



Corrective Action Plans (CAPs) Provider Guidance Document for Allegation of Abuse & Neglect

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A Corrective Action Plan (CAP) is required for all Allegations of Abuse & Neglect (A/N). A/N incidents are designated by the NYS Justice Center (JC), and include Physical Abuse, Psychological Abuse, Sexual Abuse, Neglect, Deliberate Inappropriate Use of Restraint, Obstruction of reports of Reportable Incidents, Unlawful use or administration of a controlled substance, and Aversive Conditioning. For definitions of each type of A/N, please refer to 14 NYCRR Part 524 or your Incident Management Guide from the Office of Quality Improvement (OQI).

A CAP is required to address any substantiated finding of A/N as well as any area of concern identified in the investigation or Incident Review Committee’s (IRC) review of an allegation. Actions taken to address these issues are documented in the CAP with the purpose of mitigating continued risk. Providers submit their CAP in NYS Incident Management Reporting System (NIMRS) for Office of Mental Health (OMH) Central Office to review and approve. Once approved, CAPs become available to the JC for potential audit.

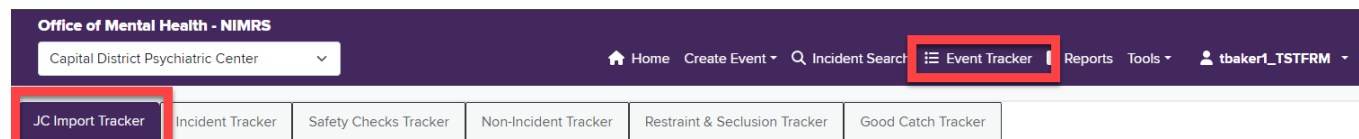
- For additional help managing your CAP information in NIMRS, see the NIMRS 2.0 CAP User guide on the [NIMRS Learning Center](#)

When the JC receives an Allegation of A/N, they assign the incident to one of the following paths:

- OMH Led investigation: these are typically then delegated to the provider for investigation (Facility-led). In these cases, the provider will document their investigation and evidence in the Web Submission of Investigation Reports (WSIR) and NIMRS.
- JC Led: the JC will lead the investigation.
- 3 Business Day Review (3BDR): the JC will request documentation from the provider and determine if the incident should be reclassified as a Significant Incident (SI) or Non-NYJC.

STEPS TO PROCESS AN ALLEGATION OF ABUSE/NEGLECT: ↑

- 1) **Import Incident** from the JC Incident Import Queue into NIMRS.



- 2) **Document Incident Details including Initial Findings and Immediate Response** in NIMRS: Document any immediate safety measures taken; including, but not limited to:
 - Separation of staff and victims
 - Environmental assessment (i.e., removal of broken or dangerous objects)
 - Notifications to law enforcement

- Medical interventions
- Notifications made

3) **Complete Individuals Involved information including Jonathan’s Law tab in NIMRS.**

4) **Email OMH** by clicking the “Email OMH” milestone button in NIMRS. This should be done within 24 hours unless the provider has been notified that the JC has designated the incident a 3BDR.

5) **Complete Investigation:**

- For **Facility-Led investigations**, the provider will complete their investigation and submit the documentation into the WSIR within 45-days from assignment. Once reviewed by OMH Central Office and the NYS JC, a Determination letter (LOD) will be issued and mailed to the provider, typically within 45 days. *WSIR technical issues should be directed to <https://www.justicecenter.ny.gov/web-submission-investigation-report-wsir>
- For **JC-Led investigations**:
 - Per Part 524, the provider may not take formal written statements from witnesses or subjects. However, providers can review all other evidence and formulate preliminary findings and identify and implement action items.
 - The provider will be contacted by the investigator and asked to supply evidence and assist with scheduling interviews/interrogations.
 - Once the JC has completed their investigation, they will issue the LOD as well as their full investigation by mail to the provider.
- For **OMH-led investigations**: OMH will issue a copy of their investigative report to the provider. The JC will then issue their determination by mail to the provider.

6) **Investigation Conclusions** in NIMRS:

- For Facility-Led investigations, the provider should summarize their findings and conclusions from their investigation. The provider can also upload their investigative report into NIMRS to assist with providing details of the investigation where applicable.

7) **IRC Findings** in NIMRS: Documented review of incidents by your IRC must occur within 45 days of its acceptance, and then every 45 days until the incident is closed in NIMRS. The provider should document:

- All dates the Incident was discussed in their IRC Meetings. The date of the initial review should be noted as the “IRC Review Date”.
- Any immediate actions taken to ensure safety of persons involved and the environment.
- Whether the IRC agreed or disagreed with the investigator’s findings, conclusions, and recommendations.
- Any additional issues of concern or recommendations.
- What corrective actions have been or will be completed to address the finding(s), issues of concern and recommendations.
- The review of previously implemented CAPs and any adjustments/changes to them if they were not effective.

Once completed, provider should click “Confirm IRC Milestone” button in NIMRS.

- For JC or OMH-Led investigations, IRC requirements remain the same. The provider must not delay the review of the incident in IRC while waiting for the final report or LOD. The review should note that the investigation is being led by the JC or OMH and the incident will be kept open and re-reviewed once the final report and JC LOD are received, while documenting any immediate actions and notifications. Once the provider receives the report and the JC LOD, the IRC will review and discuss these documents to determine the need for any additional corrective actions.

- 8) **Submit Investigation:** once the investigation has been completed and reviewed by the IRC, click the “Submit Investigation” milestone button in NIMRS. To be in compliance with Part 524 regulations, this must occur within 45 days from the date the provider was assigned the incident.



- 9) **Determination Letter (LOD):** Once the investigation is complete, and the investigative report is reviewed by the JC’s Office of General Counsel, a LOD is issued. The LOD states whether any offense of A/N has been substantiated, what category of substantiation, and any areas of concern identified in the investigation. The provider will receive a copy of this letter via mail. **OMH Central Office staff receive an electronic copy and then enter the information into NIMRS.**

- 10) **CAP Documentation and Submission:** Upon receipt of the LOD, the provider should complete all CAP information in NIMRS and click the “Submit CAP” milestone button. CAP submission is due for OMH review 45 days after the date of the LOD. An approved CAP is due in NIMRS for the NYS JC’s potential audit 100 days from the date of the LOD. Enter the name and contact information of a staff member who can be contacted with any questions or concerns regarding the CAP, in the “CAP Manager Details” section in NIMRS.



CORRECTIVE ACTION PLANS ↑

Each Corrective Action should:

- ✓ Be identified as soon as possible and developed at the onset of the allegation.
- ✓ Directly correlate with identified issue(s).
- ✓ Clearly define opportunities for improvement.
- ✓ Be measurable and reasonable.
- ✓ Specify staff responsible to implement and monitor.
- ✓ Specify staff that will receive the corrective action.
- ✓ Be driven by the intention to mitigate risk.

What is required in your CAP submission:

- Each substantiated finding and area of concern should have a corresponding corrective action.
- Each Action should be listed separately and can include disciplinary action, training/re-training, increased supervision, counseling, policy/procedural change, documentation audits, environmental changes, etc.
- Complete each section of the entry to include a person responsible, a clear “Corrective Action Description” and a noted “Measure of Effectiveness”. The measure of effectiveness is especially important when the staff is being re-trained on a subject matter in which they should already be competent. To mitigate risk, additional steps should be taken to best ensure comprehension such as a post-test or auditing.
- Supporting documentation, verifying the completion of each action, is required for CAP approval. The only exceptions are:
 - Disciplinary Actions for substantiated findings as these are documented directly to the JC through the Administrative Action Reporting Mechanism (AARM) web application.
 - Clinical Actions that are specific to a person receiving services.
 - Actions that are listed as “Partially Implemented” (PI).

How Findings Impact your CAP: ↑

To sufficiently address a substantiated finding in you CAP it’s important to understand:

- Each allegation identified in the investigation will be noted as either substantiated or unsubstantiated in the LOD.
 - **Substantiated:** Allegations may be substantiated if an investigation determines that there is a preponderance of evidence to support the allegation. Preponderance of the evidence means that a review of the evidence shows the A/N was more likely than not to have occurred. There are four categories of substantiated findings:
 - ❖ **Category 1:** Serious physical abuse, sexual abuse, or other severe conduct by a subject. A Category 1 substantiation places the subject on the Staff Exclusion List (SEL). Subjects on the SEL remain on the list forever and are prohibited from being hired by any state operated, certified or licensed provider agencies or providers that serve people with special needs.
 - ❖ **Category 2:** A subject significantly endangers the health, safety, or welfare of a service recipient by committing an act of abuse or neglect. Category 2 offenses are sealed after five years and are not publicly available. *Note: Two substantiated Category 2 Findings within 3 years, raises the second finding to a Category 1, placing the subject on the SEL.
 - ❖ **Category 3:** Less serious incidents of abuse or neglect. Reports are sealed after five years. Future employers do not receive any information about these incidents, and they are not publicly available.
 - ❖ **Category 4:** Conditions at a program or facility expose people receiving services to harm or risk of harm. Category 4 also includes instances in which it has been substantiated that an individual receiving services has been abused or neglected, but a perpetrator cannot be identified.
 - **Unsubstantiated:** A report may be determined to be "unsubstantiated" for a variety of reasons. For instance, there may not be enough evidence to confirm that an incident occurred, or a specific individual may not be able to be identified as responsible for the incident. Please note that an unsubstantiated finding does not prevent employers from imposing corrective actions which may include employee discipline, additional supervision, and training.
- Corrective actions can be taken regardless of the NYS JC's final findings, meaning a substantiated finding is not necessary for a provider to implement actions including disciplinary actions, training or re-training, increased supervision or counseling for staff named in the allegation.
- Corrective actions taken towards staff do not need to be limited to staff named as subjects. An investigation can reveal staff's lack of understanding to policies, procedure or expected behavior with people receiving services. For example, if the investigation reveals that a unit conducts their rounds in a way that contradicts the policy expectation because when trained they were told "this is how we do it" the expectation would be that IRC would identify that all staff on that unit would need to be re-trained to the policy and increased supervision should be used to ensure rounds are being completed appropriately.
- Even if the LOD indicates there have been no substantiated findings, a CAP submission is still required. In the event that there are no substantiated findings, and no areas of concern were noted by the investigator or your IRC's review, a "None CAP" would be the appropriate submission.

Partially Implemented Corrective Actions: If a corrective action cannot be fully implemented within the 45- day CAP due date, OMH will allow for CAP approvals with actions that are listed as "partially implemented" as long as:

- ✓ The action cannot reasonably be completed by the CAP Due Date.
- ✓ The provider documents an estimated date of completion in the Corrective Action Description and Person Responsible.
- ✓ The provider does not Close the incident in NIMRS until all actions have been completed and supporting documentation has been attached.

OMH Central Office (CO) review of the submitted CAP: ↑

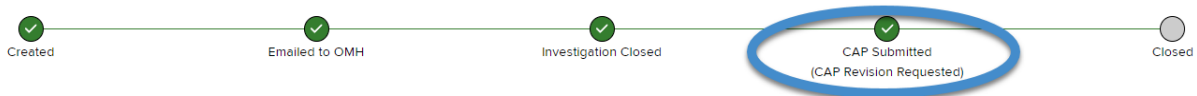
Once submitted, the CAP Status in NIMRS will be "CAP Submitted." The CAP Reviewer will review the allegations and full investigative report to verify that the submitted CAP addresses:

- All substantiated findings.
- Any delay in reporting (mandated reporters are required to report to the VPCR within 24- hours of discovery).

- Any staff refusal to participate in the investigation (with exception of named subjects of a criminal investigation).
- Any areas of concern noted by the investigator or IRCs review.
- Any noted trends.
- Supporting documentation for all completed actions.

If all required areas of the CAP have been documented and the CAP Reviewer found no additional areas of concern, the CAP will be marked “Approved” and the Reviewer will close the Incident in NIMRS.

If the CAP Reviewer deems that revisions are required before the CAP can be approved, an email will be sent to the provider and the incident will display the status of “CAP Revision Requested”. If there is more than one corrective action noted, the action(s) requiring revision will have an “Approval Status” of Revision Requested. Revision notes can be found in the Comments page, under the CAP Comments tab.



The screenshot displays the NIMRS interface. On the left, a sidebar contains navigation options: Incident, Individuals Involved, Investigation, IRC Review, CAP, **Comments** (highlighted with a blue box and arrow), History, and Attachments. The main content area is titled 'Comments' and features a tabbed interface with 'General Comments', 'Investigation Comments', and 'CAP Comments' (highlighted with a blue circle and arrow). Below the tabs is a text input field with the placeholder 'Enter a comment below (max. 500 characters):'. At the bottom right of the input area are 'Save Comments' and 'Cancel Changes' buttons. At the very bottom of the page are '< Previous' and 'Next >' navigation buttons.

Tips and Resources: ↑

- If the provider has not received their documentation from the NYS JC, contact:
 - ogcing@justicecenter.ny.gov for LODs
 - recordsaccess@justicecenter.ny.gov for JC Investigations
- Any NIMRS technical issues should be directed to 1-800-HELP-NYS (Option 2) or by email at NIMRSHelp@omh.ny.gov
- Any WSIR technical issues should be directed to <https://www.justicecenter.ny.gov/web-submission-investigation-report-wsir>
- Any questions or concern regarding the content of a CAP should be directed to the CAP Reviewer at 518-474-3619.
- If supporting documentation is not available for a completed action, the provider can attach a letter of attestation.
- If the supporting documentation is too large to be included in the Corrective Action Description, it can be attached on the relevant Issue of Concern by selecting it from the grid. It can be noted on the Comments page under the CAP Comments tab in NIMRS.
- If an action cannot be completed as intended by the IRC, this should be documented on the Comments page under the CAP Comments tab in NIMRS.
- If the provider does not agree with the JC's findings, this can be noted on the IRC review page in the IRC Findings text box.
- If the provider does not feel a corrective action is required for a JC area of concern, the rationale should be noted on the IRC review page in the IRC Findings text box.
- While the provider may choose to appeal a determination, the appeal process does not alleviate the provider's requirement to complete a CAP.