

BARRY COUNTY COMMUNITY MENTAL HEALTH AUTHORITY POLICY AND PROCEDURE MANUAL

Policy: Abuse and Neglect 7-D		Application: BCCMHA Staff & Providers
Reviewed 10/4/2023	Revised 10/4/2023	First Effective 5/16/1996

PURPOSE

To ensure timely review, uniformity, and consistency in reporting unusual incidents involving a recipient of mental health services that adversely disrupt the normal routine of program administration.

All unusual incidents will be reported by staff on the appropriate forms to the Quality Department.

POLICY

It is the policy of BCCMHA to ensure that unusual incidents, including abuse and neglect, involving recipients are reported, reviewed and investigated immediately, and that appropriate follow-up care and/or remedial action is taken to ensure the safe and humane treatment of all clients.

BCCMHA has a zero tolerance stance on abuse and neglect per contract language.

If an allegation is found to be substantiated, the agency will take firm and fair disciplinary action or remedial action as appropriate. [MHC 1722(2)].

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, 1931, PA 328, MCL 750.520a, that is committed by an employee or volunteer of the department, a community mental health services program, a licensed hospital, an employee or volunteer of a service provider under contract with the department, community mental health services program, or licensed hospital.

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

- b. The use of unreasonable force on a recipient by an employee, volunteer, or agent of a provider, with or without apparent harm; or
 - c. Any action, or provocation of another act, by an employee, volunteer or agent of a provider, that causes or contributes to emotional harm to a recipient; or
 - d. An action taken on behalf of a recipient by a provider who assumes the recipient is incompetent, although a guardian has not been appointed or sought, which results in substantial economic, material, or emotional harm to the recipient.
 - e. Exploitation of a recipient by an employee, volunteer, or agent of a provider.
3. **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 [AR 7001 (a-c) (z)/AR 7035(2)(a)].

Abuse (DHHS): All suspected cases or incidents of individuals (not less than 18 years of age) who are at risk because of harm or threatened harm to adult's health or welfare caused by another person. This includes but is not limited to non-accidental physical or mental injury, sexual abuse, or mistreatment.

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, even if not presented.

Bodily Function: The usual action of any region or organ of the body.

Consumer/Client: Any person for whom BCCMHA is responsible for arranging, contracting for and/or coordinating the provision of services.

Degrade: To treat inhumanly; to cause 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, debased, 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.

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-Volunteer: An individual who works for compensation or a volunteer, including a student, who works without compensation for a CMH program or for staff of an agency or

service under contract with CMH.

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.

Fiduciary Abuse: Any exploitation of a recipient for financial gain that may include, but not limited to, misuse of recipient's funds or taking advantage of the provider relationship with the recipient.

Neglect: An act, or failure to act, committed by an employee or volunteer of the department, a community mental health services program, 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.

1. Neglect Class I:

- a. Acts of commission or omission by an employee, volunteer or agent of a provider which results 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 causes or contributes to the death, or sexual abuse of, or serious physical harm to a recipient.
- b. The failure to report apparent or suspected Abuse Class I or Neglect Class I of a recipient.

2. Neglect Class II:

- a. Acts of commission or omission by an employee, volunteer or agent of a provider which results from noncompliance with standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and which cause, or contribute to non-serious physical harm, or emotional harm, to a recipient; or
- b. The failure to report apparent or suspected Abuse Class II or Neglect Class II of a recipient.

3. Neglect Class III:

- a. Acts of commission or omission by an employee, volunteer or agent of a provider which results from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and which either placed or could have placed a recipient at risk of physical harm; or sexual abuse.
- b. The failure to report apparent or suspected Abuse Class III or Neglect Class III of a recipient [AR 7001(i-k)/AR 7035(2)(a)].

Neglect (DHHS): All suspected cases of incidents of individuals who are at risk because of harm to an adult's health or welfare caused by the inability of the adult to respond to a harmful situation (self-neglect) or by the conduct of a person who assumes responsibility for a significant aspect of the adult's health or welfare.

Non-Serious Physical Harm: 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.

Physical Management: 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 themselves, or others.

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.

Restraint: 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 recipient that a physician or registered nurse determines caused or could have caused the death of a recipient, caused the impairment of their bodily functions, or caused the permanent disfigurement of a recipient.

Sexual Abuse: 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 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.

Sexual Contact: The intentional 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; or

3. Out of anger

Sexual Penetration: Sexual intercourse, cunnilingus, fellatio, 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. Emission of semen is not required.

Sexual Harassment: Any action, by any person, which can be construed as sexual advances toward a recipient, requests for sexual favors from a recipient, or communication of a sexual nature toward a recipient.

Therapeutic De-Escalation: 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.

Threaten: To tell someone that you will hurt them or cause problems if they do not do what you want [CMHSP 6.3.2.3(B)].

Time Out: A voluntary response to the therapeutic suggestion to a recipient to remove themselves from a stressful situation in order to prevent a potentially hazardous outcome.

Treatment by Spiritual Means: A spiritual discipline or school of thought that a recipient wishes to rely on to aid physical or mental recovery.

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:

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.

Vulnerable: A condition in which an adult is unable to protect themselves from abuse, neglect or exploitation because of a mental or physical impairment or because of advanced age.

PROCEDURES

Any BCCMHA employee or contract employee who has reasonable cause to suspect the abuse or

neglect of a client shall immediately make a verbal report of the suspected abuse or neglect to the Recipient Rights Officer. See Attachment Packet.

The Recipient Rights Officer shall be informed of all reported cases of abuse or neglect within 24 hours. The Recipient Rights Officer is required to inform BCCMHA's Executive Director.

Staff who have witnessed or suspect cases of abuse or neglect are required to:

- a. Barry County Department of Health and Human Services, Adult or Child Protective Services in accordance with their definition of abuse and neglect;
- b. Department of Health and Human Services Licensing if the suspected case of abuse or neglect occurred in a licensed home;
- c. Local law enforcement if the suspected abuse involves assault, criminal homicide or criminal sexual conduct, vulnerable adult abuse and child abuse [MHC 1723]. Within 72 hours after making the oral report, the reporting person shall file a written report with the law enforcement agency to which the oral report was made and with the chief administrator or the agency responsible for the recipient [MHC 1723(2)].

Any employee making such a report of suspected abuse or neglect shall not be dismissed or penalized for making the report and will be protected by the Michigan Whistleblower's Protection Act.

Allegations of abuse and/or neglect will be investigated immediately by the Recipient Rights Office. [MHC 1778(1)]

All BCCMHA employees and contractual providers are required to cooperate with recipient rights investigations.

REFERENCES

BCCMHA

CARF

Department of Health and Human Services

Michigan Mental Health Code

CMS

Office of Recipient Rights

SOAMR Administrative Rules (R325.14302 to 325.14306)

ATTACHMENTS

[Continuing Education for Requirements for Recipient Rights Staff](#)

https://www.michigan.gov/documents/mdhhs/C6.3.2.3B_RR_Course_Content_Requirements_f or_CMHSP_and_Provider_Staff_FINAL_FY19_636151_7.pdf
[Incident Report.pdf](#)

APPROVED BY:

Richard Thiemkey
Executive Director

Date