



OASAS Part 836 Guidance for Provider Agencies and Investigation Report Best Practices

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Develop an incident management plan and incident review committee:

- Providers (licensed, funded, or operated by OASAS) must have written policies and procedures for responding to, reporting, and evaluating incidents. Employees and clients shall be informed of the **incident management plan**. See Part 836.5.
 - The plan must include staff responsible, internal recording and reporting procedures, minimum standards for investigations of incidents, procedures for implementation of correction action plans, establishment of an incident review committee, training requirements, and record retention (see Part 836.5(b) for more detail on plans).
- Each provider's incident management program must provide for the establishment of an **incident review committee**. See Part 836.5(f). This committee must include members of the governing authority of the provider and other persons identified by the director.
 - The committee must review all incidents, determine the facts, review and evaluation practices and procedures, determine patterns and common causes of incidents, and make recommendations, keep meeting minutes, summarize incidents and recommendations made at meetings, and take any action necessary to follow up on recommendations made.
 - The committee is to review the program's response to incidents and make recommendations for preventative and corrective action.
 - The committee is responsible for monitoring the program's compliance with the incident management plan, as well as report incident types, findings, and recommendations.

Reportable vs. Non-Reportable Incidents:

- What is "**Abuse and Neglect**"-these are reportable incidents that are required to be reported to the Vulnerable Persons' Central Register (VPCR) and include: physical abuse, sexual abuse, deliberate inappropriate use of restraints, use of aversive conditioning, obstruction of reports of reportable incidents, unlawful use or administration of a controlled substance, and/or neglect. See Part 836.4(c).
- What is a "**Non-Reportable Incident**"-these are incidents that need not be reported to the Justice Center, or if they are reported may be determined as not within the jurisdiction of the Justice Center. However, these incidents may require documentation in a patient's clinical record or as an incident related to the program or facility which must be maintained by the provider for review (by the Incident Review Committee or by OASAS or the Justice Center upon request). See Part 836.4(a)(3).
- What is a "**Reportable Incident**"-these incidents are either "abuse and neglect" or "significant incidents, or a death which must be reported. See Part 836.4(b).
- What is a "**Significant Incident**"-this is a reportable incident, other than an incident of abuse and neglect, which because of its severity or the sensitivity of the situation, may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety or welfare of a



person receiving services. See Part 836.4(d) for additional information on what types of incidents fall under “significant incidents.”

Who needs to report?

- Incidents must be reported by “Mandated Reporters” (Part 836.4(g)).
- Mandated reported include custodians and human service professionals (Part 836.4(e) and (h)).
- Service recipients are NOT mandated reporters.
- When a custodian in any program who personally observes, is advised of, or otherwise becomes aware of an incident must take immediate and appropriate action to intervene and attempt to prevent or limit injury or potential injury to any person to the greatest extent possible.
- Every mandated reporter who has direct **knowledge** of an incident and has **reasonable cause** to suspect that a person receiving services has been subjected to a reportable incident is required to make a report to the VPCR unless:
 - They have actual knowledge that it was already reported, and they have been named as a person with knowledge of the incident in that report.

Incident Reporting, Notice, and Investigation Requirements for Providers Certified/Licensed/Operated by OASAS:

- All reportable incidents (unless otherwise specified) have to be reported to the VPCR.
- In accordance with a provider’s incident management program, a written incident report must be initiated through the Justice Center Incident Reporting site (<https://vpcr.justicecenter.ny.gov/WIRW/#/>) or a call made by a mandated reporter as defined in this Part to the VPCR toll-free hotline immediately after a reportable incident is discovered.
- In addition to a report made to the Justice Center, an **initial incident report** must be forwarded to the director/designee immediately after the incident is discovered. This initial incident report must contain at least:
 - **Exact date and time if known, a description, location, actions taken in response, name(s), address(es) and telephone number(s) of the victim(s), witness(es), and anyone else involved, any injuries and any aid provided to address injuries.**
- The Justice Center then determines whether a reportable incident shall be investigated by the Justice Center or delegated to OASAS for investigation. If it is delegated to OASAS, OASAS may delegate investigation to the program.
- Any final report of a delegated **significant incident** must be provided to the OASAS Regional Office for incident closure within **sixty (60) days** after the Justice Center accepts the initial report of the incident, unless an extension of time is granted for documented good cause.
- All incidents must be **recorded** by the service provider and all incident reports and other relevant records made available for inspection by OASAS and the Justice Center, when appropriate.
- Upon notice to OASAS Regional Office, service providers may delay reporting to the VPCR for no more than twenty-four (24) hours in order to conduct a preliminary review of an allegation of abuse or neglect, where a service provider does not have reasonable cause to suspect that the allegation has occurred because:



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- the person making the allegation of abuse or neglect has a documented history of making false reports of abuse or neglect and no other person has come forward as a witness to such allegation; or
- the person making the allegation of abuse or neglect has a documented behavioral or psychological condition that would tend to cause such person to make a false report of abuse or neglect and no other person has come forward as a witness to such allegation.
- Any delayed discovery must be documented, including the reasons for delay and the basis for not reporting-and such documentation must be available upon request to the Justice Center.

It should also be noted that the Justice Center has implemented a 3 Day Business Review process where the Justice Center will make additional requests for information to determine the appropriate classification of an incident.

Incident Reporting, Notice, and Investigation Requirements for Funded Providers (not Certified/Licensed/Operated by OASAS):

- Prevention programs and other services funded, but not certified or licensed by OASAS, **shall report incidents to OASAS**, and not the Justice Center. Reports shall be made to the OASAS Bureau of Patient Advocacy. The initial report of such an incident, in such a program, must, at a minimum, contain:
 - Exact date and time if known, a description, location, actions taken in response, name(s), address(es) and telephone number(s) of the victim(s), witness(es), and anyone else involved, any injuries and any aid provided to address injuries.

Additional Reporting Requirements:

- **“Jonathan’s Law”**: Subject to the provisions of 42 CFR Part 2, in addition to any other notice provisions required in this Part, notification of reportable incidents involving a client must be made pursuant to section 33.23 of the Mental Hygiene Law by the director or designee to the client’s family or significant other, designated emergency contact, or other qualified person. Such notification must be made by telephone or secure electronic method immediately after an incident is discovered.
- **Crimes**: If it appears that a crime may have been committed against any custodian or service recipient, the provider must immediately make such reports as are necessary to provide notification to the appropriate law enforcement agency of the incident.
- **Death**: In the event of a client’s death in an inpatient or residential program under any circumstances or within 30 days of such client’s discharge, immediate notification must be made to both the VPCR and the Justice Center’s Mortality Review Unit (subject to the provisions of 42 CFR Part 2), the process for which can be found here: <https://www.justicecenter.ny.gov/mortality-review>, the local coroner or medical examiner, or any other state or local agency identified under state laws requiring the collection of health or other vital statistics.
- **Missing client**: In addition to other requirements, missing client reports must indicate that the appropriate supervisory staff member was notified immediately. A diligent search must be made by staff of the physical plant, grounds, and surroundings. Telephone inquiries can be



made to the person's home and/or any other appropriate locations, in accordance with the confidentiality requirements of 42 CFR Part 2. Incident reports of a missing client must state the efforts made to locate the client as well as the outcomes.

What do I need to include in an Investigation Report of a Significant Incident?

- Develop investigation questions based on the context of the incident to complete your internal investigation.
- To close this incident in the VPCR, you need to submit your investigation report outlining all investigatory activities to OASAS Regional Office.
- **Your submission must include the following information:**
 - A summary of the evidence relied upon to establish findings and conclusions.
 - All documentation and/or evidence to support the findings (types of evidence may include testimonial evidence, documentary evidence, demonstrative evidence, physical evidence, and/or statements).
 - A summary of corrective actions deemed necessary based on investigation findings and conclusions.
 - All documentation that demonstrates the corrective and/or preventative actions that have been completed (i.e., staff training documentation, staff supervision notes, etc.).
 - Provider must also report incidents involving credentialed or licensed staff to:
 - **OASAS credentialed individuals** <https://oasas.ny.gov/providers/credentialing>
 - **NYSED licensed individuals** https://www.op.nysed.gov/enforcement/discipline-complaint_form
 - **Physicians** <https://www.health.ny.gov/forms/doh-3867.pdf>

Please note investigative reports must sufficiently summarize the evidence, note the agency's findings, and include the agency's corrective/preventative actions.

Submissions which do not meet the above requirements will be returned for revision.

How do I submit an Investigation Report?

- Investigation Reports are submitted to your OASAS Regional Office.
- Always use the same e-mail thread received from the Regional Office for any further communication regarding the incident in question.
- Always use 'reply all' and do not modify the subject line.

When is the Investigation Report due?

- Submit all documentation by close of business on the date designated in the email received from the Regional Office.

What if something I discover makes me suspect that abuse or neglect may have occurred?

- If at any point during your investigation you discover information which you have reasonable cause to suspect indicates potential Abuse or Neglect (as defined above, by Part 836.4(c)), **stop investigating and immediately report** the additional information to the NYJC and your respective OASAS Regional Office.