

# NORTHEAST MICHIGAN COMMUNITY MENTAL HEALTH AUTHORITY

## POLICY & PROCEDURE MANUAL

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### **PERSONNEL**

(Manual Section)

RECIPIENT RIGHTS:

### **ABUSE AND NEGLECT**

(Subject)

Approval of Policy:

Dated:

Original Inception Date:

January 12, 1995

Last Revision of Policy Approved:

May 8, 2009

### **•1 POLICY:**

Any employee, volunteer, or agent of a provider of the Agency who abuses and/or neglects a consumer in any way shall be subject to immediate discipline. Complaints from a consumer or informant regarding an employee, volunteer, or agent of a provider of the Agency shall be thoroughly investigated by the Recipient Rights staff and if substantiated, immediate discipline (up to possible dismissal) shall occur.

All employees, volunteers, or agents of a provider of the Agency are responsible for safeguarding the rights of consumers; this includes protecting all consumers from abuse or neglect and the reporting of abuse and neglect. Any staff member who has knowledge of recipient abuse or neglect shall insure that it is immediately reported to the Office of Recipient Rights and other appropriate entities as required by law and in accordance with the Michigan Mental Health Code. This includes any and all incidents that the staff or volunteer has either witnessed or received report of, that constitute or may constitute abuse or neglect as defined in this policy, whether or not the staff believes the allegation to be true. Failure to report abuse and neglect shall subject the employee to disciplinary action, up to and including termination. Refer to Exhibit A for further explanation of mandatory reporting.

### **•2 APPLICATION:**

All staff

### **•3 DEFINITIONS:**

**Abuse:** Means non-accidental physical or emotional harm to a recipient, or sexual contact with or sexual penetration of a recipient as those terms are defined in Section 520a of the Michigan Penal Code, 1931 PA 328, MCL 750-520a, that is committed by an employee or

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volunteer of a community mental health services program, or by an employee or volunteer of a service provider under contract with the community mental health service program.

### **Abuse, Class I:**

A non-accidental act or provocation of another to act, by an employee, volunteer, or agent of a provider that caused or contributed to the death, or sexual abuse of, or serious physical harm to a consumer.

### **Abuse, Class II:**

- A) A non-accidental act or provocation of another to act, by an employee, volunteer, or agent of a provider that caused or contributed to non-serious physical harm to a consumer; or
- B) The use of unreasonable force on a consumer by an employee, volunteer, or agent of a provider with or without apparent harm; or,
- C) Any action or provocation of another to act by an employee, volunteer, or agent of a provider that causes or contributes to emotional harm to a consumer; or,
- D) An action taken on behalf of a consumer by a provider who assumes the consumer is incompetent, despite the fact that a guardian has not been appointed, that results in substantial economic, material, or emotional harm to the recipient.
- E) Exploitation of a consumer by an employee, volunteer, or agent of a provider.

### **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 consumer.

### **Neglect:**

Means an act or failure to act committed by an employee or volunteer of a community mental health services program; a service provider under contract with the community mental health services program; or an employee or volunteer of a service provider under contract with the community mental health services program, that denies a recipient the standard of care or treatment to which he or she is entitled under PA 258 of 1974.

### **Neglect, Class I:**

- A) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law and/or rules, policies, guidelines, written directives, procedures, or individual plan of service and causes or contributes to the death, or sexual abuse of or serious physical harm to a consumer.
- B) The failure to report apparent or suspected abuse Class I or neglect Class I of a consumer when the abuse or neglect results in the death of, or serious physical harm, to the consumer.

### **Neglect, Class II:**

- A) Acts of commission or omission by an employee, volunteer, or agent of a provider which result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service

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and that cause or contribute to non-serious physical harm or emotional harm, to a consumer; or,

- B) The failure to report apparent or suspected abuse Class II or neglect Class II of a consumer when the abuse or neglect results in non-serious physical harm to the consumer.

### **Neglect, Class III:**

- A) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and that either placed or could have placed a consumer at risk of physical harm or sexual abuse; or,
- B) The failure to report apparent or suspected abuse Class III or neglect Class III of a consumer when the abuse or neglect places a consumer at risk of serious or non-serious harm.

### **Bodily Function:**

The usual action of any region or organ of the body.

### **Criminal Abuse:**

Assault (other than consumer assault), criminal homicide, criminal sexual conduct, vulnerable adult abuse or child abuse as defined in the Michigan Penal Code, Act 328 of Public Acts of 1931.

### **Degrade:** means any of the following:

- treat humiliatingly; to cause somebody or something a humiliating loss of status or reputation, or cause somebody a humiliating loss of self-esteem
- make worthless: to cause people to feel that they or other people are worthless and do not have the respect or good opinion of others
- (*syn*) degrade, abase, debase, demean, humble, humiliate: These verbs mean to deprive of self-esteem or self-worth: to shame or disgrace

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. Examples of behavior that is degrading and must be reported as Abuse includes, but is not limited to:

- Swearing at consumers
- Using foul language at consumers
- Using racial or ethnic slurs toward or about consumers
- Making emotionally harmful remarks toward consumers
- Causing or prompting others to commit the actions listed above

### **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.

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### **Employee:**

An individual who works for the Agency and receives compensation for that work.

### **Exploitation:**

An action by an employee, volunteer or agent of a provider that involves the misappropriation or misuse of a consumer's property or funds for the benefit of an individual or individuals other than the consumer.

### **Non-Serious Physical Harm:**

Physical damage or what could reasonably be construed as pain suffered by a consumer that a physician or R.N. determines could not have caused, or contributed to, the death of a consumer, the permanent disfigurement of a consumer, or an impairment of his or her bodily functions.

### **Office of Recipient Rights:**

That office, as established in the Mental Health Code (P.A. 290 of 1995) which is subordinate only to the chief official of the agency establishing it and which is responsible for rights protection and advocacy services.

### **Physical Management:**

A technique used by staff as an emergency intervention to restrict the movement of a consumer by direct physical contact in order to prevent the consumer from harming himself, herself, or others and lesser restrictive interventions have been unsuccessful in reducing or eliminating the imminent risk of serious or non-serious physical harm. Both of the following shall apply:

- Physical management shall not be included as a component in a behavior treatment plan.
- Prone immobilization of a consumer for the purpose of behavior control is prohibited unless implementation of physical management techniques other than prone immobilization is medically contraindicated and documented in the consumer's record.

### **Protective Device:**

A device or physical barrier to prevent the consumer from causing serious self-injury associated with documented and frequent incidents of the behavior. A protective device as defined here and incorporated in the written individual plan of service shall not be considered a restraint.

### **Provider:**

The department, each community mental health services program, each licensed hospital, each psychiatric unit and each psychiatric partial hospitalization program licensed under section 137 of the act, their employees, volunteers, and contractual agents.

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### **Restraint:**

Means the use of a physical device to restrict an individual's movement. Restraint does not include the use of a device primarily intended to provide anatomical support.

### **Serious Physical Harm:**

Physical damage suffered by a consumer, which a physician or RN determines caused or could have caused the death of a consumer, caused the impairment of his or her bodily functions, or caused the permanent disfigurement of a consumer.

### **Sexual Abuse:**

Means any of the following:

1. Criminal sexual conduct as defined by section 520b to 520e of 1931 PA 318, being MCL 750.520b to MCL 750.520e involving an employee, volunteer, or agent of a provider and a consumer.
2. Any sexual contact or sexual penetration involving an employee, volunteer 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 consumer.
3. Any sexual contact or sexual penetration involving an employee, volunteer, or agent of a provider and a consumer for whom the employee, volunteer or agent provides direct services.

### **Sexual Contact:**

Sexual contact is the intentional touching of the consumer's or employee's intimate parts (genitals, buttocks, breasts, groin, inner thigh, or rectum); or the touching of the clothing covering the immediate area of the consumer's or employee'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 any of the following: revenge, to inflict humiliation or out of anger.

### **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, but emission of semen is not required.

### **Sexual Harassment:**

Sexual advances to a consumer, requests for sexual favors from a consumer, or other conduct or communication of a sexual nature toward a consumer

**Threaten:** means any of the following:

- to utter intentions of injury or punishment against
- to express a deliberate intention to deny the well-being, safety, or happiness of somebody unless the person does what is being demanded

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### **Unreasonable Force:**

Physical management or force that is applied by an employee, volunteer, or agent of a provider to a consumer in one or more of the following circumstances:

- 1) There is no imminent risk of serious or non-serious physical harm to the consumer, staff or others.
- 2) The physical management used is not in compliance with techniques approved by the provider and the responsible mental health agency.
- 3) The physical management used is not in compliance with the emergency interventions authorized in the consumer'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.

### **Volunteer:**

An individual who, without compensation, other than reimbursement for expenses, performs activities for the department, a facility, or a community mental health services program under specified conditions.

**REMEMBER: PROTECTING THE CONSUMER IS YOUR FIRST AND MOST IMPORTANT RESPONSIBILITY.**

RESIDENT CARE PROHIBITED PRACTICES: ADULT FOSTER CARE LICENSING RULES PROVIDE PROTECTION IN SMALL GROUP HOMES. RESIDENT BEHAVIOR INTERVENTIONS PROHIBITIONS ARE AS FOLLOWS:

1. The Agency shall not mistreat a resident and shall not permit the administrator, direct care staff, employees, volunteers who are under the direction of the licensee, visitors, or other occupants of the home to mistreat a resident. Mistreatment includes any intentional action or omission, which exposes a resident to a serious risk or physical or emotional harm or deliberate infliction of pain by any means.
2. The Agency's direct care staff, administrator, members of the household, volunteers who are under the direction of the licensee, employees, or any person who lives in the home shall not do any of the following:
  - (a) Use any form of punishment.
  - (b) Use any form of physical force other than physical restraint as defined in these rules.
  - (c) Restrain a resident's movement by binding or tying or through the use of medication, paraphernalia, contraptions, material, or equipment for the purpose of immobilizing a resident.
  - (d) Confine a resident in an area, such as a room, where egress is prevented, in a closet, or in a bed, box, or chair or restrict a resident in a similar manner.
  - (e) Withhold food, water, clothing, rest, or toilet use.
  - (f) Subject a resident to any of the following:
    - (i) Mental or emotional cruelty.
    - (ii) Verbal abuse.

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- (iii) Derogatory remarks about the resident or members of his or her family.
- (iv) Threats.
- (g) Refuse the resident entrance to the home.
- (h) Isolation of a resident as defined in R400.14102(1)(m).
- (i) Any electrical shock device.

**•4 CROSS-/REFERENCES:**

Mental Health Code 330.1722(2), 330.1723(2), 330.1778(1)  
Administrative Rule 330.7001 (a-z), 330.7035, 330.7243(11)(i,ii)  
Public Acts 519, 1982; 238, 1978; 218, 1979

**•5 FORMS AND EXHIBITS:**

[Exhibit A – Mandatory Reporting Guidelines for Abuse and Neglect](#)

[Exhibit B – Report on Recipient Abuse](#)

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**Administrative Approval of Procedure:**

**Dated:**

November 7, 2008

**•6 PROCEDURE:**

Mandatory Reporting of Abuse or Neglect

**•6•1 APPLICATION:**

All staff

**•6•2 OUTLINE / NARRATIVE:**

The procedure is directed to the fundamental principle that no consumer shall be abused or neglected by an employee, volunteer, or agent of a provider.

1. In the event that an employee, volunteer, or agent of a provider has reasonable cause to suspect that a consumer has been abused and/or neglected that individual must *immediately* report the incident to the Recipient Rights Officer. Failure to report immediately may result in disciplinary action.
2. That same individual then must take immediate action to protect, comfort, and get any necessary treatment for any injured person in their care.
3. In the case of suspected sexual abuse, care must be taken to protect the clothing of the consumer and the consumer should not be bathed/showered until after being examined by a physician (clothing and the examination's findings are considered part of the evidence).
4. After immediate care has been provided to the consumer and the supervisor has been notified, an incident report (IR) is then to be completed. Include any signs that abuse or neglect may have been involved. Give the report to the supervisor as soon as possible, but never later than the end of the shift on which the incident occurred. The supervisor shall verbally notify the Recipient Rights Officer when injuries are involved and shall route the IR immediately,
5. For criminal abuse incidents, the supervisor is to contact the Clinical Services Director and Supports Coordinator.
6. The Supports Coordinator will then assure that the Director, Recipient Rights Officer, Guardian, and appropriate police department are notified of the alleged incident.



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7. The Supports Coordinator will then complete the Report on Recipient Abuse form and forward one copy to the police, one to the Recipient Rights Officer, and place one copy in the consumer's record.
8. The Recipient Rights Officer will then assure that Protective Services and the Foster Care Licensing Consultant are notified first by phone then, within the agreed upon time frame, in writing.
9. An investigation will be conducted by the Recipient Rights staff according to Personnel policy 3800, Recipient Rights System.
10. A copy of this policy and procedure shall be given to all new employees, volunteers, and providers and reviewed with them during their first day of employment for the purpose of making sure that everyone who has responsibility to our consumers has a full understanding of all its provisions. The Recipient Rights staff will insure that this policy and procedure is called to the attention of all employees, volunteers, and providers at least annually.

### •6•3 CLARIFICATIONS:

### •6•4 CROSS-/REFERENCES:

Mental Health Code Sections 330.1722(2), 330.1723(2)  
Administrative Rules 7001 (a-c), (g-I), 7035  
Michigan Penal Code, Act 328 of Public Acts of 1931  
Public Acts 519, 1982; 238, 1982; 218, 1979

### •6•5 FORMS AND EXHIBITS:

[Exhibit A – Mandatory Reporting Guidelines for Abuse and Neglect](#)  
[Exhibit B – Report on Recipient Abuse](#)