

Notice of Proposed Rulemaking
Amendments to 14 NYCRR Part 836

Section 1. Subdivisions (a) and (b) of section 836.4 of Part 836, as adopted December 9, 2015, are amended to read as follows:

(a) (1) "Incident" means an event or happening, accident or injury during the conduct of any program activity which involves a client, a custodian, or damage to the facility in which the program operates and which has, or may have, an adverse or endangering effect on the life, health or welfare of clients or custodians and is required to be reported, investigated and recorded to designated parties according to Article eleven of the social services law and procedures approved by the Office, reviewed by an Incident Review Committee, and acted upon in an appropriate manner to safeguard the well-being of clients and custodians and to bring the matter to closure.

(2) Incidents are either "reportable" to the Justice Center or "non-reportable."
~~[Reportable incidents include incidents of "abuse and neglect" and "significant incidents" as such terms are defined in this section.]~~

(3) "Non-reportable" incidents 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; nevertheless, 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 service provider for review by the provider's Incident Review Committee, or by the Office or the Justice Center, upon request.

(b) "Reportable incident" means an incident of "abuse or neglect" or a "significant incident" as defined in subdivision (c) or (d) of this section; **some patient deaths are also a reportable incident.**

§2 Paragraph 3 of subdivision (d) of section 836.4 of Part 836, as adopted December 9, 2015, is amended by adding a new subparagraph (vii) to read as follows:

(3) Other significant incidents, including but not limited to:

(i) An event that is, or appears to be, a crime under New York state or federal law involving custodians, clients, or others, including children of service recipients in a residential program, as victims or perpetrators;

(ii) Body cavity search; must be with client consent;

(iii) Any violation of a client's rights to confidentiality pursuant to 42 CFR Part 2 or the Health Insurance Portability and Accountability Act (HIPAA).

(iv) Missing client as defined in subdivision (u) of this section;

(v) Suicide attempt whether or not preceded by statements of intent; statement of intent alone is not a suicide attempt; statements of intent should be recorded in a patient's clinical record;

(vi) Death of a custodian or mandated reporter during the course of his/her job duties related to the provider facility; shall also be reported to any other appropriate entity[.];

(vii) Death of an outpatient client if death occurs on program premises or during the course of program activities. Notification must also be made to 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.

§3 Subdivision (c) of section 836.8 of Part 836, as adopted December 9, 2015, is amended to read as follows:

(c) In the [~~case of a client's death~~] **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 the VPCR (subject to the provisions of 42 CFR Part 2), 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.