



November 22, 2019

## **GUIDANCE ON CONTRABAND AND JUSTICE CENTER REPORTABLE INCIDENTS**

The Office of Addiction Services And Supports (OASAS) offers the following guidance to providers to reaffirm the importance of addressing the presence of contraband to preserve safety within the treatment community, while also preventing unnecessary discharge of those possessing contraband.

Items which present a potential to result in serious harm to the life, safety, health, and/or welfare of individuals are considered contraband, including but not limited to, weapons or substances of abuse with the potential to result in overdose. Examples of contraband items that pose potential risks to the safety and well-being of individuals in treatment, but which do not alone present a potential for serious harm, include tobacco, tobacco paraphernalia, cell phones, money, cosmetic/hygiene products, or food.

Individuals have the right to receive services in a “therapeutic environment that is safe, sanitary, and free from the presence of addictive substances.” To provide such an environment, programs must implement policies and procedures to prevent and address the presence of contraband items in a manner that is person-centered, respectful of patient dignity, and that reasonably balances the well-being of the individual with contraband with the health and safety of other individuals within the program.

While OASAS requires tobacco-and-vaping-free treatment environments and the possession of tobacco or vaping products by an individual is considered contraband, the mere presence of tobacco products and related paraphernalia is not a Justice Center reportable incident, unless it poses an immediate risk to the life, safety, health, or welfare of individuals in care, and/or the circumstances surrounding the presence or the possession of the contraband reasonably indicates some level of abuse or neglect.

More specifically, the presence of a contraband item, substance, or associated paraphernalia is not, in and of itself, a Justice Center reportable incident. The reporter must ALSO have reasonable cause to suspect that the vulnerable person has been subjected to a reportable incident involving the contraband pursuant to SSL Section 491(1)(b). For example, if there has been a failure to follow program policies and procedures (eg., search policies), and there is actual or likely harm to an individual, the incident is reportable (e.g., an individual is burned by an attempt to smoke tobacco; an

individual is harmed in the process of contraband cash being used to conduct criminal activity; the use of the cell phone leads to a relapse).

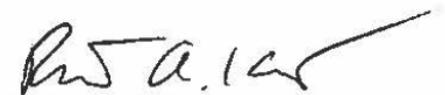
Instances of a confirmed or suspected overdose, or if an individual is found unresponsive, must still be reported to the Justice Center.

In all cases where contraband is found, the individual's possession of such items should be documented within their clinical record and addressed through clinical discussion, which may include review of adherence to policies and protocols to reduce continued risk, and/or enhanced treatment supports (such as nicotine replacement therapy, more frequent searches, or more frequent counseling).

OASAS programs should not administratively discharge individuals solely based on their possession of tobacco, tobacco products, or other contraband unless it poses an immediate risk to health and safety within the program. A program policy which establishes a "zero-tolerance" rule that requires discharge of an individual when they possess any contraband, is inconsistent with a person-centered approach to treatment. Any decision to discharge a patient based upon the presence of contraband should be patient-specific and should fully assess the risk the individual poses to themselves and the treatment community as a whole when compared with the impact that an administrative discharge could have on the patient after discharge.

In the event that a discharge is in the best interest of the program community, the program is responsible for developing an individualized discharge plan that includes a safe transition to another treatment setting if the individual will participate in plan development or accept a plan.

Sincerely,

A handwritten signature in black ink, appearing to read "R.A. Kent", with a long horizontal stroke extending to the right.

Robert A. Kent