

(was MCCMH Policy 9-06-090)

Category: **RECIPIENT RIGHTS**
Title: **RECIPIENT ABUSE OR NEGLECT**

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Approved by: **BOARD ACTION**



Executive Director

3-28-19

Date

I. Abstract

This policy establishes the standards and procedures of the Macomb County Community Mental Health (MCCMH) Board for safeguarding MCCMH recipients from abuse, neglect, or mistreatment, for promoting the safety, security and well-being of the recipients, and for ensuring the protection of their person, rights and properties.

II. Application

This policy shall apply to all directly-operated and contract network providers of the MCCMH Board.

III. Policy

It is the policy of the MCCMH Board to:

- A. Prohibit acts which, by their nature, jeopardize or impair the rights, safety and well-being, best interests and properties of recipients (prohibited acts include but are not limited to those stated in definitions);
- B. Prohibit willful acts by provider employees, volunteers, or agents which adversely affect the care and treatment of recipients;
- C. Ensure that there is a responsive system of accountability for safeguarding recipients from abuse, neglect or mistreatment; and

- D. Ensure that instances of, or knowledge of suspected abuse, neglect or mistreatment are reported immediately.

IV. Definitions

- A. Abuse (General): Non-accidental physical or emotional harm to a recipient, or sexual contact with or sexual penetration of a recipient that is committed by an employee, volunteer, or agent of a service provider.
- B. Abuse-Class I: A non-accidental act, or provocation of another to act, by an employee, volunteer, or agent of a service provider, that caused, or contributed to the death, or sexual abuse of, or serious physical harm to a recipient.
- C. Abuse-Class II: Means any of the following:
1. A non-accidental act, or provocation of another to act, by an employee, volunteer, or agent of a service provider which caused or contributed to non-serious physical harm to a recipient; or
 2. The use of unreasonable force on a recipient by an employee, volunteer, or agent of a service provider with or without apparent harm; or
 3. Any action or a provocation of another to act by an employee, volunteer, or agent of a service provider that causes or contributes to emotional harm to a recipient; or
 4. An action taken on behalf of a recipient by a provider who assumes the recipient is incompetent, despite the fact that a guardian has not been appointed, that results in substantial economic, material, or emotional harm to the recipient; or
 5. Exploitation of a recipient by an employee, volunteer, or agent of a service provider.
- D. Abuse-Class III: The use of language or other means of communication by an employee, volunteer, or agent of a provider to degrade, threaten, or sexually harass a recipient.

Note: Recipient to recipient physical altercations are not "abuse" under the Michigan Department of Community Health (MDCH) definition. However, recipient to recipient "sexual abuse" must be reported to the MCCMH Office of Recipient Rights (ORR) accompanied by a completed Consumer Incident, Accident, Illness, Death or Arrest Report (Exhibit A to MCCMH

MCO Policy 9-321, "Consumer Incident, Accident, Illness, Death or Arrest Report Monitoring.")

- E. Agent: An individual authorized to act on behalf of an entity (such as MCCMH or a contract provider) including, but not limited to, an independent contractor or an intern.
- F. Allegation: A written or oral statement made by an individual which asserts his/her belief that a recipient has been abused or mistreated.
- G. Assault: An intentional, unlawful offer of physical injury to another by force; or force unlawfully directed toward another person, under circumstances which create well-founded fear or belief of imminent peril, coupled with the apparent present ability to execute the attempt if not prevented.
- H. Battery: An unlawful beating, or other wrongful physical violence or constraint, inflicted on another a without his/her consent. A willful and unlawful use of force or violence upon another person. The slightest touching of another, or his/her clothes or anything else attached to his/her person, if done in an insolent or angry manner.
- I. Bodily Function: The usual action of any region or organ of the body.
- J. Child Abuse: Harm or threatened harm to a child's health or welfare by a parent, a legal guardian, or any other person responsible for the child's health or welfare, or by a teacher or teacher's aide, that occurs through non-accidental physical or mental injury; sexual abuse; sexual exploitation; or maltreatment.
- K. Child Neglect: Harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that occurs through either of the following:
 - 1. Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.
 - 2. Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.
- L. Commission of Acts: Committing or perpetrating an act that poses a substantial threat of personal injury, such as physically striking or assaulting a recipient; speaking harshly or rudely to a recipient; ridiculing, coercing or threatening a recipient.

M. Criminal Abuse:

1. An assault that is a violation or an attempt or conspiracy to commit a violation of sections 81 to 90 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.81 to 750.90 of the Michigan Compiled Laws. Criminal abuse does not include an assault or an assault and battery that is a violation of section 81 of Act No. 328 of the Public Acts of 1939, being section 750.81 of the Michigan Compiled Laws, and that is committed by a recipient against another recipient.
 2. A criminal homicide that is a violation or an attempt or conspiracy to commit a violation of section 316, 317, or 321 of Act No. 328 of the Public Acts of 1931, being sections 750.316, 750.317, and 750.321 of the Michigan Compiled Laws.
 3. Criminal sexual conduct that is a violation or an attempt or conspiracy to commit a violation of sections 520b to 520e or 520g of Act No. 328 of the Public Acts of 1931, being sections 750.520b to 750.520e and 750.520g of the Michigan Compiled Laws.
 4. Vulnerable adult abuse that is a violation or an attempt or conspiracy to commit a violation of section 145n of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.145n of the Michigan Compiled Laws.
 5. Child abuse that is a violation or an attempt or conspiracy to commit a violation of section 136b of Act No. 328 of the Public Acts of 1931, being section 750.136b of the Michigan Compiled Laws.
- N. "Degrade" means (a) Treat humiliatingly: to cause somebody a humiliating loss of status or reputation or cause somebody a humiliating loss of self-esteem; make worthless; to cause a person to feel that they or other people are worthless and do not have the respect or good opinion of others. (syn) degrade, debase, demean, humble, humiliate. These verbs mean to deprive of self-esteem or self-worth; to shame or disgrace. (b) Degrading behavior shall be further defined as any language or epithets that insult the person's heritage, mental status, race, sexual orientation, gender, intelligence, etc.
- O. Emotional Harm: Impaired psychological functioning, growth, or development of a significant nature as evidenced by observable, physical symptomatology or as determined by a mental health professional.
- P. Exploitation: An action by an employee, volunteer, or agent of a provider that involves the misappropriation or misuse of a recipient's labor, property or funds

for the purpose of benefit to an individual, individuals, or entity other than the recipient.

- Q. Failure to Report: To omit communication concerning an allegation, apparent or suspected, of a rights violation.
- R. Falsification of Care and Treatment Records: To willfully cause entry of untrue observations, or to introduce untrue notations and entries into a care and treatment record, or to fail to make timely entries of observations as well as necessary information into the record.
- S. Mistreatment: An action, or lack of action, which is detrimental to the care or treatment of a recipient, (e.g., misuse, ill-use, maltreatment, or exploitation).
- T. Neglect: An act or failure to act committed by an employee, volunteer, or agent of a service provider that denies a recipient the standard of care or treatment to which he or she is entitled.
- U. Neglect-Class I:
1. Acts of commission or acts of omission by a provider's employee, volunteer, or agent, which result from non-compliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plans of service, and which cause or contribute to the death of, or sexual abuse of, or serious physical harm to a recipient; or,
 2. The failure to report apparent or suspected abuse Class I or neglect Class I of a recipient.
- V. Neglect-Class II:
1. Acts of commission or the omission of acts by a provider's employee, volunteer, or agent which result from non-compliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plans of service, and which cause, or contribute to, non-serious physical harm or emotional harm to a recipient; or,
 2. The failure to report apparent or suspected abuse Class II or neglect Class II of a recipient.

W. Neglect-Class III:

1. Acts of commission or the omission of acts by a provider's employee, volunteer, or agent which result from non-compliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plans of service which either placed or could have placed, a recipient at risk of physical harm or sexual abuse; or,
2. The failure to report apparent or suspected abuse Class III or neglect Class III of a recipient.

X. Non-Serious Physical Harm: Physical damage or what could reasonably be construed as pain suffered by a recipient which a physician or registered nurse determines could not have caused or contributed to the death of the recipient, the permanent disfigurement of the recipient, or an impairment of his/her bodily function(s).

Y. Omission of Acts: Failure or neglect or apathy toward the performance of an act or duty, the absence of which caused or could have caused physical or emotional injuries to a recipient.

Z. Physical Management: A technique used by staff as an emergency intervention to restrict or limit the movement of a recipient by direct physical contact to prevent the recipient from harming himself, herself, or others.

AA. Reasonable Cause: A suspicion founded upon circumstances sufficiently strong to warrant a reasonable person to believe that the suspicion is true.

BB. Recipient (or "Consumer"): A person who receives mental health services from a MCCMH provider.

CC. Remedial Action: Action taken by a provider to correct violation(s) of a right and to remove contributing conditions.

DD. Serious Physical Harm: Physical damage suffered by the recipient which a physician or registered nurse determines caused or could have caused the death of the recipient, or caused the impairment of his/her bodily function(s), or the permanent disfigurement of the recipient.

EE. Sexual Abuse: Criminal sexual conduct as defined by section 520b to 520e of 1931 PA 318, MCL 750.520b to MCL 750.520e involving an employee, volunteer, independent contractor, intern or agent of a provider and a recipient; or any sexual contact or sexual penetration involving an employee, volunteer, independent contractor, intern or agent of a department operated hospital or

center, a facility licensed by the department under section 137 of the act or an adult foster care facility and a recipient; or any sexual contact or sexual penetration between an employee, volunteer, independent contractor, intern or agent of a provider and a recipient for whom the employee, volunteer, or agent provides direct services.

FF. Sexual Contact: The intentional touching of the recipient's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the recipient's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification; done for a sexual purpose; or in a sexual manner for revenge, or to inflict humiliation, or out of anger.

GG. Sexual Harassment: Sexual advances toward a recipient; requests for sexual favors from a recipient; or, conduct or communication of a sexual nature toward a recipient by any person.

HH. Sexual Penetration: Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, even where emission of semen does not occur.

II. Sexual Mistreatment: Sexual contact that occurs or has occurred between:

1. A recipient and a MCCMH provider's, employee, independent contractor, volunteer, intern or other person providing authorized care or supervision, to the recipient;
2. Two recipients if one or more does not consent or is not competent to consent;
3. Recipients if one or more is a minor; or
4. A recipient and any other person if the recipient does not consent or is not competent to consent.

JJ. "Threaten" means to tell someone that you will hurt them or cause problems if they do not do what you want.

KK. Unreasonable Force: The use of physical management or force that is applied by an employee, volunteer, or agent of a service provider to a recipient in one or more of the following circumstances:

1. There is no imminent risk of serious or non-serious physical harm to the recipient, staff or others.
 2. The physical management used is not in compliance with techniques approved by the provider and the responsible mental health agency, and/or does not adhere to the MDCH Technical Advisory for Behavior Treatment Plan Review Committees (7/28/08).
 3. The physical management used is not in compliance with the emergency interventions authorized in the recipient's individual plan of service.
 4. The physical management or force is used when other less restrictive measures were possible but not attempted immediately before the use of physical management or force.
- LL. Vulnerable Adult Abuse - First Degree: When a caregiver intentionally causes serious physical harm or serious mental harm to a vulnerable adult.
- MM. Vulnerable Adult Abuse - Second Degree: When a caregiver or other person with authority over the vulnerable adult commits the reckless act or the reckless failure to act of the caregiver or other person with authority over the vulnerable adult causes serious physical harm or serious mental harm to a vulnerable adult.
- NN. Vulnerable Adult Abuse - Third Degree: When a caregiver intentionally causes physical harm to a vulnerable adult.
- OO. Vulnerable Adult Abuse - Fourth Degree: When a caregiver or other person with authority over the vulnerable adult commits the reckless act or the reckless failure to act of the caregiver or other person with authority over a vulnerable adult causes physical harm to a vulnerable adult.

Note: A caregiver or other person with authority over a vulnerable adult is not prohibited from taking reasonable action to prevent a vulnerable adult from being harmed or from harming others.

Note: Vulnerable adult abuse does not apply to an act or failure to act that is carried out as directed by a patient advocate under a properly executed patient advocate designation.

V. Standards

- A. MCCMH provider employees, volunteers, and agents are responsible for safeguarding recipients from abuse, neglect or mistreatment. It is the assigned duty and legal responsibility of each individual who has reasonable cause to suspect recipient abuse, neglect or mistreatment to make or cause to be made a

report to the local law enforcement agency, to the state police and/or to the Michigan Department of Human Services in the county in which the violation is alleged to have occurred when appropriate. (See Report on Recipient Abuse, Exhibit A.)

In all cases of abuse, neglect and/or mistreatment, it is the assigned duty and responsibility of MCCMH provider employees, volunteers, and agents who have knowledge of an allegation, apparent or suspected, of abuse, neglect and mistreatment to immediately report same to his/her immediate supervisor/designee, if applicable, and to the MCCMH ORR.

- B. Allegations of abuse, neglect or mistreatment shall be reported in accordance with Recipient Rights procedures, related MCCMH MCO policies, and state law. The reporting employee, volunteer, or agent and the MCCMH ORR shall also assure that a Consumer Incident, Accident, Illness, Death or Arrest Report is filed according to the standards and procedures of MCCMH MCO Policy 9-321, "Consumer Incident, Accident Illness, Death or Arrest Report Monitoring."
- C. Incidents that, according to direct observation, result from accidental causes or from self abuse shall be reported to the reporting person(s)' immediate supervisor/designee, if applicable, and to the MCCMH ORR.
- D. When a prompt and thorough initial review has determined that there is cause to believe or suspect that child abuse or neglect has or may have occurred, the MCCMH provider employee, independent contractor, volunteer, or intern who made the report shall immediately notify his/her supervisor/designee, if applicable, the Michigan Department of Human Services, Protective Services, and the MCCMH ORR. In all cases of suspected criminal abuse or neglect (child or adult) the appropriate law enforcement agency shall also be immediately notified.
- E. During police investigation of alleged abuse:
 - 1. Police shall be given full cooperation and support by MCCMH provider personnel to complete their investigation.
 - 2. The investigation convened by the MCCMH ORR shall be carried out in cooperation with the police.
- F. Statements of alleged abuse shall not be discounted because a recipient is receiving mental health services, nor shall such statements be used to deprive a recipient of his/her rights and benefits.

- G. MCCMH providers shall comply with all reporting and investigative requirements of this policy.
- H. A person who intentionally fails to report a reasonable suspicion of abuse or who knowingly makes a false report pursuant to the Mental Health Code is guilty of a misdemeanor and may be civilly liable for damages proximately caused by the violation.
- I. When there is reasonable cause to suspect that a MCCMH provider employee, volunteer, or agent either directly or as an accomplice, has been involved in abusing a recipient, the individual shall be removed from his/her assignment during the investigation of the allegation(s) of abuse.
- J. Assistance will be provided to appropriate individuals and/or agencies as necessary in the prosecution of criminal charges against those who have engaged in abuse, including the reporting of acts or actions which may lead to prosecution. MCCMH provider employees, volunteers, and agents shall cooperate with authorized investigators from other agencies (i.e., Michigan Department of Civil Rights, Protective Services, Michigan Department of Human Services) assigned to inquire into any violations which, by law, are within their jurisdiction. Pursuant to the prosecution, confidential records and information shall be disclosed to the Department of Human Services / Children's Protection Services or Adult Protective Services.

VI. Procedures

- A. All allegations or incidents of suspected abuse, neglect or mistreatment by a provider employee, independent contractor, volunteer, or agent toward a recipient shall be reported to the appropriate/immediate supervisor/designee, if applicable, and to the MCCMH ORR and the Michigan Department of Human Services.
- B. When necessary, pursuant to MCL 330.1723, an oral report shall be made by the individual who suspects criminal abuse, neglect, or mistreatment immediately to the law enforcement agency for the county or city in which the criminal abuse is suspected to have occurred or to the state police. Within 72 hours after making the oral report to the appropriate law enforcement agency, the individual who suspected the criminal abuse shall file a written report. The written report shall be filed with the law enforcement agency to which the oral report was made, and with the MCCMH ORR. If the person making the report is not the party making the initial allegation, that person shall be provided a copy of the written report.
 - 1. A report is not required if the incident has already been reported to the appropriate law enforcement agency, or the suspected criminal abuse occurred more than one (1) year before the date on which it first became

known to an individual otherwise required to make a report. The basis for the knowledge that the incident has already been reported must be expressly documented in the recipient's clinical record.

2. The written report shall contain the name of the recipient, a description of the criminal abuse and other available information to establish the cause and manner of the alleged criminal abuse. This report becomes part of the recipient's clinical record. Upon placement in the clinical record the names of the reporting person and the person accused of committing the alleged abuse shall be deleted.
 3. The identity of the individual making the report and the report itself are confidential and shall be disclosed only with the written consent of the reporting individual or by appropriate judicial process.
 4. These reporting requirements do not relieve an individual from the duty to report abuse under other applicable law, e.g., Protective Services, etc.
- C. The reporting requirement of suspected criminal abuse in this policy is superseded by the patient-therapist (psychiatrist, psychologist, clinical social worker, licensed counselor) privilege recognized in the State of Michigan only if the allegation does not involve:
1. Suspected criminal abuse by (1) a mental health professional, (2) a person who is an employee, volunteer, or agent of, or under contract to the MDCH, a facility, or a community mental health board, or (3) a person employed by an entity under contract to MDCH, a facility, or a community mental health board; or
 2. Suspected criminal abuse committed in (1) a facility, (2) a community mental health program site, (3) the work site of an employee, volunteer, or agent of, or person who is under contract to a facility or community mental health board, or (4) an entity under contract to a facility or community mental health board, or (5) any place where a recipient is under the supervision of a person who is an employee, volunteer, or agent of, or person who is under contract to a facility or community mental health board, or (6) an entity under contract to a facility or community mental health board.
- D. Upon receipt of an allegation of alleged abuse, neglect or mistreatment the MCCMH ORR shall initiate an immediate investigation. As appropriate, the MCCMH ORR shall notify the MCCMH Executive Director of the situation, keeping him/her apprised of the investigation (if warranted) and the findings, and assure that appropriate procedures for notification to various departments and law enforcement agencies are completed.

- E. The MCCMH ORR shall implement approved procedures for investigating complaints/allegations regarding MCCMH recipients provided that:
1. Results of the investigation are sent to the MCCMH Executive Director for review within 90 days.
 2. If remedial and/or disciplinary action is necessary, the MCCMH Executive Director, having reviewed and approved the recommendation(s) for remedial/disciplinary action, discharges such responsibility to the appropriate individual(s) thereby correcting the situation, be implemented timely, and/or preventing reoccurrence of the incident/situation with provider employees, independent contractors, volunteers, or interns. Disciplinary action is required for substantiated allegation of abuse, neglect, and harassment/retaliation.
 3. The MCCMH ORR shall maintain copies of reported abuse, neglect, and mistreatment.
 4. The MCCMH ORR, semiannually, shall report cumulative data detailing submitted reports of abuse, neglect and mistreatment to the Recipient Rights Advisory Committee of the Board, with a copy to the Quality Assurance Performance Improvement Council.

VII. References / Legal Authority

- A. Mental Health Code, MCL 330.1001 et seq.
- B. Child Protection Law, MCL 722.621 et seq.
- C. Adult Protection Act, MCL 400.11 et seq.
- D. Public Health Code, MCL 333.16131, 16135, 16263
- E. Penal Code, MCL 750.145n, MCL 750.81-750.90
- F. MCL 339.1610
- G. 1998 MDCH Administrative Rules, R 330.7035
2009 MDCH Administrative Rules, R 330.7001
- H. MDCH Guideline for Definitions and Reporting of Abuse and Neglect, 07-C-1722 / GL-01 (3-4-96)

- I. MDCH Mental Health and Substance Abuse Administration Technical Requirement for Behavior Treatment Plan Review Committees (FY12 revision); (MDCH/PIHP Medicaid Managed Specialty Supports and Services Contract FY12 Attachment P.1.4.1)

VIII. Exhibits

- A. MCCMH Report on Recipient Abuse