

HEALTHWEST

Policy and Procedure

No. 04-020

Prepared by:

Effective: April 22, 1983

Revised: July 5, 2017

The Office of Recipient Rights

Approved by:

Subject: Reporting of Abuse and Neglect

Julia B. Rupp, Executive Director

I. POLICY

- A. A recipient of mental health services shall not be subject to abuse or neglect.
- B. In order to protect recipients from, and prevent repetition of, violations of rights guaranteed by the Mental Health Code, all staff of HealthWest will immediately report apparent or suspected abuse and neglect.
- C. HealthWest and each service provider under contract with it shall ensure that appropriate disciplinary action is taken against those who have engaged in abuse or neglect.

II. PURPOSE

To provide clear guidelines for the reporting suspected or apparent abuse and neglect.

III. APPLICATION

The following are required to report any apparent or suspected abuse and neglect involving a recipient of mental health services and cooperate in an investigation conducted by the Office of Recipient Rights:

- A. Employees of or people under contract with HealthWest.
- B. Employees of agencies under contract with HealthWest or their agents.
- C. Employees or home operators of adult and child foster care facilities providing care to mental health recipients or their agents.
- D. Volunteers/interns.

IV. DEFINITIONS

- A. **Abuse class I** means a nonaccidental 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.
- B. **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 provider that caused or contributed to nonserious physical harm to a recipient.
 2. The use of unreasonable force on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm.
 3. 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.
 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.
 5. Exploitation of a recipient by an employee, volunteer, or agent of a provider.
- C. **Abuse class III** 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.
- D. **Act** means mental health code, 1974 PA 258, MCL 330.1001 et seq.
- E. **Anatomical support** means body positioning or a physical support ordered by a physical or occupational therapist for the purpose of maintaining or improving a recipient's physical functioning.
- F. **Bodily function** means the usual action of any region or organ of the body.
- G. **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.
- H. **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.
- I. **Neglect class I** means either of the following:
1. 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 recipient.

2. The failure to report apparent or suspected abuse Class I or neglect Class I of a recipient.

J. **Neglect class II** means either of the following:

1. 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 cause or contribute to non serious physical harm or emotional harm to a recipient.
2. The failure to report apparent or suspected abuse Class II or neglect Class II of a recipient.

K. **Neglect class III** means either of the following:

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

L. **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.

M. **Physical management** means a technique used by staff as an emergency intervention to restrict the movement of a recipient by direct physical contact to prevent the recipient from harming himself, herself, or others.

N. **Protective device** means a device or physical barrier to prevent the recipient from causing serious self-injury associated with documented and frequent incidents of the behavior. A protective device as defined in this subdivision and incorporated in the written individual plan of service shall not be considered a restraint as defined in subdivision Q of this subrule.

O. **Provider** means the department, each Community Mental Health Services Program (CMHSP), 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.

P. **Psychotropic drug** means any medication administered for the treatment or amelioration of disorders of thought, mood, or behavior.

Q. **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.

R. **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.

- S. **Sexual abuse** means any of the following:
1. 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.
 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 recipient.
 3. 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.
- T. **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 the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for any of the following:
1. Revenge.
 2. To inflict humiliation.
 3. Out of anger.
- U. **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.
- V. **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.
- W. **Therapeutic de-escalation** means an intervention, the implementation of which is incorporated in the individualized written plan of service, wherein the recipient is placed in an area or room, accompanied by staff who shall therapeutically engage the recipient in behavioral de-escalation techniques and debriefing as to the cause and future prevention of the target behavior.
- X. **Time out** means a voluntary response to the therapeutic suggestion to a recipient to remove him or herself from a stressful situation in order to prevent a potentially hazardous outcome.
- Y. **Treatment by spiritual means** means a spiritual discipline or school of thought that a recipient wishes to rely on to aid physical or mental recovery.
- Z. **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:
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.
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.

V. PROCEDURE

- A. A mental health professional, a person employed by or under contract to the Michigan Department of Health and Human Services (MDHHS), a licensed facility, or a CMHSP, or a person employed by a provider under contract to MDHHS, a licensed facility, or a CMHSP who has reasonable cause to suspect the abuse or neglect of a recipient immediately shall make or cause to be made, by telephone or otherwise, an oral report of the apparent or suspected abuse or neglect to the Office of Recipient Rights.
 1. After making the oral report, and before the end of their current shift, staff shall complete a Recipient Rights Complaint form and send it directly to the Office of Recipient Rights.
 2. Staff required to report apparent or suspected abuse and neglect shall report apparent or suspected abuse and neglect to Adult/Child Protective Services.
 3. The Office of Recipient Rights shall forward a copy of all complaints to the HealthWest Executive Director.
- B. A mental health professional, a person employed by or under contract to MDHHS, a licensed facility, or a CMHSP, or a person employed by a provider under contract to MDHHS, a licensed facility, or a CMHSP who has reasonable cause to suspect the criminal abuse of a recipient immediately shall make or cause to be made, by telephone or otherwise, 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.
 1. Within seventy-two (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, with the Executive Director and with the Office of Recipient Rights.
 2. 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. The 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.
 3. 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 that 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 the Mental Health Code extends only to acts done under MCL 330.1723 and does not extend to a negligent act that causes personal injury or death. An individual who makes a report of criminal abuse in good faith shall not be dismissed or otherwise penalized by an employer or contractor for making the report. HealthWest and service providers under contract with it shall cooperate in the prosecution of appropriate criminal charges against those who have engaged in criminal abuse. HealthWest or a service provider under contract with it may investigate reported claims of criminal abuse of a recipient by its employees using the procedures described in HealthWest Policy No. 4-020, and take appropriate disciplinary action against its employees based upon that investigation.

4. A person is not required to report suspected criminal abuse if the individual has knowledge that the incident of suspected criminal abuse has been reported to the appropriate law enforcement agency or 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.
5. An individual required to report suspected criminal abuse is *not required* to disclose confidential information or a privileged communication *except* under one or both of the following circumstances:
 - a. If the suspected criminal abuse is alleged to have been committed or caused by a mental health professional, an individual employed by or under contract to the MDHHS, a licensed facility, or a community mental health services program, or an individual employed by or under contract to MDHHS, a licensed facility, or a community mental health services program.
 - b. If the suspected criminal abuse is alleged to have been committed in one of the following:
 - i. A State facility or a licensed facility.
 - ii. A County CMHSP site.
 - iii. The work site of an individual employed by or under contract to MDHHS, or a community mental health services program or a provider under contract to MDHHS, a licensed facility, or a CMHSP.
 - iv. A place where the recipient is under the supervision of an individual employed by or under contract to MDHHS, a licensed facility, a CMHSP, or a provider under contract to MDHHS, a licensed facility, or a CMHSP.

- C. The Office of Recipient Rights shall initiate investigation of apparent or suspected rights violations in a timely and efficient manner. Subject to delays involving pending action by external agencies, the office shall complete the investigation not later than ninety (90) days after it receives the rights complaint. Investigation shall be initiated immediately in cases involving alleged abuse, neglect, serious injury, or death of a recipient involving an apparent or suspected rights violation.
- D. If it has been determined through investigation that a right has been violated, HealthWest and each service provider under contract with HealthWest shall take appropriate remedial action that meets all of the following requirements:
 - 1. Corrects or provides a remedy for the rights violations.
 - 2. Is implemented in a timely manner.
 - 3. Attempts to prevent a recurrence of the rights violation.
- E. HealthWest and each service provider under contract with HealthWest shall ensure that appropriate disciplinary action is taken against those who have engaged in abuse or neglect.

VI. REFERENCES

M.C.L. 330.1100(2) (18), 330.1722(2), 330.1723, 330.1752(1), 330.1778(1)
Administrative Rules R 330.7001(a-c) (g-l), R 330.7035, as amended December 2007

GK/jec