

**Pathways CMH
Compliance Plan – FY2016
(Effective 5/1/16)**

OVERVIEW

This Compliance Plan documents Pathways approach to assuring that federal and state regulatory and contractual obligations related to compliance of the Community Mental Health Services Program (CMHSP) are fulfilled. The Pathways Compliance Plan addresses Pathways regulatory compliance obligations as a CMHSP.

The Compliance Program is designed to further Pathways' commitment to comply with applicable laws, promote quality performance throughout Pathways programs, Contract Providers, and maintain a working environment for all Pathways Board members, employees, volunteers, students, interns, and contract providers (hereinafter referred to as "Personnel") that promotes honesty, integrity and high ethical standards. Pathways' Compliance Program is an integral part of Pathways mission, and all Pathways Personnel and Contract Providers are expected to follow the compliance program. Pathways compliance plan is comprised of the following principal elements:

1. The development and distribution of written standards of conduct, as well as written policies and procedures, that promote Pathways commitment to compliance and that address specific areas of potential fraud, waste, and abuse;
2. The designation of a Compliance Manager and other appropriate bodies,(e.g., a Compliance / Risk Management Monitoring Team), charged with the responsibility and authority of operating and monitoring the compliance program;
3. The development and implementation of regular, effective education and training programs for all included personnel;
4. The development of effective lines of communication between the Compliance Manager and all employees, including a reporting system to receive complaints and the adoption of procedures to protect the anonymity of complainants and to protect callers from retaliation;
5. The use of audits and ongoing monitoring to assist in the reduction of identified problem areas, including fraud, waste, and abuse, within delivered services, claims processing and delegated managed care functions from NorthCare in striving for continual improvement on compliance activities;
6. The development of disciplinary mechanisms to consistently enforce standards and the development of policies addressing dealings with sanctioned and others specific individuals; and
7. The development of policies to respond to detected offenses, including potential fraud, waste, and abuse, to initiate corrective action to prevent similar offenses, and to report to Government authorities when appropriate.

Pathways is committed to:

- Minimizing organizational risk and improving compliance with the service provision, documentation, and billing requirements of Medicaid and other payers;
- Complying with State and Federal laws and their applicable regulations, including, but not limited to, those outlined in *Pathways Regulatory Standards Policy*;
- Maintaining adequate internal controls throughout Pathways and our Provider Network;
- Encouraging the highest level of ethical and legal behavior from all Pathways personnel and contract providers;
- Educating or ensuring the education of personnel, contract providers, board members, and stakeholders on their responsibilities and obligations to comply with applicable local, state, and federal laws;
- Providing oversight and monitoring functions.

The Pathways Compliance Plan is subject to the following conditions:

- Pathways reserves the right to change, modify, or amend the Compliance Plan and/or the compliance policies as deemed necessary by Pathways without notice.
- Pathways will attempt to communicate changes to or modification of the Compliance Plan concurrent with or prior to the implementation of such changes or modification.
- This document is not intended to, nor should be construed as, a contract or agreement and does not grant any individual or entity employment or contract rights.

APPLICATION OF THE COMPLIANCE PLAN

This Plan addresses Pathways as the Community Mental Health Services Provider (CMHSP) whose primary function is to provide services to the Medicaid, Healthy Michigan, MI Health Link Demonstration Project, and General Fund benefits for individuals receiving Michigan Mental Health Specialty Supports and Services in Alger, Delta, Luce, and Marquette Counties in the Upper Peninsula of Michigan.

Pathways directly, and indirectly through its Contract Providers, provides services for adults and children with mental illness, developmental disabilities, serious emotional disturbances, and co-occurring mental health and substance use disorders, within Alger, Delta, Luce, and Marquette Counties in the Upper Peninsula.

It is the intent of Pathways that the scope of all its compliance policies and procedures should promote integrity, support objectivity and foster trust throughout the service area. This Plan applies to all Pathways operational activities and administrative actions, and includes those activities that come within federal and state regulations relating to CMHSP's. Pathways personnel are subject to the requirements of this plan as a condition of employment. All Pathways personnel are required to fulfill their duties in accordance with Pathways Compliance Plan, Human Resource and Operational policies, and to promote and protect the integrity of Pathways. Failure to do so by Pathways Personnel will result in discipline, up to and including termination of employment depending on the seriousness of the offense. Disciplinary action may also be taken against a supervisory employee who directs or approves an employee's improper conduct, is aware

of the improper conduct and does not act appropriately to correct it, or who fails to properly exercise appropriate supervision over an employee.

This Plan applies to all Contract Providers receiving Medicaid or other payment under the CMHSP. All Contract Providers, including their Managers, employees, volunteers, interns, and agents, are subject to the requirements of this Plan as applicable to them and as stated within the applicable contracts. All Contract Providers that provide services directly or indirectly to consumers within the Pathways Network are expected to follow principles that promote ethical health care, and uphold the integrity of ethical business practice. Failure to do so will result in remediation effort attempts and/or contract action, if needed. Pathways has the responsibility of regulating, overseeing and monitoring the Medicaid processes of business conducted throughout its service area and to support business practices conducted with integrity and in compliance with the requirements of applicable laws and sound business practices. The Pathways Compliance Plan, standards, and policies included or referenced herein are not exhaustive or all inclusive. All Pathways Personnel and Contract Providers are required to comply with all applicable laws, rules and regulations including those that are not specifically addressed in the Compliance Plan. Pathways will monitor compliance efforts of Contract Providers during annual site reviews, at minimum.

DEFINITIONS AND TERMS

- **Abuse:** means provider practices that are inconsistent with sound fiscal, business, or clinical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards of care. It also includes beneficiary practices that result in unnecessary cost to the Medicaid program. (42 CFR § 455.2)
- **Compliance investigation:** the observation or study of suspected fraud, abuse, waste, or reported violations of applicable laws and regulations for all Medicaid covered services by close examination and systematic inquiry.
- **Contract Providers:** Independent, Organization, and Agency, and other Providers which Pathways directly holds a contract to provide covered mental health services.
- **Fraud (Federal False Claims Act):** means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him/herself or some other person. It includes any act that constitutes fraud under applicable Federal or State law including but not limited to the Federal False Claims Act and the Michigan False Claims Act. (42 CFR § 455.2)
- **Fraud (MI Medicaid False Claims Act):** Michigan law permits a finding of Medicaid fraud based upon “constructive knowledge.” This means that if the course of conduct reflects a systematic or persistent tendency to cause inaccuracies” then it may be fraud, rather than simply a good faith error or mistake. (Public Act 421 of 2008, effective 1/6/2009)
- **Provider:** Means an individual or organization that has entered into a written agreement with Pathways either directly or indirectly through a third Party, to provide behavioral health services in exchange for reimbursement.
- **Waste:** means overutilization of services, or other practices that result in unnecessary costs. Generally not considered caused by criminally negligent actions but rather the misuse of resources.

SECTION I - STANDARDS OF CONDUCT

An important component of Pathways Compliance Program is the Code of Conduct (referred to as “Code”), which sets out basic principles that all Pathways Personnel and Contract Providers must follow.

Pathways Board of Directors and management establishes and encourages throughout its region, a culture that promotes prevention, detection, and resolution of instances of misconduct in order to conform to applicable laws and regulations. Pathways will assist Contract Providers in adopting practices that promote compliance with Medicaid fraud, abuse and waste program requirements. The Pathways Compliance Plan and Program will be enforced consistently.

The Compliance Program and the Code of Conduct are not intended to and shall not be deemed or construed to provide any rights, contractual or otherwise, to any personnel, contract providers, or to any third parties.

Pathways will distribute the Code of Conduct, as well as policies and procedures to all personnel and contract providers at the time of hire/contract. These standards of conduct demonstrate Pathways commitment to ethical practices and system wide emphasis on compliance with all applicable laws and regulations. All Pathways Compliance Policies and Code of Conduct can also be accessed any time on our website at: www.pathwaysup.org.

Pathways will perform or cause to be performed criminal records checks on potential Pathways Personnel and Contract Providers, and shall avoid placing untrustworthy or unreliable employees in key positions. In addition, Pathways will perform or cause to be performed a review of the OIG Cumulative Sanctions List and the General Services Administration Sanctions Report to determine whether any current or prospective Pathways Personnel or Contract Providers have been excluded from participation in Federal Health Care Programs. Further, Pathways Board and management will use due care not to delegate substantial discretionary authority to individuals whom they know, or should have known through due diligence, have a propensity to engage in illegal activities.

Should any Pathways Personnel or Contract Provider have any questions or uncertainties regarding compliance with applicable state or federal law, or any aspect of the Compliance Plan, including related policies or procedures, they should seek immediate clarification from the Compliance Manager.

Pathways and Contract Providers may not have relationships with an individual or entity that is excluded from participating in Federal health care programs. Pathways and Contract Providers will comply with federal regulations to obtain, maintain, disclose, and furnish required information about ownership, control interests, business transactions, and criminal convictions as specified in applicable laws, regulation, contracts, and policy/procedure.

SECTION II - COMPLIANCE MANAGER AND COMPLIANCE OVERSIGHT AND RISK MANAGEMENT COMMITTEE

The overall responsibility for operation and oversight of the Corporate Compliance Plan belongs to the Board; however, the day-to-day responsibility for operation and oversight of the Corporate Compliance Plan rests with the Compliance Manager.

Pathways CEO (or designee) will designate a Compliance Manager, who will be given sufficient authority to carry out operational responsibility of the Compliance Program. To carry out such responsibility, the Compliance Manager shall be given adequate resources, direct access to the governing authority or an appropriate subgroup of the governing authority, the CEO, all other senior management and legal counsel. The Compliance Manager has authority to provide unfiltered, in-person reports to the board of directors at his or her discretion. The authority given the Compliance Manager will include the ability to review all Pathways and Contract Providers Medicaid, ABW, and General Fund documents and other information relevant to compliance activities, including, but not limited to, consumer records, billing records, employee records and contracts and obligations of Pathways. In the event the Compliance Manager is conducting a compliance investigation relative to the CEO, the CEO cannot terminate the Compliance Manager without approval of the Board of Directors.

Pathways shall maintain a Compliance / Risk Management Monitoring Team (CRMT) that will advise the Compliance Manager and assist with the implementation, operation and evaluation of the Compliance Program. This will be a permanent committee with the authority, responsibility and specific duties as described in Pathways *Compliance / Risk Management Monitoring Team Policy*. Their charge is intended to ensure compliance with applicable state and federal laws, including HIPAA and to ensure adequate operation of the Pathways Compliance Program.

SECTION III - COMPLIANCE TRAINING AND EDUCATION

Proper and continuous training and education of Pathways personnel at all levels is a significant element of an effective compliance program. Therefore, Pathways will establish a regular training program that covers the provisions of the Code of Conduct and Compliance Program. Training is provided upon hire for new Personnel; annual and periodic retraining is provided to existing Pathways Personnel and, as applicable, Contract Providers and other stakeholders.

Pathways Personnel will be scheduled to receive compliance training at orientation or within thirty (30) days of employment/appointment. Tailored training may be required for employees involved in specific areas of risk and the Compliance Manager, or designee, will coordinate and schedule as needed. Training may be supplemented with newsletters, e-mails and in-services. Records will be maintained on all formal training and educational activities.

Training is considered a condition of employment and failure to comply will result in appropriate disciplinary action.

- **Initial training:** The Compliance Manager, or designee, shall ensure the scheduling and documentation of initial trainings for all Pathways personnel regarding Pathways Compliance Plan. Subsequent compliance instruction will occur annually.
- **Continuing Education:** The Compliance Manager shall review and circulate periodic revisions to the Compliance Oversight and Risk Management Committee regarding any health care fraud issues as received from the Office of Inspector General (OIG), Centers for Medicare and Medicaid (CMS), Michigan Department of Health and Human Services (MDHHS), and other updated compliance materials.
- Contract Providers are expected to provide the following minimum compliance training, at orientation and as needed, to all staff and agents working on their behalf:
 - Overview of the organization's Compliance Program and Policies, including, but not limited to:
 - ✓ Code of Conduct
 - ✓ Reporting Requirements and Procedures
 - ✓ Organization's policies/procedures relating to prevention of fraud, waste and abuse; and
 - ✓ Organization's policies and procedures relating to whistleblower provisions and non-retaliation protections
 - Deficit Reduction Act including, but not limited to:
 - ✓ Federal False Claims Act;
 - ✓ MI State False Claims Act;
 - ✓ Whistleblowers Act
- Pathways reserves the right to review and approve all compliance related training materials used by Contract Providers covering the elements noted above.

The Compliance / Risk Management Monitoring Team shall ensure current mandates are instituted in both initial and refresher education/training that will assist in carrying out job responsibilities. Continued compliance training will be documented. These training sessions are obligatory, personnel initiated, or instituted upon request of the supervisor. Failure to participate in mandatory training session(s) will result in disciplinary action as stated in the Personnel Policies / Procedures. The Compliance Manager and members of the Compliance / Risk Management Monitoring Team will be available to all Personnel to answer questions regarding modifications of governmental guidelines.

It is the responsibility of Pathways Personnel to maintain job specific certifications and/or licensing requirements, proficiencies, and competencies set forth by the State of Michigan, licensing body and job descriptions.

Upon employment/appointment, all Pathways Personnel will be provided an orientation to the Compliance Program and will receive an electronic copy and/or receive a written copy of the Compliance Plan, Code of Conduct, and Pathways Compliance Policies.

Modifications to the Compliance Plan are made as necessary. The updated Plan is posted to Pathways website and notice of this posting provided to all Personnel after revisions have been approved by the Compliance / Risk Management Monitoring Team and accepted by the Board.

A copy of all Compliance Program documents (Compliance Plan, Code of Conduct and Policies) will be kept on file by the Compliance Manager and maintained at Pathways office. Compliance Program documents can also be accessed on Pathways Intranet – Spark and on the web at www.pathwaysup.org.

SECTION IV - COMPLIANCE REPORTING AND ONGOING COMMUNICATION

All Pathways Personnel must be familiar with applicable federal and state laws and regulations as well as Pathways Policies and Procedures. Any Pathways Personnel that know, or has reason to believe, that an employee of, or independent professional providing services to Pathways is not acting in compliance with federal and state laws and regulations should report such matters to any supervisor or the Compliance Manager consistent with Pathways *Responsibilities for Reporting Compliance Issues Policy*.

Personnel who make good faith reports of violations of federal or state law are protected by state and federal whistleblower statutes, as more fully described below.

Under the *Federal False Claims Act* and the *Michigan Medicaid False Claims Act*, personnel who report violations in good faith are entitled to protection from disciplinary actions taken by their employer.

The *Federal False Claims Act*, 31 USC §§3729 through 3731, provides for administrative remedies, encourages enactment of parallel State laws pertaining to civil and criminal penalties for false claims and statements, and provides “whistle-blower” protection for those making good faith reports of statutory violations.

Under the *False Claims Act*, an employer shall not discharge, demote, suspend, threaten, harass, or otherwise discriminate against an employee in the terms and conditions of employment because the employee initiates, assists in, or participates in a proceeding or court action under this act or because the employee cooperates with or assists in an investigation under this act. This prohibition does not apply to an employment action against an employee who the court finds: (i) brought a frivolous claim, as defined in section 2591 of the revised judicature act of 1961, 1961 PA 236, MCL §600.2591; or, (ii) planned, initiated, or participated in the conduct upon which the action is brought; or, (iii) is convicted of criminal conduct arising from a violation of that act.

An employer who takes action against an employee in violation of the *False Claims Act* is liable to the employee for all of the following:

1. reinstatement to the employee’s position without loss of seniority;
2. two times the amount of lost back pay;
3. interest on the back pay;
4. compensation for any special damages; and,
5. any other relief necessary to make the employee whole.

SECTION V - COMPLIANCE MONITORING, AUDITING AND RISK EVALUATION

All Pathways personnel are responsible for monitoring compliance activities and operations within Pathways. Any determination of noncompliance must be reported to Pathways’ Compliance Manager.

Pathways believes that a thorough and ongoing evaluation of the various aspects of Pathways Compliance Program is crucial to its success. In order to evaluate the effectiveness of the Plan, Pathways may employ a variety of monitoring and auditing techniques, including but not limited to:

1. Annual Provider Reviews conducted by Pathways Recipient Rights Office and Contract Manager.
2. Periodic interviews with Pathways and Contract Provider personnel regarding their perceived levels of compliance within their departments or areas of responsibilities;
3. Questionnaires developed to poll personnel within Pathways and Contract Provider organizations regarding compliance matters including the effectiveness of training/education;
4. Information gained from written reports from Contract Provider compliance Managers utilizing assessment tools developed to track all areas of compliance;
5. Audits designed and performed by internal and/or external auditors utilizing specific compliance guidelines;
6. Investigations of alleged noncompliance reports as described in *Pathways Compliance Review and Investigations Policy and Procedure*; and
7. Exit interviews with departing Pathways employees.

Information obtained through monitoring and auditing efforts will be retained in written form and provided to the Pathways CRMT in full or aggregate.

The CRMT will evaluate, no less than annually, the effectiveness of the Compliance Program. Compliance issue topics identified from monitoring and auditing will be presented to the Pathways Board of Directors at least annually in complete and/or summary format.

Contract Providers are encouraged to perform auditing and monitoring functions of their services through their own compliance program efforts.

The Pathways Compliance Manager, CRMT, and as appropriate, other Pathways Committees / Personnel will take actions to ensure the following:

- Access to and familiarity with the latest HHS OIG compliance guidelines and current enforcement priorities; and
- Assessment of the baseline risk of any significant issues regarding noncompliance with laws or regulations in accordance with this Plan and Compliance Policies.

SECTION VI - ENFORCEMENT and DISCIPLINE

Corrective action is used as a means of facilitating the overall goal of the Pathways Compliance Plan which is full compliance. Corrective action plans should assist Pathways Personnel and Contract Providers to understand specific issues and reduce the likelihood of future noncompliance. Correction action sufficient to address the particular instance of noncompliance and should reflect the severity of the noncompliance. The following Corrective Action Plan Guidelines are to be used with Pathways Personnel and Contract Providers:

| Violation | Possible Disciplinary Action |
|--|--|
| Knowingly and willfully committing fraud and/or violation of a federal or state billing or documentation practice(s). Knowingly and willfully providing false or misleading information in a compliance context to Pathways, governmental agency, consumer or MDCH. [e.g. billing for services not performed, forging documentation or signatures, up-coding, kickbacks, bribes] | First Offense for Pathways Personnel: Follow Pathways Personnel Policy/Procedures. First Offense for Contract Provider: Termination of contract. |
| Unknowingly violating federal or state billing or documentation practice(s). | First Offense for Pathways Personnel: Follow Pathways Personnel Policy/Procedures. Second Offense for Pathways Personnel: Follow Pathways Personnel Policy/Procedures. First Offense for Contract Provider: Written notice of noncompliance for Contract file, mandatory compliance training approved by Pathways CRMT or provided by Pathways, Corrective Action Plan to be submitted to CRMT, may be placed on probationary period. Related individual(s) may be barred from Medicaid service provision or administrative activity. Second Offense for Contract Provider: Possible termination of contract. |
| Knowingly violating policies and/or procedures as set forth in the Compliance Plan. | First Offense for Pathways Personnel: Follow Pathways Personnel Policy/Procedures. Second Offense for Pathways Personnel: Follow Pathways Personnel Policy/Procedures. First Offense for Contract Provider: Written notice of noncompliance for Contract file, Corrective Action Plan to be submitted to CRMT, may be placed on probationary period. Related individual(s) may be barred from Medicaid service provision or administrative activity. Second Offense for Contract Provider: Possible termination of contract. |
| Detection of, but, failure to report or failure to detect substantive violations of federal and state mandates in duties where a reasonable person could be expected to detect violation(s). | First Offense for Pathways Personnel: Follow Pathways Personnel Policy/Procedures. Second Offense for Pathways Personnel: Follow Pathways Personnel Policy/Procedures. First Offense for Contract Provider: Written notice of noncompliance for Contract file, mandatory compliance training approved by Pathways CRMT or provided by Pathways, Corrective Action Plan to be submitted to CRMT, may be placed on probationary period. Related individual(s) may be barred from Medicaid service provision or administrative activity. Second Offense for Contract Provider: Possible termination of contract. |

Basis for Contract Provider Corrective Action: Monitoring and auditing, and reports of questionable practices may form the basis for imposing corrective action.

Elements of a Contract Provider Corrective Action Plan: As appropriate given the nature of the noncompliance, a corrective action plan submitted to Pathways for approval shall include:

- ✓ A description of how the issue(s) identified was immediately corrected OR the reason the issue(s) cannot be immediately corrected (i.e. the consumer has been discharged).
- ✓ A description of the steps put or to be put into place to prevent the issue(s), or a similar issue(s), from occurring again (i.e. staff training, process redesign, etc.)
- ✓ A description of the quality assurance program put into place for monitoring purposes to ensure the corrective action plan is effective and/or similar issues do not occur.
- ✓ Action items are to include position or group responsible for implementation of corrective action and target date for completion.

SECTION VII –RESPONSE AND PREVENTION

Pathways and Contract Providers are expected to respond to suspected misconduct or wrongdoing in a timely manner. Each report of suspected misconduct or wrongdoing reported to Pathways will be documented and reviewed to determine how serious the misconduct or wrongdoing is and develop an appropriate plan of action. An investigation will commence any time a potential violation is identified. Pathways Compliance Manager will assemble an investigation team that may include outside counsel and/or content experts, depending on the extent and seriousness of the alleged infraction. While an internal investigation is the first step, Pathways will also take necessary steps immediately to stop or modify the procedures that are the alleged source of wrongdoing.

Prompt reporting of misconduct to the appropriate governmental authority within a reasonable period, but not more than 60 days after determining that there is a credible evidence of a violation is expected.

Detailed documentation is critical and must include:

- ✓ A description of the potential misconduct and how it was reported
- ✓ A description of the investigative process
- ✓ List of relevant documents reviewed
- ✓ List of employees interviewed
- ✓ Changes to policies and procedures, if appropriate
- ✓ Documentation of any disciplinary actions
- ✓ Investigation final report with recommended remedial actions.

The final report and any attached documentation are sensitive materials and distribution should be limited.

If the investigation finds that there was no violation, the investigation will be closed. However, if after the internal investigation, there is reason to believe the organization's misconduct constituted a material violation of the civil law or the rules and regulations governing federally funded health care programs, then the organization is expected to take steps to disclose the violation to the government. Voluntary disclosure is the right thing to do. Pathways may seek legal advice to ensure prior to reporting any voluntary disclosure.