



Memorandum

From: Robert Kent, Office of Counsel

Date: August 24, 2016

Re: Incident Reporting Policies and Procedures

The Justice Center for the Protection of People with Special Needs is charged with taking reports of abuse, neglect or significant incidents.¹ Mandated reporters, including custodians and human services professionals, are required to report allegations of reportable incidents to the Vulnerable Persons' Central Register immediately upon discovery.² A mandated reporter's failure to report or obstruction of a report of a suspected reportable incident to the VPCR is a serious matter with consequences to an individual and to a program's operating certificate including: discipline, termination, loss of a credential or certification, prosecution (class A misdemeanor), and/or civil liability for damages proximately caused by a failure to report.³

It is incumbent upon OASAS (operated, certified, licensed) providers to have and implement written policies and procedures constituting an incident management program for responding to, reporting, investigating and evaluating incidents.⁴ Policies which require a mandated reporter to delay reporting to the Justice Center until the incident has been reviewed and evaluated internally is not compliant with statute and regulations, and constitutes obstruction.⁵

Obstruction of reports is a reportable incident by all mandated reporters. Obstruction means conduct which impedes the discovery, reporting or investigation of the treatment of a service recipient and could be intentional or the consequence of policies and procedures that are not consistent with the plain English requirements of the law.⁶

This is not to be confused with notice to a program director or their designee, after an initial incident report has been filed with the Justice Center, to ensure proper documentation of the details of the incident.⁷

This is also distinguished from the limited circumstances where a provider may delay "discovery" of a reportable incident of abuse or neglect, and the requisite reporting to the VPCR, for no more than 24 hours.⁸ Where a provider seeks to delay "discovery", they must first provide notice to

¹ N.Y. Soc. Serv. Law §492.

² N.Y. Soc. Serv. Law §488(2),(5) and (5-a) for definitions of custodian, mandated reporter and human services professional.

³ N.Y. Soc. Serv. Law §491(3).

⁴ 14 NYCRR §836.5(a).

⁵ 14 NYCRR 836.6(a).

⁶ N.Y. Soc. Serv. Law §488(1)(f).

⁷ 14 NYCRR 836.6(d).

⁸ 14 NYCRR 836.6(g)(h)

OASAS, and any delay must be clearly documented in the record. This is permitted only where the person alleging the neglect has (1) previously made false allegations and the allegation is uncorroborated, or (2) has a physical or behavioral health condition which makes them prone to making a false report of abuse.⁹ These requirements must be strictly adhered to by the provider, and staff individually, to avoid intentional obstruction of reports or effective obstruction of reports.

The foregoing reminder shall service as final notice that in addition to any criminal or civil penalties imposed, any programs or provider agency which implements an incident management policy, in writing or verbally, which does not comply with Social Services Law and OASAS regulations is subject administrative action against their operating certificate, up to and including:

- Imposition of a fine,
- Funding restrictions and/or limitation,
- Suspension or revocation of an operating certificate.

The suspension or revocation of a provider's operating certificate prohibits the operation of any substance use disorder and/or problem gambling program requiring OASAS certification. Suspension or revocation of an OASAS operating certificate also prevents a provider from billing Medicaid, other third party payers and individual program participants for substance use disorder and/or problem gambling services. Non-compliant programs or provider agencies will be given written notice at least 30 days prior to the imposition of the applicable sanction, including the opportunity to submit justification as to why the action should not be imposed.

Upon OASAS' determination that the sanctioned service provider has come into full compliance with all applicable Justice Center and OASAS reporting requirements, OASAS may, at its discretion, lift any sanctions and return the provider to good standing.

⁹ 14 NYCRR 836.6(g)