

**WEST MICHIGAN COMMUNITYMENTAL HEALTH
ADMINISTRATIVE MANUAL**

		Chapter: 5	Section: 2	Subject: 10
CHAPTER: Recipient Rights				
SECTION: Recipient Rights in all CMH Settings				
SUBJECT: Reporting Abuse and Neglect				
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- I. **PURPOSE:** To establish policy and procedures to protect West Michigan Community Mental Health service recipients from being abused and neglected.

- II. **APPLICATION:** All programs and services operated by or under contract with the West Michigan Community Mental Health Governing Body.

- III. **REQUIRED BY:** Michigan Mental Health Code 330.1722; 330.1723; 330.1752; 330.1778. Michigan Department of Health and Human Services Administrative Rules R330.7035. Act 238 of 1975, as amended (Child Protection Law). Act 519 of 1982 (Adult Protection Law). MDHHS Mental Health & Substance Abuse Services Recipient Rights Programs in Michigan R 325.14303.

- IV. **DEFINITIONS:**
 1. **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 recipient.

 2. **Abuse--Class II:**
 - 2.1 A non-accidental act or provocation of another to act by an employee, volunteer, or agent of a provider that caused or contributed to non-serious physical harm to a recipient.

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

 - 2.3 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.

 - 2.4 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.

 - 2.5 Exploitation of a recipient by an employee, volunteer, or agent of a provider.

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3. Abuse--Class III: Verbal abuse. Defined as the use of language, or other means of communications by an employee, volunteer, or agent of a provider to degrade, threaten, or sexually harass a recipient.
 - 3.a. "Degrade" means any of the following:
 - 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. 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, Class III includes, but is not limited to: Swearing at recipients; 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.
 - 3.b. "Threaten" means any of the following:
 - To utter intentions of injury or punishment against
 - To tell someone that you will hurt them or cause problems if they do not do what you want.
4. Abuse: 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 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.
5. Assault: An intentional act to physically injure another person by force, or forces unlawfully directed toward the person of another, under such circumstances as creates a well-founded fear of imminent peril, coupled with the apparent present ability to effectuate the attempt, if not presented.
6. Intimate Parts: The genitalia, buttock, or breast of a human being as well as the groin, inner thigh and rectum.

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7. Neglect--Class I: Acts of commission or omission by an employee, volunteer or agent of a provider that result from non-compliance 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; or the failure to report apparent or suspected abuse Class I or neglect Class I of a recipient.
8. Neglect--Class II: Acts of commission or omission by an employee, volunteer, or agent of a provider that result from non-compliance with a standard of care or treatment required by law rules, policies, guidelines, procedures, written directives or Individual Plan of Service and that cause or contribute to non-serious physical harm or emotional harm to a recipient; or the failure to report apparent or suspected abuse Class II or neglect Class II of a recipient.
9. Neglect--Class III: Acts of commission or omission by an employee, volunteer, or agent of a provider that result from non-compliance with a standard of care or treatment required by law and/or rules, policies, guidelines, procedures, written directives, Individual Plan of Service, that either placed or could have placed a recipient at risk of physical harm or sexual abuse; or the failure to report apparent or suspected abuse Class III or neglect Class III of a recipient.
10. Neglect: 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.
11. Non-Serious Physical Harm: Physical damage or what could reasonable 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.
12. Remedial Action: Action taken by the provider to correct conditions which led to an unusual incident, to remedy the results of any unusual incident and to prevent recurrence of the unusual incident, including disciplinary action when necessary.

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13. Serious Physical Harm: 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.

14. Sexual Abuse: Means any of the following: (i) 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 recipient. (ii) 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. (iii) 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.

15. Sexual Contact: 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:
 - (i) Revenge.
 - (ii) To inflict humiliation.
 - (iii) Out of anger.

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

17. Sexual Penetration: Vaginal or anal intercourse, cunnilingus, fellatio, or any other intrusion, however slight, into any part of a person's body or insertion of any object into the genital or anal openings of another person's body if the intrusion can reasonably be construed as being for the purpose of sexual arousal or gratification. Emission of semen is not required.

18. Exploitation: 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.

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19. 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.

20. Unreasonable Force: A 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:
 - (i) There is no imminent risk of serious or non-serious physical harm to the recipient, staff or others.
 - (ii) Not in compliance with techniques approved by the provider and the responsible mental health agency.
 - (iii) Not in compliance with the emergency interventions authorized in the recipient's individual plan of service,
 - (iv) Used when other less restrictive measures were possible but not attempted immediately before the use of physical management or force.

APPLICABLE TO ALL SUBSTANCE USE DISORDER SERVICE RECIPIENTS

The WMCMH Substance Use Disorder Recipient Rights Policy 5-4-1 includes the Substance Abuse Service Programs Definitions of: Recipient; Recipient Abuse; and, Recipient Neglect. Also, included with the WMCMH SUD RR Policy 5-4-1 are the procedures for substance use disorder formal complaints including those for reporting abuse or neglect.

- V. **POLICY**: It is the policy of the West Michigan Community Mental Health that West Michigan Community Mental Health employees, contract employees or volunteers shall report suspected cases of abuse and neglect to the Recipient Rights Office and appropriate agencies. A West Michigan Community Mental Health employee, contract employee, or volunteer who reports a suspected case of abuse or neglect shall not be dismissed or penalized for making such a report.

- VI. **PROCEDURES**:
 1. A West Michigan CMH employee, volunteer or agent of a contract provider who witnesses, discovers or otherwise becomes aware of apparent or suspected abuse or neglect of a service recipient as defined above shall immediately report the information as soon as possible, but not later than 24 hours after becoming aware of the information to the Recipient Rights Office, if the report is made verbally a Critical Incident Report shall be completed and transmitted

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before the end of staff person's shift. Additionally, a verbal report must be made immediately to the Michigan Department of Health & Human Services Adult or Children's Protective Services Reporting Hotline (MDHHS) with a written report to the MDHHS on MDHHS Form 3200 within 72 hours for Children and a written report at the discretion of the reporting person for Adults. For children only, online reporting through MI Bridges is available as an option. Also, when the abuse or neglect is alleged to have occurred in a licensed foster care home report to the Bureau of Community and Health Systems (LARA) Complaint Intake Unit. The employee, volunteer or agent of a contract provider may, but is not required to file a formal Recipient Rights Complaint in addition to the Critical Incident Report.

2. If an employee, volunteer or agent of a contract provider has reasonable cause to suspect the abuse or neglect of a recipient who is a child or vulnerable adult by ANY person, as defined by applicable statutes, an oral report must be made immediately to the MDHHS Adult or Children's Protective Services Reporting Hotline, followed by a written report for children on MDHHS Form 3200 within 72 hours to the appropriate Michigan Department of Health and Human Services Children's Protective Services as required by law. For children only, online reporting through MI Bridges is available as an option. If the recipient is a resident of a licensed facility, immediately report to the Bureau of Community and Health Systems (LARA) Complaint Intake Unit, as required by law.
 - 2.1 If the employee, volunteer or agent of a contract provider has reasonable cause to suspect the criminal abuse of a recipient that individual shall immediately make an oral report, by telephone or otherwise, 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. A copy of the report shall be placed in the recipient's clinical record; however, prior to placing it in his/her record the names of the reporting individual and the individual accused of committing the criminal abuse, if contained in the report, shall be deleted. A Critical Incident Report shall also be completed and submitted within 24 hours after becoming aware of the information to the WMCMH Service Enhancement Team.

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**2.2 APPLICABLE TO ALL SUBSTANCE USE DISORDER SERVICE
RECIPIENTS**

2.2.1 Suspected child abuse and/or neglect must be reported to the MDHHS Child Protective Services Reporting Hotline [42 CFR, Part 2, Subpart B 2.12(6) prohibits disclosure of any PHI after the initial report to CPS unless a written authorization for release or a court order for further disclosure is obtained].

42 CFR, Part 2 provides no permitted disclosure for suspected adult abuse or neglect. However, a report to APS could be made with an authorization for release or by obtaining a court order.

42 CFR, Part 2 provides no permitted disclosure for reporting to a law enforcement agency suspected criminal abuse of a SUD recipient. However, a report could be made with an authorization for release or by obtaining a court order.

3. The Recipient Rights Office shall begin conducting an investigation of apparent or suspected rights violations in a timely and efficient manner. 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. When applicable external agencies are involved (e.g., Law Enforcement, Protective Services, LARA) the coordination of investigation with those agencies shall be maintained including the sharing of investigative findings.
4. Once the Recipient Rights Office has finished the investigation a written report of the investigative findings shall be submitted within the confidentiality constraints of Section 748 of the Michigan Mental Health Code to, at minimum, the West Michigan Community Mental Health Executive Director and respondent. Investigative reports of adult abuse or neglect shall be provided to MDHHS-APS and as applicable, Bureau of Community & Health Systems, within five (5) days of completion of the report of investigative findings.

4.1 The Recipient Rights Office shall include the following in the written investigative report:

- 4.11 Allegations
- 4.12 Citations
- 4.13 Issues

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- 4.14 Investigation findings
- 4.15 Conclusions
- 4.16 Recommendations, if any.

- 4.2 If the Recipient Rights Office substantiates the allegation of abuse or neglect, West Michigan Community Mental Health shall implement or shall ensure each service provider under contract with WMCMH implements firm and fair/appropriate disciplinary action against those who have engaged in abuse and neglect in accordance with the agency's disciplinary policy.

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VII. SUPPORTING DOCUMENTS:

Please refer to:

Critical Incident Report (WMCMH Form EC001 or EC002)
MDHHS Requirements for Reporting Abuse and Neglect Poster Form DCH-0727; and, MDHHS Form 3200 – Report of Actual or Suspected Child Abuse and Neglect

5-2-10 Abuse and Neglect

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