Legislation, Policies, and Recognizing Abuse

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# Welcome

Welcome to the Department of Human Services incident management and protective services online training. This module will cover legislation, policies, and recognizing abuse. This training is designed for agencies and individuals who provide long-term care to adults.

## Modules Overview

This training has three online modules:

* + Module 1: Legislation, Policies, and Recognizing Abuse
  + Module 2: Roles and Responsibilities
* Module 3: Reporting

## Lesson Overview

This module contains two lessons.

* + Lesson 1: An overview of incident management and protective services legislation and policies.
  + Lesson 2: Signs of abuse and how you can prevent it.

## Objectives

After completing this module, you will be able to:

* + List the key elements of legislation for protective services for both adults aged 60 and over and adults aged 18 to 59.
  + Identify key agencies, organizations, and staff involved in protective services and incident reporting.
  + Define abuse, neglect, exploitation, abandonment, and other key terms related to critical incident management.
* Identify potential abuse, neglect, exploitation, and abandonment.

# Legislation and Policies

Let’s get started. In Lesson 1, we’ll review the legislation and policies that underpin incident management and protective services and learn relevant definitions.

## CMS, OAPSA, and APS

The main legislation and policies involved in protective services for adults and older adults include the Centers for Medicare & Medicaid Services (CMS) Waiver Assurances, the OLTL Critical Incident Management policy, the Older Adults Protective Services Act (OAPSA), and the Adult Protective Services Law (APS) Act 70 of 2010. Each of these have a different focus, and a set of definitions and processes. Let’s start with federal waiver assurances and critical incident management.

### CMS and Waivers

If people receive publicly funded services in their homes, the protection of the individual’s health and safety is required by CMS. CMS is the federal agency that oversees Medicare and Medicaid programs. Medicaid is jointly funded by federal and state dollars that pay for most long-term care provided to low income, older persons, and persons with disabilities.

For many years, nursing facilities and institutions were the only options for persons needing long-term assistance. So, institutions were responsible for individuals’ health and safety. When given the choice, many people choose to live in the community rather than in an institution. This opens the responsibility for ensuring health and safety to a wider group of support providers.

#### HCBS Waivers

Recognizing the preference to receive services at home, the federal government developed the Home and Community-Based Services (HCBS) waivers as alternatives to requiring that care be provided in institutions. HCBS waivers allow states to use Medicaid funding to provide services and supports to persons living in their homes or in other community-based settings. The state also offers Act 150 as an alternative to institutional care.

#### Waiver Assurances

Each waiver has assurances associated with it. Assurances are guarantees that states make to CMS in several areas, including health and welfare. The health and welfare assurance emphasizes the role of the state and its long-term care network in reporting, investigating, and resolving serious incidents including cases of abuse, neglect, exploitation, and abandonment.

Waiver assurances are in addition to the protective services requirements you will learn about in this module. All rules and requirements for all laws, waiver assurances, and state policies must be followed. Act 150, a state-funded program, follows these rules as well.

#### Reporting and Investigating

States are required to have a system for reporting and investigating critical incidents, including cases of suspected abuse, neglect, exploitation, and abandonment. The system must describe:

* + Definition of critical incidents that must be reported
  + Identification of individuals/entities that must report
  + Timeframes for reporting and investigating
  + Method of reporting
  + Identification of entity/entities for:
  + Receiving reports
  + Evaluating reports
  + Conducting investigations
  + Process and timeframes for informing participant and other relevant parties of investigation results including appeal rights of any outcomes

## Critical Incident Management

OLTL’s critical incident management policies and procedures address the waiver assurances to establish a process to protect the health and welfare of HCBS participants. This is in addition to OAPSA and APS requirements. The critical incident management process and requirements are codified in 55 Pa. Code, Section 52 and clarified in OLTL bulletins.

The process requires service coordination entities (SCEs) and providers to:

* + Develop policies and procedures related to incident management
  + Respond to critical incidents
  + Report incidents
  + Investigate incidents
  + Follow-up as needed
  + Train staff on all aspects of critical incident management

Critical incident management not only protects the health and safety of participants, it also provides data on the network’s ability and effectiveness to address and mitigate incidents. Data is essential in developing processes and procedures to avoid future incidents and demonstrating to CMS that Pennsylvania has met or exceeded its waiver assurances.

### Critical Incident Overview

The following events are reportable as critical incidents:

* Death other than natural causes, serious injury, or unplanned hospitalization
* Provider and staff misconduct
* Abuse, including the infliction of injury, unreasonable confinement, intimidation, punishment, or mental anguish, of the participant. This includes physical, psychological, sexual, and verbal abuse.
* Neglect, including self-neglect
* Exploitation
* Service interruption that places the participant’s health or welfare at risk
* Medication errors that result in hospitalization, an emergency department visit, or other medical intervention.

All OAPSA and APS events are critical incidents. However, not all critical incidents rise to the level of a protective services report.

Providers are responsible for staffing all shifts on the Service Authorization Form. If the back-up on the service plan met all the participant’s health and safety needs, the incident is not reportable. However, if the back-up plan did not meet all of the participant’s health and safety needs, then the incident is reportable. We’ll look at these definitions in detail later in the module.

### Critical Incident Reporters

It is mandatory that the service coordinator (SC) or provider agency that discovers or has firsthand knowledge of the critical incident, makes the report. A provider may discover an incident that happened when they were not there. The provider that learns of it must report it.

This applies to incidents that happen at any time, including incidents that occur:

* During the time a service is being provided.
* During the time a provider is contracted to provide services but fails to do so.
* At other times when an agency isn’t providing or contracted to provide services.

When you discover or have firsthand knowledge, you must report it.

Please note that participants have rights in this process. They can report alleged incidents at any time, but they are not required to do so. They can refuse to participate in investigations. Participants cannot be terminated or threatened for not cooperating or for reporting.

#### Provider Responsibilities

All providers (SCs and direct service providers) must develop and implement written policies and procedures relating to critical incident management. The policies and procedures must include detailed information in seven key areas.

##### Prevention

What will the provider do to prevent incidents from happening and reduce the number of preventable incidents?

How will the provider track and trend incident data for quality improvement activities?

How will the provider document preventative measures taken?

##### Risk Management

All providers must analyze causes and trends related to critical incidents and use the data to reduce the number of preventable incidents.

The methods used by providers and SCs to reduce the number of preventable incidents are to be documented on the provider’s Quality Management Plan.

##### Reporting

All providers must have detailed documentation on how reporting occurs including the following elements:

* Determining if the incident is reportable.
* Securing health and safety, such as calling law enforcement, emergency medical services (EMS), or crisis intervention.
* Reporting immediately to protective services when there is reasonable cause to suspect abuse, neglect, exploitation, or abandonment.
* Contacting the SC within 24 hours of the critical incident discovery.
* Submitting a report to OLTL within 48 hours of discovery via EIM.
* SC completing the investigation
* Closing the incident within 30 days of the critical incident discovery.

##### Investigation

Investigations are conducted by the SC in collaboration with all agencies involved with the participant and the incident. Investigations must begin within 24 hours of discovery or notification that an incident report was submitted.

All SCs must investigate incidents that are not being investigated by a protective services agency. If a protective services agency is investigating an incident, the SC or SCE must cooperate with the agency conducting the investigation.

If the incident involves the SC or SCE, they may not investigate and must turn the investigation over to OLTL immediately.

Investigations include taking the steps necessary to determine:

* If a critical incident has occurred.
* If there is reasonable cause to suspect abuse, neglect, exploitation, or abandonment and whether protective services must be notified.
* What actions are needed to immediately protect the health and welfare of participants.
* What actions are needed to mitigate future incidents.

Please note that service providers, SCs, and protective service investigators have different roles. Consult your agency’s policies and procedures for specifics regarding your responsibilities.

##### Notification

Participant notification procedures must include the following:

* Within 24 hours - Staff must notify the participant that a critical incident report has been filed. The notice to the participant comes from the agency staff that discovers or first becomes aware of the critical incident. That could be the SC or the provider.
* Within 48 hours of the conclusion of the critical incident investigation - SCs must notify the participant of the resolution and measures implemented to prevent recurrences.

##### Critical Incident Management

Providers have critical incident management responsibilities to ensure that:

* Facts and sequences of events are outlined and documented with sufficient detail.
* Preventative action is taken both through the service plan and by providing additional resources.
* Actions and resources provided are documented accurately.
* Participants are not placed at any additional risk.
* Investigations and reporting tasks are completed within 30 days.

##### Staff Training

All staff must be trained annually on:

* Prevention of abuse and exploitation of participants.
* Critical incident reporting.
* Participant complaint resolution.
* Department-issued policies & procedures.
* Provider quality management plan.

Providing this training as soon as possible upon hire ensures that new hires are equipped to address critical incidents that may arise. All providers must ensure that all employees are trained and ready to prevent, report, and remediate critical incidents.

The training must be documented. Providers must prove that all staff completed the training.

### Older Adult Protective Services Act (OAPSA)

Protective services for individuals aged 60 and over are provided in accordance with OAPSA. The Department of Aging is responsible for oversight and implementation of OAPSA. The law protects Pennsylvanians 60 years of age and older against physical or emotional abuse, neglect, exploitation, or abandonment. All protective services provided under OAPSA are available free of charge.

#### PA Commitment

OAPSA’s passage reinforced Pennsylvania's commitment to:

* + Provide access to services that protect the health, safety, and welfare of older adults who lack the capacity to protect themselves and who are at imminent risk of abuse, neglect, exploitation, or abandonment,
  + Safeguard older people's rights while providing the protective services needed,
  + Provide for detection, reduction, correction, or elimination of abuse, neglect, exploitation, and abandonment,
  + Establish a program of protective services for older adults who need them, and
  + Educate the public as to the availability of services and create an awareness of the problem.

#### OAPSA Mandatory Reporters

The Act mandates that Area Agencies on Aging (AAAs) be available 24 hours a day to receive reports of older adults who need protective services. Mandatory reporters are staff & administrators of:

* + Adult Daily Living Centers
  + Personal Care Homes
  + Assisted Living Residences
  + Community Homes for Individuals with Intellectual Disabilities
  + Community Residential Rehabilitation Services
  + Department of Human Services (DHS) Nursing Facility (South Mountain)
  + DHS-licensed and DHS-operated residential facilities for adults
  + Domiciliary Care Homes
  + Life Sharing Homes
* An organization or group of people that uses public funds and is paid, in part, to provide care and support to adults in a licensed or unlicensed setting (This includes SCs and providers.)
* Home Care Registry – Or “Registry” is further defined to include those agencies licensed by the Department of Health as an organization or business entity that supplies, arranges, or refers independent contractors to provide activities of daily living or instrumental activities of daily living or specialized care in the participant’s place of residence or other independent living environment for which the registry receives a fee, consideration, or compensation of any kind.
* Home Health Care Organization or Agency – is further defined to include those agencies licensed by the Department of Health and any public or private organization which provides care to a care-dependent individual in their place of residence.
* Hospices
* Intermediate Care Facilities for Individuals with Intellectual Disabilities or with Other Related Conditions
* Long-Term Nursing Facilities
* Long-Term Structured Residences
* State Hospitals

#### OAPSA Reporting

For OAPSA reporting, call the Statewide Protective Services Hotline or call the local AAA. The reporter’s identity is kept in strict confidence, and they are legally protected from retaliation. The hotline number can be found in the Resources Document.

### Adult Protective Services (APS)

Now, let’s turn to legislation geared toward individuals aged 18 to 59.

APS was enacted to provide protective services to individuals between 18 and 59 years of age who have a physical or mental impairment that substantially limits one or more major life activities. The law establishes a program of protective services to detect, prevent, reduce, and eliminate abuse, neglect, exploitation, and abandonment of adults in need of protective services.

#### APS Mandatory Reporters

Mandatory reporters are organizations, administrators, employees, staff, or individuals that are required to report when they have a reasonable cause to suspect abuse, neglect, exploitation, or abandonment. APS mandatory reporters include:

* Assisted Living Facility
* Domiciliary Care Home
* Home Health Care Agency
* Intermediate Care Facility for Individuals with Intellectual Disabilities or with Other Related Conditions
* Long-term Nursing Facility
* Older Adult Daily Living Center
* Personal Care Home
* An organization or group of people that uses public funds and is paid, in part, to provide care and support to adults in a licensed or unlicensed setting (This includes SC and providers.)
* Residential Treatment Facility

#### APS Reporting

An administrator or employee who observes suspected abuse, neglect, exploitation, or abandonment or has reasonable cause to suspect that these have occurred must immediately ensure the individual’s safety and then follow reporting requirements.

### OAPSA and APS

So, to summarize, there are separate laws on the books related to reporting suspected abuse, neglect, exploitation, or abandonment of older adults and adults aged 18 to 59. In addition to these laws, public programs also have rules and requirements to ensure the health and safety of individuals.

## Critical Incident/Protective Services

It is important to understand the difference between protective services and critical incidents. All protective services calls are critical incidents but not all critical incidents rise to the level of a protective services investigation. Let’s take a look at some critical incidents that do not rise to the level of a reportable protective services incident.

A single incident of a service interruption that creates a risk to health and safety would be reported as a critical incident but does not necessarily require a protective services intervention. A series of service interruptions that indicates self-neglect and/or caregiver neglect would be both a critical incident report and a protective services report.

Unplanned hospitalizations are a critical incident. Let’s compare a few situations that resulted in an unplanned hospitalization, which may or may not be reportable to protective services.

In the first situation, the individual has an unplanned hospitalization due to cardiac arrest. This situation is reportable to protective services if it is caused by a medication error. It is not reportable to protective services if it is due to natural causes.

In the second situation, the individual has a fall with injuries that require hospitalization. This situation is reportable to protective services if it is caused by caregiver neglect. It is not reportable to protective services if the individual tripped when they were alone.

In the third situation, the individual has an unplanned hospitalization due to a diabetic coma. This situation is reportable to protective services if it is caused by a medication error due to self-neglect. It is not reportable to protective services if it was caused by an unknown infection.

### Definitions

Ok, now that we’ve covered the supporting policies and legislation, let’s make sure that we’re all clear on key terms and definitions. Critical Incident Management, OAPSA, and APS have slightly different definitions of their terms. Let’s review a few of these.

#### Definitions – Abuse

We’ll start with the term abuse. Take a moment to review the definitions and note any differences.

##### Critical Incident Management Abuse Definition

An act or omission that willfully deprives a participant of rights or human dignity, or which may cause or causes actual physical injury or emotional harm to a participant, including a critical incident and any of the following:

1. Sexual harassment of a participant
2. Sexual contact between a staff member and a participant
3. Using restraints on a participant
4. Financial exploitation of a participant
5. Humiliating a participant
6. Withholding regularly scheduled meals from a participant

##### OAPSA and APS Abuse Definition

The occurrence of one or more of the following acts:

1. The infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish
2. The willful deprivation by a caregiver of goods or services which are necessary to maintain physical or mental health
3. Sexual harassment, rape, or abuse

The OAPSA definition also includes a note that no older adult shall be found to be abused solely on the grounds of environmental factors, which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing, or medical care.

#### Definitions – Neglect

Now review the definitions for neglect and note any differences.

##### Critical Incident Management Neglect Definition

Failure to provide an individual the reasonable care the individual requires, including but not limited to:

* + Food
  + Clothing
  + Shelter
  + Medical care
  + Personal hygiene
  + Protection from harm

Seclusion, which is the involuntary confinement of an individual alone in a room or area from which the individual is physically prevented from having contact with others or leaving, is a form of neglect.

##### OAPSA and APS Neglect Definition

The failure to provide for oneself or the failure of a caregiver to provide goods, care, or services essential to avoid a clear and serious threat to the physical or mental health of an adult.

The OAPSA definition includes a note that an older adult who does not consent to the provision of protective services shall be found to be neglected solely on the grounds of environmental factors, which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing, or medical care.

The APS definition notes that the term does not include environmental factors that are beyond the control of an adult or the caregiver, including, but not limited to, inadequate housing, furnishings, income, clothing, or medical care. The definition of neglect pertains to neglect by a caregiver and self-neglect.

#### Definitions – Exploitation

Finally, review the definitions for exploitation and note any differences.

##### Critical Incident Management Exploitation Definition

An act of depriving, defrauding, or otherwise obtaining the personal property of a participant in an unjust or cruel manner, against one’s will, or without one’s consent or knowledge for the benefit of self or others.

##### OAPSA and APS Exploitation Definition

An act or course of conduct by a caregiver or other person against an adult/older adult or an adult’s/older adult’s resources, without the informed consent of the adult/older adult or with consent obtained through misrepresentation, coercion, or threats of force that results in monetary, personal, or other benefit, gain, or profit for the perpetrator or monetary or personal loss to the adult/older adult.

## Lesson 1 Summary

So, as you’ve learned, there are overlapping laws, regulations, and policies designed to protect adults who receive services. These laws, regulations, and policies work in tandem with different focus areas.

Critical incident management includes reporting of suspected abuse as well as other events that jeopardize the individual's health and welfare. Protective Services focuses on determining and mitigating imminent risk by creating a plan in collaboration with service providers.

## Lesson 1 Knowledge Check

Now check your understanding of what’s been covered so far by answering these review questions.

1. Which of the following legislation and policies affect critical incident management and protective services for providers and SCs? (Select all that apply.)

Older Adults Protective Services Act

Adult Protective Services Law (Act 70) of 2010

Centers for Medicare & Medicaid Services Waiver Assurances

Child Protective Services Law

Critical Incident Management Policy

Please pause.

The correct answer is that the Older Adults Protective Services Act, the Adult Protective Services Law (Act 70) of 2010, the Centers for Medicare & Medicaid Services Waiver Assurances, and the Critical Incident Management Policy affect critical incident management and protective services for providers and SCs.

2. True or False? Waiver assurances, OAPSA requirements, and APS requirements are all the same.

Please pause.

The correct answer is False. Waiver assurances are in addition to OAPSA and APS requirements. All rules and requirements must be followed.

3. True or False? All critical incidents must be reported and require protective services involvement.

Please pause.

The correct answer is False. All critical incidents must be reported. However, not all critical incidents warrant additional reporting to protective services.

4. True or False? SCs and providers are mandatory reporters of suspected abuse, neglect, exploitation, and abandonment.

Please pause.

The correct answer is True. All providers and SCs are required to report incidents of suspected abuse, neglect, exploitation, and abandonment when they become aware of the incident.

5. True or False? SCEs and SCs are required to do which of the following? (Select all that apply.)

Develop incident management policies and procedures

Report incidents

Investigate incidents

Notify participants of a critical incident report

Train staff on preventing, reporting, and remediating critical incidents

Please pause.

The correct answer is that SCEs and SCs are required to do all of these.

6. Providers are required to do which of the following? (Select all that apply.)

Develop incident management policies and procedures

Report incidents

Investigate incidents

Notify participants of a critical incident report

Train staff on preventing, reporting, and remediating critical incidents

Please pause.

The correct answer is that providers are required to do all of these except investigate incidents. SCs are responsible for investigating incidents.

7. Which of the following are true about participant’s rights? (Select all that apply.)

Participants are required to report an incident.

There can be no retaliation for reporting an incident.

Participants can refuse to participate in an incident investigation.

Participants’ services can be terminated by a provider if they do not cooperate during an investigation.

Please pause.

The correct answer is that there can be no retaliation for reporting an incident and participants can refuse to participate in an incident investigation.

# Recognizing Abuse

In Lesson 2, we’ll review the signs of abuse, neglect, exploitation, and abandonment and how you can prevent them.

## Knowing the Signs

As an SC or provider in the long-term care network, it is your responsibility to look for signs of abuse, neglect, exploitation, and abandonment. We’ve reviewed the definitions, but what do these things look like in practice? How will you know it when you see it?

### Signs of Abuse

Let’s review some signs of abuse.

#### Physical Abuse

Signs of physical abuse include:

* Bruises, black eyes, welts, lacerations, and rope marks
* Broken bones, sprains, or dislocations
* Open wounds, cuts, punctures, untreated injuries in various stages of healing
* Any physical signs of being punished or restrained such as circular bruising or abrasions
* Individual reports being hit, slapped, kicked, or mistreated
* Hypervigilance or startled responses
* Repeated incident reports or emergency department visits

#### Sexual Abuse

Signs of sexual abuse include:

* Bruises around the breasts, inner thighs, or genital area
* Unexplained venereal disease or genital infections
* Unexplained vaginal or anal bleeding
* Torn, stained, or bloody underclothing
* Changes in sitting or walking patterns
* Disproportionate reaction to questions
* Hypersensitivity to touch or talk
* Individual reports being sexually assaulted or raped
* Unexpected pregnancy

#### Psychological Abuse

Signs of psychological abuse include:

* + Changes to typical behavior. For example:
  + Being emotionally upset or agitated
  + Being withdrawn and non-communicative or non-responsive
  + Nervousness around certain people
  + Individual reports being mentally mistreated
  + Unusual behaviors such as aggression, biting, or rocking
  + Caregiver speaks for adult (when not necessary) and dominates interactions

#### Verbal Abuse

Signs of verbal abuse include:

* + Individual reports being verbally mistreated
  + Caregiver uses insulting or shaming language towards the participant
  + Caregiver yells at the participant

#### Neglect or Abandonment

Signs of neglect or abandonment include:

* Dehydration, malnutrition, weight loss
* Improperly attended medical conditions, rashes, or wounds
* Poor personal hygiene and soiled linens or clothing
* Hazardous or unsafe living conditions (such as no heat, no running water, or hoarding)
* Unsanitary living quarters
* Individual reports being mistreated or not being cared for properly
* Caregiver refuses to allow SCs or providers to see the person alone

#### Self-neglect

Signs of self-neglect include:

* Refusal of medication, food, or bathing
* No longer participating in activities
* Hoarding or other unsafe environmental conditions
* Poor grooming or appearance
* Isolation or lack of socializing
* Disorientation or incoherence
* Alcohol or drug use increase or dependence
* Refusal of services on the individual service plan
* Unpaid bills, rent and/or utilities

#### Exploitation

Signs of exploitation include:

* Sudden change in the adult’s financial status
* Unpaid bills or lack of care or services that the adult could previously afford
* Frequent evictions
* Sudden changes in bank account or banking practice, including unexplained withdrawals
* Adding additional names on bank signature cards
* Abrupt changes in a will or other financial documents
* Unexplained disappearance of valuable possessions
* Forged signature on financial transactions or titles
* Sudden appearance of previously uninvolved relatives claiming rights to possessions
* Unexplained sudden transfer of assets to a family member or someone outside the family
* Improper financial arrangements with paid caregivers (e.g., splitting checks)
* Approved time sheets for services not provided

## Prevention

Everyone in the long-term care network is responsible for prevention. Prevention starts in the risk process of the service plan, but it does not stop there. How can we prevent abuse, neglect, exploitation, and abandonment?

We can:

* + Be alert to people in the person’s setting,
  + Screen workers carefully, monitor, and follow-up,
  + Gain the participants’ trust so that they feel comfortable talking with you, and
  + Ensure that participants know their rights and that there is no retaliation or downside to talking with you about potentially dangerous individuals.

The first step to prevention is training staff and raising their level of knowledge, skill, and comfort with having conversations about abuse, neglect, exploitation, and abandonment with participants.

## Lesson 2 Knowledge Check

Now check your understanding of what’s been covered so far by answering these review questions.

1. True or False? As an SC or provider in the long-term care network, it’s your responsibility to look for signs of abuse, neglect, exploitation, and abandonment.

Please pause.

The correct answer is True. All providers and SCs need to look for signs of abuse, neglect, exploitation, and abandonment.

2. True or False? Prevention of abuse, neglect, exploitation, and abandonment starts in the monitoring process.

Please pause.

The correct answer is False. Prevention starts at the first contact with the participant.

3. Which of the following are potential signs of abuse? (Select all that apply.)

Bruises

A limp while walking

Nervousness around certain people

Caregiver being involved in conversations

Physical signs of being punished or restrained

Please pause.

The correct answer is that bruises, a limp while walking, nervousness around certain people, and physical signs of being punished or restrained are all potential signs of abuse.

Please note that a caregiver may be involved in conversations. However, if the caregiver dominates the conversation, this may be a sign of abuse.

# Congratulations!

Congratulations! You have completed the Legislation, Policies, and Recognizing Abuse training.

If you have read the contents of the entire module, register your completion of this module by going to the appropriate webpage.

If you are an enrolled provider, go to this [webpage](https://oltl-provider.deringconsulting.com/incident-management-completion-4/).

If you are not an enrolled provider, go to this [webpage](https://oltl-provider.deringconsulting.com/incident-management-completion-3-2/).