



New York State  
**PUBLIC EMPLOYEES  
FEDERATION AFL-CIO**  
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**OFFICERS:**

March 30, 2020

Wayne Spence  
*President*

Sheila Poole  
Commissioner OCFS  
52 Washington St.  
Rensselaer NY, 12144

Kay Alison Wilkie  
*Secretary-Treasurer*

Adreina Adams  
Sharon V. DeSilva  
Randi DiAntonio  
*Vice Presidents*

**REGIONAL  
COORDINATORS:**

Dear Commissioner Poole:

Michele Silsby  
Region 1

On behalf of my members, a group of clinicians from across New York's OCFS facilities, I am writing to seek clarification about the current designation of clinicians as "essential employees" in the context of the COVID-19 response.

Andrew Puleo  
Region 2

Colleen Williams  
Region 3

Roberta (Bobbi) Stafford  
Region 4

David Dubofsky  
Region 5

Jeanette St. Mary  
Region 6

Virginia (Gini) Davey  
Region 7

Michael Blue  
Region 8

Diane Jaulus  
Region 9

Darlene Williams  
Region 10

Bernadette O'Connor  
Region 11

Nora Higgins  
Region 12

**TRUSTEES:**

Christopher Buman  
Jeanette Santos  
Maddie Shannon-Roberts

The facilities in which my members work -- specifically, Brookwood Secure, Finger Lakes Residential Center, Goshen Secure Center, Highland Residential Center, Red Hook Residential and YLA -- collectively represent all levels of security (secure, limited secure and non-secure) across the OCFS system. My purpose in writing this letter is to find a way to balance the safety and well-being of OCFS' teenaged clients and clinicians in congregate environments where individuals live, sleep and eat in close proximity and who are high risk for the transmission of infectious diseases. In addition, members are anxious about the safety of their own families, some of whom fall in the CDC's high risk category for COVID-19 due to age and underlying health issues. One of the undersigned clinicians is pregnant.<sup>i</sup> The United Kingdom's Government and National Health Service System defines all pregnant women as high risk and advises all pregnant women to remain home and only leave home to obtain essential grocery and medical supplies.<sup>ii</sup>

It seems indisputable that providing clinical services as per OCFS' usual practices places vulnerable minor clients -- as well as the non-clinician colleagues -- at elevated risk of infection. Indeed, the CDC states: "Some spread might be possible before people show symptoms; there have been reports of this occurring with this new coronavirus." Therefore, coupled with the current unavailability of widespread testing, it is not tenable to proceed with normal clinical practice given the risk of transmission by asymptomatic carriers. Further, by maintaining clinical staffing at usual levels, particularly in facilities with already low clinical staff to client ratios,<sup>iii</sup> when BBHS has previously permitted 1:17 clinician to client ratios, OCFS is needlessly violating Governor Cuomo's directive to reduce workplace density. Consequently, I believe that OCFS must shift work practices in a way that aligns with other clinical colleagues across the nation (e.g., use of phone or video

conference versus in-person therapy sessions, suspension of group therapy sessions; all documentation conducted off site, etc.).

Collectively, on behalf of my members, I propose the following modifications that allows for continuity of care and best practice while minimizing risk and exposure:

#### CLINICAL SERVICES:

- All routine individual therapy services to be conducted remotely either by phone or video conference. Clinical staff to be available via phone to clients during regularly scheduled work hours.
- All routine parent sessions to be conducted remotely by phone.
- All meetings (e.g.. Psychiatric Rounds, Support Team Meetings, DBT Consultation Team etc) to be conducted remotely via WebEx conference call. Where appropriate (e.g. monthly support team meetings), youth will attend by unit phone.
- Temporary suspension of routine group therapy sessions to avoid large gathering of clients and staff sitting in close proximity to limit risk of transmission.

#### CRISIS COVERAGE

- Establishing a rotation schedule for clinical crisis coverage whereby clinicians rotate being on site while the remainder of the team works remotely.

#### DOCUMENTATION

- All clinical staff to have access to email for remote work
- All clinical documentation (contact notes, Support Team Meeting plans etc) to be completed remotely via JJIS.

As indicated in the enclosed link<sup>iv</sup>, the Office of Civil Rights (OCR) within the Department of Health and Human Services (HHS) has announced that they will significantly reduce enforcement of HIPAA restrictions on Telehealth during the COVID-19 response because they recognize both the need for remote services to care for vulnerable populations as well as to reduce spread in general, and the difficulty posed by some of the HIPAA rules regarding Telehealth.

The State's Memorandum of March 16<sup>th</sup> 2020 defined "essential employees" as follows: "anyone whose job function is essential to the effective operations of their agency or authority, or who must be physically present to perform their job, or who is involved in the COVID-19 emergency response." In contrast, non-essential employees are defined as follows: "anyone who does not need to be physically present to perform job functions, or they are not required to meet the core function and programs of their agency during this emergency response. This memorandum called for "non-essential employees shall work from home, to the extent practicable."

On behalf of my members, I respectfully request the following:

- (1) A written explanation of the specific aspects of tasks and standards for clinical staff that are considered "essential" to the "COVID-19 emergency response."
- (2) A written explanation of the rationale as to why these specific tasks cannot be conducted remotely.

Given the exigent circumstances that we as a society face, we ask for this explanation to measure any perceived diminution of service against the increased risk of infection and death that will be occasioned by continuing to conduct normal practices. (*See above.*) Note also that this is the position of our wider field (see enclosed link to March 2020 article from the *New Social Worker*" about

“acting prudently in exceptional circumstances” that states: “*Social workers are responding to extraordinary circumstances. Normal practices may not be feasible. Normal practices may also be detrimental.*”

- (3) The specific safeguards that we can expect to be implemented to ensure that we are working in a workplace “free from recognized hazards” as required by Federal and State law, and the PEF Collective Bargaining Agreement.

Risk mitigation in the form of social distancing and isolation is the only known strategy to protect our clients, ourselves and our own families from COVID-19. We are hoping for a swift and prudent modification of working conditions to ensure the safety of residents and employees/employees’ families alike, with this being the primary and most urgent concern. And of course, modifications that allow us to address the safety and at the same time allow for remote work that will allow us to continue to offer/provide mental health support to residents and families in this time of need.

- (4) A conference call with you and PEF leaders to take place this week.

Thank you for your attention to this matter.

Sincerely,



Wayne Spence  
President,  
Public Employees Federation

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<sup>i</sup> The CDC states that it is unknown whether COVID 19 may cause adverse pregnancy outcomes but that “high fevers during the first trimester of pregnancy can increase the risk of certain birth defects.”  
<https://www.cdc.gov/coronavirus/2019-ncov/hcp/pregnant-women-faq.html#pregnant>

<sup>ii</sup> <https://www.nhs.uk/conditions/coronavirus-covid-19/advice-for-people-at-high-risk/>

<sup>iii</sup> **Current Clinical Staff: Client Ratios**

Facility	Census	No of Clinicians	No of AD-T	Total Clinical Staff	Clinical Staff: Client Ratio
Brookwood	34	4	1	5	1:6.8
Finger Lakes Residential	45	7	2	9	1:5
Goshen Secure Center	22	6	2	8	1:4
Highland Residential	48	6	0	6	1:8
Red Hook Residential	5	2	1	3	1: 1:3
YLA	5	2	1	3	1: 1.3

<sup>iv</sup> (<https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>)

<sup>v</sup> <https://www.socialworker.com/feature-articles/ethics-articles/ethical-exceptions-social-workers-in-light-of-covid-19-pandemic-physical-distancing/>