§ 490. Incident management programs. 1. Each state oversight agency, as defined in this article, shall promulgate regulations approved by the justice center, that contain procedures and requirements consistent with guidelines and standards developed by the justice center, addressing the following issues relating to an incident management program; provided, however, that regulations of the state education department need not be approved by the justice center, but shall be developed in consultation with the justice center:

(a) all reportable incidents are identified and reported in a timely manner in accordance with this article;

(b) all reportable incidents are promptly investigated;

(c) individual reportable incidents, and incident patterns and trends, are reviewed to identify and implement preventive and corrective actions, which may include, but shall not be limited to, staff retraining or any appropriate disciplinary action allowed by law or contract, as well as opportunities for improvement;

(d) patterns and trends in the reporting and response to allegations of reportable incidents are reviewed and plans of improvement are timely developed based on such reviews;

(e) information regarding individual reportable incidents, incident patterns and trends, and patterns and trends in the reporting and response to reportable incidents is shared, consistent with applicable law, with the justice center, in the form and manner required by the justice center and, for facilities or provider agencies that are not state operated, with the applicable state oversight agency which shall provide such information to the justice center;

(f) incident review committees are established; provided, however, that the regulations may authorize an exemption from this requirement, when appropriate, based on the size of the facility or provider agency or other relevant factors. Such committees shall be composed of members of the governing body of the facility or provider agency and other persons identified by the director of the facility or provider agency, including some members of the following: direct support staff, licensed health care practitioners, service recipients and representatives of family, consumer and other advocacy organizations, but not the director of the facility or provider agency. Such committee shall meet regularly to: (i) review the timeliness, thoroughness and appropriateness of the

facility or provider agency's responses to reportable incidents; (ii) recommend additional opportunities for improvement to the director of the facility or provider agency, if appropriate; (iii) review incident trends and patterns concerning reportable incidents; and (iv) make recommendations to the director of the facility or provider agency to assist in reducing reportable incidents. Members of the committee shall be trained in confidentiality laws and regulations, and shall comply with section seventy-four of the public officers law; and

(g) safe storage, administration, and diversion prevention policies regarding controlled substances and medical cannabis.

2. Notwithstanding any other provision of law, except as may be provided by section 33.25 of the mental hygiene law, records, reports or other information maintained by the justice center, state oversight agencies, delegate investigatory entities, and facilities and provider agencies regarding the deliberations of an incident review committee shall be confidential, provided that nothing in this article shall be deemed to diminish or otherwise derogate the legal privilege afforded to proceedings, records, reports or other information relating to a quality assurance function, including the investigation of an incident reported pursuant to section 29.29 of the mental hygiene law, as provided in section sixty-five hundred twenty-seven of the education law. For purposes of this section, a quality assurance function is a process for systematically monitoring and evaluating various aspects of a program, service or facility to ensure that standards of care are being met.

3. No member of an incident review committee performing a quality assurance function shall be permitted or required to testify in a judicial or administrative proceeding with respect to quality assurance findings, recommendations, evaluations, opinions or actions taken, except that this provision is not intended to relieve any state oversight agency, delegate investigatory entity, facility or provider agency, or an agent thereof, from liability arising from treatment of a service recipient.

4. There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of

participating in good faith and with reasonable care in the communication of information in the possession of such person to an incident review committee, or on account of any recommendation or evaluation regarding the conduct or practices of any custodian that is made in good faith and with reasonable care.

5. With respect to the implementation of incident management plans in residential schools or facilities located outside of New York state, each state oversight agency shall require that: (a) the justice center, the applicable state oversight agency and any local social services district and/or local educational agency placing an individual with such facility or school or state agency funding the placement of an individual or student be notified immediately of any allegation of abuse or neglect involving that individual or student; (b) an investigation be conducted by the justice center, or where that is not practicable, by a state agency or other entity authorized or required to investigate complaints of abuse or neglect under the laws of the state in which the facility or school is located; and (c) the findings of such investigation be forwarded to the justice center and each placing entity or funding agency in New York state within ninety days. Failure to comply with the requirements of this section shall be grounds for revocation or suspension of the license or approval of the out of state facility or school.

6. Records of facilities or provider agencies not otherwise subject to article six of the public officers law shall be made available for public inspection and copying, when such records relate to abuse and neglect of vulnerable persons, to the same extent that those records would be available from a state agency, as defined in such article. Requests for such records shall be made in writing to the justice center. The justice center may deny access to records of such facilities or provider agencies, or portions thereof, that the justice center determines would be exempt from disclosure by a state agency pursuant to such article. The requesting party may appeal a denial of access to such records to the executive director of the justice center. A requesting party denied access to a record in such appeal determination may bring a proceeding for review of such denial pursuant to article seventy-eight

of the civil practice law and rules. The executive director of the justice center shall promulgate regulations, consistent with the provisions of article six of the public officers law providing for the prompt response to such requests. Facilities or provider agencies covered by this subdivision shall cooperate with the justice center and provide any records that the justice center deems subject to disclosure.