§ 31.37 Mental health incident review panels.

(a) The commissioner shall establish no less than one mental health incident review panel per quarter to review the circumstances and events related to an incident involving a person with serious mental illness occurring in the community that involved the use of deadly physical force, as defined by subdivision eleven of section 10.00 of the penal law, and resulted in serious physical injury, as defined by subdivision ten of section 10.00 of the penal law, to another. In selecting an incident to be reviewed, the commissioner shall review requests from local governmental units, or non-governmental organizations or not-for-profit entities involved with the provision of mental health care or that represent the interests of people with mental illness and shall identify an incident appropriate for an incident review panel, consistent with the purposes of this section.

(a-1) The commissioner may establish, on their own accord, additional mental health incident review panels for the purposes of reviewing in conjunction with local representation, the circumstances and events related to a serious incident involving a person with mental illness. For purposes of this section, a "serious incident involving a person with mental illness" means an incident occurring in the community in which a person with a serious mental illness suffers physical injury as defined in subdivision nine of section 10.00 of the penal law or causes such physical injury to another person, or suffers a serious and preventable medical complication or becomes involved in a criminal incident involving violence.

(a-2) A panel established under this section shall conduct a review of such incident for the purpose of identifying problems or gaps in mental health delivery systems and to make recommendations for corrective actions to improve the provision of mental health or related services, to improve the coordination, integration and accountability of care in the mental health service system, and to enhance individual and public safety.

(b) A mental health incident review panel shall include representatives from the office of mental health, the division of criminal justice services, and the chief executive officer or designee of the local governmental unit where the serious incident involving a person with a mental illness occurred. A mental health incident review

panel may also include, if deemed appropriate by the commissioner based on the nature of the serious incident being reviewed, one or more representatives from mental health providers, local departments of social services, human services programs, hospitals, local schools, emergency medical or mental health services, the office of the county attorney, state or local police agencies, the office of the medical examiner or the office of the coroner, the judiciary, or other appropriate state or local officials; provided, however, that a local law enforcement official may not serve as a member of such a review panel if such local law enforcement official's office or agency is directly involved in any ongoing investigation or prosecution of a crime under review by the panel, or any appeal of a criminal conviction for such crime.

(c) (i) Notwithstanding any other provision of law to the contrary and to the extent consistent with federal law, a mental health incident review panel shall have access to those relevant client-identifiable mental health records, as well as all records, documentation and reports relating to the investigation of an incident by the justice center, pursuant to article twenty of the executive law and an incident by a facility in accordance with regulations of the commissioner, which are necessary for the investigation of the serious incident involving a person with mental illness and the preparation of a report of such incident, as provided in subdivision (e) of this section. A mental health incident review panel investigating a serious incident involving a person with a mental illness pursuant to this section shall be provided with access to all relevant, non-privileged records in the possession of state or local officials or agencies, within twenty-one days of receipt of a request, except: (A) those records protected by section 190.25 of the criminal procedure law; (B) where providing law enforcement records would interfere with an ongoing law enforcement investigation or judicial proceeding, identify a confidential source or disclose confidential information relating to an ongoing criminal investigation, highly sensitive criminal investigative techniques or procedures, or endanger the safety or welfare of an individual; (C) with respect to any such record that is privileged, where the privilege is held by the official or agency and no separate privilege held by an individual applies, such official or agency shall be authorized to waive

such official's or agency's privilege, as applicable, and provide such record; and (D) whenever an agency, director or unit believes pursuant to subparagraph (B) of this paragraph that release of records would interfere with a judicial proceeding, it shall identify that proceeding, and the mental health incident review panel shall be authorized, upon notice to such agency, director or unit, to request in writing to the judge before whom such judicial proceeding is pending, that such judge determine whether access to such records should be denied on the ground that release of such records would interfere with the pending proceeding. Upon receipt of such a request, the judge shall offer the agency, director or unit and the panel a reasonable opportunity to be heard, and may review the disputed records in camera. The judge shall submit its determination to the agency, director or unit and the mental health incident review panel, and the agency, director or unit shall then proceed in accordance with the judge's determination.

(ii) In any case in which access to records is denied pursuant to this subdivision, the appropriate agency shall inform the panel in writing of the reasoning for such denial.

(d) Mental health incident review panels and members of the review panels shall have immunity from civil and criminal liability for all reasonable and good faith actions taken pursuant to this section, and shall not be questioned in any civil or criminal proceeding regarding any discussions, deliberations or findings relating to the official duties of such review panel. Nothing in this section shall be construed to prevent a person from testifying as to information obtained independently of a mental health incident review panel, or information which is public.

(d-1) Persons who present information to the panel shall have immunity from civil and criminal liability for all reasonable and good faith actions taken pursuant to this section, and shall not be questioned in any civil or criminal proceeding regarding their authorized participation at a meeting of the panel. Neither information nor records relating to the performance of a review panel function, nor a person's participation in a review panel shall be subject to disclosure pursuant to article thirty-one of the civil practice law and rules. Nothing in this section shall be construed to prevent the disclosure of, or testimony regarding, information that exists or is obtained

independently of the panel or information that is public.

(e) Notwithstanding any other provision of law to the contrary, all meetings conducted, all reports and records made and maintained and all books and papers obtained by a mental health incident review panel shall be confidential, and shall not be open or made available, except by court order for good cause shown or as set forth in subdivision (g) of this section. Each mental health incident review panel shall develop a report of the incident investigated. Such report shall not contain any individually identifiable information and shall be provided to the office of mental health upon completion. Records, reports, information regarding testimony and other information gathered by the panel shall not be further disseminated by a panel member.

(f) If quality problems of particular mental health programs are identified based on such reviews, the commissioner is authorized, pursuant to the relevant provisions of this chapter, to take appropriate actions regarding the licensure of particular providers, to refer the issue to other responsible parties for investigation, or to take other appropriate action within the scope of his or her authority.

(g) In accordance with section 33.13 of this title, the commissioner shall provide the final report of a review panel or portions thereof to any individual or entity for whom the report makes recommendations for corrective or other appropriate actions. Any final report or portion thereof shall be confidential. Any individual or entity receiving the report shall be prohibited from further disseminating such report. Further, the commissioner shall notify the temporary president of the senate and the speaker of the assembly of the issuance of the reports.

(h) The commissioner shall, every two years, submit a cumulative report to the governor and the legislature incorporating the data in the mental health incident review panel reports and including a summary of the findings and recommendations made by such review panels and, to the extent practicable, any recommendations that have been implemented, including recommendations from prior reports, and the impact of such implementations. The cumulative reports shall thereafter be made available to the public on the official agency website for the office of mental health, consistent with federal and state confidentiality protections.