MEMORANDUM

TO: Executive Directors, Voluntary Providers  
Directors, DDROs/DDSOOs

FROM: Megan O’Connor-Hebert, Deputy Commissioner  
Division of Quality Improvement

Jill Pettinger, Assistant Deputy Commissioner  
Statewide Services

DATE: June 2, 2014

SUBJECT: OPWDD Guidelines for Frequent False Reporting of Abuse, Neglect, or Mistreatment

A. Intent:

This document provides guidance so agencies can respond appropriately and therapeutically to individuals who have demonstrated a documented pattern of making false reports of abuse, neglect, or mistreatment while fully complying with 14 NYCRR Part 624 (Reportable Incidents and Notable Occurrences) and Article 11 of the Social Services Law. All reports of abuse, neglect, and mistreatment are to be taken seriously and investigated in order to protect the rights of individuals, including those with a documented history of a pattern of making false reports. In addition to protecting an individual’s rights, the procedures in this guidance document can reduce the potential for behavioral reinforcement that is often inadvertently provided by standard reporting and investigation procedures. Reinforcing a pattern of false reporting negatively impacts an individual’s daily functioning and interpersonal relationships, and reduces an individual’s potential to develop adaptive skills such as problem-solving, social, and communication skills.

Intermediate Care Facilities for Individuals with Developmental Disabilities (ICFs/IID) must also comply with federal regulations in 42 CFR Part 483. In some instances, the federal regulations and guidelines are more stringent than the requirements in Part 624.

B. Applicability:

1. This guidance document applies to the facilities and programs that comply with 14 NYCRR Sec. 633.16. Section 633.16 applies to:
   (1) all residential facilities certified or operated by OPWDD, including ICFs/IID and family care homes;
   (2) all facilities certified by OPWDD, except:
      (i) free standing respite;
      (ii) Article 16 clinics; and
      (iii) the Institute for Basic Research in Developmental Disabilities;
   (3) day habilitation services (whether or not provided in a certified facility);
   (4) prevocational services (whether or not provided in a certified facility); and
   (5) community habilitation.
2. Only the programs specified above have the option of implementing the procedures outlined in this guidance document. Programs that choose to use these guidelines must practice in full compliance with the requirements and procedures contained in this document.

3. Programs and facilities subject to OPWDD oversight that are not listed above are prohibited from implementing the procedures in this guidance document. Therefore, the program or facility must immediately notify the Justice Center and/or OPWDD (as appropriate) following a report of abuse, neglect, or mistreatment, even if the agency or program considers the report to likely be false.

4. This guidance document pertains only to reports of abuse, neglect, or mistreatment as defined in paragraphs 624.3(b)(1-8) and subparagraph 624.3(9)(ii) and in ICF regulation 483.420(a)(5) guidelines. Reports made in accordance with Part 625 do not fall under this guidance document. Certain ICF reports that do not meet the definitions of abuse, neglect, or mistreatment in paragraphs 624.3(b)(1-8) or subparagraph 624.3(9)(ii), but do meet the definitions in 483.420(a)(5) guidelines, are reported and managed as "ICF Violations," defined in paragraph 624.4(c)(7). ICF violations are subject to this protocol.

C. Definitions for purposes of this guidance document:

1. Many terms used in this guidance document are defined in subdivision 633.16(b). These include behavior support plan (BSP) and functional behavior assessment (FBA).

2. **Abuse** includes reportable incidents defined in paragraphs 624.3(b)(1-7).

3. **Neglect** is defined in subparagraphs 624.3(b)(8)(i-iii).

4. **Mistreatment** is defined in subparagraph 624.3(b)(9)(ii).

5. **ICF Violation** is defined in 624.4(c)(7).

6. **Pattern of False Reporting:**
   a. A pattern of behavior is considered to be at least three (3) unsubstantiated or false reports of abuse, neglect, or mistreatment made within the most recent six (6) consecutive months. The reports must have been determined to be unsubstantiated or false following an investigation completed in accordance with Part 624. Documentation that each report was unsubstantiated, or determined to be false, must be maintained by the agency; and
   b. There must be a pattern and similarities in the type and features of the reports. Similarities could include an individual making reports in a particular setting, during a particular circumstance, during a particular time of day or on a particular day of the week, or regarding a particular type of event; and
   c. The reported conduct, if it were true, must meet the definition of abuse, neglect, or mistreatment.

7. **Expedited Review:**
   a. Involves an investigator, designated by a CEO, reviewing a report made by an individual who has a Protocol for False Reporting.
   b. The review must commence immediately once a report is made by an individual.
c. Information from the review is placed into a written report in the form and format specified by OPWDD. The report must be completed within 24 hours following the report made by an individual.

D. Procedure:

I. Identifying individuals for a protocol for false reporting

1. Individuals with a documented history of a pattern of false reports of abuse, neglect, or mistreatment can be identified by any staff member including a member of the program planning/support team or by an administrator designated by the agency director or chief executive officer.

   a. Any member of the program planning/support team notified that an individual might demonstrate a pattern of false reporting of abuse, neglect, or mistreatment should notify the administrator designated in agency policy.

   b. The designated administrator should confirm that the individual has demonstrated a pattern of making false reports of abuse, neglect, or mistreatment as defined in Section C(5) of this document. The designated administrator can decide whether to implement a Protocol for False Reporting only if he/she confirms, through review of the individual’s incident history, that the individual has demonstrated a pattern of making false reports. The designated administrator must maintain written documentation that confirms the individual has demonstrated a pattern of false reporting as defined above, if the individual will have a protocol for false reporting.

2. If the designated administrator cannot verify that a “pattern of false reporting” exists, or if the designated administrator determines not to implement a Protocol for False Reporting, then all reports of abuse, neglect, or mistreatment made by the individual must be immediately reported to the Justice Center and/or OPWDD in accordance with Part 624.

3. Efforts shall be made to support the individual to address the behavior of making false reports prior to the development of a protocol for false reporting. If it is verified that the person has demonstrated a “pattern of false reporting”, the designated administrator must notify a member of the clinical staff (psychologist, social worker, counselor, etc.). The clinical staff member shall attempt to discuss this pattern of false reporting with the individual in a therapeutic manner, if the individual is capable of participating in this discussion, in order to gather more information about, and attempt to resolve, the behavior. Documentation of this counseling must be maintained.

   a. If the individual is responsive to counseling and the behavior can be addressed without implementing a protocol for false reporting, then the agency will respond to all reports of abuse, neglect, or mistreatment in accordance with Part 624 (and Part 483, where applicable).

   b. If the individual is not responsive to counseling (e.g., expresses no desire to address the behavior, demonstrates continued false reporting despite the counseling
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intervention, denies the behavior, or is unable to understand or comprehend the communication) the clinical staff member shall inform the designated administrator who will arrange for a meeting of the program planning/support team. The individual’s response to the counseling should be documented in the FBA (Functional Behavioral Assessment; See paragraph 633.16 (b)(2) for the definition of FBA).

II. Program planning/support team review.

1. The designated administrator will coordinate a meeting with the program planning/support team that includes the individual, family and/or guardian, and clinician to discuss possible factors that contribute to the individual making false reports. Documentation of the meeting and identified factors that contribute to the behavior shall be maintained. Factors that shall be discussed and considered include:

   a. **Cognitive Impairment**: Some individuals experience cognitive impairment or deficits that result in them misunderstanding or misinterpreting situations. These individuals may perceive a situation differently than others do, and therefore might be prone to making reports that are repeatedly deemed false.

   b. **Psychiatric or Neuropsychiatric Disorder**: Some individuals experience symptoms of an active psychiatric or neuropsychiatric disorder that results in them perceiving situations inaccurately. Further, they may be predisposed to believing and making repeated, frequent, or stereotyped statements that could be considered a false report.

   c. **Unmet internal needs**: Individuals who feel powerless, ignored, in need of attention, or want to avoid a situation may make false reports to achieve a secondary gain such as obtaining or diverting attention, avoiding an activity, or avoiding a person.

   d. **Personal factors**: An individual may demonstrate personality traits that are associated with making false reports.

   e. **Health factors**: Some individuals experience medical or health conditions or symptoms that can result in physical or physiological sensations that cause a person to be more sensitive to touch or pain or render them more susceptible to illness or injury.

   f. **Historical event**: Historical events or experiences, particularly involving trauma or abuse, can contribute to an individual’s behavior of making false reports.

2. After consideration of the factors described above, the team will determine if a Behavior Support Plan (BSP) that contains a Protocol for False Reporting to address the pattern of false reporting is appropriate.

   a. If the team determines that a Protocol for False Reporting is not appropriate, the agency will respond to all reports of abuse, neglect, or mistreatment in accordance with Part 624 (and Part 483, where applicable).

   b. If the team determines that a Protocol for False Reporting is appropriate to respond to such reports, the planning team must develop a BSP in accordance with its agency
procedures and policy, and comply with Section 633.16 (*Person-Centered Behavioral Intervention*). The Protocol for False Reporting cannot be used until informed consent is obtained, and may not be used without the approval of the Incident Review Committee and Behavior Plan/Human Rights Committee. Any report of abuse, neglect, or mistreatment made by the individual prior to obtaining the necessary consent or approvals to use the plan shall be responded to in accordance with Part 624.

### III. Development of a Behavior Support Plan (BSP) that includes a Protocol for False Reporting

1. The BSP must be developed by a Behavior Intervention Specialist (BIS), licensed psychologist, or licensed clinical social worker.

2. Completing the Functional Behavior Assessment (FBA): An FBA that includes the required elements set forth in subdivision 633.16(d) must be completed prior to the development of a BSP that includes a Protocol for False Reporting. The purpose of the FBA is to evaluate the individual's pattern of making false reports (i.e., the challenging behavior that is the target of the plan) by identifying factors that contribute to the pattern of behavior and circumstances that make it more likely for the individual to make a false report. It is critical that the FBA justifies the implementation of a Protocol for False Reporting.

3. Information from the FBA will be used to guide the development of a Protocol for False Reporting which is contained in a BSP. If an individual has an existing BSP to address other challenging behavior, information from the existing FBA may be considered when developing the Protocol for False Reporting which will be incorporated into the existing BSP.

4. The BSP, including the Protocol for False Reporting, may only be implemented after receipt of informed consent and must be reviewed and approved by the Incident Review Committee (IRC) and by the Behavior Plan/Human Rights Committee (HRC) prior to implementation. Objections to the plan are subject to processes outlined in subdivision 633.16(h). Documentation of consent and HRC and IRC approval must be maintained. Prior to approving the plan, the IRC must confirm, and maintain documentation to support, that there have been three (3) false reports made within six (6) consecutive months.

5. The BSP containing the protocol for false reporting must be prescriptive in nature and specify both the types of reports the plan applies to and the steps to be followed. The plan must also include the following:

   a. Identification of the specific type of report(s) and/or circumstance(s) subject to the plan (e.g., reports of physical, sexual, or psychological abuse; reports following a disagreement with a staff member or peer; or reports made prior to a task or event the individual wishes to avoid). The plan must state that in the event a report differs from the behavior specifically described in the BSP, immediate reporting to the Justice Center and/or OPWDD in accordance with Part 624 is required.
b. The plan must include requirements that the chief executive officer (or designee) is notified following a report of abuse, neglect, or mistreatment that is the specific type of report stated in the Behavior Support Plan. The chief executive officer (or designee) is responsible for ensuring immediate protections (see subdivision 624.5(f)). The plan must also include a provision that the party who consented to the plan is also notified of the report.

c. The plan must include immediate examination for injury upon the individual making a report that could have resulted in physical harm. If injury is identified or suspected, appropriate medical care must be provided and health care staff must be immediately notified. Documentation requirements are set forth in subparagraph 624.5(g)(3)(i).

d. The plan must also specify documentation requirements pertaining to the report and the protections implemented.

e. A fading plan for the Protocol for False Reporting must be included in the BSP as outlined in clause 633.16 (e)(3)(ii)(e). When the section of the plan pertaining to Protocol for False Reporting is faded or discontinued, any and all subsequent reports of abuse, neglect, or mistreatment must be reported to the Justice Center and/or OPWDD immediately. The Protocol for False Reporting must be discontinued if the individual does not make one report determined to be false in six (6) consecutive months.

6. A BSP containing a Protocol for False Reporting, and related data collected, must be reviewed by the program planning/support team, and IRC, every three months beginning from the date the Protocol for False Reporting was implemented. This review should include reviewing the types of reports made by the individual, conclusions from any written reports, review of the individuals’ response to the Protocol for False Reporting that is contained in the behavior support plan, and the efficacy of the Protocol for False Reporting.

a. The designated administrator must ensure that the program planning/support team review is documented. Documentation must include a summary of the individual’s progress, or lack thereof, as well as any suggestions or revisions to the BSP and Protocol for False Reporting.

b. The designated administrator must forward the documentation of the review to the IRC which will approve or deny continuation of the plan that contains the Protocol for False Reporting. The decision of the IRC must be documented. IRC approval is required for the continuation of the plan.

7. Informed Consent to use the BSP that contains the Protocol for False Reporting must be renewed annually. The HRC must also review and approve the plan at least annually. If informed consent or HRC approval is not renewed, the protocol will immediately cease.

8. The designated administrator must maintain copies of all reports including reports that document action(s) taken to protect the individual and/or address the pattern of making false reports, as well as findings from expedited reviews.
IV. Using a Behavior Support Plan that contains a Protocol for False Reporting

1. Once an individual, who has a protocol for false reporting, reports abuse, neglect, or mistreatment, a review of the BSP that contains the protocol must be completed immediately by the designated administrator so that all the steps in the plan are followed as outlined.

2. The designated administrator is responsible for requiring that all necessary and appropriate immediate protections are implemented.

3. If an individual makes a report that is consistent with the behavioral pattern specified in the BSP, which contains a Protocol for False Reporting, the plan must require notification of a trained investigator designated by the chief executive officer or designee. The investigator must be notified within one hour after the report was made. Investigators are assigned in accordance with paragraph 624.5(g)(8).

4. The investigation is considered an expedited review and must commence immediately once the report is made, following subparagraphs 624.5(g)(3)(i-v).

V. Completion of the Investigation

1. The investigation and written report in the form and format specified by OPWDD must be completed within 24 hours following the report made by the individual.

2. The assigned investigator will forward the written report from the expedited review to the designated administrator, chief executive officer or designee, and IRC chair.

3. The designated administrator and chief executive officer or designee must review the written report from the expedited review within 24 hours of receipt of the report. The designated administrator shall retain all documentation.

   a. If the written report indicates there is no reasonable cause to suspect that the abuse, neglect, or mistreatment occurred, and the chief executive officer or designee agrees that there is no reasonable cause to suspect that the abuse, neglect or mistreatment occurred, no report is made to the Justice Center or OPWDD.

      i. In this instance the written report shall be sent to, and retained by, the IRC Chair and the CEO or designee.

      ii. This documentation, as well as other related documentation, is maintained to provide evidence that the protocol for false reporting was correctly followed.

      iii. The following parties are also notified of the outcome:

          1. The program planning/support team,
          2. Individual,
          3. Involved employee(s), and
          4. Person who provided consent for the plan.
b. During the circumstances listed below (see i through iv) a report must be made, by the appropriate administrator and all mandated reporters present during the occurrence or discovery of the incident, to the Justice Center Vulnerable Persons' Central Register (VPCR) and/or OPWDD in accordance with Part 624. The circumstances listed below result in the report being considered a reportable incident. When these situations arise, the designated administrator is responsible for ensuring immediate protections are in place for the individual.

i. Upon review of the written report, the designated administrator, chief executive officer, and/or IRC disagree with the conclusion that there is no reasonable cause to suspect that the abuse, neglect, or mistreatment occurred.

ii. Upon review of the written report, the designated administrator, chief executive officer, or IRC find reasonable cause to believe that the report is true or that findings are inconclusive.

iii. The expedited review cannot be completed within twenty-four hours.

iv. An expedited review initially determined that there is no reasonable cause to suspect that the abuse, neglect, or mistreatment occurred; however, subsequent information comes to light that suggests there is reasonable cause to believe that the report is true.

If you have any questions about the information contained in this memorandum, please contact Ms. Leslie Fuld @ Leslie.Fuld@opwdd.ny.gov or Dr. Virginia Scott-Adams @ Virginia.L.ScottAdams@opwdd.ny.gov.

c: Provider Associations
Willowbrook Task Force
Central Office Leadership Team
Division of Quality Improvement Staff