

**Gateway Community Industries, Inc.**  
**Policies and Procedures**

- Manual:** Compliance
- Title:** Abuse Prevention
- Purpose:** Gateway is committed to providing safe and respectful environments that support the health and well-being of all people receiving our services. Gateway seeks to institute guidelines and resources for staff and enforce zero tolerance for those actions which may jeopardize the health, safety or welfare of any person receiving services.
- Policy:** This policy establishes guidelines for abuse prevention, zero tolerance for actions that constitute abuse, and responsibilities as a mandated reporter.

**DEFINITIONS**

**Custodian:** employees, volunteers, interns, directors, and operators of covered facilities and programs. External staff who have regular and substantial contact with the people being served.

**Mandated Reporter:** all staff and volunteers at Gateway are mandated reporters and are held to the Protection of Person’s with Special Needs Act (PPSNA) regulations regarding mandated reporters.

**Reportable Incidents:**

**Physical Abuse**

Conduct by staff that is intentional or reckless, causing physical injury or serious or protracted impairment of the physical, mental or emotional condition of the vulnerable person or causing the likelihood of injury or impairment. Examples: hitting, kicking, biting, slapping, shoving, throwing, punching, dragging, shaking, choking, smothering, burning, cutting, or the use of corporal punishment.

*Note exception: Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any person. (14 NYCRR Part 624.3(b)(1)), (14 NYCRR Part 524.5(a)(1))*

**Psychological Abuse**

Conduct by a staff (Verbal or non-verbal) that is intentional or reckless that adversely affects and results in or is likely to cause a substantial diminution of the vulnerable person’s emotional, social, or behavioral condition, Examples include, but are not be limited to, taunts, derogatory comments or ridicule, intimidation, threats, the display of a weapon or other object that could reasonably be perceived by a person receiving services as a means for infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury. Non-verbal conduct, a substantial diminution of a person receiving services’ emotional, social or behavioral development or condition, supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor, or causing the likelihood of such diminution

**Sexual Abuse**

Conduct by staff that constitutes certain crimes under the New York Penal Law. Examples include rape (forcible compulsion or physical helpless or incapable of consent), forcible, inappropriate touching, indecent exposure, sexual assault, prostitution offenses (such as promoting, compelling, or permitting prostitution), and “sexual performance” offenses (such as inducing a person receiving services to engage

in sexual conduct in any play, motion picture, photograph, or any other visual representation before an audience).

*Note: A person with a developmental disability who is or was receiving services and is also a staff or volunteer of a service provider shall not be considered a staff if he or she has sexual contact with another person receiving services who is a consenting adult who has consented to such contact.*

### **Deliberate misuse of restraint or seclusion**

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 a person receiving services' individual treatment plan or behavioral intervention plan, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies. 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.

The use of restraint and seclusion is prohibited by Gateway policy except in the following extreme conditions: Under OPWDD services, when the use of restraint or seclusion is consistent with an individual's Behavior Support Plan and is used by trained staff only in accordance with the provisions of Part 633.16 regulations; or, when reasonable physical force is necessary to protect the life and limb of any person, for the purpose of restoring safety. (14 NYCRR Part 526.3(4))

### **Controlled Substances**

Administration (by staff) of a controlled substance without a prescription; or other medication not approved for any use by the federal food and drug administration, by a staff to a vulnerable person. Staff unlawfully using or distributing a controlled substance at the workplace or while on duty is also covered. Controlled substance is defined by article thirty-three of NYS public health law.

### **Aversive conditioning**

The application of a physical stimulus with the intent to induce pain or discomfort in order to modify or change the behavior of a person receiving services. Examples: Aversive conditioning may include but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, water-filled spray bottles, blindfolds, corporal punishment, the withholding of meals, the provision of substitute foods in an unpalatable form and movement limitations used as punishment, including but not limited to helmets and mechanical restraint devices. The use of aversive conditioning is prohibited by OPWDD and is prohibited by agency policy.

### **Obstruction**

Conduct by staff that impedes the discovery, reporting or investigation of the treatment of a person receiving services by: falsifying records related to the safety, treatment or supervision of a person receiving services; actively persuading a mandated reporter from making a report of a reportable incident to the statewide vulnerable persons' central register with the intent to suppress the reporting of the investigation of such incident; intentionally making a false statement; intentionally withholding material information during an investigation into such a report; intentional failure of a supervisor or manager to act upon such a report in accordance with governing state agency regulations, policies or procedures; or a mandated reporter who is a staff as defined above, failing to report a reportable incident upon discovery.

### **Neglect**

Any breach of staff's duty, which includes action, inaction, or lack of attention on the part of the staff that results in or is likely to result in physical injury or serious or protracted impairment to the person's physical, mental, or emotional condition of the vulnerable person. Examples include failure to provide: supervision resulting in conduct between persons receiving services that would otherwise constitute abuse as defined above if committed by a staff; adequate food, clothing, shelter as required by rules and

regulations; adequate healthcare (e.g., medical, dental, optometric or surgical care) as required by rules and regulations; and access to an educational instruction as required by rules and regulations or the individual's Individualized Education Program (IEP)

**Significant incident**

Any incident, other than an incident of abuse or neglect that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in harm to the health, safety or welfare of a person receiving services and shall include, but shall not be limited to:

(1) **Conduct between persons receiving services** that would constitute abuse as described in Protection of People with Special Needs Act, Part B, Section 488, 1. paragraphs (a) through (g) if done by a staff;

or

(2) **Conduct on the part of staff**, which is inconsistent with a person receiving services, individual treatment plan, or individualized educational program, generally accepted treatment practices, and/or applicable federal or state laws, regulations or policies which impairs or creates a reasonably foreseeable potential to impair the health, safety, or welfare of a person receiving services, including, but not limited to:

- a. Seclusion
- b. Unauthorized use of time-out
- c. Administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription or order issued by a licensed, qualified health care practitioner and which has an adverse effect on a person receiving services. For purposes of this paragraph, "adverse effect" shall mean the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the well-being of a person receiving services
- d. Inappropriate use of restraints

(3) Any other conduct identified in regulations of the state oversight agency, pursuant to guidelines or standards established by the executive director.

(4) Other Significant/Serious Notable incidents as classified by OMH/OPWDD:

OMH		OPWDD
Financial Exploitation	Assault	Mistreatment
Injury of unknown origin	Falls by Patients	Missing Person
Missing Patient	Fights	Choking, with known risk
Sexual Assault	Self-Abuse	Self-abusive behavior with injury
Suicide Attempt	Death	Serious Notable
Wrongful Conduct	Crime	Choking, no known risk
Adverse Drug reaction	Fire Setting	Death
Verbal Aggression by Patients	Mistreatment	Sensitive Situation
Intentional, Improper use of Medication		Theft or Financial Exploitation
Inappropriate use of Time out		Unauthorized absence
		Injury, with hospital admission

**TRAINING**

The following trainings are provided within the first month of hire and annually thereafter to ensure that staff understand what constitutes abuse and how to safeguard themselves against it, their

responsibilities to protect people receiving services from abuse and neglect as defined above, and their responsibilities as a mandated reporter.

- Abuse prevention and maintaining professional boundaries.
- Mandated Reporter responsibilities and reporting requirements.
- Retaliation protections as a Mandated Reporter.
- Justice Center’s Code of Conduct for Custodians of People with Special Needs.
- Gateway’s Standards of Conduct.
- Staff training on topics including stress management and conflict resolution are provided as necessary based on the needs of each program.

Department Heads are required to ensure this policy is reviewed with and signed off by Program Managers within their first week of assignment to ensure that incident reporting requirements are clearly understood.

## **INTERACTIONS AND CONDUCT**

Gateway’s Standards of Conduct outlines expectations for board members, employees, volunteers, contractors, and all others associated with Gateway to exercise safe, responsible and respectful behavior in their interactions with people receiving services. The agency culture modeled by all levels of management reinforces the Standards of Conduct. The following standards are meant to further guide staff during their interactions with people receiving services. These guidelines do not and cannot outline every situation encountered while on the job, thus requiring staff to act with a certain degree of personal discretion. Because a certain action is not prohibited in this section does not mean it is acceptable behavior. Gateway reserves the right to take disciplinary action against staff whose actions are found to be inappropriate regardless of whether they appear in this section.

### **Respectful Interactions:**

1. Custodians treat all people who receive services with respect and consideration. Treatment must be fair and equitable, and must not impose bias due to gender, race, religion, sexual orientation, or economic or social status.
2. Diligent effort is made to avoid preferential treatment or the appearance of such.
3. Custodians do not use harsh, demeaning or inappropriate language, degrading punishment or any type of unauthorized restraining device in the name of behavior management.
4. Custodians do not participate in or allow others to engage in any form of hazing, unwelcome teasing, ostracism or bullying.

### **Social Boundaries:**

1. Custodians do not intentionally connect with a person receiving services outside of the course of their work and limit unintentional contact to brief greetings and conversation.
2. Custodians do not connect with a person receiving services via social media.
3. All overnight staffing positions are “awake positions.” If extenuating circumstances arise where staff must accompany individuals overnight, staff do not share sleeping locations with people who receive services. This includes beds, tents, hotel rooms and other similar areas. Staff may sleep in open areas with people who receive services as long as the area is large enough for the staff to have their own defined sleeping areas and other staff are also present.

### **Physical Boundaries:**

1. Custodians do not engage in certain types of physical contact that may be unwelcome or misconstrued by the individual or others. This includes bear hugs, pats on head, pinching cheeks, pat on the buttocks, etc.

2. Custodians, to their best ability, identify when circumstances are beyond their capacity to address in a productive manner, and request support from peers or a supervisor to manage any risk of abusing or neglecting a person receiving services.
3. Custodians intervene and provide support when they observe co-workers exhibiting a loss of ability to safely and effectively manage a challenging behavior, or other circumstances involving a person(s) they are providing care for.
4. Custodians do not use physical punishment in any form. The only time physical force is allowed with a person who receives services is when their actions are placing themselves or others at an immediate risk for serious harm or it is consistent with a person's Behavior Support Plan and the interventions are performed by staff who are SCIP/PROMOTE certified.

**Sexual Boundaries:**

1. Custodians do not have any sexual contact with people who receive services, including touching of nonsexual body parts for the purpose of sexual stimulation for either party.
2. Custodians address and manage their own sexual reactions to a person receiving services by: requesting support from their supervisor as needed, requesting limited contact or no 1:1 contact as needed, or other safeguards to maintain appropriate professional boundaries.
3. Custodians do not dress, undress, shower or bathe with, or in the presence of people who receive services.
4. Custodians do not discuss their own sexual history, preferences or fantasies, nor their use of illicit or pornographic materials while in the company of people who receive services.
5. Custodians do not possess any sexually oriented materials (e.g., books, magazines, videos, clothing) when conducting business in the name of Gateway.

**Alcohol/Drug Use:**

1. While representing Gateway, Custodians do not possess, distribute, use or allow others to use any alcohol or drugs except as allowed by agency policies.

If, for any reason, a staff makes an exception to the above guidelines, they discuss it with their supervisor as soon as possible. Any reportable incidents are reported in accordance with reporting requirements and protocol. Supervisors document and address circumstances that do not rise to reportable incident but fail to follow the above, or other established agency guidelines.

**REPORTING REQUIREMENTS AND PROCESS**

**Mandated Reporter Requirements:**

Social Service Law Section 491 outlines a mandated reporter's duty to report allegations of reportable incidents to the NYS Justice Center via the Vulnerable Persons' Central Register (VPCR) as soon as possible, within 24 hours of discovery, at any time of the day or night and on any day of the week, by telephone to the Vulnerable Persons' Central Register toll-free hotline at 1-855-373-2122, TTY: 1-855-373-2123.

*All* custodians in facilities or programs operated or certified by OPWDD and OMH 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.

**Internal Reporting Protocol:**

Staff are to respond immediately to the discovery of an incident by ensuring immediate safeguards are put in place for the individual including calling 911 or providing medical care if warranted. Management is to

be promptly notified to ensure safeguards are in place and that appropriate entities investigate reportable incidents when they occur. The Mandated Reporter will complete an internal incident report as well.

**Protections:**

The law provides protections against the disclosure of a reporter’s identity, subject to limited exceptions such as consent from the reporter, or in the event of a court order. The law grants immunity to voluntary reporters and Mandated Reporters from any legal claims which may arise from a good faith act of providing information to the Vulnerable Persons’ Central Register. An employer or agency is prohibited from taking any retaliatory action against a person who has made a good faith act of providing information to the hotline.

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Stephanie Turco, President and CEO

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Date

Regulation Reference (if applicable): PPSNA, Title 14 NYCRR Part 624, Title 14 NYCRR Part 524, 14 NYCRR Part 526.3(4), 14 NYCRR Part 624.3(b)(1), 14 NYCRR Part 524.5(a)(1)

Related Policy(ies): HR 106 Employment Clearances, HR 702 Drug Free Workplace, HR 703, Sexual Harassment and Other Forms of Harassment, Corporate Compliance Plan, Regulatory and Training Policy

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