

NORTH COUNTRY COMMUNITY MENTAL HEALTH ADMINISTRATIVE MANUAL

CHAPTER: Five – Member Rights
PROCEDURE NAME: ABUSE AND NEGLECT
EFFECTIVE DATE: August 1, 2019

PURPOSE

To establish a procedure for reporting abuse and neglect of recipients of mental health services.

APPLICATION

All North Country Community Mental Health service programs and contract providers.

DEFINITIONS

Abuse means nonaccidental 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 volunteer of the department, a community mental health services program, or a licensed hospital or by an employee or volunteer of a service provider under contract with the department, community mental health services program, or licensed hospital.

Class I Abuse means 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 recipient.

Sexual Abuse means any of the following:

- 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, or agent of a provider and a recipient.
- Any sexual contact or sexual penetration involving an employee, volunteer, or agent of an adult foster care facility and a recipient.
- Any sexual contact or sexual penetration involving an employee, volunteer, or agent of a provider and a recipient for whom the employee, volunteer, or agent provides direct services.

Sexual Contact means the intentional touching of the recipient's or employee's intimate parts or the touching of the clothing covering the immediate area of the recipient's or employee's intimate parts, if that intentional touching can reasonably be construed as being for sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for any of the following:

- Revenge
- To inflict humiliation
- Out of anger

Sexual Penetration means 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.

Serious Physical Harm means physical damage suffered by a recipient that a physician or registered nurse determines caused or could have caused the death of a recipient, caused the impairment of his or her bodily functions, or caused the permanent disfigurement of a recipient.

Class II Abuse means any of the following:

- The use of unreasonable force on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm.
- 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 recipient.

Nonserious Physical Harm means physical damage or what could reasonably be construed as pain suffered by a recipient that a physician or registered nurse determines could not have caused, or contributed to, the death of a recipient, the permanent disfigurement of a recipient, or an impairment of his or her bodily functions.

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

- There is no imminent risk of serious or non-serious physical harm to the recipient, staff or others.
- The physical management used is not in compliance with techniques approved by the provider and by NCCMH.
- The physical management used is not in compliance with the emergency interventions authorized in the recipient's individual plan of service.
- 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.
- 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 recipient.
- An action taken on behalf of a recipient by a provider who assumes the recipient is incompetent, even though a guardian has not been appointed, that results in substantial economic, material, or emotional harm to the recipient.
- Exploitation of a recipient by an employee, volunteer, or agent of a provider.

Emotional Harm means impaired psychological functioning, growth, or development of a significant nature as evidenced by observable physical symptomatology or as determined by a mental health professional.

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

Class III Abuse means 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.

Degrade means to 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.

- A. Degrading behavior shall be further defined as any language or epithets that insult the persons heritage, mental status, race, sexual orientation, gender, intelligence, etc.
- B. Examples of behavior that is degrading, and must be reported as Abuse includes, but is not limited to:
 - Swearing at recipient.
 - Using foul language at recipients.
 - Using racial or ethnic slurs toward or about recipients.
 - Making emotionally harmful remarks toward recipients.
 - Causing or prompting others to commit the actions listed above.

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

Sexual Harassment means sexual advances to a recipient, requests for sexual favors from a recipient, or other conduct or communication of a sexual nature toward a recipient.

Neglect means an act or failure to act committed by an employee or volunteer of the department, a community mental health services program, or a licensed hospital; a service provider under contract with the department, community mental health services program, or licensed hospital; or an employee or volunteer of a service provider under contract with the department, community mental health services program, or licensed hospital, that denies a recipient the standard of care or treatment to which he or she is entitled under this act.

Class I Neglect means either of the following:

- 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 causes or contributes to the death, serious physical harm, or sexual abuse of a recipient.
- The failure to report apparent or suspected abuse Class I or neglect Class I of a recipient.

Class II Neglect means either of the following:

- Act 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 that cause or contribute to nonserious physical harm or emotional harm to a recipient.
- The failure to report apparent or suspected abuse Class II or neglect Class II of a recipient.

Class III Neglect means either of the following:

- 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 that either placed or could have placed a recipient at risk of physical harm or sexual abuse.
- The failure to report apparent or suspected Abuse Class III or Neglect Class III of a recipient.

Criminal Abuse means one or more of the following:

- An assault that is a violation or an attempt or conspiracy to commit a violation of MCL 750.81 to 750.90. Criminal abuse does not include an assault or an assault and battery that is a violation of MCL 750.81, *and that is committed by a recipient against another recipient.*

Example: Assault, battery, threats of assault, inflicting extreme physical or mental pain or suffering, sexual intercourse under the pretext of medical treatment.

- A criminal homicide that is a violation or an attempt or conspiracy to commit a violation MCL 750.316, 750.317, and 750.321.

Example: Murder, manslaughter

- Criminal sexual conduct that is a violation or an attempt or conspiracy to commit a violation of MCL 750.520b to 750.520e and 750.520g.

Example: Criminal sexual conduct, assault with intent to commit criminal sexual conduct.

- Vulnerable adult abuse that is a violation or an attempt or conspiracy to commit a violation of MCL 750.145n.

Example: Caregiver intentionally causes physical or mental harm, reckless act or reckless failure to act causing physical or mental harm.

- Child abuse that is a violation or an attempt or conspiracy to commit a violation of MCL 750.136b.

Example: Intentional physical or mental harm, omission or reckless act causing physical or mental harm, intentional act of cruelty regardless of harm, intentional act that poses an unreasonable risk of harm or injury. A children's group home that intentionally violates a licensing rule causing the death of a child.

PROCEDURE

1. All staff, both direct and contractual, volunteers, and agents of a provider who witness, discover, or are notified of an incident of abuse and/or neglect of a recipient shall cause a report to be made to the recipient's primary NCCMH case holder, immediate supervisor and the Recipient Rights Office as soon as possible, but not later than the end of the shift on which the incident occurred. An incident report must also be completed per agency procedure.
2. All staff, both direct and contractual, who have reasonable cause to believe that a child or vulnerable adult is subject to abuse, exploitation, or neglect shall make immediately, by telephone or otherwise, an oral report, of the suspected abuse or neglect to the Michigan Department of Health and Human Services (MDHHS), Protective Services Division, Centralized Intake at 855-444-3911. In all cases of suspected criminal abuse or neglect (child or adult) the appropriate law enforcement agency shall also be immediately notified.
3. Within 72 hours after making an oral report to Child Protective Services (CPS), the reporting person shall file a written report [Form DHS-3200] with MDHHS. The report shall contain information available to the reporting person that might establish the cause of the abuse or neglect, and the manner in which the abuse or neglect occurred. The written report shall be mailed or otherwise transmitted to MDHHS. Alternatively, mandated reporters may report suspected child abuse or neglect online at [MI Bridges.gov](http://MI.Bridges.gov). Successful submission of an online complaint fulfills the mandate reporter's requirement to submit form DHHS-3200 and eliminates the requirement to make an oral report.
4. A verbal report made to Adult Protective Services (APS) does not require an additional written report to be filed with MDHHS.
5. Allegations of abuse or neglect involving a recipient in a licensed foster care setting must also be reported to Licensing and Regulatory Affairs (LARA) [online](#) or by calling 866-856-0126.
6. All staff, both direct and contractual, who have reasonable cause to suspect the **criminal abuse of a recipient** immediately shall make or cause to be made an oral report of the suspected criminal abuse 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, the reporting individual shall file a written report with the law enforcement agency to which the oral report was made and with the chief administrator of the facility or agency responsible for the recipient. The written report shall contain the name of the recipient and a description of the criminal abuse and other information available to the reporting individual that might establish the cause of the criminal abuse and the manner in which it occurred.
7. Criminal abuse of a recipient does not have to be reported if either of the following apply:
 - The individual has knowledge that the incident of suspected criminal abuse has already been reported to the appropriate law enforcement agency as outlined above.
 - The suspected criminal abuse occurred more than 1 year before the date on which it first became known to an individual who would otherwise be required to make a report.
8. The written report shall become a part of the *recipient's* clinical record. Before the report becomes part of the recipient's clinical record, the names of the reporting individual and the individual accused of committing the criminal abuse, if contained in the report, shall be deleted. The identity of an individual who makes a report under this section is confidential and is not subject to disclosure without the consent of that individual or by order or subpoena of a court of record. An individual acting in good faith who makes a report of criminal abuse against a recipient is immune from civil or criminal liability that might otherwise be incurred. The immunity from civil or criminal liability granted by this subsection extends only to acts done under this section and does not extend to a negligent act that causes personal injury or death.
9. An individual who makes a report under this section in good faith shall not be dismissed or otherwise penalized by an employer or contractor for making the report.

10. NCCMH and its contracted service providers shall cooperate in the prosecution of appropriate criminal charges against those who have engaged in criminal abuse.
11. Except as otherwise provided in number 8, this procedure does not preclude nor hinder NCCMH or a service provider under contract with NCCMH from investigating reported claims of criminal abuse of a recipient by its employees, and from taking appropriate disciplinary action against its employees based upon that investigation.
12. An individual who intentionally fails to report a reasonable suspicion of abuse or who knowingly makes a false report pursuant to MHC 723 is guilty of a misdemeanor and is civilly liable for the damages proximately caused by the violation.

DOCUMENTATION

1. If records that contain information about abuse and neglect reporting concerning a child or a vulnerable adult are requested by an authorized individual, the records will be reviewed pursuant to MHC 330.1748 (4) to determine if releasing that information would be detrimental to the recipient or others. If it is determined by the CEO or the CEO's designee that releasing the information could cause harm to the recipient or others, the information will be withheld or redacted. [See *NCCMH Confidentiality Use and Disclosure procedure*.]
2. All disclosures to outside agencies for the purpose of reporting the abuse or neglect of a recipient must also be documented in the EHR disclosure log, per policy.
3. A report of criminal abuse made about an individual who is NOT a recipient of NCCMH services does not require the written report to be kept in the associated (non-victim) recipient's record. For example, if a mother, who *is* a recipient, alleges that her husband abuses their child, a report to CPS must be made, but the written report regarding the non-recipient child will not be included in the mothers EHR. *If* information about the mother is disclosed as part of the report, it requires documentation in the disclosure log only. In the case of alleged abuse/neglect of a non-recipient child, the form DHS-3200 will be kept in a secure area separate from the record and will be monitored by Risk Management.

REFERENCE: Michigan Mental Health Code 330.1100 ; 330.1723
 MDHHS Administrative Rule R 330.7001
 Adult Protective Services Act PA 519
 Child Protection Law PA 238 as amended
 Penal Code MCL 750.145n, MCL 750.81-750.90
 Public Health Code, MCL 333.16131, 16135, 16263
 HIPAA; HITECH
 Appendix A: MDHHS Abuse and Neglect reporting poster

REVIEWED: 03/24/08; 07/01/13

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APPROVED BY SIGNATURE:

Christine Gebhard
 Chief Executive Officer

07/22/2019
 Date

Kim Rapplelea
 Recipient Rights Officer

07/22/2019
 Date