



**Notice of Proposed Rulemaking
Regulatory Impact Statement**

**Amend 14 NYCRR Part 836
INCIDENT REPORTING IN OASAS CERTIFIED, LICENSED, FUNDED, OR OPERATED
SERVICES**

1. Statutory Authority:

- (a) Section 19.07(c) of the Mental Hygiene Law charges the Office with the responsibility for seeing that persons in need of treatment for addiction services receive high quality care and treatment, and that the personal and civil rights of persons receiving care, treatment and rehabilitation are adequately protected.
- (b) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner (“Commissioner”) of the Office to adopt standards including necessary rules and regulations pertaining to addiction services.
- (c) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under their jurisdiction.
- (d) Section 19.20 of the Mental Hygiene Law (Protection of People with Special Needs Act, added by Chapter 501 of the Laws of 2012) authorizes the Office to receive and review criminal history information related to certain prospective employees and volunteers.
- (e) Section 19.20-a of the Mental Hygiene Law (Protection of People with Special Needs Act, added by Chapter 501 of the Laws of 2012) authorizes the Office to receive and review criminal history information related to persons seeking to be credentialed or applicants for an operating certificate issued by the Office.
- (f) Section 19.21(b) of the Mental Hygiene Law requires the Commissioner to establish and enforce certification, inspection, licensing and treatment standards for addiction services facilities and staff.
- (g) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of addiction services.

- (h) Section 22.07(c) of the Mental Hygiene Law authorizes the Commissioner to promulgate rules and regulations to ensure that the rights of individuals who have received, and are receiving, addiction services are protected.
- (i) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.
- (j) Section 32.02 of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary to ensure quality services to those suffering from compulsive gambling.
- (k) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.
- (l) Sections 33.16(a)(6) and 33.16(b)(4) of the Mental Hygiene Law define a “qualified person” as an individual receiving services, their legal guardian, or a parent, spouse or adult child who has authority to provide consent for care and treatment.
- (m) Section 33.23 of the Mental Hygiene Law requires directors of facilities certified by OASAS to provide telephone notification to a “qualified person” of an incident involving a client within twenty-four (24) hours of the initial report.
- (n) Section 33.25 of the Mental Hygiene Law requires facilities to release records to “qualified persons”, upon request, relating to allegations and investigations of client abuse or mistreatment.
- (o) Section 491 of the Executive Law requires mandated reporters to immediately report allegations of reportable incidents to the Vulnerable Persons’ Register upon discovery.
- (p) Section 492 of the Social Services Law establishes the Vulnerable Persons’ Register to which reports of allegations of reportable incidents must be submitted in a manner and on forms approved by the executive director of the Justice Center.
- (q) Article 6, Title 6 of the Social Services Law requires the reporting of suspected abuse or maltreatment of persons under 18 years of age to the New York Statewide Central Register of Child Abuse and Maltreatment (hereinafter, “Statewide Central Register”).
- (r) Section 413 of the Social Services Law identifies persons required to report cases of suspected child abuse or maltreatment to the Statewide Central Register.

2. Legislative Objectives: The legislature has authorized OASAS to establish standards and regulations governing incident management and oversight of addiction services in certified, funded or otherwise authorized programs, consistent with various NYS laws, regulations and rules for the protection of individuals seeking and receiving services in the OASAS system.
3. Needs and Benefits: OASAS is explicitly prohibiting any certified, funded or otherwise authorized program from conducting a body cavity search of a patient for any reason. There is no therapeutic value in conducting a body cavity search and could potentially cause harm to individuals that have a history of trauma.
4. Costs: No additional administrative costs to the agency are anticipated.
5. Paperwork: There is no additional paperwork beyond what is already required.
6. Local Government Mandates: There are no new local government mandates.
7. Duplications: This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule.
8. Alternatives: The alternative is to leave the regulation as it currently reads, with language permitting body cavity searches.
9. Federal Standards: This regulation does not conflict with federal standards.
10. Compliance Schedule: This rulemaking will be effective upon publication of a Notice of Adoption in the *State Register*.