines that some credible evidence of abuse
18 or maltreatment exists] neglect is substantiated and such abuse or
19 [maltreatment] neglect may be attributed in whole or in part to noncom-
20 pliance by the facility with the provisions of this chapter or regu-
21 lations of the office applicable to the operation of such [residential]
22 facility. Any plan of prevention and remediation required to be devel-
23 oped pursuant to this subdivision by a facility supervised by the office
24 shall be submitted to and approved by such office in accordance with
25 time limits established by regulations of such office. Implementation
26 of the plan shall be monitored by such office. In reviewing the contin-
27 ued qualifications of a residential facility or program for an operating
28 certificate, the office shall evaluate such facility's compliance with

1 plans of prevention and remediation developed and implemented pursuant
2 to this subdivision.
3 § 10. Section 31.30 of the mental hygiene law, as added by chapter 24
4 of the laws of 2007, is amended to read as follows:
5 § 31.30 [Child abuse and maltreatment in residential care] Abuse,
6 neglect, and significant incidents involving vulnerable
7 persons.
8 (a) The commissioner in consultation with the executive director of
9 the justice center for the protection of people with special needs,
10 shall promulgate regulations establishing standards for the protection
11 of [children in residential] service recipients in the care [and
12 maltreatment] of facilities and provider agencies operated, licensed or
13 certified by the office from abuse, neglect, and significant incidents
14 pursuant to article eleven of the social services law, including proce-
15 dures for:
16 1. [reviewing and evaluating the backgrounds of and information
17 supplied by any person applying to be an employee, a volunteer or
18 consultant,] consistent with appropriate collective bargaining agree-
19 ments and applicable provisions of the civil service law[. Such review
20 and evaluation shall include, but not be limited to, the following
21 requirements: that the applicant set forth his or her employment histo-
22 ry, provide personal and employment references and relevant experiential
23 and educational information and, sign a sworn statement whether, to the
24 best of his or her knowledge, he or she has ever been convicted of a
25 crime in this state or any other jurisdiction], assisting the justice
26 center for the protection of people with special needs with its review
27 and evaluation of criminal background checks of prospective employees,

1 as set forth in subdivision five of section five hundred fifty-three of
2 the executive law;
3 2. establishing minimal experiential and educational qualifications
4 for employees that are consistent with appropriate collective bargaining
5 agreements and applicable provisions of the civil service law;
6 3. assuring adequate and appropriate supervision of employees, volun-
7 teers and consultants;
8 4. demonstrating that appropriate action is taken to assure the safety
9 of the [child] service recipient who is [reported] alleged to have been
10 abused or neglected in a report to the [state] vulnerable persons'
11 central register, in accordance with section four hundred ninety-two of
12 the social services law, as well as other [children] persons in care,
13 immediately upon notification that a report of [child] an allegation of
14 abuse or [maltreatment] neglect has been made [with respect to a child's
15 custodian in a residential facility];
16 4-a. consistent with applicable collective bargaining agreements
17 assuring that an individual who has committed a category one offense, as
18 defined in paragraph (a) of subdivision five of section four hundred
19 ninety-three of the social services law, that is included on the vulner-
20 able persons' central register is not hired or otherwise used in any
21 position in which such individual would have regular and substantial
22 contact with a service recipient in a program covered by this article;
23 5. removing a [child] service recipient when it is determined that
24 there is risk to such [child] person if he or she continues to remain in
25 a [residential] facility; and
26 6. taking appropriate preventive and remedial actions, including legal
27 action, consistent with appropriate collective bargaining agreements and
28 applicable provisions of the civil service law. [Such] The commissioner

1 shall adopt standards [shall also establish] as established by the
2 justice center for the protection of people with special needs, that:
3 (i) administrators, employees, volunteers and consultants receive
4 training in at least the following: [child] abuse prevention and iden-
5 tification, safety and security procedures, the principles of child
6 development, the characteristics of [children] persons in care and tech-
7 niques of group [and child] management including crisis intervention,
8 the laws, rules and regulations and procedures governing the protection
9 of [children] vulnerable persons from abuse [and maltreatment], neglect,
10 and significant incidents and other appropriate topics; provided, howev-
11 er, that [either] the office may exempt administrators and consultants
12 from such requirements upon demonstration of substantially equivalent
13 knowledge or experience; and
14 (ii) [children] service recipients receive instruction consistent with
15 their age, needs and circumstances as well as the needs and circum-
16 stances within the facility or program, in techniques and procedures
17 that will enable [such children] them to advocate and protect themselves
18 from abuse [and maltreatment], neglect, and significant incidents.
19 The commissioner, in consultation with the executive director of the
20 justice center for the protection of people with special needs, shall
21 take all reasonable and necessary actions to assure that employees,
22 volunteers or consultants in [residential care] facilities operated or
23 overseen by the office are kept apprised on a current basis of all poli-
24 cies and procedures [of the office] relating to the protection of [chil-
25 dren from abuse and maltreatment,] vulnerable persons and shall monitor
26 and supervise the provision of training to such administrators, employ-
27 ees, volunteers, children and consultants. Standards developed pursuant

1 to this subdivision shall, to the extent possible, be consistent with
2 those promulgated by other state agencies for such purposes.
3 (b) The commissioner shall provide necessary assistance to the [state
4 commission on quality of care and advocacy for persons with disabili-
5 ties] justice center for the protection of people with special needs in
6 the conduct of investigations pursuant to [section 45.07 of this chap-
7 ter] article eleven of the executive law, shall consider its recommenda-
8 tions for appropriate preventive and remedial action including legal
9 actions, and shall provide or direct a residential facility licensed or
10 operated by the office of mental health to provide written reports ther-
11 eon to such [commission] justice center as to the implementation of
12 plans of prevention and remediation.
13 (c) The commissioner shall provide for the development and implementa-
14 tion of a plan of prevention and remediation with respect to [an indi-
15 cated] a substantiated report of [child] abuse or [maltreatment]
16 neglect. Such action shall include:
17 1. within ten days of receipt of [an indicated] a substantiated report
18 of [child] abuse or [maltreatment] neglect, development and implementa-
19 tion of a plan of prevention and remediation to be taken [with respect
20 to a custodian or residential facility in order] to assure the continued
21 health, safety, and [safety] welfare of [children] service recipients
22 and to provide for the prevention of future acts of abuse [or maltreat-
23 ment] neglect, and significant incidents; and
24 2. development and implementation of a plan of prevention and remedi-
25 ation, in the event an investigation of a report of alleged [child]
26 abuse or [maltreatment] neglect determines that a report of [child]
27 abuse or [maltreatment] neglect is [indicated] substantiated and such
28 abuse or [maltreatment] neglect may be attributed in whole or in part to

1 noncompliance by the facility with provisions of this chapter or regu-
2 lations of the respective [offices] office applicable to the operation
3 of such [residential] facility. Any plan of prevention and remediation
4 required to be developed pursuant to this subdivision by a facility
5 supervised by [either] the office shall be submitted to and approved by
6 such office in accordance with time limits established by rules and
7 regulations of such office. Implementation of the plan shall be moni-
8 tored by such office. In reviewing the continued qualification of a
9 residential facility or program for an operating certificate, the office
10 having supervisory responsibilities shall evaluate such facility's
11 compliance with plans of prevention and remediation developed pursuant
12 to this subdivision.
13 § 11. Subdivision (c) of section 33.02 of the mental hygiene law, as
14 amended by chapter 168 of the laws of 2010, is amended to read as
15 follows:
16 (c) The commissioners and the facility director shall ensure that a
17 notice of the rights included in regulations promulgated pursuant to
18 this section is posted in each ward or living area of every hospital
19 operated or licensed by the office of mental health and every develop-
20 mental center operated by the office for people with developmental disa-
21 bilities, and that such notice is provided to every individual resident
22 of any other residential facility or program operated or licensed by the
23 respective offices upon admission to such facility or program, upon
24 limitation on any right, or at the individual's request. The notice
25 shall include the address and telephone numbers of the office of the
26 facility director or such person's designee responsible for receiving
27 questions or complaints, the board of visitors if applicable, the mental
28 hygiene legal service, the vulnerable persons' central register and the

1 [commission on quality of care and advocacy for persons with disabili-
2 ties] justice center for the protection of people with special needs.
3 § 12. Section 33.06 of the mental hygiene law, as amended by chapter
4 37 of the laws of 2011, is amended to read as follows:
5 § 33.06 Reports of abuse [or mistreatment], neglect, and significant
6 incidents.
7 The executive director of the justice center for the protection of
8 people with special needs, in consultation with the commissioner of the
9 office of mental health, the commissioner of the office of alcoholism
10 and substance abuse services and the commissioner of the office for
11 people with developmental disabilities shall establish procedures or
12 mechanisms pursuant to article eleven of the social services law to
13 receive allegations or complaints of abuse or [mistreatment] neglect of,
14 and significant incidents involving, individuals served by agencies and
15 providers licensed or operated by the offices, including receipt of
16 anonymous allegations or complaints. [Such mechanisms shall include the
17 operation of a toll-free number. Allegations or complaints received
18 shall be evaluated and, if necessary, referred for appropriate correc-
19 tive action, consistent with laws, regulations and procedures estab-
20 lished for the investigation, resolution and response to incident
21 reports to ensure the care and safety of all patients. The inability of
22 the person reporting the abuse to identify the alleged perpetrator
23 shall, in no circumstance, constitute the sole cause to reject such
24 allegation for investigation or fail to refer such allegation for
25 corrective action. When an allegation of abuse or maltreatment of a
26 child is made, the allegation shall be referred to the statewide central
27 register of child abuse and maltreatment, established pursuant to
28 section four hundred twenty-two of the social services law.]

1 § 13. Subdivision (a) of section 33.25 of the mental hygiene law, as
2 added by chapter 24 of the laws of 2007, is amended to read as follows:
3 (a) Records and documents pertaining to allegations and investigations
4 into patient abuse [or mistreatment], neglect, and significant incidents
5 at a facility, as defined in subdivision six of section 1.03 of this
6 chapter, including but not limited to all complaints and reports made
7 pursuant to [subdivision (c) of section 45.07 and section 45.17 of this
8 title] article eleven of the social services law, shall be released to a
9 qualified person, as defined in paragraph six of subdivision (a) of
10 section 33.16 of this article, upon a written request by such qualified
11 person. Such records and documents shall be made available by the appro-
12 priate office within twenty-one days of the conclusion of its investi-
13 gation, provided that the names and other personally identifying infor-
14 mation of other patients and employees shall not be included unless such
15 patients and employees authorize disclosure.
16 § 14. This act shall take effect April 1, 2013.

17 PART D

18 Section 1. Paragraph (a) of subdivision 5 of section 20 of the social
19 services law, as amended by chapter 485 of the laws of 2006, is amended
20 to read as follows:
21 (a) In the case of the death of a child whose care and custody or
22 custody and guardianship has been transferred to an authorized agency,
23 other than a vulnerable person as defined in article eleven of this
24 chapter, or the death of a child for whom any local department of social
25 services has an open child protective services or preventive services
26 case, or in the case of a report made to the statewide central register

1 of child abuse and maltreatment involving the death of a child, the
2 office of children and family services shall (i) investigate or provide
3 for an investigation of the cause of and circumstances surrounding such
4 death, (ii) review such investigation, and (iii) prepare and issue a
5 report on such death, except where a report is issued by an approved
6 local or regional fatality review team in accordance with section four
7 hundred twenty-two-b of this chapter.
8 § 2. Paragraph (b) of subdivision 5 of section 412 of the social
9 services law is REPEALED.
10 § 2-a. Subdivisions 1, 2 and 4 of section 412 of the social services
11 law, as amended by chapter 323 of the laws of 2008, are amended to read
12 as follows:
13 1. An "abused child" means[:
14 (a)] a child under eighteen years of age [not in "residential care,"
15 as defined in subdivision four of section four hundred twelve-a of this
16 title,] and who is defined as an abused child by the family court act[;
17 or
18 (b) a child under the age of eighteen years who is defined as an
19 abused child in residential care pursuant to subdivision one of section
20 four hundred twelve-a of this title];
21 2. A "maltreated child" includes[:
22 (a)] a child under eighteen years of age [not in "residential care" as
23 defined in subdivision four of section four hundred twelve-a of this
24 title]:
25 [(i)] (a) defined as a neglected child by the family court act, or
26 [(ii)] (b) who has had serious physical injury inflicted upon him or
27 her by other than accidental means; [or

1 (b) a child who is a neglected child in residential care as defined in
2 subdivision two of section four hundred twelve-a of this title;]
3 4. "Subject of the report" means[: (a)] any parent of, guardian of, or
4 other person eighteen years of age or older legally responsible for, as
5 defined in subdivision (g) of section one thousand twelve of the family
6 court act, a child reported to the statewide central register of child
7 abuse and maltreatment who is allegedly responsible for causing injury,
8 abuse or maltreatment to such child or who allegedly allows such injury,
9 abuse or maltreatment to be inflicted on such child; or a director or an
10 operator of, or employee or volunteer in, a home operated or supervised
11 by an authorized agency, the office of children and family services, [or
12 an office of the department of mental hygiene] or in a family day-care
13 home, a day-care center, a group family day care home, a school-age
14 child care program or a day-services program who is allegedly responsi-
15 ble for causing injury, abuse or maltreatment to a child who is reported
16 to the statewide central register of child abuse or maltreatment or who
17 allegedly allows such injury, abuse or maltreatment to be inflicted on
18 such child; [or
19 (b) a subject of a report of an abused or neglected child in residen-
20 tial care as defined in subdivision eight of section four hundred
21 twelve-a of this title;]
22 § 2-b. Section 412-a of the social services law is REPEALED.
23 § 3. Paragraphs (a) and (c) of subdivision 1 of section 413 of the
24 social services law, paragraph (a) as amended by chapter 91 of the laws
25 of 2011 and paragraph (c) as amended by chapter 366 of the laws of 2008,
26 are amended to read as follows:
27 (a) The following persons and officials are required to report or
28 cause a report to be made in accordance with this title when they have

1 reasonable cause to suspect that a child coming before them in their
2 professional or official capacity is an abused or maltreated child, or
3 when they have reasonable cause to suspect that a child is an abused or
4 maltreated child where the parent, guardian, custodian or other person
5 legally responsible for such child comes before them in their profes-
6 sional or official capacity and states from personal knowledge facts,
7 conditions or circumstances which, if correct, would render the child an
8 abused or maltreated child: any physician; registered physician assist-
9 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;
10 osteopath; optometrist; chiropractor; podiatrist; resident; intern;
11 psychologist; registered nurse; social worker; emergency medical techni-
12 cian; licensed creative arts therapist; licensed marriage and family
13 therapist; licensed mental health counselor; licensed psychoanalyst;
14 hospital personnel engaged in the admission, examination, care or treat-
15 ment of persons; a Christian Science practitioner; school official,
16 which includes but is not limited to school teacher, school guidance
17 counselor, school psychologist, school social worker, school nurse,
18 school administrator or other school personnel required to hold a teach-
19 ing or administrative license or certificate; social services worker;
20 director of a children's overnight camp, summer day camp or traveling
21 summer day camp, as such camps are defined in section thirteen hundred
22 ninety-two of the public health law; day care center worker; school-age
23 child care worker; provider of family or group family day care; [employ-
24 ee or volunteer in a residential care] <u>agent of a</u> facility <u>or provider</u>
25 <u>agency, as</u> defined in [subdivision four of] section four hundred
26 [twelve-a] <u>eighty-eight</u> of [this title] <u>article eleven of this chapter</u>
27 or any other child care or foster care worker; mental health profes-
28 sional; substance abuse counselor; alcoholism counselor; all persons

1 credentialed by the office of alcoholism and substance abuse services;
2 peace officer; police officer; district attorney or assistant district
3 attorney; investigator employed in the office of a district attorney; or
4 other law enforcement official.
5 (c) A medical or other public or private institution, school, facility
6 or agency shall not take any retaliatory personnel action, as such term
7 is defined in paragraph (e) of subdivision one of section seven hundred
8 forty of the labor law, against an employee because such employee
9 believes that he or she has reasonable cause to suspect that a child is
10 an abused or maltreated child and that employee therefore makes a report
11 in accordance with this title. No school, school official, child care
12 provider, foster care provider, residential care facility provider,
13 hospital, medical institution provider or mental health facility provid-
14 er shall impose any conditions, including prior approval or prior
15 notification, upon a member of their staff specifically required to
16 report under this title. At the time of the making of a report, or at
17 any time thereafter, such person or official may exercise the right to
18 request, pursuant to paragraph (A) of subdivision four of section four
19 hundred twenty-two of this title, the findings of an investigation made
20 pursuant to this title [or section 45.07 of the mental hygiene law].
21 § 3-a. Section 415 of the social services law, as amended by chapter
22 323 of the laws of 2008, is amended to read as follows:
23 § 415. Reporting procedure. Reports of suspected child abuse or
24 maltreatment made pursuant to this title shall be made immediately by
25 telephone or by telephone facsimile machine on a form supplied by the
26 commissioner of the office of children and family services. Oral reports
27 shall be followed by a report in writing within forty-eight hours after
28 such oral report. Oral reports shall be made to the statewide central

1 register of child abuse and maltreatment unless the appropriate local
2 plan for the provision of child protective services provides that oral
3 reports should be made to the local child protective service. In those
4 localities in which oral reports are made initially to the local child
5 protective service, the child protective service shall immediately make
6 an oral or electronic report to the statewide central register. Written
7 reports shall be made to the appropriate local child protective service
8 except that written reports involving children [in residential care, as
9 defined in subdivision four of section four hundred twelve-a of this
10 title, or] being cared for in a home operated or supervised by an
11 authorized agency[,] <u>or the</u> office of children and family services[, or
12 an office of the department of mental hygiene,] shall be made to the
13 statewide central register of child abuse and maltreatment which shall
14 transmit the reports to the agency responsible for investigating the
15 report, in accordance with [paragraph (a) or (c) of subdivision eleven
16 of section four hundred twenty-two or] section four hundred
17 twenty-four-b of this title[, as applicable]. Written reports shall be
18 made in a manner prescribed and on forms supplied by the commissioner of
19 the office of children and family services and shall include the follow-
20 ing information: the names and addresses of the child and his or her
21 parents or other person responsible for his or her care, if known, and,
22 as the case may be, the name and address of the [residential care facil-
23 ity or] program in which the child [resides or] is receiving care; the
24 child's age, sex and race; the nature and extent of the child's inju-
25 ries, abuse or maltreatment, including any evidence of prior injuries,
26 abuse or maltreatment to the child or, as the case may be, his or her
27 siblings; the name of the person or persons alleged to be responsible
28 for causing the injury, abuse or maltreatment, if known; family composi-

1 tion, where appropriate; the source of the report; the person making the
2 report and where he or she can be reached; the actions taken by the
3 reporting source, including the taking of photographs and x-rays,
4 removal or keeping of the child or notifying the medical examiner or
5 coroner; and any other information which the commissioner of the office
6 of children and family services may, by regulation, require, or the
7 person making the report believes might be helpful, in the furtherance
8 of the purposes of this title. Notwithstanding the privileges set forth
9 in article forty-five of the civil practice law and rules, and any other
10 provision of law to the contrary, mandated reporters who make a report
11 which initiates an investigation of an allegation of child abuse or
12 maltreatment are required to comply with all requests for records made
13 by a child protective service relating to such report, including records
14 relating to diagnosis, prognosis or treatment, and clinical records, of
15 any patient or client that are essential for a full investigation of
16 allegations of child abuse or maltreatment pursuant to this title;
17 provided, however, that disclosure of substance abuse treatment records
18 shall be made pursuant to the standards and procedures for disclosure of
19 such records delineated in federal law. Written reports from persons or
20 officials required by this title to report shall be admissible in
21 evidence in any proceedings relating to child abuse or maltreatment.
22 § 4. Section 418 of the social services law, as amended by chapter 485
23 of the laws of 2006, is amended to read as follows:
24 § 418. Mandatory reporting to and post-mortem investigation of deaths
25 by medical examiner or coroner. Any person or official required to
26 report cases of suspected child abuse or maltreatment, including workers
27 of the local child protective service[, as well as an employee of or
28 official of a state agency responsible for the investigation of a report

1 of abuse or maltreatment of a child in residential care,] who has
2 reasonable cause to suspect that a child died as a result of child abuse
3 or maltreatment shall report that fact to the appropriate medical exam-
4 iner or coroner. The medical examiner or coroner shall accept the
5 report for investigation and shall issue a preliminary written report of
6 his or her finding within sixty days of the date of death, absent
7 extraordinary circumstances, and his or her final written report prompt-
8 ly, absent extraordinary circumstances, to the police, the appropriate
9 district attorney, the local child protective service, the office of
10 children and family services, and, if the institution making the report
11 is a hospital, the hospital. The office of children and family services
12 shall promptly provide a copy of the preliminary and final reports to
13 the statewide central register of child abuse and maltreatment.
14 § 5. The section heading, the opening paragraph and subdivision 1 of
15 section 421 of the social services law, the section heading and the
16 opening paragraph as amended by chapter 718 of the laws of 1986 and
17 subdivision 1 as amended by chapter 504 of the laws of 1988, are amended
18 to read as follows:
19 Responsibility of the [department] <u>office</u>. The [department] <u>office</u>
20 shall: 1. in conjunction with local departments, both jointly and indi-
21 vidually, within the appropriation available, conduct a continuing
22 publicity and education program for local department staff, persons and
23 officials required to report including district attorneys, assistant
24 district attorneys, police officers, peace officers, investigators
25 employed in the office of a district attorney, and any other appropriate
26 persons to encourage the fullest degree of reporting of suspected child
27 abuse or maltreatment. Such program shall be developed and implemented
28 in coordination with those established pursuant to section 31.06 of the

1 mental hygiene law, section twenty-eight hundred five-n of the public
2 health law, section thirty-two hundred nine-a of the education law
3 [and], sections two hundred fourteen-a and eight hundred forty of the
4 executive law and article eleven of this chapter. The program shall
5 include but not be limited to responsibilities, obligations and powers
6 under this title and chapter as well as the diagnosis of child abuse and
7 maltreatment, the procedures of the child protective service, the family
8 court and other duly authorized agencies and the prevention, treatment
9 and remediation of abuse and maltreatment of children in residential
10 care.

11 § 6. Subparagraph (r) of paragraph (A) of subdivision 4 of section
12 422 of the social services law is REPEALED, and the opening paragraph,
13 subparagraphs (j), (z) and (aa) and the first undesignated paragraph of
14 paragraph (A) of subdivision 4 of section 422 of the social services
15 law, the opening paragraph, subparagraph (j) and the first undesignated
16 paragraph of paragraph (A) of subdivision 4 as amended by chapter 12 of
17 the laws of 1996, subparagraph (z) as amended and subparagraph (aa) as
18 added by chapter 440 of the laws of 2011, are amended to read as
19 follows:

20 Reports made pursuant to this title as well as any other information
21 obtained, reports written or photographs taken concerning such reports
22 in the possession of the [department,] office or local departments[, or
23 the commission on quality of care for the mentally disabled,] shall be
24 confidential and shall only be made available to:

25 (j) [the state commission on quality of care for the mentally disabled
26 in connection with an investigation being conducted by the commission
27 pursuant to article forty-five of the mental hygiene law] the justice
28 center for the protection of people with special needs or a delegate

1 investigatory entity in connection with an investigation being conducted
2 under article eleven of this chapter;
3 (z) an entity with appropriate legal authority in another state to
4 license, certify or otherwise approve prospective foster and adoptive
5 parents where disclosure of information regarding the prospective foster
6 or adoptive parents and other persons over the age of eighteen residing
7 in the home of such prospective parents is required by paragraph twenty
8 of subdivision (a) of section six hundred seventy-one of title forty-two
9 of the United States code; and
10 (aa) a social services official who is investigating whether an adult
11 is in need of protective services in accordance with the provisions of
12 section four hundred seventy-three of this chapter, when such official
13 has reasonable cause to believe such adult may be in need of protective
14 services due to the conduct of an individual or individuals who had
15 access to such adult when such adult was a child and that such reports
16 and information are needed to further the present investigation.
17 After a child, other than a child in residential care, who is reported
18 to the central register of abuse or maltreatment reaches the age of
19 eighteen years, access to a child's record under subparagraphs (a) and
20 (b) of this paragraph shall be permitted only if a sibling or off-spring
21 of such child is before such person and is a suspected victim of child
22 abuse or maltreatment. In addition, a person or official required to
23 make a report of suspected child abuse or maltreatment pursuant to
24 section four hundred thirteen of this chapter shall receive, upon
25 request, the findings of an investigation made pursuant to this title
26 [or section 45.07 of the mental hygiene law]. However, no information
27 may be released unless the person or official's identity is confirmed by
28 the [department] office. If the request for such information is made

1 prior to the completion of an investigation of a report, the released
2 information shall be limited to whether the report is "indicated",
3 "unfounded" or "under investigation", whichever the case may be. If the
4 request for such information is made after the completion of an investi-
5 gation of a report, the released information shall be limited to whether
6 the report is "indicated" or "unfounded", whichever the case may be. A
7 person given access to the names or other information identifying the
8 subjects of the report, or other persons named in the report, except the
9 subject of the report or other persons named in the report, shall not
10 divulge or make public such identifying information unless he or she is
11 a district attorney or other law enforcement official and the purpose is
12 to initiate court action or the disclosure is necessary in connection
13 with the investigation or prosecution of the subject of the report for a
14 crime alleged to have been committed by the subject against another
15 person named in the report. Nothing in this section shall be construed
16 to permit any release, disclosure or identification of the names or
17 identifying descriptions of persons who have reported suspected child
18 abuse or maltreatment to the statewide central register or the agency,
19 institution, organization, program or other entity where such persons
20 are employed or the agency, institution, organization or program with
21 which they are associated without such persons' written permission
22 except to persons, officials, and agencies enumerated in subparagraphs
23 (e), (f), (h), (j), (l), (m) and (v) of this paragraph.
24 § 7. The opening paragraph, subparagraph (iii) of paragraph (a) and
25 paragraph (b) of subdivision 5 and subdivision 6 of section 422 of the
26 social services law, the opening paragraph, subparagraph (iii) of para-
27 graph (a) and paragraph (b) of subdivision 5 as amended by chapter 555

1 of the laws of 2000 and subdivision 6 as amended by chapter 323 of the
2 laws of 2008, are amended to read as follows:
3 Unless an investigation of a report conducted pursuant to this title
4 [or subdivision (c) of section 45.07 of the mental hygiene law] deter-
5 mines that there is some credible evidence of the alleged abuse or
6 maltreatment, all information identifying the subjects of the report and
7 other persons named in the report shall be legally sealed forthwith by
8 the central register and any local child protective services or the
9 state agency which investigated the report. Such unfounded reports may
10 only be unsealed and made available:
11 (iii) to a local child protective service, the office of children and
12 family services, <u>or</u> all members of a local or regional multidisciplinary
13 investigative team[, the commission on quality of care for the mentally
14 disabled, or the department of mental hygiene,] <u>or the justice center</u>
15 <u>for the protection of people with special needs</u> when investigating a
16 subsequent report of suspected abuse<u>, neglect</u> or maltreatment involving
17 a subject of the unfounded report, a child named in the unfounded
18 report, or a child's sibling named in the unfounded report <u>pursuant to</u>
19 <u>this article or article eleven of this chapter</u>;
20 (b) Persons given access to unfounded reports pursuant to subparagraph
21 (v) of paragraph (a) of this subdivision shall not redisclose such
22 reports except as necessary to conduct such appropriate investigation or
23 prosecution and shall request of the court that any copies of such
24 reports produced in any court proceeding be redacted to remove the names
25 of the subjects and other persons named in the reports or that the court
26 issue an order protecting the names of the subjects and other persons
27 named in the reports from public disclosure. The local child protective
28 service or state agency shall not indicate the subsequent report solely

1 based upon the existence of the prior unfounded report or reports.
2 Notwithstanding section four hundred fifteen of this title, section one
3 thousand forty-six of the family court act, or, except as set forth
4 herein, any other provision of law to the contrary, an unfounded report
5 shall not be admissible in any judicial or administrative proceeding or
6 action; provided, however, an unfounded report may be introduced into
7 evidence: (i) by the subject of the report where such subject is a
8 respondent in a proceeding under article ten of the family court act or
9 is a plaintiff or petitioner in a civil action or proceeding alleging
10 the false reporting of child abuse or maltreatment; or (ii) in a crimi-
11 nal court for the purpose of prosecuting a violation of subdivision
12 [three] <u>four</u> of section [240.55] <u>240.50</u> of the penal law. Legally sealed
13 unfounded reports shall be expunged ten years after the receipt of the
14 report. [Whenever the office of children and family services determines
15 that there is some credible evidence of abuse or maltreatment as a
16 result of an investigation of a report conducted pursuant to subdivision
17 (c) of section 45.07 of the mental hygiene law, the office of children
18 and family services shall notify the commission on quality of care for
19 the mentally disabled.]
20 6. In all other cases, the record of the report to the statewide
21 central register shall be expunged ten years after the eighteenth birth-
22 day of the youngest child named in the report. In the case of a child in
23 residential care [as defined in subdivision four of section four hundred
24 twelve-a of this title,] the record of the report to the statewide
25 central register shall be expunged ten years after the reported child's
26 eighteenth birthday. In any case and at any time, the commissioner of
27 the office of children and family services may amend any record upon

1 good cause shown and notice to the subjects of the report and other
2 persons named in the report.
3 § 8. Subdivisions 3, 4, 5 and 6 of section 424-a of the social
4 services law, subdivision 3 as amended by chapter 578 of the laws of
5 1997, subdivision 4 as amended by chapter 465 of the laws of 1992,
6 subdivision 5 as added by chapter 677 of the laws of 1985, paragraph (a)
7 of subdivision 5 as amended by chapter 634 of the laws of 1988 and
8 subdivision 6 as amended by chapter 587 of the laws of 1997, are amended
9 and a new subdivision 7 is added to read as follows:
10 3. For purposes of this [chapter] section, the term "provider" or
11 "provider agency" shall mean an authorized agency, the [division for
12 youth] office of children and family services, juvenile detention facil-
13 ities subject to the certification of such [division] office, programs
14 established pursuant to article nineteen-H of the executive law, non-re-
15 sidential or residential programs or facilities licensed or operated by
16 the office of mental health or the office [of mental retardation and]
17 for persons with developmental disabilities except family care homes,
18 licensed child day care centers, including head start programs which are
19 funded pursuant to title V of the federal economic opportunity act of
20 nineteen hundred sixty-four, as amended, early intervention service
21 established pursuant to section twenty-five hundred forty of the public
22 health law, preschool services established pursuant to section forty-
23 four hundred ten of the education law, school-age child care programs,
24 special act school districts as enumerated in chapter five hundred
25 sixty-six of the laws of nineteen hundred sixty-seven, as amended,
26 programs and facilities licensed by the office of alcoholism and
27 substance abuse services [and], residential schools which are operated,
28 supervised or approved by the education department, and any other facil-

1 ity or provider agency, as defined in subdivision four of section four
2 hundred eighty-eight of this chapter, in regard to the employment of
3 staff, or use of providers of goods and services and staff of such
4 providers, consultants, interns and volunteers.
5 4. For purposes of this [chapter] section, the term "licensing agency"
6 shall mean an authorized agency which has received an application to
7 become an adoptive parent or an authorized agency which has received an
8 application for a certificate or license to receive, board or keep any
9 child pursuant to the provisions of section three hundred seventy-six or
10 three hundred seventy-seven of this article or an authorized agency
11 which has received an application from a relative within the second
12 degree or third degree of consanguinity of the parent of a child or a
13 relative within the second degree or third degree of consanguinity of
14 the step-parent of a child or children, or the child's legal guardian
15 for approval to receive, board or keep such child or a state or local
16 governmental agency which receives an application to provide child day
17 care services in a child day care center, school-age child care program,
18 family day care home or group family day care home pursuant to the
19 provisions of section three hundred ninety of this article, or the
20 department of health and mental hygiene of the city of New York, when
21 such department receives an application for a certificate of approval to
22 provide [family] child day care services in a child day care center
23 pursuant to the provisions of the health code of the city of New York,
24 or the office of mental health or the office [of mental retardation and]
25 for people with developmental disabilities when such office receives an
26 application for an operating certificate pursuant to the provisions of
27 the mental hygiene law to operate a family care home which will serve
28 children, or a state or local governmental official who receives an

1 application for a permit to operate a camp which is subject to the
2 provisions of article thirteen-A[,] or thirteen-B [or thirteen-C] of the
3 public health law or the [division for youth] office of children and
4 family services which has received an application for a certificate to
5 receive, board or keep any child at a foster family home pursuant to
6 articles nineteen-G and nineteen-H of the executive law or any other
7 facility or provider agency, as defined in subdivision four of section
8 four hundred eighty-eight of this chapter, in regard to any licensing or
9 certification function carried out by such facility or agency.
10 5. (a) The [department] office of children and family services, after
11 consultation with the [division for youth, the department of mental
12 hygiene, the commission on quality of care for the mentally disabled]
13 justice center for the protection of people with special needs, the
14 office of mental health, the office for people with developmental disa-
15 bilities, the office of alcoholism and substance abuse services, the
16 department of health, and the state education department shall develop
17 [guidelines] guidelines to be utilized by a provider agency, as defined
18 by subdivision three of this section, and a licensing agency, as defined
19 by subdivision four of this section, in evaluating persons about whom
20 inquiries are made to the [department] office pursuant to this section
21 who are the subjects of indicated reports of child abuse and maltreat-
22 ment, as defined by subdivision four of section four hundred twelve of
23 this chapter.
24 (b) The guidelines developed pursuant to subdivision one of this
25 section shall not [supercede] supersede similar guidelines developed by
26 local governmental agencies prior to January first, nineteen hundred
27 eighty-six.

1 6. A child care resource and referral program as defined in subdivi-
2 sion two of section four hundred ten-p of this article may inquire of
3 the [department] office of children and family services and the [depart-
4 ment] office shall, upon receipt of such inquiry and subject to the
5 provisions of paragraph (e) of subdivision one of this section, inform
6 such program and the subject of such inquiry whether any person who has
7 requested and agreed to be included in a list of substitute child day
8 care caregivers for employment by registered or licensed day care
9 providers maintained by such program in accordance with regulations
10 promulgated by the [department] office, is the subject of an indicated
11 child abuse and maltreatment report on file with the statewide central
12 register of child abuse and maltreatment. Inquiries made to the [depart-
13 ment] office by such programs pursuant to this subdivision shall be made
14 no more often than once in any six month period and no less often than
15 once in any twelve month period. Notwithstanding any provision of law to
16 the contrary, a child care resource and referral program may redisclose
17 such information only if the purpose of such redisclosure is to respond
18 to a request for such information by a registered or licensed provider
19 and only if after an individual included in the list of substitute child
20 day care caregivers for employment by registered or licensed day care
21 providers has consented to be referred for employment to such inquiring
22 agency. Upon such referral, the provisions related to notice and fair
23 hearing rights of this section shall otherwise apply. Inquiries made
24 pursuant to this subdivision shall be in lieu of the inquiry require-
25 ments set forth in paragraph (b) of subdivision one of this section.
26 7. Any facility, provider agency, or program that is required to
27 conduct an inquiry pursuant to section four hundred ninety-five of this
28 chapter shall first conduct the inquiry required under such section. If

1 the result of the inquiry under section four hundred ninety-five of this
2 chapter is that the person about whom the inquiry is made is on the
3 register of substantiated category one cases of abuse or neglect and the
4 facility or provider agency is required to deny the application in
5 accordance with article eleven of this chapter, the facility or provider
6 agency shall not be required to make an inquiry of the office under this
7 section.
8 § 8-a. Paragraph (b) and subparagraph (iv) of paragraph (e) of subdi-
9 vision 1 and paragraph (a) of subdivision 2 of section 424-a of the
10 social services law, paragraph (b) of subdivision 1 as amended by chap-
11 ter 677 of the laws of 1985, subparagraph (iv) of paragraph (e) of
12 subdivision 1 as amended by chapter 323 of the laws of 2008, and para-
13 graph (a) of subdivision 2 as amended by chapter 441 of the laws of
14 1993, are amended to read as follows:
15 (b) (i) [A] Subject to the provisions of subdivision seven of this
16 section, a provider agency shall inquire of the [department] office and
17 the [department] office shall, subject to the provisions of paragraph
18 (e) of this subdivision, inform such agency and the subject of the
19 inquiry whether any person who is actively being considered for employ-
20 ment and who will have the potential for regular and substantial contact
21 with [children] individuals who are cared for by the agency, is the
22 subject of an indicated child abuse and maltreatment report on file with
23 the statewide central register of child abuse and maltreatment prior to
24 permitting such person to have unsupervised contact with [children] such
25 individuals. Such agency may inquire of the [department] office and the
26 [department] office shall inform such agency and the subject of the
27 inquiry whether any person who is currently employed and who has the
28 potential for regular and substantial contact with [children] individ-

1 uals who are cared for by such agency is the subject of an indicated
2 child abuse and maltreatment report on file with the statewide central
3 register of child abuse and maltreatment. A provider agency shall also
4 inquire of the [department] office and the [department] office shall
5 inform such agency and the subject of the inquiry whether any person who
6 is employed by an individual, corporation, partnership or association
7 which provides goods or services to such agency who has the potential
8 for regular and substantial contact with [children] individuals who are
9 cared for by the agency, is the subject of an indicated child abuse and
10 maltreatment report on file with the statewide central register of child
11 abuse and maltreatment prior to permitting such person to have unsuper-
12 vised contact with [children] such individuals. Inquiries made to the
13 [department] office pursuant to this subparagraph by a provider agency
14 on current employees shall be made no more often than once in any six
15 month period.
16 (ii) A provider agency may inquire of the [department] office and the
17 [department] office shall, upon receipt of such inquiry and subject to
18 the provisions of paragraph (e) of this subdivision, inform such agency
19 and the subject of the inquiry whether any person who is to be hired as
20 a consultant by such agency who has the potential for regular and
21 substantial contact with [children] individuals who are cared for by the
22 agency is the subject of an indicated child abuse and maltreatment
23 report on file with the statewide central register of child abuse and
24 maltreatment.
25 (iii) A provider agency may inquire of the [department] office and the
26 [department] office shall, upon receipt of such inquiry and subject to
27 the provisions of paragraph (e) of this subdivision, inform such agency
28 and the subject of the inquiry whether any person who has volunteered

his or her services to such agency and who will have the potential for regular and substantial contact with [children] individuals who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(iv) The [department] office shall promulgate regulations which effectuate the provisions of this paragraph.

(iv) If it is determined after a review by the office [of children and family services] of all records, reports and information in its possession concerning the subject of the report that there is a [fair] preponderance of the evidence to find that the subject committed the act or acts of child abuse or [neglect] maltreatment giving rise to the indicated report, the office [of children and family services] shall also determine whether such act or acts are relevant and reasonably related to issues concerning the employment of the subject by a provider agency or the subject being allowed to have regular and substantial contact with [children] individuals cared for by a provider agency or the approval or disapproval of an application which has been submitted by the subject to a licensing agency, based on guidelines developed pursuant to subdivision five of this section. If it is determined that such act or acts are not relevant and related to such issues, the office [of children and family services] shall be precluded from informing the provider or licensing agency which made the inquiry to the office [of children and family services] pursuant to this section that the person about whom the inquiry is made is the subject of an indicated report of child abuse or maltreatment.

(a) Upon notification by the [department] office or by a child care resource and referral program in accordance with subdivision six of this

1 section that any person who has applied to a licensing agency for a
2 license, certificate or permit or who seeks to become an employee of a
3 provider agency, or to accept a child for adoptive placement or who will
4 be hired as a consultant or used as a volunteer by a provider agency, or
5 that any other person about whom an inquiry is made to the [department]
6 office pursuant to the provisions of this section is the subject of an
7 indicated report, the licensing or provider agency shall determine on
8 the basis of information it has available whether to approve such appli-
9 cation or retain the employee or hire the consultant or use the volun-
10 teer or permit an employee of another person, corporation, partnership
11 or association to have access to the [children] individuals cared for by
12 the provider agency, provided, however, that if such application is
13 approved, or such employee is retained or consultant hired or volunteer
14 used or person permitted to have access to the children cared for by
15 such agency the licensing or provider agency shall maintain a written
16 record, as part of the application file or employment record, of the
17 specific reasons why such person was determined to be appropriate to
18 receive a foster care or adoption placement or to provide day care
19 services, to be the director of a camp subject to the provisions of
20 article thirteen-A[,] or thirteen-B [or thirteen-C] of the public health
21 law, to be employed, to be retained as an employee, to be hired as a
22 consultant, used as a volunteer or to have access to the [children]
23 individuals cared for by the agency.
24 § 9. Section 424-b of the social services law, as amended by chapter
25 323 of the laws of 2008, is amended to read as follows:
26 § 424-b. Children in the care of certain public and private agencies.
27 Notwithstanding any inconsistent provisions of law, when a report of
28 child abuse or maltreatment involves a child being cared for in a home

1 operated or supervised by an authorized agency[,] <u>or</u> the office of chil-
2 dren and family services, [or an office of the department of mental
3 hygiene,] such report shall be accepted and maintained by the office of
4 children and family services and shall be referred for the purposes of
5 conducting an investigation to the appropriate staff within the office
6 of children and family services [or the appropriate office of the
7 department of mental hygiene,] where the child is in the care of such
8 agency; and where the child is in a home operated or supervised by an
9 authorized agency, to the social services district wherein such home is
10 located. The [agency] <u>office</u> or social services district receiving such
11 referral shall undertake an appropriate investigation of the report, in
12 accordance with the terms and conditions set forth in [subdivisions one
13 through eight of section four hundred twenty-four-c of] this title. Any
14 person who is alleged to have abused or maltreated a child in a report
15 accepted and referred pursuant to this section shall be accorded the
16 procedural rights set forth in section four hundred twenty-two and in
17 subdivision six of section four hundred twenty-four of this title. Noth-
18 ing in this section shall impose any duty or responsibility on any child
19 protective service pursuant to section four hundred twenty-two, four
20 hundred twenty-four or any other provision of this article.

21 § 10. Subdivision 1 of section 425 of the social services law, as
22 amended by chapter 634 of the laws of 1988, is amended to read as
23 follows:

24 1. To effectuate the purposes of this title, the commissioner may
25 request and shall receive from departments, boards, bureaus, or other
26 agencies of the state, or any of its political subdivisions, or any duly
27 authorized agency, or any other agency providing services under the
28 local child protective services plan such assistance and data as will

1 enable the department and local child protective services to fulfill
2 their responsibilities properly. [In relation to an investigation of a
3 report of abuse or maltreatment involving a child in residential care,
4 such data may include, but need not be limited to, the case records of
5 the child who allegedly was abused or maltreated and any other child who
6 allegedly witnessed the abuse or maltreatment and, consistent with
7 appropriate collective bargaining agreements and applicable provisions
8 of the civil service law, those portions of the employment record of the
9 subject of the report considered by the subject's employer to be rele-
10 vant and reasonably related to the allegations being investigated by the
11 department.] Nothing contained in this subdivision shall limit the
12 department's authority under sections three hundred seventy-two, four
13 hundred sixty-c and four hundred sixty-e of this chapter to access the
14 records of authorized agencies.
15 § 11. Section 426 of the social services law, as amended by chapter
16 676 of the laws of 1985, is amended to read as follows:
17 § 426. Annual reports. The commissioner shall prepare for inclusion in
18 the annual report required by subdivision (d) of section seventeen of
19 this chapter to be filed with the governor and the legislature prior to
20 December fifteenth of each year, a report on the operations of the state
21 central register of child abuse and maltreatment and the various local
22 child protective services. The report shall include a full statistical
23 analysis of the reports made to the central register together with a
24 report on the implementation of this title, his <u>or her</u> evaluation of
25 services offered under this chapter and his <u>or her</u> recommendations for
26 additional legislation to fulfill the purposes of this title. Such
27 report shall indicate the number of child abuse and maltreatment reports
28 and cases received by the statewide central register of child abuse and

1 maltreatment by each district in the preceding year, the number of such
2 cases determined to have been indicated and the number of such cases
3 determined to be unfounded by each district in the preceding year, the
4 number of such cases which have not been indicated or unfounded within
5 the time period required by subdivision seven of section four hundred
6 twenty-four of this [chapter] article by each district in the preceding
7 year and the number of workers assigned to the child protective service
8 in each district in the preceding year. [The report shall also contain
9 data on the protection of children in residential care from abuse and
10 maltreatment, including reports received, results of investigations by
11 types of facilities and programs, types of corrective action taken, as
12 well as efforts undertaken by the department, the division for youth
13 and the state education department to provide training pursuant to stan-
14 dards established by section four hundred sixty-two of this chapter,
15 section five hundred one of the executive law and sections forty-four
16 hundred three, forty-three hundred fourteen, forty-three hundred fifty-
17 eight and forty-two hundred twelve of the education law.]
18 § 12. Section 460 of the social services law, as added by chapter 669
19 of the laws of 1977, is amended to read as follows:
20 § 460. Declaration of policy and statement of purpose. Residential
21 care programs for adults and children of the highest quality, efficient-
22 ly produced and properly utilized at a reasonable cost, are a matter of
23 vital concern to the people of this state. In order to more effectively
24 protect and assure the life, health, safety and comfort of adults and
25 children who must be cared for away from their own homes, the department
26 of social services acting directly or through social services districts,
27 and with the cooperation of other state agencies, shall have the compre-
28 hensive responsibility for the development and administration of

1 programs, standards and methods of operation, and all other matters of
2 state policy, with respect to residential care programs for children and
3 adults and all facilities and agencies, whether public or private, which
4 are subject to the provisions of this article. For the purposes of this
5 article, with respect to residential care programs for children, the
6 term "department" shall mean the office of children and family services
7 and with respect to residential care programs for adults, the term shall
8 mean the office of children and family services in relation to family
9 type homes for adults and residential programs for victims of domestic
10 violence, the office of temporary and disability assistance in relation
11 to shelters for adults and shelters for families; and the department of
12 health in relation to all other residential care programs for adults.
13 § 13. Subdivision 2-a of section 460-c of the social services law, as
14 amended by chapter 32 of the laws of 1992 and paragraphs (a) and (b) as
15 amended by chapter 323 of the laws of 2008, is amended to read as
16 follows:
17 2-a. Special procedures relating to abuse and neglect of [children in
18 residential care] vulnerable persons. (a) If the report of an investi-
19 gation of [child] abuse or [maltreatment] neglect is [indicated]
20 substantiated in accordance with article eleven of this chapter, the
21 director or operator of a residential facility or program[, including a
22 program described in paragraph (j) of subdivision four of section four
23 hundred twelve-a of this chapter,] shall submit to the [office of chil-
24 dren and family services] department, within ten business days of
25 receipt of notice of the [indicated] substantiated report, a written
26 plan of prevention and remediation to be taken with respect to the
27 subject of [the indicated] such report to [assure] protect the continued
28 health [and], safety and welfare of [children] the service recipients

1 and provide for the prevention of future acts of abuse or [maltreatment]
2 neglect. The [office of children and family services] department shall
3 approve or disapprove such plan and specify necessary revisions within
4 ten days of its receipt and shall monitor its implementation pursuant to
5 the provisions of this chapter.
6 (b) In the event an investigation of a report of alleged [child] abuse
7 or [maltreatment] neglect determines that [some credible] a preponder-
8 ance of evidence of abuse or [maltreatment] neglect exists and such
9 abuse or [maltreatment] neglect may be attributed in whole or in part to
10 noncompliance by the facility or program[, including a program described
11 in paragraph (j) of subdivision four of section four hundred twelve-a of
12 this chapter,] with provisions of this chapter or regulations of the
13 [office of children and family services] department applicable to the
14 operation of such residential facility or program, the director or oper-
15 ator of such facility or program shall, in consultation with officials
16 of the department responsible for the approval of operating certificates
17 and for monitoring the provision of protective services to [children]
18 service recipients, develop a plan of prevention and remediation which
19 shall be submitted to and approved by the [office of children and family
20 services] department in accordance with time limits established by regu-
21 lations of the [office of children and family services] department.
22 Implementation of such plan shall be jointly monitored by officials of
23 the [office of children and family services] department responsible for
24 the approval of operating certificates and for monitoring the provision
25 of protective services to [children] service recipients. In reviewing
26 the continuing qualification of a residential [child care] facility or
27 program for an operating certificate, the [office of children and family
28 services] department shall evaluate such facility's or program's compli-

1 ance with plans of prevention and remediation developed and implemented
2 pursuant to this section.
3 (c) Development and implementation of plans pursuant to this section
4 shall, to the extent possible, be coordinated with remediation plans
5 required by local social services districts.
6 § 14. Section 461-m of the social services law, as amended by chapter
7 462 of the laws of 1996, is amended to read as follows:
8 § 461-m. Death and felony crime reporting. The operator of an adult
9 home or residence for adults shall have an affirmative duty to report
10 any death, or attempted suicide of a resident to the department within
11 twenty-four hours of its occurrence, and shall also have an affirmative
12 duty to report to an appropriate law enforcement authority if it is
13 believed that a felony crime may have been committed against a resident
14 of such facility as soon as possible, or in any event within forty-eight
15 hours. In addition, the operator shall send any reports involving a
16 resident who had at any time received services from a mental hygiene
17 service provider to the [state commission on quality of care for the
18 mentally disabled] <u>justice center for the protection of people with</u>
19 <u>special needs</u>.
20 § 15. Section 461-o of the social services law, as added by chapter
21 462 of the laws of 1996, is amended to read as follows:
22 § 461-o. Complaint investigation procedures. The department shall
23 establish procedures governing the receipt and investigation of
24 complaints regarding the care afforded to residents of adult care facil-
25 ities <u>consistent with article eleven of this chapter, as applicable</u>.
26 Such procedures shall assure the confidentiality of the complainant.
27 Such procedures shall include but not be limited to the procedures for
28 reporting complaints, either in writing or orally to the department, and

1 the time frames governing the investigation of any such complaints
2 submitted to the department. Provided however, if any complaint alleges
3 the abuse or neglect of a resident or involves an incident that exposes
4 a resident to cruel or unsafe care or otherwise represents a serious
5 resident care issue, the department shall ensure that an investigation
6 of any such complaint is initiated immediately and in no event commenced
7 less than seventy-two hours from the time such complaint is received by
8 the department. Upon the conclusion of the investigation by the depart-
9 ment the operator and the complainant shall be notified in writing of
10 the results of such investigation <u>or, as applicable, pursuant to article</u>
11 <u>eleven of this chapter</u>.
12 § 16. Section 462 of the social services law, as added by chapter 669
13 of the laws of 1977, subdivision 1 as amended by chapter 677 of the laws
14 of 1985, paragraphs (b) and (c) of subdivision 1 as amended by chapter
15 32 of the laws of 1992, paragraph (f) of subdivision 1 as added by chap-
16 ter 472 of the laws of 2004, paragraph (a) of subdivision 2 as amended
17 by chapter 800 of the laws of 1985 and paragraph (b) of subdivision 2 as
18 amended by chapter 558 of the laws of 1999, is amended to read as
19 follows:
20 § 462. Responsibility for standards. 1. (a) The [department of social
21 services] <u>office of children and family services</u> shall promulgate regu-
22 lations concerning standards of care and treatment and fiscal, adminis-
23 trative, nutritional, architectural and safety standards, consistent
24 with the provisions of section three hundred ninety-eight-a of this
25 chapter, which shall apply to all facilities exercising care or custody
26 of children or providing care or shelter to unmarried mothers.
27 (b) With respect to facilities exercising care or custody of children,
28 no license or operating certificate shall be provided or renewed unless

1 it can be demonstrated that such facilities comply with regulations for
2 the prevention and remediation of abuse or neglect and [maltreatment of]
3 for significant incidents involving children in such facilities, includ-
4 ing procedures for:
5 (i) consistent with appropriate collective bargaining agreements and
6 applicable provisions of the civil service law, [the review and evalu-
7 ation of the backgrounds of and the information supplied by any person
8 applying to be an employee, a volunteer or consultant, which shall
9 include but not be limited to the following requirements: that the
10 applicant set forth his or her employment history, provide personal and
11 employment references, relevant experiential and educational information
12 and sign a sworn statement indicating whether the applicant to the best
13 of his or her knowledge, has ever been convicted of a crime in this
14 state or any other jurisdiction] assisting the justice center for the
15 protection of people with special needs with its review and evaluation
16 of criminal background checks of prospective employees, as set forth in
17 subdivision five of section five hundred fifty-three of the executive
18 law;
19 (ii) establishing, for employees, relevant minimal experiential and
20 educational qualifications consistent with appropriate collective
21 bargaining agreements and applicable provisions of the civil service
22 law;
23 (iii) assuring adequate and appropriate supervision of employees,
24 volunteers and consultants;
25 (iv) demonstrating by a residential facility or program that appropri-
26 ate action is taken to assure the safety of the child who is reported
27 pursuant to article eleven of this chapter to the [state] vulnerable
28 persons' central register [of child abuse and maltreatment] as well as

1 other children in care, immediately upon notification that a report of
2 [child] abuse or [maltreatment] neglect has been made with respect to a
3 child in such facility or program;
4 (v) consistent with applicable collective bargaining agreements,
5 assuring that an individual who has committed a category one offense, as
6 defined in paragraph (a) of subdivision five of section four hundred
7 ninety-three of this chapter, that is included on the vulnerable
8 persons' central register is not hired or otherwise used in any position
9 in which such individual would have regular and substantial contact with
10 a service recipient in any program operated, licensed or certified by
11 the office;
12 (vi) removing a child, consistent as applicable with any court order
13 placing the child, when it is determined that there is risk to such
14 child if he or she continues to remain within a facility or program;
15 [(vi)] (vii) appropriate preventive and remedial action to be taken
16 including legal actions, consistent with appropriate collective bargain-
17 ing agreements and applicable provisions of the civil service law.
18 (c) With respect to facilities exercising care or custody of children
19 such standards shall establish as a priority that:
20 (i) subject to the amounts appropriated therefor, administrators,
21 employees, volunteers and consultants receive training in at least the
22 following: child abuse prevention and identification, safety and securi-
23 ty procedures, the principles of child development, the characteristics
24 of children in care and techniques of group and child management includ-
25 ing crisis intervention, the laws, regulations and procedures governing
26 the protection of children from abuse and [maltreatment] neglect, and
27 other appropriate topics, provided however, that the [department] office
28 may exempt administrators and consultants of such facilities or programs

1 from such requirements upon demonstration of substantially equivalent
2 knowledge or experience; and
3 (ii) subject to the amounts appropriated therefor, children receive
4 instruction, consistent with their age, needs and circumstances as well
5 as the needs and circumstances within the facility or program, in tech-
6 niques and procedures which will enable such children to advocate for
7 and protect themselves from abuse and [maltreatment] neglect; and
8 (iii) the [department] office, in consultation with the executive
9 director of the justice center for persons with special needs shall take
10 all reasonable and necessary actions to assure that employees, volun-
11 teers and consultants in residential care facilities and programs are
12 kept apprised on a current basis of all [department] office policies and
13 procedures relating to the protection of children from abuse and
14 [maltreatment] neglect and significant incidents, and shall monitor and
15 supervise the provision of training to such administrators, employees,
16 volunteers, children and consultants.
17 (d) Such regulations shall be developed in consultation with other
18 state departments and agencies responsible for human services programs
19 including, but not limited to, the department of education, the depart-
20 ment of health, [the department of mental hygiene, the division for
21 youth and the board of social welfare,] the office of mental health, the
22 office for people with developmental disabilities, the office of alco-
23 holism and substance abuse services and the justice center for the
24 protection of people with special needs and shall, to the extent possi-
25 ble, be consistent with those promulgated by other state agencies for
26 such purposes.
27 (e) This subdivision shall not apply to facilities operated by or
28 certified or licensed to operate by another state agency.

1 (f) No residential institution for children as defined in subdivision
2 forty-four of section sixteen hundred seventy-six of the public authori-
3 ties law shall enter into a lease, sub-lease or other agreement with the
4 dormitory authority pursuant to subdivision forty of section sixteen
5 hundred eighty of the public authorities law unless and until:
6 (i) the office of children and family services, the director of the
7 division of the budget and any other state agency which licenses such
8 residential institutions for children first determines that the project
9 is necessary to address health and safety needs of children at the
10 institution, approve the project cost upon determination that such costs
11 are reasonable, necessary and cost effective based upon the application
12 of cost per square foot guidelines and any other standards applicable to
13 the type of program or to the clinically-required needs of a specialized
14 group of children to be served by the project; and
15 (ii) the office of children and family services or such other state
16 agency which licenses such residential institution for children approves
17 the plans and specifications of the residential facilities to be
18 replaced, reconstructed, rehabilitated, improved, renovated, or other-
19 wise provided for, furnished or equipped.
20 2. (a) The [division for youth] <u>office</u> shall establish regulations
21 governing secure and non-secure detention facilities subject to article
22 nineteen-G of the executive law and residential facilities operated as
23 approved runaway programs or transitional independent living support
24 programs pursuant to article nineteen-H of the executive law.
25 (b) The appropriate offices of the state department of mental hygiene
26 shall establish regulations governing all child care facilities subject
27 to articles [twenty-three,] thirty-one and thirty-two of the mental
28 hygiene law.

1 (c) The department of mental hygiene and the [division for youth]
2 office shall propose any additional standards as are deemed necessary to
3 adequately ensure the care of children in facilities subject to the
4 inspection and supervision of the department, which care for a signif-
5 icant number of mentally disabled children, juvenile delinquents or
6 persons in need of supervision. The final form of any such additional
7 standards shall be subject to the approval of the department of mental
8 hygiene for such standards related to the care of mentally disabled
9 children, or the [division for youth] office for such standards related
10 to the care of juvenile delinquents and persons in need of supervision.
11 § 17. This act shall take effect April 1, 2013; provided, however,
12 that the amendments to section 426 of the social services law made by
13 section eleven of this act shall only remain in effect until section 6
14 of chapter 377 of the laws of 2011, takes effect; provided further, that
15 effective immediately, the addition, amendment or repeal of any rule or
16 regulation necessary for the implementation of this act on its effective
17 date are authorized to be made and completed on or before such effective
18 date.

19 PART E

20 Section 1. Subdivision 5 of section 1125 of the education law, as
21 added by chapter 180 of the laws of 2000, is amended to read as follows:
22 5. "Educational setting" shall mean the building and grounds of a
23 public school district, the vehicles provided by the school district for
24 the transportation of students to and from school buildings, field
25 trips, co-curricular and extra-curricular activities both on and off
26 school district grounds, all co-curricular and extra-curricular activity

1 sites, and any other location where direct contact between an employee
2 or volunteer and a child has allegedly occurred. Such term shall not
3 include a special act school district as defined in section four thou-
4 sand one of this chapter which shall be subject to article eleven of the
5 social services law.
6 § 1-a. Subdivisions (a), (b) and (c) of section 4212 of the education
7 law, as amended by chapter 32 of the laws of 1992, are amended to read
8 as follows:
9 (a) Promulgate regulations, pursuant to this section and article elev-
10 en of the social services law, concerning standards for the protection
11 of children in residential care from abuse and [maltreatment] neglect
12 including procedures for:
13 (i) consistent with appropriate collective bargaining agreements and
14 applicable provisions of the civil service law, the review and evalu-
15 ation of the backgrounds of and the information supplied by any person
16 applying to be an employee, a volunteer or consultant, which shall
17 include but not be limited to the following requirements: that the
18 applicant set forth his or her employment history, provide personal and
19 employment references, and relevant experiential and educational infor-
20 mation, and sign a sworn statement indicating whether the applicant, to
21 the best of his or her knowledge, has ever been convicted of a crime in
22 this state or any other jurisdiction;
23 (ii) establishing, for employees, relevant minimal experiential and
24 educational qualifications, consistent with appropriate collective
25 bargaining agreements and applicable provisions of the civil service
26 law;
27 (iii) assuring adequate and appropriate supervision of employees,
28 volunteers and consultants;

1 (iv) demonstrating by a residential facility or program that appropri-
2 ate action is taken to assure the safety of the child who is reported to
3 the [state] vulnerable persons' central register in accordance with
4 section four hundred ninety-two of the social services law as well as
5 other children in care, immediately upon notification that a report of
6 [child] abuse or [maltreatment] neglect has been made with respect to a
7 child in such residential facility or program;
8 (v) removing a child when it is determined that there is risk to such
9 child if he or she continues to remain within a residential facility or
10 program; and
11 (vi) appropriate preventive and remedial action to be taken including
12 legal actions, consistent with appropriate collective bargaining agree-
13 ments and applicable provisions of the civil service law.
14 (vii) consistent with applicable collective bargaining agreements,
15 assuring that an individual who has committed a category one offense, as
16 defined in paragraph (a) of subdivision four of section four hundred
17 ninety-three of the social services law, that is included on the vulner-
18 able persons' central register is not hired or otherwise used in any
19 position in which such individual would have regular and substantial
20 contact with a service recipient in any program described in paragraph
21 (d) of subdivision four of section four hundred eighty-eight of the
22 social services law.
23 Such standards shall also establish as a priority requirements that:
24 (A) subject to the amounts appropriated therefor, administrators,
25 employees, volunteers and consultants receive training in at least the
26 following: child abuse prevention and identification, safety and securi-
27 ty procedures, the principles of child development, the characteristics
28 of children in care and techniques of group and child management includ-

1 ing crisis intervention, the laws, regulations and procedures governing
2 the protection of children from abuse, neglect and maltreatment, and
3 other appropriate topics, provided, however, that the department may
4 exempt administrators and consultants from such requirements upon demon-
5 stration of substantially equivalent knowledge or experience; and
6 (B) subject to the amounts appropriated therefor, children receive
7 instruction, consistent with their age, needs and circumstances as well
8 as the needs and circumstances within the program, in techniques and
9 procedures which will enable such children to protect themselves from
10 abuse, neglect and maltreatment.
11 The department shall take all reasonable and necessary actions to
12 assure that employees, volunteers and consultants in residential facili-
13 ties and programs are kept apprised on a current basis of all department
14 policies and procedures relating to the protection of children from
15 abuse, neglect and maltreatment, and shall monitor and supervise the
16 provision of training to such employees, volunteers and consultants.
17 Regulations and standards developed pursuant to this subdivision shall,
18 to the extent possible, be consistent with those promulgated by other
19 state agencies for such purposes.
20 (b) [Cooperate with the state department of social services to protect
21 the health and safety of pupils at the school pursuant to title six of
22 article six of the social services law. Such cooperation shall include:
23 the making of reports of alleged child abuse or maltreatment; providing
24 necessary assistance to the state department of social services in the
25 department's investigation thereof and considering the recommendations
26 of the state department of social services for preventive and remedial
27 action including legal action and provide or direct the residential
28 facility to provide such written reports thereon to the department of

1 social services as to the implementation of plans of prevention and
2 remediation approved by the department of education; and
3 (c)] Provide for the development and implementation of a plan of
4 prevention and remediation with respect to [an indicated] a substanti-
5 ated report of [child] abuse or [maltreatment] neglect. Such action
6 shall include: (i) within ten days of receipt of [an indicated] a
7 substantiated report of [child] abuse or [maltreatment] neglect, devel-
8 opment and implementation of a plan of prevention and remediation to be
9 taken with respect to a custodian or the residential facility in order
10 to assure the continued health and safety of children and to provide for
11 the prevention of future acts of abuse or [maltreatment] neglect; and
12 (ii) development and implementation of a plan of prevention and remedi-
13 ation, in the event an investigation of a report of alleged child abuse
14 or [maltreatment] neglect determines that some credible evidence of
15 abuse or [maltreatment] neglect exists and such abuse or [maltreatment]
16 neglect may be attributed in whole or in part to noncompliance by the
17 residential facility or program with provisions of this chapter or regu-
18 lations of the department applicable to the operation of a residential
19 facility or program. Any plan of prevention and remediation required to
20 be developed [pursuant to paragraph (ii) of this subdivision] by a
21 facility supervised by the department shall be submitted to and approved
22 by the department in accordance with time limits established by regu-
23 lations of the department. Implementation of the plan shall be monitored
24 by the department. In reviewing the continued qualifications of a resi-
25 dential facility or program for an operating certificate, the department
26 shall evaluate such facility's compliance with plans of prevention and
27 remediation developed and implemented pursuant to this subdivision.

1 § 2. Section 4314 of the education law, as added by chapter 677 of the
2 laws of 1985, subdivisions (a), (b) and (c) as amended by chapter 32 of
3 the laws of 1992, is amended to read as follows:
4 § 4314. Protection of pupils. The department shall:
5 (a) Promulgate regulations, in accordance with this section and arti-
6 cle eleven of the social services law, concerning standards for the
7 protection of children in residential care from abuse and [maltreatment]
8 neglect, including procedures for:
9 (i) consistent with appropriate collective agreements and applicable
10 provisions of the civil service law, the review and evaluation of the
11 backgrounds of and the information supplied by any person applying to be
12 an employee, a volunteer or consultant, which shall include but not be
13 limited to the following requirements: that the applicant set forth his
14 or her employment history, provide personal and employment references,
15 and relevant experiential and educational information, and sign a sworn
16 statement indicating whether the applicant, to the best of his or her
17 knowledge, has ever been convicted of a crime in this state or any other
18 jurisdiction;
19 (ii) establishing for employees, relevant minimal experiential and
20 educational qualifications consistent with appropriate collective
21 bargaining agreements and applicable provisions of the civil service
22 law;
23 (iii) assuring adequate and appropriate supervision of employees,
24 volunteers and consultants;
25 (iv) demonstrating by a residential facility or program that appropri-
26 ate action is taken to assure the safety of the child who is [reported]
27 alleged to have been abused or neglected in a report to the [state]
28 vulnerable persons' central register in accordance with section four

1 hundred ninety-two of the social services law as well as other children
2 in care, immediately upon notification that a report of [child] an alle-
3 gation of abuse or [maltreatment] neglect has been made [with respect to
4 a child in such residential facility or program];
5 (v) removing a child when it is determined that there is risk to such
6 child if he or she continues to remain within a residential facility or
7 program; and
8 (vi) appropriate preventive and remedial action to be taken including
9 legal actions, consistent with appropriate collective bargaining agree-
10 ments and applicable provisions of the civil service law.
11 Such standards shall also establish as a priority requirements that:
12 (1) subject to the amounts appropriated therefor, administrators,
13 employees, volunteers and consultants receive training in at least the
14 following: child abuse prevention and identification, safety and secu-
15 rity procedures, the principles of child development, the character-
16 istics of children in care and techniques of group and child management
17 including crisis intervention, the laws, regulations and procedures
18 governing the protection of children from abuse, neglect and maltreat-
19 ment, and other appropriate topics, provided however, that the depart-
20 ment may exempt administrators and consultants from such requirements
21 upon demonstration of substantially equivalent knowledge or experience;
22 and
23 (2) subject to the amounts appropriated therefor, children receive
24 instruction, consistent with their age, needs and circumstances as well
25 as the needs and circumstances within the facility or program, in tech-
26 niques and procedures which will enable such children to protect them-
27 selves from abuse, neglect and maltreatment.

1 The department, in consultation with the executive director of the
2 justice center for the protection of people with special needs, shall
3 take all reasonable and necessary actions to assure that employees,
4 volunteers and consultants in residential facilities are kept apprised
5 on a current basis of all department policies and procedures relating to
6 the protection of children from abuse, neglect and maltreatment and
7 shall monitor and supervise the provision of training to such employees,
8 volunteers and consultants. Regulations and standards developed pursuant
9 to this section shall, to the extent possible, be consistent with those
10 promulgated by other state agencies for such purposes;
11 (b) [Cooperate with the state department of social services to protect
12 the health and safety of pupils at the school pursuant to title six of
13 article six of the social services law. Such cooperation shall include:
14 the making of reports of alleged child abuse or maltreatment; providing
15 necessary assistance to the state department of social services in the
16 department's investigation thereof and considering the recommendations
17 of the state department of social services for preventive and remedial
18 action including legal action and provide or direct the residential
19 facility to provide such written reports thereon to the department of
20 social services as to the implementation of plans of prevention and
21 remediation approved by the department; and
22 (c)] Provide for the development and implementation of a plan of
23 prevention and remediation with respect to [an indicated] a substanti-
24 ated report of child abuse or [maltreatment] neglect. Such action shall
25 include: (i) within ten days of receipt of [an indicated] a substanti-
26 ated report of child abuse or [maltreatment] neglect, development and
27 implementation of a plan of prevention and remediation to be taken with
28 respect to a custodian or the residential facility in order to assure

1 the continued health and safety of children and to provide for the
2 prevention of future acts of abuse or [maltreatment] neglect; and (ii)
3 development and implementation of a plan of prevention and remediation,
4 in the event an investigation of a report of alleged [child] abuse or
5 [maltreatment] neglect determines that some credible evidence of abuse
6 or [maltreatment] neglect exists and such abuse or [maltreatment]
7 neglect may be attributed in whole or in part to noncompliance by the
8 residential facility or program with provisions of this chapter or regu-
9 lations of the department applicable to the operation of such residen-
10 tial facility or program. Any plan of prevention and remediation
11 required to be developed pursuant to [paragraph (ii) of] this subdivi-
12 sion by a facility supervised by the department shall be submitted to
13 and approved by the department in accordance with time limits estab-
14 lished by regulations of the department. Implementation of the plan
15 shall be monitored by the department. In reviewing the continued quali-
16 fications of a residential facility or program for an operating certif-
17 icate, the department shall evaluate such facility's compliance with
18 plans of prevention and remediation developed and implemented pursuant
19 to this subdivision.
20 § 3. Section 4358 of the education law, as added by chapter 677 of the
21 laws of 1985, subdivisions (a), (b) and (c) as amended by chapter 32 of
22 the laws of 1992, is amended to read as follows:
23 § 4358. Protection of pupils. The department shall:
24 (a) Promulgate regulations concerning standards for the protection of
25 children in residential care from abuse [and maltreatment] and neglect
26 in accordance with this section and article eleven of the social
27 services law, including procedures for:

1 (i) consistent with appropriate collective bargaining agreements and
2 applicable provisions of the civil service law, the review and evalu-
3 ation of the backgrounds of and the information supplied by any person
4 applying to be an employee, a volunteer or consultant, which shall
5 include but not be limited to the following requirements: that the
6 applicant set forth his or her employment history, provide personal and
7 employment references and relevant experiential and educational informa-
8 tion, and sign a sworn statement indicating whether the applicant, to
9 the best of his or her knowledge, has ever been convicted of a crime in
10 this state or any other jurisdiction;
11 (ii) establishing, for employees, relevant minimal experiential and
12 educational qualifications, consistent with appropriate collective
13 bargaining agreements and applicable provisions of the civil service
14 law;
15 (iii) assuring adequate and appropriate supervision of employees,
16 volunteers and consultants;
17 (iv) demonstrating by a residential facility or program that appropri-
18 ate action is taken to assure the safety of the child who is [reported]
19 alleged to have been abused or neglected in a report to the [state]
20 vulnerable persons' central register in accordance with section four
21 hundred ninety-two of the social services law as well as other children
22 in care, immediately upon notification that a report of [child] an alle-
23 gation of abuse [or maltreatment] or neglect has been made [with respect
24 to a child in such facility or program];
25 (v) removing a child when it is determined that there is risk to such
26 child if he or she continues to remain within a facility or program; and

1 (vi) appropriate preventive and remedial action to be taken including
2 legal actions, consistent with appropriate collective bargaining agree-
3 ments and applicable provisions of the civil service law.
4 Such standards shall also establish as a priority requirements that:
5 (A) subject to the amounts appropriated therefor, administrators,
6 employees, volunteers and consultants receive training in at least the
7 following: child abuse prevention and identification, safety and securi-
8 ty procedures, the principles of child development, the characteristics
9 of children in care and techniques of group and child management includ-
10 ing crisis intervention, the laws, regulations and procedures governing
11 the protection of children from abuse, neglect and maltreatment, and
12 other appropriate topics, provided however, that the department may
13 exempt administrators and consultants from such requirements upon demon-
14 stration of substantially equivalent knowledge or experience; and
15 (B) subject to the amounts appropriated therefor, children receive
16 instruction, consistent with their age, needs and circumstances as well
17 as the needs and circumstances of the facility, in techniques and proce-
18 dures which will enable such children to protect themselves from abuse,
19 neglect and maltreatment.
20 The department shall take all reasonable and necessary actions to
21 assure that employees, volunteers and consultants in residential facili-
22 ties and programs are kept apprised on a current basis of all department
23 policies and procedures relating to the protection of children from
24 abuse, neglect and maltreatment and shall monitor and supervise the
25 provision of training to such administrators, employees, volunteers,
26 children and consultants. Regulations and standards developed pursuant
27 to this section shall, to the extent possible, be consistent with those
28 promulgated by other state agencies for such purposes;

1 (b) [Cooperate with the state department of social services to protect
2 the health and safety of pupils at the school pursuant to title six of
3 article six of the social services law. Such cooperation shall include:
4 the making of reports of alleged child abuse or maltreatment; providing
5 necessary assistance to the state department of social services in the
6 department's investigation thereof and considering the recommendations
7 of the state department of social services for preventive and remedial
8 action including legal action and provide or direct the residential
9 facility to provide such written reports to the department of social
10 services as to the implementation of plans of prevention and remediation
11 approved by the department; and
12 (c)] Provide for the development and implementation of a plan of
13 prevention and remediation with respect to [an indicated] a substanti-
14 ated report of child abuse [or maltreatment] or neglect. Such action
15 shall include: (i) within ten days of receipt of [an indicated] a
16 substantiated report of child abuse [or maltreatment] or neglect, devel-
17 opment and implementation of a plan of prevention and remediation to be
18 taken with respect to a custodian or the residential facility in order
19 to assure the continued health and safety of children and to provide for
20 the prevention of future acts of abuse or [maltreatment] neglect; and
21 (ii) development and implementation of a plan of prevention and remedi-
22 ation, in the event an investigation of a report of alleged [child]
23 abuse [or maltreatment] or neglect determines that some credible
24 evidence of abuse [or maltreatment] or neglect exists and such abuse [or
25 maltreatment] or neglect may be attributed in whole or in part to
26 noncompliance by the residential facility or program with provisions of
27 this chapter or regulations of the department applicable to the opera-
28 tion of such residential facility or program. Any plan of prevention and

1 remediation required to be developed pursuant to [paragraph (ii) of]
2 this subdivision by a facility supervised by the department shall be
3 submitted to and approved by the department in accordance with time
4 limits established by regulations of the department. Implementation of
5 the plan shall be monitored by the department. In reviewing the contin-
6 ued qualifications of a residential facility or program for an operating
7 certificate, the department shall evaluate such facility's compliance
8 with plans of prevention and remediation developed and implemented
9 pursuant to this subdivision.

10 § 4. Subdivisions 11, 12, 13, 14, 15, 16, 17, 18, 19 and 19-a of
11 section 4403 of the education law, subdivisions 11, 12 and 13 as amended
12 by chapter 32 of the laws of 1992, subdivisions 14, 15 and 16 as added
13 by chapter 53 of the laws of 1986, subdivision 17 as amended by chapter
14 53 of the laws of 1987, subdivision 18 as added by chapter 428 of the
15 laws of 1992, subdivision 19 as added by chapter 600 of the laws of 1994
16 and subdivision 19-a as amended by chapter 378 of the laws of 2007, are
17 amended to read as follows:

18 11. To promulgate regulations concerning standards for the protection
19 of children in residential care from abuse and [maltreatment] <u>neglect in</u>
20 <u>accordance with this section and article eleven of the social services</u>
21 <u>law</u>, including procedures for:

22 (a) consistent with appropriate collective bargaining agreements and
23 applicable provisions of the civil service law, the review and evalu-
24 ation of the backgrounds of and the information supplied by any person
25 applying to be an employee, a volunteer or consultant, which shall
26 include but not be limited to the following requirements: that the
27 applicant set forth his or her employment history, provide personal and
28 employment references, and relevant experiential and educational quali-

1 fications and, sign a sworn statement indicating whether the applicant,
2 to the best of his or her knowledge has ever been convicted of a crime
3 in this state or any other jurisdiction;
4 (b) establishing, for employees, relevant minimal experiential and
5 educational qualifications, consistent with appropriate collective
6 bargaining agreements and applicable provisions of the civil service
7 law;
8 (c) assuring adequate and appropriate supervision of employees, volun-
9 teers and consultants;
10 (d) demonstrating by a residential facility or program that appropri-
11 ate action is taken to assure the safety of the child who is [reported]
12 alleged to have been abused or neglected in a report to the [state]
13 vulnerable persons' central register in accordance with section four
14 hundred ninety-two of the social services law as well as other children
15 in care, immediately upon notification that a report of [child] an alle-
16 gation of abuse [or maltreatment] or neglect has been made with respect
17 to a child in such residential facility or program;
18 (e) removing a child when it is determined that there is risk to such
19 child if he or she continues to remain within a residential facility or
20 program; and
21 (f) appropriate preventive and remedial action to be taken including
22 legal actions, consistent with appropriate collective bargaining agree-
23 ments and applicable provisions of the civil service law.
24 Such standards shall also establish as a priority requirements that:
25 (A) subject to amounts appropriated therefor, administrators, employ-
26 ees, volunteers and consultants receive training in at least the follow-
27 ing: child abuse prevention and identification, safety and security
28 procedures, the principles of child development, the characteristics of

1 children in care, and techniques of group and child management including
2 crisis intervention, the laws, regulations and procedures governing the
3 protection of children from abuse, neglect and maltreatment, and other
4 appropriate topics, provided however, that the department may exempt
5 administrators and consultants from such requirements upon demonstration
6 of substantially equivalent knowledge or experience; and
7 (B) subject to the amounts appropriated therefor, children receive
8 instruction, consistent with their age, needs and circumstances as well
9 as the needs and circumstances within the program, in techniques and
10 procedures which will enable such children to advocate for and protect
11 themselves from abuse [and maltreatment] and neglect.
12 The department shall take all reasonable and necessary actions to
13 assure that employees, volunteers and consultants in residential facili-
14 ties and programs are kept apprised on a current basis of all department
15 policies and procedures relating to the protection of children from
16 abuse, neglect and maltreatment and shall monitor and supervise the
17 provision of training to such administrators, employees, volunteers,
18 children and consultants. Regulations and standards developed pursuant
19 to this subdivision shall, to the extent possible, be consistent with
20 those promulgated by other state agencies for such purposes.
21 12. [To cooperate with the state department of social services and
22 other departments, divisions and agencies of the state when a report is
23 received pursuant to title six of article six of the social services law
24 to protect the health and safety of children in residential placement.
25 Such cooperation shall include: the making of reports of alleged child
26 abuse or maltreatment; providing necessary assistance to the state
27 department of social services in the department's investigation thereof
28 and considering the recommendations of the state department of social

1 services for preventive and remedial action, including legal action and
2 providing written reports thereon to the department of social services
3 as to the implementation of plans of prevention and remediation approved
4 by the department.
5 13.] To provide for the development and implementation of a plan of
6 prevention and remediation with respect to [an indicated] a substanti-
7 ated report of [child] abuse or [maltreatment] neglect. Such action
8 shall include: (a) within ten days of receipt of [an indicated] a
9 substantiated report of [child] abuse or [maltreatment] neglect, devel-
10 opment and implementation of a plan of prevention and remediation to be
11 taken with respect to a custodian or the residential facility in order
12 to assure the continued health and safety of children and to provide for
13 the prevention of future acts of abuse or [maltreatment] neglect; and
14 (b) development and implementation of a plan of prevention and remedi-
15 ation, in the event an investigation of a report of alleged [child]
16 abuse or [maltreatment] neglect determines that some credible evidence
17 of abuse or [maltreatment] neglect exists and such abuse or [maltreat-
18 ment] neglect may be attributed in whole or in part to noncompliance by
19 the residential facility or program with provisions of this chapter or
20 regulations of the department applicable to the operation of such resi-
21 dential facility or program. Any plan of prevention and remediation
22 required to be developed pursuant to [paragraph (b) of] this subdivision
23 by a facility supervised by the department shall be submitted to and
24 approved by the department in accordance with time limits established by
25 regulations of the department. Implementation of the plan shall be moni-
26 tored by the department. In reviewing the continued qualifications of a
27 residential facility or program for an operating certificate, the
28 department shall evaluate such facility's compliance with plans of

1 prevention and remediation developed and implemented pursuant to this
2 subdivision.
3 [14] 13. To provide technical assistance to school districts for
4 appropriate evaluation and assessment.
5 [15] 14. To provide technical assistance to school districts to
6 assist in the adaptation of curriculum for the instruction of children
7 with handicapping conditions.
8 [16] 15. To provide technical assistance to school districts to
9 assist in developing criteria for placement in special education and
10 criteria for reviewing the ability of a pupil to participate in regular
11 education.
12 [17] 16. Commencing with the nineteen hundred eighty-seven--eighty-
13 eight school year, to provide for instruction during the months of July
14 and August of students with handicapping conditions who have received
15 state appointments pursuant to article eighty-five, eighty-seven or
16 eighty-eight of this chapter and whose handicapping conditions, in the
17 judgment of the commissioner, are severe enough to exhibit the need for
18 a structured learning environment of twelve months duration to maintain
19 developmental levels, by making such appointments for twelve months;
20 provided that the initial term of appointment of a student with a handi-
21 capping condition who is the minimum age eligible for such a state
22 appointment shall not commence during the months of July or August.
23 [18] 17. To approve the provision of early intervention services, as
24 defined in section twenty-five hundred forty-one of the public health
25 law, by agencies which are approved providers of special services or
26 programs pursuant to section forty-four hundred ten of this article
27 based on such agency's compliance with the coordinated standards and
28 procedures for early intervention services established pursuant to title

1 II-A of article twenty-five of the public health law and, where applica-
2 ble, teacher certification requirements.
3 [19] 18. To establish guidelines for determining when a child is at
4 risk of a future placement in a residential school, and for the
5 provision by committees on special education of information to parents
6 and other persons in parental relationship concerning the availability
7 of community support services to meet the needs of the family. The
8 guidelines shall be developed by the department after consultation with
9 the office of mental health, the office of mental retardation and devel-
10 opmental disabilities, the office of alcoholism and substance abuse
11 services, the department of health, the department of social services
12 and the division for youth.
13 [19-a] 19. To adopt regulations prescribing the state complaint
14 procedures pursuant to sections 300.151 through 300.153 of title thir-
15 ty-four of the code of federal regulations, where an individual or
16 organization files a written complaint alleging that a public agency has
17 violated part B of the individuals with disabilities education act. Such
18 regulations shall include, but not be limited to, remedies for denial of
19 appropriate services, including, as appropriate, the awarding of mone-
20 tary reimbursement, compensatory services or other corrective action
21 appropriate to the needs of the child.
22 § 5. Subdivision 2 of section 3650 of the education law, as added by
23 chapter 18 of the laws of 2007, is amended to read as follows:
24 2. The commissioner, in consultation with the [state commission on
25 quality care and advocacy for persons with disabilities] justice center
26 for the protection of people with special needs, shall promulgate rules
27 and regulations requiring every school bus driver operating a school bus
28 which has or will have one or more students with a disability as passen-

1 gers to receive training and instruction relating to the understanding
2 of, and attention to, the special needs of such students. Such training
3 and instruction may be included with the training and instruction
4 required pursuant to paragraph a of subdivision one of this section and
5 shall be provided at least once per year or more frequently as deter-
6 mined by the commissioner in consultation with the state comprehensive
7 school bus driver safety training council. For the purposes of this
8 subdivision, the term "student with a disability" shall have the same
9 meaning as such term is defined in subdivision one of section forty-four
10 hundred one of this chapter. Any person employed as a school bus driver
11 on January first, two thousand nine who is subject to the provisions of
12 this subdivision shall comply with the requirements of this subdivision
13 by July first, two thousand nine. Any school bus driver hired after
14 January first, two thousand nine who is subject to the requirements of
15 this subdivision shall complete such training and instruction prior to
16 assuming his or her duties.
17 § 6. Subdivision 4 of section 1229-d of the vehicle and traffic law,
18 as added by chapter 181 of the laws of 2007, is amended to read as
19 follows:
20 (4) The commissioner of education, in consultation with the [state
21 commission on quality care and advocacy for persons with disabilities]
22 <u>justice center for the protection of people with special needs</u>, shall
23 promulgate rules and regulations requiring that every school bus attend-
24 ant serving a student or students with a disability receive training and
25 instruction relating to the understanding of and attention to the
26 special needs of such students. Such training and instruction may be
27 included with the training and instruction required pursuant to subdivi-
28 sion three of this section and shall be provided at least once per year

1 or more frequently as determined by the commissioner of education in
2 consultation with the state comprehensive school bus driver safety
3 training council. For the purposes of this subdivision, the term
4 "student with a disability" shall have the same meaning as such term is
5 defined in subdivision one of section forty-four hundred one of the
6 education law. Any person employed as a school bus attendant serving a
7 student or students with a disability on January first, two thousand
8 nine shall comply with the requirements of this subdivision by July
9 first, two thousand nine. Any person hired after January first, two
10 thousand nine shall complete such training, instruction and testing
11 prior to assuming his or her duties as a school bus attendant serving a
12 student or students with a disability.
13 § 7. This act shall take effect April 1, 2013; provided, however, that
14 the amendments to subdivision 18 of section 4403 of the education law
15 made by section four of this act shall not affect the repeal of such
16 subdivision and shall be deemed repealed therewith; provided further
17 that the amendments to subdivision 19-a of section 4403 of the education
18 law made by section four of this act shall not affect the expiration of
19 such subdivision and shall be deemed to expire therewith.

20 PART F

21 Section 1. Subdivision (a) of section 16.33 of the mental hygiene law,
22 as amended by chapter 575 of the laws of 2004, is amended to read as
23 follows:
24 (a) Every provider of services who contracts with or is approved or
25 otherwise authorized by the office to provide services, except (1) a
26 department facility, (2) a hospital as defined in article twenty-eight

1 of the public health law, or (3) a licensed professional under title
2 eight of the education law who does not have employees or volunteers who
3 will have regular and substantial unsupervised or unrestricted physical
4 contact with the clients of such provider, and every applicant to be
5 such a provider of services except (i) a department facility, (ii) a
6 hospital as defined in article twenty-eight of the public health law, or
7 (iii) a licensed professional under title eight of the education law and
8 who does not have employees or volunteers who will have regular and
9 substantial unsupervised or unrestricted physical contact with the
10 clients of such provider, shall request that the [office] justice center
11 for the protection of people with special needs check, and upon such
12 request [the office] such justice center shall request and shall be
13 authorized to receive from the division of criminal justice services
14 criminal history information, as such phrase is defined in paragraph (c)
15 of subdivision one of section eight hundred forty-five-b of the execu-
16 tive law, concerning each (A) prospective operator, employee or volun-
17 teer of such provider who will have regular and substantial unsupervised
18 or unrestricted physical contact with the clients of such provider, or
19 (B) other person over the age of eighteen who is to reside in a family
20 care home, except any person receiving family care services, who will
21 have regular and substantial unsupervised or unrestricted physical
22 contact with the clients of such provider. For purposes of this section,
23 "operator" shall include any natural person with an ownership interest
24 in the provider of services.
25 § 2. The mental hygiene law is amended by adding a new section 19.20
26 to read as follows:

1 § 19.20 Review of criminal history information concerning certain
2 prospective providers, employees, and individuals creden-
3 tialed by the office.
4 (a) Every provider of services who contracts with or is approved or
5 otherwise authorized by the office to provide services, except (1) a
6 department facility, (2) a hospital as defined in article twenty-eight
7 of the public health law, or (3) a licensed professional under title
8 eight of the education law who does not have employees or volunteers who
9 will have regular and substantial unsupervised or unrestricted physical
10 contact with the clients of such provider, and every applicant to be
11 such a provider of services except (i) a department facility, (ii) a
12 hospital as defined in article twenty-eight of the public health law, or
13 (iii) a licensed professional under title eight of the education law who
14 does not have employees or volunteers who will have regular and substan-
15 tial unsupervised or unrestricted physical contact with the clients of
16 such provider, shall request that the justice center for the protection
17 of people with special needs check, and upon such request such justice
18 center shall request and shall be authorized to receive from the divi-
19 sion of criminal justice services criminal history information, as such
20 phrase is defined in paragraph (c) of subdivision one of section eight
21 hundred forty-five-b of the executive law, concerning each prospective
22 operator, employee or volunteer of such provider who will have regular
23 and substantial unsupervised or unrestricted physical contact with the
24 clients of such provider. For purposes of this section, "operator" shall
25 include any natural person with an ownership interest in the provider of
26 services.
27 (b) The justice center for the protection of people with special needs
28 shall be authorized to request and receive from the division of criminal

1 justice services criminal history information, as such phrase is defined
2 in paragraph (c) of subdivision one of section eight hundred
3 forty-five-b of the executive law, for every individual credentialed, or
4 seeking to be credentialed, by the office of alcoholism and substance
5 abuse services to provide substance use disorder services.
6 (c) Access to and use of such information shall be governed by the
7 provisions of section eight hundred forty-five-b of the executive law.
8 § 3. Subdivision (a) of section 31.35 of the mental hygiene law, as
9 amended by chapter 575 of the laws of 2004, is amended to read as
10 follows:
11 (a) Every provider of services who contracts with or is approved or
12 otherwise authorized by the office to provide services, except (1) a
13 department facility, (2) a hospital as defined in article twenty-eight
14 of the public health law, or (3) a licensed professional under title
15 eight of the education law who does not have employees or volunteers who
16 will have regular and substantial unsupervised or unrestricted physical
17 contact with the clients of such provider, and every applicant to be
18 such a provider of services except (i) a department facility, (ii) a
19 hospital as defined in article twenty-eight of the public health law, or
20 (iii) a licensed professional under title eight of the education law who
21 does not have employees or volunteers who will have regular and substan-
22 tial unsupervised or unrestricted physical contact with the clients of
23 such provider, shall request that the [office] justice center for the
24 protection of people with special needs check, and upon such request
25 [the office] such justice center shall request and shall be authorized
26 to receive from the division of criminal justice services criminal
27 history information, as such phrase is defined in paragraph (c) of
28 subdivision one of section eight hundred forty-five-b of the executive

1 law, concerning each prospective operator, employee or volunteer of such
2 provider who will have regular and substantial unsupervised or unre-
3 stricted physical contact with the clients of such provider. For
4 purposes of this section, "operator" shall include any natural person
5 with an ownership interest in the provider of services.
6 § 4. Subdivision 1 of section 378-a of the social services law, as
7 amended by chapter 7 of the laws of 1999, is amended to read as follows:
8 1. [Subject to rules and regulations of the division of criminal
9 justice services, an] Every authorized agency which operates a residen-
10 tial program for children and the office of children and family services
11 shall [have access to conviction records maintained by state law
12 enforcement agencies pertaining to persons who have applied for and are
13 under active consideration for employment by such authorized agency in
14 positions where such persons will be engaged directly in the care and
15 supervision of children] request that the justice center for the
16 protection of people with special needs check, and upon such request,
17 such justice center shall request and shall be authorized to receive
18 from the division of criminal justice services criminal history informa-
19 tion, as such phrase is defined in paragraph (c) of subdivision one of
20 section eight hundred forty-five-b of the executive law concerning each
21 prospective operator, employee or volunteer of such residential program
22 who will have regular and substantial unsupervised or unrestricted phys-
23 ical contact with children in such program. For the purposes of this
24 section, "operator" shall include any natural person with an ownership
25 interest in the authorized agency. Access to and the use of such infor-
26 mation shall be governed by the provisions of section eight hundred
27 forty-five-b of the executive law.

1 § 5. Subdivision 2 and paragraph (a) of subdivision 5 of section 845-b
2 of the executive law, subdivision 2 as amended by chapter 769 of the
3 laws of 2005 and paragraph (a) of subdivision 5 as amended by chapter
4 331 of the laws of 2006, are amended to read as follows:
5 2. Where a provider is authorized or required to request a check of
6 criminal history information by an authorized agency pursuant to section
7 16.33 [or], 31.35, 19.07 or 19.20 of the mental hygiene law [or], arti-
8 cle twenty-eight-E of the public health law or subdivision one of
9 section three hundred seventy-eight-a of the social services law, such
10 provider shall proceed pursuant to the provisions of this section and in
11 a manner consistent with the provisions of article twenty-three-A of the
12 correction law, subdivisions fifteen and sixteen of section two hundred
13 ninety-six of this chapter and all other applicable laws.
14 (a) Where the criminal history information concerning a subject indi-
15 vidual reveals a felony conviction at any time for a sex offense, a
16 felony conviction within the past ten years involving violence, or a
17 conviction [for endangering the welfare of an incompetent or physically
18 disabled person] pursuant to section 260.00, 260.10, 260.24, 260.25,
19 260.32 or 260.34 of the penal law, and in the case of criminal history
20 information obtained pursuant to section twenty-eight hundred ninety-
21 nine-a of the public health law, where the criminal history information
22 concerning a subject individual reveals a conviction at any time of any
23 class A felony; a conviction within the past ten years of any class B or
24 C felony, any class D or E felony defined in article one hundred twenty,
25 one hundred thirty, one hundred fifty-five, one hundred sixty, one
26 hundred seventy-eight or two hundred twenty of the penal law; or any
27 crime defined in [sections] section 260.32 or 260.34 of the penal law;
28 or any comparable offense in any other jurisdiction, the authorized

1 agency shall deny or disapprove the application for or renewal of the
2 operating certificate, contract, approval, employment of the subject
3 individual or other authorization to provide services, or direct the
4 provider to deny employment, as applicable, unless the authorized agency
5 determines, in its discretion, that approval of the application or
6 renewal or employment will not in any way jeopardize the health, safety
7 or welfare of the beneficiaries of such services.
8 § 6. This act shall take effect on April 1, 2013; provided, however,
9 that effective immediately, the addition, amendment or repeal of any
10 rule or regulation necessary for the implementation of this act on its
11 effective date are authorized to be made and completed on or before such
12 date.

13 PART G

14 Section 1. The opening paragraph and subdivision 4 of section 240.50
15 of the penal law, the opening paragraph as amended by chapter 276 of the
16 laws of 1973 and subdivision 4 as amended by chapter 400 of the laws of
17 2008, are amended to read as follows:
18 A person is guilty of falsely reporting an incident in the third
19 degree when, knowing the information reported, conveyed or circulated to
20 be false or baseless, he <u>or she</u>:
21 4. Reports, by word or action, an alleged occurrence or condition of
22 child abuse or maltreatment <u>or abuse or neglect of a vulnerable person</u>
23 which did not in fact occur or exist to:
24 (a) the statewide central register of child abuse and maltreatment, as
25 defined in title six of article six of the social services law <u>or the</u>

1 vulnerable persons' central register as defined in article eleven of
2 such law, or
3 (b) any person required to report cases of suspected child abuse or
4 maltreatment pursuant to subdivision one of section four hundred thir-
5 teen of the social services law or to report cases of suspected abuse or
6 neglect of a vulnerable person pursuant to section four hundred ninety-
7 one of such law, knowing that the person is required to report such
8 cases, and with the intent that such an alleged occurrence be reported
9 to the statewide central register or vulnerable persons' central regis-
10 ter.
11 § 2. Paragraph (h) of subdivision 3 of section 130.05 of the penal
12 law, as amended by chapter 264 of the laws of 2003, is amended and a new
13 paragraph (i) is added to read as follows:
14 (h) a client or patient and the actor is a health care provider or
15 mental health care provider charged with rape in the third degree as
16 defined in section 130.25, criminal sexual act in the third degree as
17 defined in section 130.40, aggravated sexual abuse in the fourth degree
18 as defined in section 130.65-a, or sexual abuse in the third degree as
19 defined in section 130.55, and the act of sexual conduct occurs during a
20 treatment session, consultation, interview, or examination[.]; or
21 (i) a resident or inpatient of a residential facility operated,
22 licensed or certified by (i) the office of mental health; (ii) the
23 office for people with developmental disabilities; or (iii) the office
24 of alcoholism and substance abuse services, and the actor is an employee
25 of the facility. For purposes of this paragraph, "employee" means either
26 an employee of the agency operating the residential facility, who
27 provides direct care services, case management services, medical or
28 other clinical services, habilitative services or direct supervision of

1 the residents in the facility in which the resident resides; or officers
2 or other employees, consultants, contractors or volunteers of the resi-
3 dential facility, who know or reasonably should know that the person is
4 a resident of such facility; provided, however, "employee" shall not
5 include a person with a developmental disability who is or was receiving
6 services and is also an employee of a service provider and who has sexu-
7 al contact with another service recipient who is a consenting adult who
8 has consented to such contact.
9 § 3. The penal law is amended by adding a new section 260.24 to read
10 as follows:
11 § 260.24 Endangering the welfare of an incompetent or physically disa-
12 bled person in the second degree.
13 A person is guilty of endangering the welfare of an incompetent or
14 physically disabled person in the second degree when he or she reckless-
15 ly engages in conduct which is likely to be injurious to the physical,
16 mental or moral welfare of a person who is unable to care for himself or
17 herself because of physical disability, mental disease or defect.
18 Endangering the welfare of an incompetent or physically disabled
19 person in the second degree is a class A misdemeanor.
20 § 4. Section 260.25 of the penal law, as amended by chapter 381 of the
21 laws of 1998, is amended to read as follows:
22 § 260.25 Endangering the welfare of an incompetent or physically disa-
23 bled person in the first degree.
24 A person is guilty of endangering the welfare of an incompetent or
25 physically disabled person in the first degree when he knowingly acts in
26 a manner likely to be injurious to the physical, mental or moral welfare
27 of a person who is unable to care for himself or herself because of
28 physical disability, mental disease or defect.

1 Endangering the welfare of an incompetent or physically disabled
2 person in the first degree is a class [A misdemeanor] E felony.
3 § 5. The closing paragraph of section 260.32 of the penal law, as
4 amended by chapter 14 of the laws of 2010, is amended to read as
5 follows:
6 Endangering the welfare of a vulnerable elderly person, or an incompe-
7 tent or physically disabled person in the second degree is a class [E] D
8 felony.
9 § 6. The closing paragraph of section 260.34 of the penal law, as
10 amended by chapter 14 of the laws of 2010, is amended to read as
11 follows:
12 Endangering the welfare of a vulnerable elderly person, or an incompe-
13 tent or physically disabled person in the first degree is a class [D] C
14 felony.
15 § 7. This act shall take effect on the thirtieth day after it shall
16 have become a law.

17 PART H

18 Section 1. Chapter 606 of the laws of 2011, amending the mental
19 hygiene law relating to creating an abuse prevention notification
20 system, is REPEALED.
21 § 2. Chapter 6 of the laws of 2012, amending chapter 606 of the laws
22 of 2011, amending the mental hygiene law relating to creating an abuse
23 prevention notification system, is REPEALED.
24 § 3. This act shall take effect April 1, 2013.
25 § 3. Severability clause. If any clause, sentence, paragraph, subdivi-
26 sion, section or part of this act shall be adjudged by any court of

1 competent jurisdiction to be invalid, such judgment shall not affect,
2 impair, or invalidate the remainder thereof, but shall be confined in
3 its operation to the clause, sentence, paragraph, subdivision, section
4 or part thereof directly involved in the controversy in which such judg-
5 ment shall have been rendered. It is hereby declared to be the intent of
6 the legislature that this act would have been enacted even if such
7 invalid provisions had not been included herein.
8 § 4. This act shall take effect immediately provided, however, that
9 the applicable effective date of Parts A through H of this act shall be
10 as specifically set forth in the last section of such Parts.