



# Guidance Document for Abuse/Neglect Corrective Action Plans (CAPs)

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A CAP refers to a Corrective Action Plan which is required for all Allegations of Abuse/Neglect.

**Allegations of Abuse/Neglect** are determined by the NYS Justice Center, which 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 Abuse/Neglect, please refer to 14 NYCRR Part 524 or your Incident Management Guide from the Office of Quality Improvement.

**Corrective Action Plan (CAP):** is required to address any substantiated finding of abuse/neglect as well as any area of concern identified in the investigation or Incident Review Committee’s (IRC) review of an allegation. Any action taken to address these are documented in the CAP with the purpose of mitigating continued risk. Providers submit their CAP in NIMRS for OMH Central Office to review and approve. Once approved, these CAPs become available to the NYS Justice Center for their potential audit. Unlike other incident types, *no allegation of abuse/neglect can be considered closed until the CAP submission and OMH approval.*

**Upon the Justice Center’s acceptance of an Allegation of Abuse/Neglect, they will opt to place the incident on one of the following tracks:**

- Assign the incident to OMH for investigation. These are typically then delegated to the provider for investigation (facility-led).
  - The provider will document their investigation and evidence in the Web Submission of Investigation Reports (WSIR) and New York State Incident Management and Reporting System (NIMRS).
- Lead the investigation (JC-led).
- Place the incident in the 3 Business Day Review (3BDR) in which they will request documentation from the provider and determine if the incident should be reclassified to a Significant Incident or Non-NYJC.

## Steps to process an Allegation of Abuse/Neglect: ↑

1. **The provider imports Incident from the Justice Center Incident Import Queue in NIMRS.**  
For assistance, please refer to the NIMRS Learning Center.  
<https://www.omh.ny.gov/omhweb/dqm/bqi/nimrs/videos.html>
2. **The provider will click the “Email OMH” action button in NIMRS.**
3. **The provider will document Initial Findings/Facility Response (section 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
  - Contacts made.
4. **Investigation Completion:**
  - a. 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 Justice Center, a Determination Letter will be issued and mailed to the provider, typically within 45 days.
    - i. Any WSIR technical issues should be directed to  
<https://www.justicecenter.ny.gov/web-submission-investigation-report-wsir>
  - b. For Justice Center-led investigations:
    - i. 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. *This applies to any investigation that is not led by the facility.*
    - ii. The provider will be contacted by the investigator and asked to supply evidence and assist with scheduling interviews/interrogations.
    - iii. Once the NYS Justice Center has completed their investigation, they will issue the Determination Letter as well as their full investigation by mail to the provider.
  - c. For OMH-led investigations OMH will issue a copy of their investigative report to the provider. The Justice Center will then issue their determination by mail to the provider.
5. **The Investigation Conclusions (section in NIMRS):**
  - a. For facility-led investigations, the provider will summarize their findings and conclusions from their investigation, submitted in the WSIR. The provider can also upload their investigative report into NIMRS to assist with providing details of the investigation where applicable.
  - b. For JC-led investigations, enter “N/A, JC-led” into this section.

6. **IRC Findings (section in NIMRS):** Documented review of incidents by your Incident Review Committee (IRC) must occur within 45 days of its acceptance, by the VPCR, 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 identified areas of concern or recommendations.
  - What corrective actions will/have been completed to address the finding(s), areas of concern and recommendations.
  - An illustration of a discussion of clinical and systemic issues and how they impact quality of care at the facility.
  - The review of previously implemented CAPs and making adjustments/changes to them if they do not prove to be effective.

*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 determination letter. 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 determination letter are received, while documenting any immediate actions and notifications. Once the provider receives the report and the JC Determination Letter, the IRC will review and discuss these documents to determine the need for any additional corrective actions.*

7. **Close Investigation and Confirm IRC (section in NIMRS):**
- a. For facility-led investigations: Once the investigation has been completed and reviewed by IRC, the provider must click the “Close Investigation and Confirm IRC” 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.
  - b. For OMH or Justice Center-led investigations: Once the provider has conducted their initial IRC review of the Incident and documented any immediate actions and notifications, they must click the “Close Investigation and Confirm IRC” 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.
8. **Import of the Determination Letter details and CAP Due Dates in NIMRS:** Once the incident has been fully investigated by the provider, OMH or the NYS Justice Center, the investigative report is reviewed by the NYS Justice Center’s Office of General Counsel. Once their review is complete, a Determination Letter is issued stating if any offense of abuse/neglect has been substantiated, what category of substantiation, as well as any areas of concern identified in the investigation. The provider is mailed a copy of this letter and OMH Central Office receives an electronic copy and imports the findings into NIMRS. A CAP submission is due in NIMRS for OMH to review 45 days after the date of the Determination Letter. An approved CAP is due in NIMRS for the NYS Justice Center’s potential audit 100 days from the date of the Determination Letter. If NIMRS notes the receipt of a Determination Letter at least 5 business days prior, and the provider has not yet received their copy, please click on the attached document (A Determination Letter Placeholder) in section outlined in red on Figure 1 below in NIMRS and contact the staff noted for assistance.

< Back   Save   Close Incident

Start → 1 Imported → 2 Email OMH → 3 Close Investigation → 4 Submit CAP → 5 Approve CAP → 6 Closed → End

Incident   Client   Initial Findings   Notification   **Investigation & CAP**   History

Investigation Findings & IRC   **Corrective Action Plan**

Incident List   **Corrective Action Plan**   Print CAP   Print

JC Incident Type: Abuse and Neglect   JC Incident ID: [ ]

Incident # [ ]   Incident Status: Reported To CO

[NIMRS Learning Center](#)

CAP Manager [ ]   CAP Status: Submitted to CO

   CAP Due Date: 05/21/2022

   CAP Implemented Date: 03/07/2022 [ ]

Issue(s) of Concerns:

Program/Services/Treatment    Safety/Basic Needs/Patient Rights    Documentation

Policies/Procedures    Physical Plant/Environmental    Cat 3/4(a CAT 3 or 4 allegation was substantiated)

Incident Management    Personnel/Training    Other

JC Determination Details:

Any Offense Substantiated by The NYS Justice Center (AOS)    Yes    No      [A Determination Letter](#)   [Remove](#)

Determination Letter Received?    Yes    No   If Yes, please specify date: 04/06/2022 [ ]  

Corrective Action(s)

Approved	Revision Required	Corrective Action Type	Corrective Action Desc	Person Responsible	Implementation Status	Implementation Date

Figure 1

9. **CAP Manager in NIMRS:** The provider should enter the name and contact information of a staff member who can be contacted by OMH or the NYS Justice Center with any questions or concerns regarding the CAP.

10. **Documentation and submission of the CAP:** A CAP submission is required of all Allegations of Abuse/Neglect. The CAP should document all corrective actions taken in response to any substantiated findings, as well as any areas of concern noted in the investigation or by the IRC. You will then want to click the “Submit CAP” button (indicated with the arrow in Figure 2 below). Once submitted, the CAP is reviewed by OMH Central Office and either approved or sent back for revision. The incident can be closed in NIMRS once the CAP has been approved and all actions have been fully implemented.



Click the “Submit CAP” action button to submit to OMH

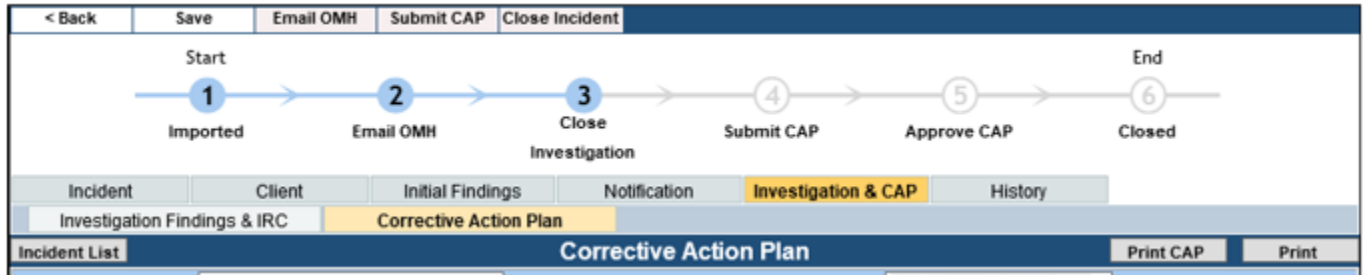


Figure 2

## 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. If one action is meant to address more than one area, this should be clearly noted in the “Corrective Action Description”.
- 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 Justice Center through the AARM.
  - Clinical Actions that are specific to a person receiving services.
  - Actions that are listed as “Partially Implemented”.

## How Findings Impact your CAP: ↑

To sufficiently address a substantiated finding in your CAP it's important to understand:

- Each allegation identified in the investigation will be noted as either substantiated or unsubstantiated in the Determination Letter.
  - **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 abuse and/or neglect was more likely than not to have occurred. There are 4 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 Justice Center'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 Determination Letter 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, your CAP Status in NIMRS will read “Submitted to CO”. This means it is in the CAP Reviewers queue at OMH for review.

- The CAP Reviewer will review the allegations and full investigative report to verify that the submitted CAP addresses:
  - Any 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 is attached 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”. The CAP Status will read “Approved” and the #5 on the progress line, “Approve CAP” will turn blue. If all actions have been noted as “Fully Implemented”, the provider will now be able to Click “Close Incident” (indicated with arrow in Figure 3 below).

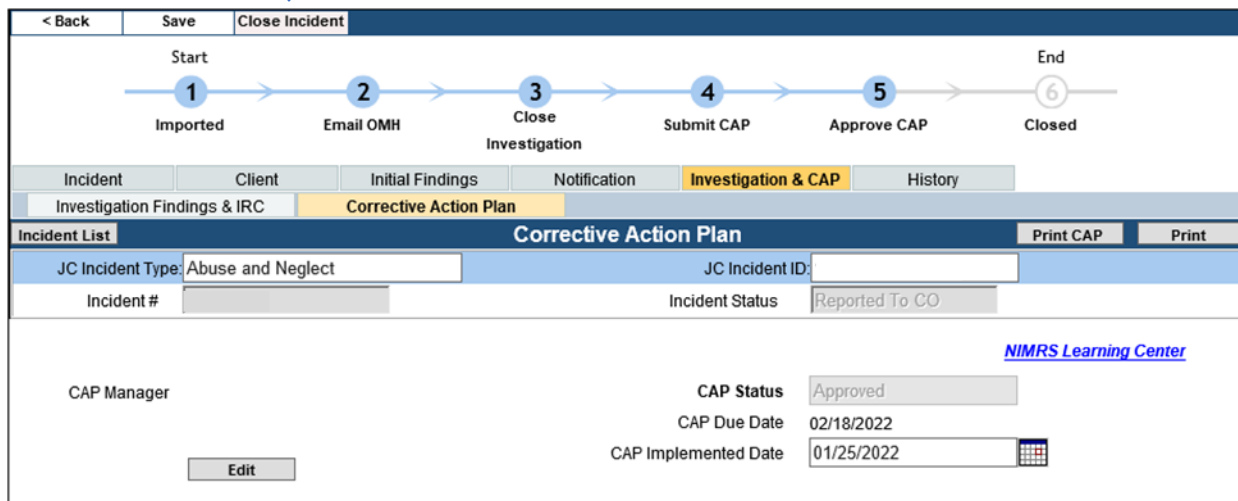


Figure 3

- If the CAP Reviewer deems that revisions are required before the CAP can be approved, the CAP will be sent back to the provider under the CAP Status of “Provider Revision Required”. If there is more than one corrective action noted, the action(s) requiring revision will be noted by the bullet to the left of the action and the Notes section will detail what revisions are being requested by



the CAP Reviewer (noted in red highlighted areas in Figure 4 below). The provider will need to make the revisions and then re-submit the CAP.

[NYS Learning Center](#)

CAP Manager

**CAP Status** Provider Revision Required

CAP Due Date 11/06/2022

CAP Implemented Date 07/27/2022

Issue(s) of Concerns:

<input type="checkbox"/> Program/Services/Treatment	<input type="checkbox"/> Safety/Basic Needs/Patient Rights	<input type="checkbox"/> Documentation
<input type="checkbox"/> Policies/Procedures	<input type="checkbox"/> Physical Plant/Environmental	<input type="checkbox"/> Cat 3/4(a CAT 3 or 4 allegation was substantiated)
<input type="checkbox"/> Incident Management	<input checked="" type="checkbox"/> Personnel/Training	<input type="checkbox"/> Other

JC Determination Details:

Any Offense Substantiated by The NYS Justice Center (AOS)  Yes  No

Determination Letter Received?  Yes  No

If Yes, please specify date 09/22/2022

[A Determination L...](#)

Corrective Action(s)

Approved	Revision Required	Corrective Action Type	Corrective Action Desc	Person Responsible	Implementation Status	Implementation Date	
<input checked="" type="radio"/>	<input type="radio"/>				Fully Implement...	07/05/2022	<input type="button" value="Edit"/> <input type="button" value="Attach Files"/>
<input checked="" type="radio"/>	<input type="radio"/>				Fully Implement...	07/08/2022	<input type="button" value="Edit"/> <input type="button" value="Attach Files"/>
<input type="radio"/>	<input checked="" type="radio"/>				Fully Implement...	07/06/2022	<input type="button" value="Edit"/> <input type="button" value="Attach Files"/>

Notes

Figure 4



### Tips and Resources: ↑

- If the provider has not received their documentation from the NYS Justice Center, contact:
  - [ogcinq@justicecenter.ny.gov](mailto:ogcinq@justicecenter.ny.gov) for Determination Letters
  - [recordsaccess@justicecenter.ny.gov](mailto:recordsaccess@justicecenter.ny.gov) for Justice Center Investigations
- Any NIMRS technical issues should be directed to 1-800-HELP-NYS (Option 2) or by email at [NIMRSHelp@omh.ny.gov](mailto: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 attached on the Corrective Action Plan tab, it can be attached on the "Investigation Findings & IRC" tab. Its location should be noted in the Notes section which is located on the bottom of the Corrective Action Tab in NIMRS.
- If an action cannot be completed as intended by the IRC, this should be documented in the Notes section located on the bottom of the Corrective Action Tab in NIMRS.
- If the provider does not agree with the Justice Center's findings, this can be noted in the IRC section.
- If the provider does not feel a corrective action is required for a Justice Center area of concern, the rationale should be noted in the IRC.
- While the provider may choose to appeal a determination, the appeal process does not alleviate the provider's requirement to complete a CAP.