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POLICIES AND PROCEDURES MANUAL	<u>FUNCTION:</u> INCIDENT REPORTING			
<u>SOURCE/REFERENCE:</u> NYCRR – 624.3 article 130 of the penal law section 488 of the Social Services Law Article 11 of the social services law article 33 of the public health law 42 CFR Part 483 491 of the social services law	<u>SUBJECT:</u> Abuse / Neglect			
	<u>TOPIC:</u> Processing of a Reportable Incident Abuse / Neglect			

Section 624.3. Reportable incidents (Abuse / Neglect) defined.

Physical abuse shall mean:

Physical abuse shall mean conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury or serious or protracted impairment of the physical, mental, or emotional condition of the individual receiving services, or causing the likelihood of such injury or impairment. Such conduct may include, but shall not be limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting, or the use of corporal punishment. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any party.

(1) Sexual abuse shall mean:

any conduct by a custodian that subjects a person receiving services to any offense defined in article 130 or section 255.25, 255.26, or 255.27 of the penal law, or any conduct or communication by such custodian that allows, permits, uses, or encourages a person receiving services to engage in any act described in articles 230 or 263 of the penal law; and/or any sexual contact between an individual receiving services and a custodian of the program or facility which provides services to that individual whether or not the sexual contact would constitute a crime (see especially section 130.05(i) of the penal law). However, if the individual receiving services is married to the custodian the sexual contact shall not be considered sexual abuse. Further, for purposes of this subparagraph only, a person with a developmental disability who is or was receiving services and is also an employee or volunteer of an agency shall not be considered a custodian if he or she has sexual contact with another individual receiving services who is a consenting adult who has consented to such contact.

(2) Psychological Abuse includes:

Psychological Abuse includes any verbal or nonverbal conduct that may cause significant emotional distress to individual receiving services. Examples include, but are not limited to, taunts, derogatory comments or ridicule, intimidation, threats, or the display of a weapon or other object that could reasonably be perceived by an individual receiving services as a means for infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury.

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In order for a case of psychological abuse to be substantiated after it has been reported, the conduct must be shown to intentionally or recklessly cause, or be likely to cause, a substantial diminution of the emotional, social or behavioral development or condition of the individual receiving services. Evidence of such an effect must be supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor.

(3) **Deliberate inappropriate use of restraints shall mean:**

Deliberate inappropriate use of restraints shall mean the use of a restraint when the technique that is used, the amount of force that is used, or the situation in which the restraint is used is deliberately inconsistent with an individual’s plan of services (e.g. individualized service plan (ISP) or a habilitation plan), or behavior support plan, generally **Emergency** accepted treatment practices, and/or applicable federal or state laws, regulations or policies, except when the restraint is used as a reasonable emergency intervention to prevent imminent risk of harm to a person receiving services or to any other party. For purposes of this paragraph, a restraint shall include the use of any manual, pharmacological, or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body.

Use of aversive conditioning shall mean:

Use of aversive conditioning shall mean the application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change the behavior of a person receiving services. Aversive conditioning may include, but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, blindfolds, and the withholding of meals and the provision of substitute foods in an unpalatable form. The use of aversive conditioning is prohibited by OPWDD.

(4) **Obstruction of reports of reportable incidents shall mean:**

Obstruction of reports of reportable incidents shall mean conduct by a custodian that impedes the discovery, reporting, or investigation of the treatment of a service recipient by falsifying records related to the safety, treatment, or supervision of an individual receiving services; actively persuading a custodian or other mandated reporter (as defined in section 488 of the Social Services Law) from making a report of a reportable incident to the statewide vulnerable persons' central register (VPCR) or OPWDD with the intent to suppress the reporting of the investigation of such incident; intentionally making a false statement, or intentionally withholding material

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information during an investigation into such a report; intentional failure of a supervisor or manager to act upon such a report in accordance with OPWDD regulations, policies or procedures; or, for a custodian, failing to report a reportable incident upon discovery.

(5) **Unlawful use or administration of a controlled substance shall mean:**

Unlawful use or administration of a controlled substance shall mean any administration by a custodian to a service recipient of a controlled substance as defined by article 33 of the public health law, without a prescription, or other medication not approved for any use by the federal food and drug administration. It also shall include a custodian unlawfully using or distributing a controlled substance as defined by article 33 of the public health law, at the workplace or while on duty.

(6) **Neglect shall mean:**

Neglect shall mean any action, inaction, or lack of attention that breaches a custodian's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental, or emotional condition of a service recipient. Neglect shall include, but is not limited to:

failure to provide proper supervision, including a lack of proper supervision that results in conduct between persons receiving services that would constitute abuse as described in paragraphs (1) through (7) of this subdivision if committed by a custodian; failure to provide adequate food, clothing, shelter, or medical, dental, optometric or surgical care, consistent with Parts 633, 635, and 686, of this Title (and 42 CFR Part 483, applicable to Intermediate Care Facilities), and provided that the agency has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric, or surgical treatment have been sought and obtained from the appropriate parties;

or failure to provide access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction in accordance with the provisions of part one of article 65 of the education law and/or the individual's individualized education program.

General Reporting Requirements.

All agency employees, interns, volunteers, consultants, contractors, and family care providers are required to report any event or situation that meets the criteria of a reportable incident or notable occurrence as defined in this Part. Pathways Custodians of programs and facilities certified or operated by OPWDD are mandated reporters and are also required to report reportable incidents pursuant to section 491 of the Social Services Law. Reports shall be made in accordance with agency policies/procedures.

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All reportable incidents, as defined in section 624.3 shall be reported to the agency’s President & CEO (or designee, AOC Kelly Drewno – Lesley McManus – Chris Olander) immediately upon occurrence or discovery.

Immediate Reporting to OPWDD

Pathways will report all reportable incidents immediately to OPWDD by calling the Incident Management Unit Compliance Officer if the incident occurs between the hours of 8:00 am and 4:00 pm M-F at (585) 241-5707. If after hours, notify the Incident Management Unit at 1-888-479-6763. Immediate entry of initial information into the OPWDD Incident Report and Management Application (IRMA) shall not be sufficient to satisfy this requirement.

Reporting of reportable incidents to the Vulnerable Persons’ Central Register (VPCR).

Pathways programs that are certified by OPWDD shall report all reportable incidents to the VPCR. Non-certified programs are not required to report to the VPCR.

All custodians in Pathways programs or facilities certified by OPWDD are “mandated reporters” and are required to report reportable incidents to the VPCR.

All custodians in Pathways facilities or programs certified by OPWDD are “mandated reporters” and are required to report reportable incidents to the VPCR, unless:

- he or she knows that the report has already been made by another mandated reporter; and
- that he or she has been named in that report as a person with knowledge of the incident.

"Discovery" occurs when the mandated reporter witnesses a suspected reportable incident or when another party, including an individual receiving services, comes before the mandated reporter in the mandated reporter's professional or official capacity and provides the mandated reporter with reasonable cause to suspect that the individual has been subjected to a reportable incident.

Reports shall be submitted by a statewide, toll-free telephone number (a "hotline") or by electronic transmission, in a manner and on forms prescribed by the Justice Center.

A report to the VPCR shall include the name, title, and contact information of every person known to the mandated reporter to have the same information as the mandated reporter concerning the reportable incident.

Mandated reporters shall have the rights and responsibilities established by **section 491 of the social services law**.

Pursuant to section 491 of the social services law, the obligation of mandated reporters to report reportable incidents to the VPCR is not limited to reportable incidents occurring at the agency with which the mandated reporter is associated. If a Pathways employee (mandated reporter) becomes aware that an

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individual has been subjected to a reportable incident at a different facility or program subject to the requirements of Article 11 of the social services law, the mandated reporter is also required to report the incident to the VPCR. Facilities and programs subject to Article 11 include but are not limited to facilities and programs certified or operated by OPWDD, facilities under the oversight of the Office of Mental Health (OMH), specified residential schools (e.g. “853 schools” and “4201” schools), and summer camp.

When a report of a reportable incident is made to the VPCR:

- (1) initial information is automatically entered into IRMA; however,
- (2) Pathways is required to review the information within 24 hours of occurrence or discovery of the incident or by close of the next working day, whichever is later, and to report missing or discrepant information to OPWDD

When a report of a reportable incident is not made to the VPCR, initial information shall be entered into IRMA within 24 hours of occurrence or discovery or by close of the next working day, whichever is later.

Reporting subsequent information in IRMA.

(a) Subsequent information is information concerning the incident or occurrence that is not included in the initial information entered in IRMA. This includes, but is not limited to, information about required notifications that was not reported as part of the initial information and any updates to information related to deaths (e.g. autopsy reports).

Subsequent information shall be entered by the close of the fifth working day after the action is taken or the information becomes available, except as follows:

- Subsequent information about immediate protections shall be entered into IRMA within 24 hours after the action is taken or by the close of the next working day, whichever is later.
- Subsequent information about a death shall be entered in IRMA within five working days of the discovery of the death, in the manner and form specified by OPWDD.

For reports of abuse and neglect Pathways will ensure that subsequent information includes findings and recommendations made by the Justice Center.

Pathways will comply with all requests by OPWDD for the entry of specific subsequent information.

Immediate Protections.

- (1) A person's safety must always be the primary concern of the President & CEO (or designee, AOC). Pathways will take necessary and reasonable steps to ensure that a person receiving services who has been
- (2) harmed receives any necessary treatment or care and, to the extent possible, take reasonable and prudent measures to immediately protect individuals receiving services from harm and abuse.

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(2) When appropriate, an employee, intern, volunteer, consultant, or contractor alleged to have abused or neglected a person shall be removed from direct contact with, or responsibility for, all persons receiving services from the agency.

(3) When appropriate, an individual receiving services shall be removed from a facility when it is determined that there is a risk to such individual if he or she continues to remain in the facility.

In the absence of the President & CEO or designee, the following can make immediate corrective actions necessary to assure the Individuals safety.

Day Services – Erin Warr Residential Services – Kelly Drewno. All other programs – Chris Olander

General Investigation Requirements.

(1) Any report of a reportable incident shall be thoroughly investigated by an investigator designated by the President & CEO, unless OPWDD or the Justice Center advises the President & CEO that the incident or occurrence will be investigated by OPWDD or the Justice Center and specifically relieves Pathways of the obligation to investigate.

(2) Investigations of all reportable incidents will be initiated immediately, with further investigation undertaken commensurate with the seriousness and circumstances of the situation.

- ❖ Pathways will commence an investigation immediately even when it anticipates that the Justice Center or Central Office of OPWDD will assume the responsibility for the investigation. However, if Pathways Inc. can reasonably anticipate that the Justice Center or the Central Office of OPWDD is likely to investigate the incident, the actions taken by the agency are restricted to:
 - ✓ securing and/or documenting (e.g. photographing) the scene as appropriate;
 - ✓ collecting and securing physical evidence;
 - ✓ taking preliminary statements from witnesses and involved parties; and
 - ✓ performing such other actions as specified by the Justice Center or OPWDD.

In the event that law enforcement directs that Pathways forgo any of the actions noted above, Pathways will comply with such direction.

Pathways is responsible for monitoring IRMA to ascertain whether the Justice Center, the Central Office of OPWDD, or the agency is responsible for the investigation.

If the Justice Center or the Central Office of OPWDD is responsible for the investigation, Pathways will fully cooperate with the assigned investigator but shall not conduct an independent investigation.

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Intermediate Care Facilities shall take steps as needed to comply with federal requirements for the completion of investigations within specified timeframes, including assuming the responsibility for conducting the investigation if necessary.

Federal regulation 42 CFR 483.420(d)(4) requires that the results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with state law within 5 working days of the incident. To meet this requirement Pathways must conduct and complete an investigation into the incident and provide results of the investigation within 5 working days.

Investigations conducted by Pathways or the Central Office of OPWDD shall incorporate the following:

- If a person is physically injured, an appropriate medical examination of the injured person shall be obtained. The name of the examiner shall be recorded and his or her written findings shall be retained.
- Witnesses to the incident or occurrence shall be identified and shall be interviewed in as private an environment as possible.
- Interviews should be conducted separately by qualified, objective parties. Interviews of individuals receiving services should be conducted by parties with an understanding of the persons' unique needs and/or capabilities.
- Pertinent information shall be reviewed (e.g., records, photos, observations of incident scene, expert assessments).

Investigations being conducted by the Justice Center may extend beyond the five days as noted above.

Pathways Inc. will request a letter of forbearance from the Justice Center to be uploaded in to the IRMA system. Pathways Inc. will notify OPWDD if a letter is obtained and or a requesting a letter of forbearance.

Physical evidence, if any, shall be identified and appropriate steps will be taken to safeguard and preserve physical evidence.

If Pathways becomes aware of additional information concerning an incident that may warrant its reclassification, Pathways will report the additional information to the VPCR. At its discretion, the VPCR may reclassify the incident based on the additional information.

In other cases (e.g. incidents in non-certified programs which are not operated by OPWDD), Pathways shall determine whether the incident is to be reclassified and shall report any reclassification in IRMA. In the event that the incident is reclassified, Pathways will make all additional reports and notifications that may be warranted by the reclassification.

Investigations Completed by Pathways Inc.

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For all reportable incidents, investigative reports will be documented on OPWDD Form 149.

For reportable incidents the full text of the investigative report shall be entered into IRMA. (Note: In the event that the Central Office of OPWDD conducts an investigation of an incident the Central Office of OPWDD will make the investigative report available through IRMA.)

The investigation shall continue through completion regardless of whether an employee or other custodian who is directly involved leaves employment with Pathways (or contact with individuals receiving services) before the investigation is complete.

Pathways will maintain the confidentiality of information regarding the identities of reporters, witnesses, and subjects of reportable incidents and notable occurrences, and limit access to such information to parties who need to know, including, but not limited to, personnel administrators and assigned investigators.

Restrictions

Any party who has been assigned to investigate a reportable incident, in which he or she recognizes a potential conflict of interest in the assignment, shall report this information to Pathways immediately. Pathways will relieve the assigned investigator of the duty to investigate if it is determined that there is a conflict of interest in the assignment.

No Pathways employee may conduct an investigation of any reportable incident in which he or she was directly involved, in which his or her testimony is incorporated, or in which a spouse, domestic partner, or immediate family member was directly involved.

No Pathways employee may conduct an investigation in which his or her spouse, domestic partner, or immediate family member provides supervision to the program where the incident took place or provides supervision to directly involved parties.

Members of the Incident Review Committee (IRC) will not routinely be assigned the responsibility of investigating incidents or occurrences. In the event that an IRC member conducts an investigation of an incident, refer to the Incident Review Committee policies.

Pathways will assign an investigator whose work function is at arm's length from staff who are directly involved in the reportable incident.

No employee in the direct line of supervision of staff who are directly involved in the reportable incident may conduct the investigation of such an incident.

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For reports of abuse or neglect in programs certified or operated by OPWDD, Pathways will notify each subject of the report that an investigation is being conducted, unless notifying the subject of the report would impede the investigation.

Notification shall be made by issuing the **notice of investigation form**.

State Central Registry (SCR)

For reports of abuse or neglect in programs certified or operated by OPWDD, Pathways will submit a request for a check of the Statewide Central Register of Child Abuse and Maltreatment (SCR) concerning each subject of the report.

Request will be submitted to the Justice Center in the form and manner specified by the Justice Center as soon as the information required to make the request is known or discovered.

As a result of the check, Pathways may receive information that one or more indicated reports exist concerning the subject of the report. If this occurs, the agency will take appropriate steps to gather information contained in the report as specified by the Justice Center.

Information obtained pursuant to this paragraph shall be included in the investigation records submitted to OPWDD.

OPWDD and the Justice Center have the right to review and/or investigate any reportable incident and/or notable occurrence regardless of the source of the information. All relevant records, reports, and/or minutes of meetings at which the incident or occurrence was discussed shall be made available to reviewers or investigators. Persons receiving services, staff, and any other relevant parties may be interviewed in pursuit of any such review or investigation.

Investigation Follow Up

When an incident is investigated or reviewed by OPWDD and OPWDD makes recommendations to Pathways concerning any matter related to the incident or occurrence (except during survey activities), Pathways will implement each recommendation in a timely fashion and submit documentation of the implementation to OPWDD; or in the event that the agency does not implement a particular recommendation, submit written justification to OPWDD, within a month after the recommendation is made, and identify the alternative means that will be undertaken to address the issue, or explain why no action is needed.

When the Justice Center makes findings concerning matters referred to its attention and the Justice Center issues a report and recommendations to Pathways regarding such matters, Pathways will make a written response, within ninety days of receipt of such report, of action taken regarding each of the recommendations in the report.

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Report Findings Related to Abuse or Neglect.

For every report of abuse or neglect, a finding shall be made. Pathways shall make the finding. A finding shall be based on a preponderance of the evidence and shall indicate whether:

- The report of abuse or neglect is **substantiated** because it is determined that the incident occurred and the subject of the report was responsible or, if no subject can be identified and an incident occurred, that the agency was responsible; or
- The report of abuse or neglect is **unsubstantiated** because it is determined not to have occurred or the subject of the report was not responsible, or because it cannot be determined that the incident occurred or that the subject of the report was responsible.

When the investigation is conducted by Pathways or by OPWDD, findings made by Pathways or OPWDD are not considered final until they are reviewed by the Justice Center. The Justice Center may amend findings made by Pathways or OPWDD. Findings made by the Justice Center are considered final. Written confirmation will be sent to Pathways and attached to the incident report.

Corrective Action Plans (CAPS)

Plans for prevention and remediation for substantiated reports of abuse or neglect will be completed within 10 days of the completion of the investigation, Pathways will develop and implement a plan of prevention and remediation to be taken to assure the continued health, safety, and welfare of individuals receiving services and to provide for the prevention of future acts of reportable incidents.

The plan shall include written endorsement by the President & CEO or designee.

The plan shall identify projected implementation dates and specify by title agency staff who are responsible for monitoring the implementation of each remedial action identified and for assessing the efficacy of the remedial action.

The plan shall be entered into IRMA by the close of the fifth working day after the development of the plan.

CAPS – For all reportable incidents of Abuse / Neglect where corrective actions have been identified by the agency investigator, OPWDD, the Justice Center, or the Incident Review Committee, OPWDD requires that the Corrective Action Plan be submitted to OPWDD Incident Management Unit through the IRMA system.

Examples of documentation of Corrective Actions;

- Copies of revised plans
- Copies of new agency policies and procedures
- Copies of training records
- Copies of memorandums

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CAP's must contain the following;

- The fully completed OPWDD form 161 and,
- Documentation which confirms each corrective action was implemented or addressed.

Web Submission of Investigative Records (WSIR)

For all reportable Abuse / Neglect investigations, the completed document must be uploaded to the Justice Center via the WSIR system. The investigator responsible for completing the investigation will upload the incident in to the WSIR system immediately upon completion of the investigation.

The link to the WSIR web form can be found at the Web Submission of Investigation Report (WSIR) Application information page on the NYS Justice Center web site at

<http://www.justicecenter.ny.gov/wsir-documentation>.

Reporting Updates

For reportable incidents, Pathways will enter reporting updates into IRMA on at least a monthly basis or more frequently as requested by OPWDD, until closure of the incident or occurrence. The Executive Vice President of Quality Assurance or designee will complete all updates in IRMA.

Pathways will complete required fields in IRMA for the reporting update. Among other required information, the reporting update shall include:

- ✓ A brief review of additions to the summary of evidence and specific investigatory actions taken since the last update was entered into IRMA, if any; and
- ✓ If there have been no additions to the summary of evidence or investigatory actions taken since the last report, an explanation of why no progress has been made.
- ✓ If Pathways is not responsible for conducting the investigation, Pathways will complete the required fields to the extent possible given information provided to the agency.
- ✓ If Pathways is responsible for conducting the investigation and if the investigation has not been completed within the timeframe specified, Pathways will inform OPWDD of the reason for extending the timeframe of the investigation and will continue to keep OPWDD informed on at least a monthly basis of the progress of the investigation and other actions taken.

Completion of Investigations

When Pathways is responsible for the investigation of an incident:

1. The investigation shall be completed no later than 30 days after the incident is reported to the Justice Center and/or OPWDD. An investigation shall be considered complete upon completion of the investigative report.

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2. The agency may extend the timeframe for completion of a specific investigation beyond 30 days if there is adequate justification to do so. The agency shall document its justification for the extension.

Circumstances that may justify an extension include (but are not limited to):

- whether a related investigation is being conducted by an outside entity (e.g. law enforcement) that has requested that the agency delay necessary investigatory actions; and
- whether there are delays in obtaining necessary evidence that are beyond the control of the agency (e.g. an essential witness is temporarily unavailable to be interviewed and/or provide a written statement).

Closure of an Incident

For reportable incidents of abuse and neglect incident closure will occur when;

1. The IRC has ascertained that no further investigation is necessary; or
2. If the investigation is conducted by the Central Office of OPWDD, when the Central Office of OPWDD notifies the agency of the results of the investigation; or
3. When the Justice Center provides written notice to the agency that it has accepted the results of the investigation; or
4. If the Central Office of OPWDD conducts the investigation, when the Justice Center provides written notice to the agency that it has accepted the results of the investigation; or
5. If the Justice Center conducts the investigation, when the Justice Center provides written notice to the agency that the incident is closed.

Final Reports to the Justice Center.

Pathways will submit a final report to OPWDD for all reportable incidents that were accepted by the VPCR. Final reports must be submitted in the manner, form, and format specified by OPWDD.

Final reports must be submitted within 50 days of the VPCR accepting a report of abuse or neglect.

Pathways may take additional time to submit its final report provided, however, that the reasons for any delay must be for good cause and must be documented. The report must be submitted as soon thereafter as practicably possible.

In the event that the Justice Center or OPWDD conducts the investigation instead of Pathways, the agency is not required to submit the final report to the Justice Center. In the event that OPWDD conducts the investigation, OPWDD will submit the final report to the Justice Center. However, Pathways will

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provide information as requested by the Justice Center or OPWDD that may be necessary for the completion of the final report.

Note: Final information on significant incidents is automatically available to the Justice Center through IRMA.

In the event that the Justice Center requests additional information from Pathways or OPWDD, in accordance with law or regulation, Pathways or OPWDD shall provide such requested information in a timely manner.

Record Retention

Pathways will retain records pertaining to incidents as follows:

1. Records that must be retained include but are not limited to evidence and materials obtained or accessed during the investigative process.
2. Records shall be retained for a minimum period of seven years from the date that the incident or occurrence is closed, however, when there is a pending audit or litigation concerning an incident or occurrence, agencies shall retain the pertinent records during the pendency of the audit or litigation.
3. Records, reports, and documentation shall be retrievable by the person's name and filing number or identification code assigned by the agency. For incidents and occurrences that are reported in IRMA, such information shall be retrievable by the master incident number in IRMA.
4. When there is an incident or occurrence reported involving more than one person receiving services:
 - From a statistical point of view, the situation shall be considered as one event and shall be recorded as such.
 - Pathways will ensure that overall statistics reflect single events and that, when an event involves more than one person, records are retrievable by event in addition to being retrievable by a person's name.

Confidentiality of records will be kept confidential and shall not be disclosed except as otherwise authorized by law or regulation. Records of reportable incidents that are reported to the Justice Center are to be kept confidential pursuant to section 496 of the Social Services Law.

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Retaliation

Pathways will not take any retaliatory action against an employee or agent who believes that he or she has reasonable cause to suspect that a person receiving services has been subjected to a reportable incident or notable occurrence, and the employee or agent makes a report to the VPCR and/or OPWDD and/or if the employee or agent cooperates with the investigation of a report made to the VPCR or OPWDD.

Effective January 1, 2014, when an agency enters into a new contract or renews a contract for the provision of services that are provided by one or more employees or agents who have regular and substantial physical contact with persons receiving services, the contract shall include a provision concerning retaliation by the contractor. The provision shall require the contractor not to take any retaliatory action against an employee or agent of the contractor when:

- The employee or agent believes that he or she has reasonable cause to suspect a person receiving services has been subjected to a reportable incident or notable occurrence, and the employee or agent makes a report to the VPCR and/or OPWDD in accordance with this section; and/or

If the employee or agent of the contractor cooperates with the investigation of a report to the VPCR and/or OPWDD.

Notice of findings involving employees or agents of contractors.

When Pathways receives a written notice of findings from the Justice Center regarding a report of abuse or neglect, and the subject of such notice is an employee or agent of a contractor, the agency shall notify OPWDD of these circumstances within two weeks of such notice in the manner specified by OPWDD.

624.6. Notifications

For a report of abuse or neglect involving a person who resides in a facility certified or operated by OPWDD, the agency under whose auspices the event occurred and/or that is responsible for the person shall send the written initial incident/occurrence report to the Mental Hygiene Legal Service (MHLS) within three working days of occurrence or discovery. This will be accomplished by faxing the OPWDD form 147 to the designated MHLS representative. Following completion of the investigation and review by the Special Review Committee, the Executive Vice President of Quality Assurance will notify the MHLS representative of the results of the investigation in letter format.

Reporting to Law Enforcement

An appropriate law enforcement official must be contacted immediately in the event that an emergency response by law enforcement is needed. Dial 911

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Pathways will report to an appropriate law enforcement official anytime a crime may have been committed against an individual by a custodian. This is in addition to reporting to the Justice Center when the event or situation is a reportable incident (if the services are certified or operated by OPWDD).

The report to the appropriate law enforcement official shall be made as soon as practicable, but in no event later than 24 hours after occurrence or discovery. Pathways procedure is to contact the District Attorney via the designated fax report outlining the incident details. (Non-Emergency Only) Information about the report to the appropriate law enforcement official shall be entered into IRMA within 24 hours of the report being made.

In a case where a subject of a report of abuse or neglect (in a program certified or operated by OPWDD) resigns from his or her position with Pathways or is terminated while under investigation, Pathways will promptly report such resignation or termination to the Justice Center.

Qualified Persons Report

Pathways will provide telephone notice to one of the following: a person's guardian, parent, spouse or adult child. (Qualified Person)

Pathways will not provide such notice to a party in the following situations:

- There is written advice from the guardian, parent, spouse or adult child that he or she objects to such notification to himself or herself (notice shall then be provided to another party who is a guardian, parent, spouse or adult child, if one exists); or
- If the person receiving services is a capable adult who objects to such notification being made. If the capable adult objects to notification of all parties who are a guardian, parent, spouse or adult child, the capable adult shall be provided the notice described in this subdivision; or
- If the guardian, parent, spouse or adult child is the alleged abuser.

The telephone notice shall be provided as soon as reasonably possible, but no later than 24 hours after completion of the written initial incident/occurrence report or entry of initial information in IRMA by the agency.

The telephone notice shall include:

- A description of the event or situation and a description of initial actions taken to address the incident or occurrence, if any;
- An offer to meet with the President & CEO (or designee) to further discuss the incident or occurrence; and

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- For reports of abuse and neglect, an offer to provide information on the status and/or finding of the report. Requested information shall be provided verbally or in writing, unless the person is a capable adult and objects to the provision of this information. In providing such information, Pathways will protect the privacy rights of other parties.

Once the phone call has been completed, the caller will document all information noted above on the **qualified persons report** and attach to the original incident documentation.

The complete telephone notice may be comprised of more than one call, so long as the initial call includes a description of the event or situation and is within the required period of time or is attempted within the required period of time. Follow-up calls with the additional required information will be made within a reasonable timeframe after the initial call.

Notice may be made in person instead of by telephone.

Notice may be provided by other methods at the request of the party receiving the notice.

Requests may be made for a copy of the written initial incident/occurrence report by the person receiving services (or who formerly received services), guardian, parent(s), or correspondent/advocate.

Such request shall be in writing. However, at the discretion of the agency, documented verbal requests may be accepted in lieu of a written request.

(c) If the person is a capable adult and objects to the provision of the written initial incident/occurrence report, such report shall not be provided to otherwise eligible requestors.

(d) If an otherwise eligible requestor is the alleged abuser, the written initial incident/occurrence report shall not be provided to that requestor.

(ii) Redaction.

(a) The copy of the report shall incorporate redaction of the names of employees who are involved in the incident or occurrence or the investigation or who are interviewed as a part of the investigation, persons receiving services (or who formerly received services), and any information tending to identify such employees or persons. Redaction shall be waived if the employee or person authorizes disclosure, unless redaction of the specific information is necessary because it tends to identify another employee or person who has not authorized disclosure or for another reason specified in this subparagraph.

(b) In addition, if the report identifies a particular party as having made a child abuse or maltreatment report to the Statewide Central Register of Child Abuse and Maltreatment (SCR), contacted the SCR, or otherwise cooperated in a child abuse/maltreatment investigation, that name as well as any information tending to identify the party shall be redacted.

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(iii) The copy of the written initial incident/occurrence report shall be provided to an eligible requestor as soon as reasonable, but in no event more than 10 days after the request is made.

(iv) The copy of the written initial incident/occurrence report shall be accompanied by a statement that all contents are preliminary and have not been substantiated.

Report on actions taken.

1. The agency shall provide a report on initial actions taken to address the incident or notable occurrence. Such report shall include:

- (a) any immediate steps taken in response to the incident or occurrence to safeguard the health or safety of the person receiving services; and
- (b) a general description of any initial medical or dental treatment or counseling provided to the person in response to the incident or occurrence.

2. The agency shall provide the report on actions taken to any party specified in paragraph (1) or (6) of this subdivision who received the notification.

3. The report shall be provided within 10 days of the completion of the written initial incident/occurrence report (for minor notable occurrences) or entry of initial information in IRMA by the agency.

4. The report that is provided shall be in the form and format specified by OPWDD or in a similar format developed by the agency.

5. The report that is provided shall not include names of anyone who is involved in the incident or occurrence or the investigation, or who is interviewed as a part of the investigation, or any information tending to identify such parties. Names of any such parties as well as any information tending to identify those parties shall be excluded or redacted.

The following documentation shall be maintained:

- the telephone notice and responses received, including the identity and position of the party providing the notice, the name of the party receiving the notice, the time of the original call or attempted call, the time of subsequent attempted calls if the initial call was not successful and the time of follow up calls if the notice occurred in more than one call;
- any requests for a meeting or the written initial incident/occurrence report;
- meetings held in response to the request, and those present;
- when the report on actions taken and any requested written initial incident/occurrence report was provided;
- a copy of the report on actions taken and any written initial incident/occurrence report (with redaction) that was provided; and

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- advice that a particular party does not want to receive notifications or that the capable adult receiving services objects to notice or objects to the provision of documents/ information.

For the purpose of redaction as specified in this subdivision and section 624.8 of this Part only, the term employee means any party who is, or formerly was:

- Directly employed by an agency; or
- Used by an agency to provide services substantially similar to those that are or could be provided by someone who is directly employed by an agency. Such parties shall include, but not be limited to: those who are employed by other entities on behalf of an agency and/or for the care and treatment of the person receiving services; consultants; contractors; or volunteers; or
- A family care provider or family care substitute/respite provider; or a party living in the home of the provider.

For the **Willowbrook class**, Pathways will comply with the incident reporting requirements of the Willowbrook Permanent Injunction, dated March 11, 1993.

The individual's service coordinator (e.g. a Medicaid Service Coordinator or Plan of Care Support Services Service Coordinator, or Willowbrook Service Coordinator) must be notified by the agency of all reportable incidents and notable occurrences involving any individual receiving non-ICF services that are certified, funded, or operated by OPWDD and must be provided with subsequent information, as follows:

The service coordinator must be notified within 24 hours of the completion of the written initial incident/occurrence report (for minor notable occurrences) or entry of initial information in IRMA. The notification must include a description of immediate protections.

The service coordinator must be provided with subsequent information that may be needed to update an individual's plan of services and to monitor protective, corrective, and other actions taken following a reportable incident or occurrence. Specifically:

The service coordinator must be provided with written information identifying investigative conclusions (including the findings of a report of abuse or neglect) and recommendations pertaining to the individual's care, protection, and treatment. The information provided must exclude information that directly or indirectly identifies agency employees, consultants, contractors, volunteers, or other individuals receiving services. This information must be provided to the service coordinator within:

10 days after completion of the investigation if the investigation was completed by Pathways; or

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10 days after Pathways receives notice of the results of an investigation conducted by the Central Office of OPWDD or the Justice Center.

If the IRC review results in additional findings, conclusions, or recommendations regarding the individual's care, protection, and/or treatment, this information must be provided to the service coordinator, in written form, within 3 weeks after committee review.

If the Justice Center's review of an investigation conducted by the agency or by the Central Office of OPWDD results in additional findings, conclusions, or recommendations regarding the individual's care, protection, and/or treatment, this information must be provided to the service coordinator, in written form, within 10 days after the agency's receipt of the information.

The service coordinator may request additional information concerning the incident or occurrence in order to monitor protective, corrective, and/or other actions taken. In the event that an agency receives a request for this information from a service coordinator, the agency shall provide information that it deems appropriate. In providing this information, the agency must exclude information that directly or indirectly identifies agency employees, consultants, contractors, volunteers, and other individuals receiving services. If an agency determines that it would be inappropriate to disclose specific information requested, the agency must advise the service coordinator of this determination and its justification, in writing, within 10 days after the request. If the agency does not have specific information requested by the service coordinator (e.g. if the Justice Center conducted the investigation and it has not provided that information to the agency) the agency shall advise the service coordinator that it does not have the requested information.

Note: A service coordinator may be permitted to access information related to substantiated reports in accordance with section 496(2)(n) of the Social Services Law.

If the service coordinator is identified as the subject of a report of abuse or neglect or as a witness to a reportable incident or occurrence, the agency shall not provide information to that party. In such a case, notifications and written information identified in paragraphs (1) and (2) of this subdivision must be provided to the service coordinator's supervisor or the administrator of the agency providing service coordination in lieu of the service coordinator.

The individual's Qualified Intellectual Disabilities Professional (QIDP) and (if the person is a Willowbrook class member), the Willowbrook Case Services Coordinator (WCSC) must also be notified by the agency of all reportable incidents and occurrences involving any individual who resides in an

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Intermediate Care Facility that is operated or certified by OPWDD. The QIDP and WCSC must also be provided with subsequent information. Information to the QIDP and WCSC shall be provided in the same manner that the information is provided to the Non-ICF service coordinator, in accordance with paragraphs 624.6(h)(1) and (2). If the QIDP or WCSC is identified as the alleged abuser, or is a witness to an incident or alleged abuse, the required notifications and subsequent information must be provided to the QIDP's or WCSC's supervisor or the administrator of the agency providing the residential or WCSC services, in lieu of the QIDP or WCSC.

Note: A service coordinator (including a QIDP performing that function) may be permitted to access information related to substantiated reports in accordance with Section 496(2)(n) of the Social Services Law.

Administrative appeal process - denial of requested records/documents.

A requestor denied access to the initial incident/occurrence report or report on actions taken may appeal in writing such denial to the incident records appeals officer designated by the commissioner of OPWDD.

(2) Upon receipt of the appeal, the agency issuing the denial will be notified of the appeal and given an opportunity to submit relevant information to the incident records appeals officer, including the reasons for denial, within 10 business days of the receipt of such appeal. The incident records appeals officer may also request additional information from the requestor as may be necessary to resolve the appeal.

(3) Within 10 business days of the receipt of complete information, the incident records appeals officer will make a determination about whether the requested documents should be released. The incident records appeals officer will issue his or her determination with an explanation of the reasons for the determination to the requestor and the agency. If so directed by the incident records appeals officer, the agency shall provide the requested records and/or documents to the requestor.

(k) It is the responsibility of a designated staff member of the agency where a report on a reportable incident or notable occurrence is received or made out, to notify any other agency where the person receives services of that reportable incident or notable occurrence if the incident or occurrence resulted in visible evidence of injury to the person, may be of concern to another agency, or may have an impact upon programming or activities provided by another agency.

(l) Notwithstanding any other provision in this Part, reports of *Obstruction of reports of reportable incidents* (see paragraph 624.3(b)(6)) that are reported to the Justice Center and/or OPWDD are not subject to the notification requirements in this section.

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For all Reportable Incidents: (Abuse / Neglect)

Immediately look for any signs or symptoms of injury or distress and provide all necessary protective actions. At this time the suspected staff target will be removed from the situation for their protection and the individual's protection.

In conjunction with the witness to the event, the reporting Supervisor / Manager will conduct a preliminary investigation using the designated preliminary investigation form to determine the circumstances to the event and to identify all witnesses” Once the preliminary investigation is complete, notify the Administrator on Call (AOC) to discuss and make determination.

If determined to be a Reportable Incident;

All witnesses or staff with direct knowledge of the event notifies the Justice Center individually. Call 1-855-373-2122. Each call will generate confirmation # to be documented on the preliminary investigation form.

The discovering Supervisor / Manager will also notify the Justice Center of the event indicating how many staff witnesses and individuals are involved. The Justice Center will be making determination as to who will be conducting the investigation. (Justice Center, OPWDD or Pathways Inc. or other) This will be indicated on the IRMA system once the Justice Center enters the information in to IRMA. Notify OPWDD by calling the Incident Management Unit Compliance Officer if the incident occurs between the hours of 8:30 am and 4:30 pm M-F at (585) 241-5707. If after hours, notify the Incident Management Unit at 1-888-479-6763.

Notify parent, guardian, correspondent, etc. within 24 hours unless the involved individual is a capable adult and requests that he/she/they not be notified or unless he/she/they have requested in writing that they not be notified of these occurrences. All notifications will be made by utilizing the Qualified Persons notification report. Notifying staff will complete the report and attach to the incident packet.

The manager will inform the employee who is identified in the complaint or who has been involved in the incident that he or she is a subject of an investigation and will, within 24 hours, provide the employee with a written notice that an allegation has been made.

Employees involved in Abuse / Neglect incidents will be placed on Administrative Leave until the completion of the investigation. An employee on administrative leave is not eligible to work during that period of time.

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- Utilize the Reportable Incident Notification form to ensure all notifications are made and within identified time frames.
- The Justice Center is responsible for initiating the report in to the IRMA system. Managers / Directors need to monitor IRMA so that the remaining items in IRMA can be added immediately to the justice Center entry in to IRMA.
- **For ICF's - The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with state law within five working days of the incident and if the alleged violation is verified (substantiated) appropriate corrective action must be taken. All investigative findings must be entered in to the IRMA system within five days of the incident discovery date.**

For all investigations deemed substantiated, copies of the investigative report will be submitted to the President & CEO, Chief Operating Officer and the respective Vice President of Program Operations. Email a copy of the report to the Director and Manager of the program. The Vice President of Program Operations will determine the employee's status. In the case of any reportable incident where a crime may have been committed, it is the responsibility of Pathways Inc. to notify law enforcement officials.

- 1) Pathways Inc. is responsible for notifying law enforcement officials if there is reasonable basis to believe that a person who receives services may be the victim of criminal activity or may have committed a crime, unless a report to law enforcement has already been made.
- 2) It is the responsibility of the agency to make this notification even if the person or the person's parents or guardian object.
This obligation to report is derived from the Mental Hygiene Law, sections 13.21(b) and 16.13(b) and applies regardless of whether the possible crime was committed by an employee or another person or by the person receiving services.
- 3) Crimes committed by persons receiving services would be reported on the OPWDD 147 in accordance with Part 624. Crimes committed by employees do not get reported on the Form OPWDD 147 as a possible criminal act because, by regulatory definition, "possible criminal acts"

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are actions that can only be made by persons receiving services. Instead, crimes committed by employees are reported, classified and monitored in accordance with agency policy/procedures.

- 4) Possible crimes must be reported to appropriate law enforcement officials as soon as possible and, in any event, must be reported within 24 hours.
- 5) In addition to notifying law enforcement officials, provider agencies must also report possible crimes which are reportable incidents to OPWDD and the Justice Center.

When cases of alleged abuse or neglect are assigned to the agency

For investigation or further delegated to the agency, the investigator must request that the Justice Center conduct a search in the Statewide Central Register (SCR) for any known subjects / suspects in the incident. The investigator will fill out the SCR form and email to subjectsearchs@justicecenter.ny.gov and CC (Executive Vice President of Human Resources and or the Human Resources Manager) to request that the search be completed.

The Justice Center will conduct a search. Based on the findings the Justice Center will note that a search has been completed and upload any pertinent information in to the relevant incident case file with in the VPCR. Any pertinent information will be forwarded to the agency to the authorized contact person. (Executive Vice President of Human Resources and or the Human Resources Manager) who will forward any relevant information to the investigator to be used by the investigator in the involved incident.

For Psychological Abuse - Evidence of such an effect must be supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor. The agency has identified employees and an assessment tool when necessary.

Plans for prevention and remediation for substantiated reports of abuse or neglect.

Within 10 days of the completion of the investigation, if the report of abuse or neglect has been substantiated, Pathways Inc. shall develop and implement a plan of prevention and remediation to be taken to assure the continued health, safety, and welfare of individuals receiving services and to provide for the prevention of future acts of reportable incidents.

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- The plan shall include written endorsement by the CEO or designee.
- The plan shall specify by title agency staff who are responsible for monitoring the implementation of each remedial action identified and for assessing the efficacy of the remedial action.
- **Such plan shall be entered into IRMA by the close of the fifth working day after the development of the plan**

OPWDD will inform the Justice Center about plans developed pursuant to this subdivision.

Once the investigation is complete, the investigation packet will include the following when completed by the agency.

- ❖ Completed Reportable Incident notification log
- ❖ Completed preliminary findings report
- ❖ Immediate protections provided to the consumer(s)
- ❖ Completed fax transmittal to MHLS with verification
- ❖ Completed Qualified Persons Report
- ❖ Completed version of OPWDD form 149 investigation
- ❖ Completed version of OPWDD form 147
- ❖ Completed version of OPWDD form 148 (**QA Only**)
- ❖ Completed version of OPWDD form 150 if applicable
- ❖ Copy of letter (Notice to subject)
- ❖ If applicable, copy of completed notification to Law Enforcement
- ❖ All relevant documents such as clinical history
- ❖ Written statements by staff / consumer witnesses
All evidence if applicable. Photos, clothing, diagrams etc.
- ❖ SCR Check of subject(s)
- ❖ If applicable – Copy of clinical assessment for Psychological Abuse only
- ❖ Send completed packet to the Executive Vice President of Quality Assurance
- ❖ Justice Center determination (QA Only)

Abuse Neglect incidents cannot be closed out by the SRC until notification has been received from the Justice Center.

Record Keeping

Records shall be retained for a minimum period of seven years from the date that the incident or occurrence is closed (see subdivision (m) of this section). However, when there is a pending audit or litigation concerning an incident or occurrence, agencies shall retain the pertinent records during the pendency of the audit or litigation.