

COPPER COUNTRY MENTAL HEALTH SERVICES BOARD

POLICY AND PROCEDURE

DATE: June 24, 2020 ABUSE NEGLECT.P6

RESCINDS: June 28, 2017

CATEGORY: Recipient Rights

SUBJECT: Abuse and Neglect

POLICY: It is the policy of Copper Country Mental Health Services Board (CCMHS) that recipients of services shall be protected from abuse or neglect. Abuse or neglect of a recipient by an employee, volunteer, or agent of a provider shall subject the employee, volunteer, or agent of a provider, upon substantiated reports, to an appropriate penalty, including official reprimand, demotion, suspension, reassignment, or dismissal. Allegations of abuse or neglect will be promptly and thoroughly reviewed in a manner that is fair to both the recipient alleged to have been abused or neglected and the employee, volunteer, or agent of a provider alleged to have carried out the abuse or neglect.

PURPOSE: To define abuse and neglect and to establish detailed categories of each by type and severity, to establish procedures for reporting allegations, investigating allegations, and for remediation of substantiated allegations.

DEFINITIONS:

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

Abuse, Class I:

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

Abuse, Class II:

A non-accidental act, or provocation of another to act by an employee, volunteer, or agent of a provider that causes, or contributes to non-serious physical harm to a recipient; or,

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

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; or,

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,

Exploitation of a recipient 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 recipient.

NEGLECT: 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 a community mental health services program, that denies a recipient the standard of care or treatment to which he or she is entitled under the Mental Health Code.

Neglect, Class I:

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 laws, rules, policies, guidelines, written directives, procedures, and/or individual plans 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.

Neglect, Class II:

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 laws, rules, policies, guidelines, written directives, procedures, and/or individual plans of service and causes or contributes 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.

Neglect, Class III:

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 laws, rules, policies, guidelines, written directives, procedures, and/or individual plans 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.

CRIMINAL ABUSE: One or more of the following:

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.

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.

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.

Vulnerable adult abuse that is a violation or an attempt or conspiracy to commit a violation of section 145n of the Michigan Compiled Laws.

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.

(Attachment A: Exhibit A: Abuse as defined by the Michigan Penal Code.

Exhibit B: Vulnerable adult abuse as defined by the Michigan Penal Code.

Exhibit C: Child abuse as defined by the Michigan Penal Code.)

ACT: Mental Health Code, 1974 PA 258, MCL 330.

ANATOMICAL SUPPORT: 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.

BODILY FUNCTION: The usual action of any region or organ of the body.

DEGRADE: means any of the following:

- A. To treat humiliatingly.
- B. To cause somebody or something a humiliating loss of status or reputation.
- C. To cause somebody a humiliating loss of self-esteem, make worthless.
- D. To cause people to feel that they or other people are worthless and do not have the respect or good opinion of others.

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.

EMPLOYEE: An individual who works for Copper Country Mental Health Services 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 recipient's property or funds for the benefit of an individual or individuals other than the recipient.

NON-SERIOUS PHYSICAL HARM: Physical damage or what could reasonably be construed as pain suffered by a recipient that a physician or RN determines could not have caused or contributed

to, the death of a recipient, the permanent disfigurement of a recipient, or an impairment of his/her bodily function(s).

OFFICE OF RECIPIENTS RIGHTS: That office, as established in the Mental Health Code (PA 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 a trained employee as an emergency intervention to restrict the movement of a recipient by direct physical contact in order to prevent the recipient from physically harming himself/herself, or others.

Physical management shall only be used on an emergency basis when a recipient or the situation is presenting an imminent risk of serious or non-serious physical harm to himself/herself or others and when lesser restrictive interventions have been unsuccessful in reducing or eliminating the imminent risk of physical harm. Physical management shall not be included as a component in a behavior treatment plan. **PRONE IMMOBILIZATION OF A RECIPIENT FOR THE PURPOSE OF BEHAVIOR CONTROL IS PROHIBITED UNDER ANY CIRCUMSTANCES.**

PROTECTIVE DEVICE: 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 here and incorporated in the written individual plan of service shall not be considered a "restraint" as defined below.

RECIPIENT: An individual who receives mental health services from the Michigan Department of Health and Human Services, a community mental health services program, or a facility or from a provider that is under contract with the department or a community mental health services program.

RESTRAINT: The use of a physical or mechanical device, material, or equipment to restrict an individual's movement; specifically, anything that immobilizes or reduces the ability of the recipient to move his/her arms, legs, body or head freely, for the purposes of the management, control, or extinction of seriously aggressive, self-injurious or other behaviors that place the individual or others at risk of physical harm. Restraint does not include the use of a device primarily intended to provide anatomical or physical support that is ordered by a physician, physical therapist or occupational therapist for the purpose of maintaining or improving an individual's physical functioning; or safety devices required by law, such as car seat belts or child car seats used in vehicles.

THE USE OF PHYSICAL OR MECHANICAL DEVICES USED AS RESTRAINT IS PROHIBITED IN ALL AGENCY PROGRAMS UNDER ANY CIRCUMSTANCES.

SERIOUS PHYSICAL HARM: Physical damage suffered by a recipient that a physician or RN determines caused or could have caused the death of a recipient, caused the impairment of his/her bodily function(s), or caused the permanent disfigurement of a recipient.

SEXUAL ABUSE: Any of the following:

Criminal sexual conduct as defined by section 520b to 520 e of 1931 PA 318, MCL 750.520b to MCL 750.520e involving an employee, volunteer, or agent of a provider and a recipient; or,

Any sexual contact or sexual penetration involving an employee, volunteer, or agent of an adult foster care facility and a recipient; or,

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: The intentional touching of the recipient'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 recipient's or employee's intimate parts, if that intentional touching can be reasonably 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:

- A. Revenge
- B. To inflict humiliation
- C. Out of anger

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.

SEXUAL PENETRATION: Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a recipient's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

THREATEN: means any of the following:

- A. To utter intentions of injury or punishment against:

- B. To express a deliberate intention to deny the well-being, safety, or happiness of somebody unless the person does what is being demanded.

UNREASONABLE FORCE: 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:

- A. There is no imminent risk of serious or non-serious physical harm to the recipient, employee or others;
- B. The physical management used is not in compliance with techniques approved by the Agency;
- C. The physical management used is not in compliance with the emergency interventions authorized in the recipient's Individual Plan of Service;
- D. 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, or an entity under contract to the department, a facility, or a community mental health services program under specified conditions.

STANDARDS:

- I. All employees are responsible for safeguarding recipients from abuse, or neglect. It is the assigned duty and legal responsibility of an employee who has knowledge of recipient abuse, or neglect to make or cause to be made a report to the local law enforcement agency, (county or city in which the violation is suspected to have occurred), state police or Department of Health and Human Services (county in which violation is alleged to occur) when appropriate.

In all cases of abuse, neglect and/or mistreatment, it is the assigned duty and responsibility of the employee who has knowledge of or reasonable cause to suspect recipient abuse, neglect and mistreatment to report it to their immediate supervisor/designee, and to the Recipient Rights Office.

- II. Allegations of abuse, or neglect shall be reported in accordance with Recipient Rights procedures, related to Copper Country Mental Health Services policies, and state law.

- III. 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 reporting employee shall notify his/her supervisor/designee, Department of Health and Human Services and CCMHS Office of Recipient Rights. In all cases of suspected criminal abuse or neglect (child or adult) the appropriate police agency shall also be notified.
- IV. During police investigation of alleged abuse:
 - A. Police shall be given full cooperation and support by direct service and contract service agency personnel in order that they may complete their investigation.
 - B. The investigation convened by the Office of Recipient Rights shall be carried out in cooperation with the police.
- V. All contracts for services to recipients, with agencies and other providers include the requirement of compliance with all recipient rights provisions of the Mental Health Code and Administrative Rules.
- VI. When there is reasonable cause to suspect that an employee, either directly or as an accomplice, has been involved in abuse or neglect of a recipient, the employee will not continue in his/her present assignment during the investigation of allegation(s).
- VII. 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 of actions which may lead to prosecution. Copper Country Mental Health Services Board employees shall cooperate with authorized investigators from other agencies assigned to inquire into other violations which by law are within their jurisdiction, for example, the Michigan Department of Civil Rights, Protective Services, and Department of Health and Human Services.

REPORTING/INVESTIGATION PROCEDURES:

- I. All allegations or incidents of suspected abuse, neglect, mistreatment toward a recipient shall be reported to the employee's immediate supervisor/designee and to the Copper Country Mental Health Office of Recipient Rights.
- II. When necessary, pursuant to P.A. 32 Section 723, a verbal report shall be made immediately to the law enforcement agency for the county or city in which the 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 reporting employee 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 Copper Country Mental Health Office of Recipient Rights. If the employee making the report is not the person making the initial allegation, that person shall be provided a copy of the written report.

- A. A report of suspected abuse is not required if the employee has knowledge (must be clearly documented) that the incident has been reported to the appropriate law enforcement agency, or suspected abuse occurred more than one (1) year before the date on which it first became known to an employee otherwise required to make a report.
- B. The written reports contain the name of the recipient, a description of the abuse and other available information which might establish the cause and manner of the alleged 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 are deleted.
- C. The identity of the individual making a report and the report itself is confidential and is disclosed only with the written consent of the individual or by appropriate judicial process.
- D. These reporting requirements do not relieve an employee from the duty to report abuse under other applicable law.

III. The reporting requirement is superseded by the recipient-therapist (psychiatrist, psychologist, clinical social worker, licensed counselor) privilege recognized in the State of Michigan if the allegation does not involve:

- A. Abuse by (1) a mental health professional, (2) a person employed by or under contract to the Department of Health and Human Services, a facility, or a community mental health board, or (3) a person employed by an entity under contract to the Department, a facility, or a community mental health board; or
- B. If the suspected abuse is alleged to have been committed in (1) a facility, (2) a community mental health program site, (3) the work site of a person employed by or under contract to a facility to 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 employed by or under contract to a facility or community mental health board, or (6) an entity under contract to a facility or community mental health board.

RECIPIENT RIGHTS: ABUSE AND NEGLECT POLICY & PROCEDURE

10

- IV. Upon receipt of written notification of alleged abuse, neglect, serious injury, or death of a recipient involving an apparent or suspected rights violation an investigation shall be initiated immediately by the Office of Recipient Rights. The Office of Recipient Rights shall notify the Executive Director or designee of the situation, keeping the Director apprised of the investigation (if warranted) and the findings. Assure that appropriate procedures for notification to various departments and law enforcement agencies are completed.
- V. Investigations of allegations of abuse or neglect are carried out in compliance with the Rights Complaints/Appeals Policy.

CROSS REFERENCE:

CCMHS Policy - Rights Complaints/Appeals

Mental Health Code

Department of Health and Human Services Administrative Rules

Michigan Penal Code - as cited