

PATHWAYS CMH

POLICY TITLE: Responding to Government Investigations	CATEGORY: Compliance	
EFFECTIVE DATE: 06/05/14	BOARD APPROVAL DATE: 06/04/14	
REVIEWED DATE: 04/07/17	REVISION(S) TO POLICY STATEMENT: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	OTHER REVISION(S): <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
RESPONSIBLE PARTY: Compliance Manager	CEO APPROVAL: Mary Swift, CEO	

APPLIES TO:

Pathways Personnel

POLICY:

Pathways Personnel will fully comply with the law and will cooperate with any authorized government investigation or audit. Pathways will assert all protections afforded it by law in any such investigation or audit including the protection of legal rights afforded Pathways Personnel.

Pathways personnel may not conceal, destroy, or alter any documents related to the investigation, nor lie or intentionally make misleading statements to authorized government representatives. Pathways personnel may not aid in any attempt to obstruct any government investigation, provide inaccurate or misleading information or unreasonably delay communication of information or records relating to a possible violation of the law in response to a legally authorized inquiry by a government representative acting within the scope of its authority.

PURPOSE:

Government investigators may arrive unannounced at Pathways or the homes of present or former employees and seek interviews and documentation. This policy is to establish a process for responding to subpoenas served by federal or state law enforcement officers for demand of testimony or disclosure of documents or other information and government investigations.

DEFINITIONS:

N/A

REFERENCES:

- Pathways Compliance Plan and Policies
- NorthCare Compliance Plan and Policies

HISTORY:

REVISION DATE: 04/08/15

REVIEWED DATE: 04/13/16; 04/07/17

CEO APPROVAL DATE: 06/13/14; 04/08/15; 04/13/16; 04/12/17

BOARD APPROVAL DATE: 06/04/14

PROCEDURES:

A. Procedure for unannounced government representative visits or audits

1. Any Pathways Personnel who knows of an impending visit by a government investigator shall report this information immediately to the Pathways Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Information Officer (CIO), Human Resources Director, and/or Pathways Compliance Officer (CO) (hereinafter referred to as "senior employee").
2. Any Pathways Personnel who greets an individual arriving at a facility or site of Pathways who identifies himself or herself as a government auditor, investigator, or other representative should:
 - a. Treat the individual(s) with respect and courtesy;
 - b. Politely inform them that you will contact someone who can assist them;
 - c. Take them to an available conference room, office (make sure no confidential information is in view) or location where business is not currently being conducted to wait for others to arrive;
 - d. Immediately notify a Pathways senior employee,
Chief Executive Officer: (906) 225-7357
Chief Financial Officer: (906) 225-7214
Chief Information Officer: (906) 225-5155
Human Resources Director: (906) 233-1221
Compliance Officer: (906) 233-1217
3. Pathways Senior Employee should:
 - a. request identification from the individual and the reason for the visit. **Do not attempt to photocopy credentials as this is a violation of Federal law;**
 - b. immediately contact the CEO and Legal Counsel – Joe Lavey at (906) 228-2205;
 - c. request contact information from the investigator(s) for verification purposes;
 - d. not reply to questioning, submit to an interview, or provide the government representative with any documents or other information until directed to do so by legal counsel.

B. Procedure for Search by Investigators without a Search Warrant

1. If an investigator arrives on Pathways premises and requests a search of the premises but does not have a valid search warrant, Pathways personnel should:
 - a. refuse to allow the search; and
 - b. immediately contact a senior employee; they will contact legal counsel; and
 - c. request that the investigator obtain a search warrant or, at least, put the request for a search in writing; and

- d. should emphasize that they are willing to cooperate but that a warrant is required. (NOTE: A Court Order is required for substance use records. See 5.iv)
- e. Only the CEO, after consultation with legal counsel, may consent to a search without a warrant.

C. Procedure for Search by Investigators with a Search Warrant

1. If an investigator arrives on Pathways premises **with** a valid search warrant, inform investigator(s) that they must wait until a senior employee or legal counsel arrives.
 - a. Pathways personnel should request an opportunity to consult with Pathways' legal counsel before the search commences. Provide counsel with a copy of the search warrant immediately. If counsel can be reached by phone, put counsel directly in touch with the lead investigator.
 - b. Pathways personnel shall request and document the following from the investigator:
 - i. Name, agency affiliation, business telephone number, and address of all government officials involved (lead investigator should sign off on this list);
 - ii. Ask to see credentials, badge or identification card of all investigators (do not attempt to photocopy);
 - iii. Reason for visit;
 - iv. Copies of the search warrant and the affidavit, if any, providing reasons for the issuance of the warrant;
 - v. Name of the prosecutor in charge of the investigation.
2. If the investigator presents a valid search warrant(s), they have the authority to enter private premises, search for evidence of criminal activity, and seize those documents or items specifically listed in the warrant.
3. Pathways personnel and/or legal counsel should carefully review the warrant to determine:
 - a. If there are any limitations on the areas or locations specified in the document to be searched.
 - b. If the warrant is being executed during the hours indicated on the document.
 - c. If it has been signed by a judge.
4. Generally, a search warrant does not include the right to interview personnel. Pathways personnel are not obligated to speak to the investigators, but must provide the documents requested in the warrant.

D. During a Search

1. If Pathways' legal counsel cannot be present for the search, a senior employee should ask the investigator that the search be postponed until legal counsel can be present. If the investigator refuses to postpone the search, request the name of the prosecutor and make the same request of the prosecutor. This is no guarantee that the request will be granted.
2. The senior employee should attempt to negotiate an acceptable methodology with the investigators to minimize disruptions and keep track of the process, such as:
 - a. the sequence of the search;
 - b. whether investigators will accept copies instead of originals; and if so, who will make the copies;
 - c. whether Pathways will be permitted to make its own set of copies; and,
 - d. arrangement for access to records seized if needed.
3. The senior employee should point out limitations on the premises to be searched and on the property to be seized.
 - a. Avoid access beyond the scope of the search warrant;
 - b. Never consent to an expansion of the search but do not prevent the investigators from searching areas they claim to have the right to search.
 - c. Investigators generally have the right to seize evidence of a crime that is in their "plain view" during a search regardless of whether such evidence is described in the warrant.
4. To protect Pathways staff the senior employee should:
 - a. Send all but essential personnel home or temporarily reassign them to other areas when a warrant is served;
 - b. Retain selected employees to help monitor the search;
 - c. Ensure that investigators are never left alone on Pathways' premises and that no employee is left alone with the investigators.
5. The senior employee shall object to any search of privileged documents.
 - a. If there is any possibility that the search will compromise privileged information, Pathways should object on that basis, and involve legal counsel to raise the issue with the court if necessary.
 - b. Privileged and confidential documents should be kept in a separate location and labeled accordingly.

- c. Negotiate a methodology to protect the confidentiality of any privileged information pending a resolution of these objections. For example, segregate the privileged documents from other files, so that investigators may not review the documents until the court has made a decision.
 - d. Court Orders are required prior to releasing any information regarding an individual receiving co-occurring or substance use treatment services. Court orders must meet the requirements of 42 CFR Part 2.
6. The senior employee or a designated employee should accompany the investigator(s) and monitor the search.
- a. Monitor and record the manner in which the search is conducted.
 - b. Note in detail the precise areas and files searched, the time that each was searched, the investigators who participated, and which files were seized.
 - c. Keep an inventory of all files copied or seized.
 - d. Note any individuals approached or asked questions by the investigator.
 - e. Note any statements of observations made by any investigator.
7. The senior employee should document the search in the following ways:
- a. Before the investigators leave Pathways premises, request the lead investigator to note the date and time the search was completed as well as sign the inventory with the investigator's full title, address, and telephone number.
 - b. Make copies of the seized documents, particularly medical records.
 - c. Download copies of files from hard drives of computers, and copy diskettes, especially if the material is essential to the ongoing operations of Pathways.
 - d. If possible, videotape the search. If the investigators claim the taping interferes with the search, the senior employee should make a record of the refusal. Do not persist if the investigators have warned that they regard the taping as interference.

E. A Request for Interview by Investigators

When government investigators request an interview, there is no obligation to consent to an interview, although anyone may volunteer to do so. One may require that the interview be conducted during normal business hours, at Pathways offices, or at another location. One may also request that legal counsel be present.

Pathways personnel should always be polite and should obtain the following information from the investigator:

1. Name, agency affiliation, business telephone number, and address of all government officials involved;

2. The reason for the visit;
3. Request to see investigator credential, badge or identification card.
4. Ask if there is a subpoena or search warrant to be served and request a copy. Note whether or not it includes any interviews.
5. The interview maybe stopped at any time, with a request that the investigator return when legal counsel can be present. Pathways will be represented by its corporate counsel; employees have the right to their own individual legal counsel at their expense. Legal counsel should be present for interviews whenever possible.
6. Any personnel contacted by an investigator should immediately notify his/her supervisor and the CEO. Provide this individual with as much information and documentation about the investigation as is known. Ultimately, the request should be reported to the Compliance Officer.
7. If an employee consents to an interview, the employee should tell the complete truth and not guess or speculate.
8. If employees are interviewed, encourage them to make complete notes of the interview.

F. Procedure for subpoenas (In the course of a government investigation.)

1. Any subpoena, whether delivered in person or by mail, should be delivered immediately to a Pathways senior employee present on site. And, a copy of the subpoena should be faxed to legal counsel.
2. If the subpoena is delivered in person:
 - a. The employee receiving it should get the name, title and telephone number of the agent who serves the subpoena, as this information must be given to a Pathways senior employee on duty along with the subpoena.
 - b. The employee receiving the subpoena or a Pathways senior employee should provide the agent/investigator with the information they need to deliver the subpoena to the appropriate individual.
 - c. Do not volunteer any information to an agent/investigator or submit to any form of questioning or interviewing.
3. Pathways personnel, upon notice or receipt of the subpoena, should contact a senior employee as soon as possible. Pathways senior employee will contact legal counsel.
4. Legal counsel will provide direction on how to proceed with the organization's response.

G. Personnel Conduct

1. Pathways personnel must preserve and not destroy, discard, delete or modify any documents or data relating to the investigation that is the subject of the search warrant.
2. Pathways personnel must return all documents and data in its original form.
3. Pathways personnel should keep confidential all matters relating to the investigation and the subject matter of the investigation except as required by law.
4. Pathways personnel should avoid communication among themselves, whether by e-mail or otherwise.