



HURON BEHAVIORAL HEALTH
PROCEDURE

Procedure #: RR.2.01
Issue Date: 05/16/00
Rev. Date: 07/27/16
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Title: Recipient Rights – Abuse and Neglect Procedure
Prepared By: Recipient Rights Officer

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Purpose:

To define the practices, philosophies, and employee responsibilities regarding issues of Neglect and Abuse. Also, to establish a policy to safeguard consumers of mental health services from abuse, neglect, or mistreatment and to promote the safety, security, and well being of consumers and to ensure protection of individuals served.

Scope:

This procedure applies to all employees (including full-time employees, part-time employees, contractual providers, volunteers, students, and/or interns, of Huron Behavioral Health (HBH) programs, both direct and contracted.

Information:

POLICY:

Any action of commission and/or omission which, by its nature, jeopardize or impair the rights, safety, and well being, best interest and properties of consumers are prohibited. (Actions include, but are not limited to, those stated in the definition). Willful acts of employees which adversely affect care and treatment of consumers are strictly prohibited. A responsive system of accountability for safeguarding consumers from abuse, neglect or mistreatment will be assured. Instances of or knowledge of suspected abuse, neglect, or mistreatment is to be reported immediately.

For the purpose of this procedure, the term “employee” refers to all full-time, part-time, contractual, interns, or volunteers of Huron Behavioral Health.

For the purpose of this procedure, the term “agent of a provider” refers to any full-time, part-time, or contractual providers, volunteers, or interns employed by or associated with a provider/service that has a contractual relationship with HBH.

DEFINITIONS for this procedure:

Abuse - means 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.

Abuse - Class I - 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 consumer.

Abuse - Class II – means any of the following:

- 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 consumer.
- The use of unreasonable force on a consumer by an employee, volunteer or agent of a provider with or without apparent harm.
- 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 consumer.
- An action taken on behalf of a consumer by a provider who assumes the consumer is incompetent, despite the fact that a guardian has not been appointed, that results in substantial economic, material, or emotional harm to the consumer.

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- Exploitation of a consumer by an employee, volunteer, or an agent of a provider

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 consumer.

- Note: Consumer to consumer physical altercations is not abuse under definition. Consumer to consumer sexual abuse must be reported to the HBH Recipient Rights office, accompanied by an Incident Report.

Abuse, Department of Human Services Protective Services – The harm or threatened harm to a child or vulnerable adult's health or welfare caused by another person, including non-accidental physical or mental injury, sexual abuse, or maltreatment.

Acts of Commission: Physically striking or assaulting a consumer; speaking harshly or rudely to a consumer; ridiculing, coercing, or threatening a consumer.

Acts of Omission: Causing physical or emotional injuries to a consumer, such as being unattended because of unauthorized absence of staff.

Allegation: A written or verbal statement made by an individual, which asserts their belief that a consumer has been abused or mistreated.

Assault: An intentional, unlawful offer of physical injury to another by force; or force unlawfully directed towards another person, under circumstances which create well founded fear of imminent peril, coupled with apparent present ability to execute the attempt if not prevented.

Battery: An unlawful beating or other wrongful physical violence or constraint inflicted on a human being without his/her consent. A willful and unlawful use of force or violence upon another person. The slightest touching of another, of his/ her clothes or anything else attached to his/her person, if done in an insolent or angry manner constitutes battery.

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

Child Abuse: Harm or threatening harm to a child's (person under 18 years of age) health or welfare by a person responsible for that child's health or welfare which occurs through non-accidental physical or mental injury, sexual abuse, or maltreatment.

Child Neglect: Harm to a child's health or welfare by a person responsible for the child's health or welfare which occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter or medical care.

Consumer/Recipient: A person who receives mental health services from an entity, which is operated by, or under contract with Huron Behavioral Health's Board.

Criminal Abuse:

- 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 that is committed by a consumer against another consumer unless it results in serious physical injury.
- 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 or the Michigan Compiled Laws.
- Criminal sexual conduct that is a violation of an attempt or conspiracy to commit a violation of sections 520b to 520e or 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.

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- Child abuse that is a violation of an attempt or conspiracy to commit a violation of section 136b of Act No. 328 of the Public Acts of 1931, being section 750.136n of the Michigan Compiled Laws.

Department: Michigan Department of Community Health.

Endangerment, Department of Human Services Protective Services: A life threatening situation caused by the inability of the person whose life is threatened to respond.

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.

Exploitation: An action by an employee, volunteer, or agent of a provider that involves the misappropriation or misuse of a consumers property or funds for the benefit of an individual or individuals other than the consumer.

Failure to Report: To intentionally omit communication concerning one's firsthand knowledge of witnessing any abuse, accident, injury or illness.

Falsification of Care and Treatment Records: To willfully cause entry of untrue observations, or to introduce untrue notations and entries into a care and treatment record, or to fail to make timely entries of observations as well as necessary information into the record.

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.

Neglect - Class I – means either of the following:

- 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 consumer.
- The failure to report apparent or suspected Abuse Class I or Neglect Class I of a consumer.

Neglect - Class II – means either of the following:

- 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, written directives, procedures, or individual plan of service and that cause or contribute to non-serious physical harm or emotional harm to a consumer.
- The failure to report apparent or suspected Abuse Class II or Neglect Class II of a consumer.

Neglect - Class III – means either of the following:

- 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, written directives, procedures, or individual plan of service and that either placed or could have placed a consumer at risk of physical harm or sexual abuse.
- The failure to report apparent or suspected Abuse Class III or Neglect Class III of a consumer.

Neglect, Department of Human Services Protective Services – Harm to a child or vulnerable adult's health or welfare caused by the conduct of a person responsible for their health or welfare, including the failure to provide adequate food, clothing, shelter, or medical care.

Non-Serious Physical Harm: Physical damage, or what could reasonably be construed as pain, suffered by a consumer which a physician or registered nurse determines could not have caused or contributed to the death of a consumer, the permanent disfigurement of a consumer or an impairment of his/her bodily functions..

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Mistreatment: An action, or lack of action, which is detrimental to care or treatment (i.e. misuse, maltreat, and exploit.)

Provider: The department, each community mental health services program, 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.

Reasonable Cause: A suspicion founded upon circumstances sufficiently strong enough to warn a reasonable person to believe that the suspicion is true.

Remedial Action: Action taken by a provider to correct violation(s) of a right and to remove contributing conditions.

Reporting Person: The employee, volunteer, or an agent of the provider who has reasonable cause to suspect the criminal abuse of a consumer, or the abuse, neglect, endangerment, or exploitation of a consumer who is a child or a vulnerable adult.

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

Sexual Abuse: sexual abuse means any of the following:

- (i) Criminal sexual conduct as defined in section 520b to 520e of 1931 Public Act 318, being MCL 750.520b to 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 an 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 an agent of a provider and a recipient for whom the employee, volunteer, or agent provides direct services.

Sexual Contact: 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 sexual purpose, or in a sexual manner for any of the following:

- a. Revenge
- b. To inflict humiliation
- c. Out of anger

Sexual Harassment: Any action, by any person, which can be construed as a sexual advance toward a consumer, requests for sexual favors from a consumer, or other conduct or communication of a sexual nature toward a consumer as defined in title VII of the Civil Rights Act of 1991.

Sexual Penetration: 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 a person's body, but emission of semen is not required.

Therapeutic De-escalation: The implementation of which is incorporated in the individualized written plan of service, wherein the consumer is placed in an area or room, accompanied by staff who shall therapeutically engage the consumer in behavioral de-escalation techniques and debriefing as to the cause and future prevention of the target behavior.

Unexpected Death: Any sudden, unanticipated, accidental, or violent death; any death that occurs under suspicious circumstances; and any death that occurs without medical attendants, or condition which could have contributed to the death during the 48 hours prior to death.

Unusual Incident: Occurrence that disrupts or adversely affects the course of treatment or care of an individual, or the program management, or the facility administration; and shall include but is not limited to;

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- Death of consumers
- Serious injury of consumers and incidents which could have caused serious injury; which includes serious unexplained injuries and serious injuries resulting from the application of physical management.

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

- i. There is no imminent risk of serious or non-serious physical harm to the consumer, staff or others.
- ii. The physical management used is not in compliance with techniques approved by the provider and the responsible mental health agency.
- iii. The physical management used is not in compliance with the emergency interventions authorized in the consumer's Person Centered Plan (PCP)
- iv. 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.

Written Plan of Service: The plan shall identify, at a minimum, all of the following:

Any restrictions or limitations of the consumer's rights. Such restrictions, limitations, or intrusive behavior treatment techniques shall be reviewed and approved by a formally constituted committee of mental health professionals with specific knowledge, training, and expertise in applied behavioral analysis. Any restriction or limitation shall be justified, time-limited, and clearly documented in the plan of service. Documentation shall be included that describes attempts that have been made to avoid such restrictions as well as what actions will be taken as part of the plan to ameliorate or eliminate the need for the restrictions in the future.

Procedure:

- A. All employees and agents of providers are responsible for safeguarding consumers from abuse, neglect, or mistreatment. It is the assigned duty and legal responsibility of the employee who has knowledge of consumer abuse, neglect, or mistreatment 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, and/or the Department of Human Services, (DHS) Protective Services using form DHS-3400, (county in which violation is alleged to have occurred) when appropriate.

In all cases of abuse, neglect, and/or mistreatment, it is the assigned duty and responsibility of the employee who has knowledge or reasonable cause to suspect consumer abuse, neglect, and mistreatment to report it to their immediate supervisor and to the recipient rights office.
- B. Allegations of abuse, neglect or mistreatment shall be reported in accordance with consumer rights procedures, related to Huron Behavioral Health policy and state law. The reporting employee or agent of providers shall assure that an incident report form DCH2550 is filed.
- C. Incidents that, according to the direct observation of the reporting person, results from accidental causes or from self-abuse shall be reported to the reporting person's immediate supervisor.
- D. When a prompt and thorough initial review has determined that there is cause to believe or suspect that child abuse or neglect may have occurred, the reporting employee or agent of providers shall notify his/her supervisor, and Huron Behavioral Health's Office of Recipient Rights. In all cases of suspected criminal abuse or neglect (child or adult) the appropriate police agency and DHS shall also be notified.
- E. During police investigation of alleged abuse:
 1. Direct care staff and contract service agency personnel shall give police full cooperation and support in order that they may complete their investigation.
 2. The investigation convened by the Office of Recipient Rights shall be carried out in cooperation with the police.
- F. Statements of alleged abuse shall neither be discounted because the consumer is receiving mental health

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services, nor shall such statements be used to deprive a consumer of their rights and benefits, unless the cause for such discounting is clearly documented in the consumer's records.

- G. Services provided by contract agencies and direct service sites shall comply with all recording and investigative requirements of Huron Behavioral Health's policies.
- H. A person who intentionally fails to report a reasonable suspicion of abuse, or who knowingly makes a false report pursuant to Public Act 32 is guilty of a misdemeanor and civilly liable for damages proximately caused by the violation.
- I. When there is reasonable cause to suspect that an employee or agent of a provider, either directly or as an accomplice, has been involved in abusing a consumer, the employee/agent of a provider will not continue in his/her present assignment during the investigation of allegations of abuse.
- J. 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 or actions, which may lead to prosecution. Huron Behavioral Health employees and agents of contractual providers shall cooperate with authorized investigators from other agencies assigned to inquire into other violations which by law are within their jurisdiction. For example, Michigan Department of Civil Rights, Department of Human Services, Adult and Child Protective Services.

REPORTING/INVESTIGATION PROCEDURES

- A. All allegations or incidents of suspected abuse, neglect, or mistreatment toward a consumer will be reported to the employee's or agent of the provider's immediate supervisor/designee and to the Huron Behavioral Health Office of Recipient Rights.
- B. Pursuant to Public Act 32, Section 723, when criminal abuse is suspected to have occurred, a verbal report shall be made immediately to the law enforcement agency (for the county or city in which it 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 person shall file a written report. The written report shall be filed with the law enforcement agency to which the oral report was made and the Huron Behavioral Health Office of Recipient Rights. If the person making the report is not the party making the initial allegation, (complainant), that person shall be provided a copy of the written report.
 - 1. A report of suspected abuse is not required if the staff person has knowledge (must be clearly documented) that the incident has been reported to the appropriate law enforcement agency and the Office of Recipient Rights, or in the instances where suspected abuse occurred more than one year before the date on which it first became known to an individual otherwise required to make a report.
 - 2. The written reports shall contain the name of the consumer, 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 consumer's clinical record.
 - 3. The identity of the individual making the report and the report itself, is confidential and is disclosed only with the written consent of the individuals or by appropriate judicial process.
 - 4. These reporting requirements do not relieve a staff person from the duty to report abuse under other applicable laws.
- C. The reporting requirement is superseded by the patient-therapist (psychiatrist, psychologist, clinical/social worker, and licensed counselor) privilege recognized in the State of Michigan if the allegation does not involve:
 - 1. Abuse by:
 - Mental Health Professional
 - A person employed by or under contract to Huron Behavioral Health
 - A person employed by an entity under contract to Huron Behavioral Health

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2. Suspected abuse is alleged to have been committed in:
 - Residential setting
 - A Huron Behavioral Health program site
 - The work site of a person employed by or under contract to Huron Behavioral Health
 - An entity under contract to Huron Behavioral Health
 - Any place where a consumer is under the supervision of a person employed by or under contract to Huron Behavioral Health

- D. Immediately upon receipt of notification of alleged abuse, neglect, or mistreatment, the Office of Recipient Rights shall determine if there is reasonable cause to believe that abuse, neglect, or mistreatment may have occurred. The Office of Recipient Rights shall notify the Executive Director of the situation, keeping him/her apprised of the situation, the investigation and the findings. Assure that appropriate procedures for notification to various departments in law enforcement and protective service agencies are completed.

- E. The Office of Recipient Rights shall implement approved procedures for investigating complaints/allegations.
 1. If an allegation is substantiated, the Executive Director will take remedial, firm, appropriate disciplinary action.
 2. The Recipient Rights Officer shall maintain copies of reported abuse, neglect and mistreatment.
 3. The Recipient Rights Officer, on a quarterly basis, shall recount accumulative data detailing submitted reports of abuse, neglect and mistreatment to the Rights Advisory Committee.
 4. The Recipient Rights Officer, on a monthly basis, shall recount accumulative data detailing submitted reports of abuse, neglect and mistreatment to the Executive Director for his/her review and assessment.

Definitions/Acronyms:

Note: Definitions are located in the "Information" section of this procedure

DCH – Department of Community Health

DHS – Department of Human Services (formerly Family Independence Agency or FIA)

DMH – Department of Mental Health (now called DCH)

HBH - Huron Behavioral Health

Forms:

Incident Report Form (DCH2550)

Consumer Rights Complaint (DMH2550A)

Abuse & Neglect Form (DHS-3400)

Records:

Records of Abuse and Neglect are maintained by the HBH Recipient Rights Officer.

Reference(s) and/or Legal Authority

Public Act 238 of 1978

Public Act 529 of 1982

Michigan Mental Health Code 330.1100, 330.1722, 330.1723, 330.1752, 330.1778

Administrative Rules R 330.7035

Administrative Rules R 330.7001

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Change Letter	Date of Change(s)	Changes
A	5/21/03	Deleted Appeals, updated references and legal authority,
B	08/05/03	Added sexual contact definition, clarified in Reporting/Investigation Procedures d & e.
C	03/01/06	Changed FIA to DHS in "Procedure A & J", added DHS-3400 Abuse and Neglect Form, added "Sexual Contact" to "Definitions" section, re-formatted procedure.
D	08/22/06	Added Mental Health Code definitions for "Abuse" and "Neglect" in response to ORR Audit Report corrective action, added the word "criminal" to "B" (page 5), re-ordered definitions alphabetically for ease of use.
E	04/21/09	Updated, added definition changes from Administrative rules effective 04/06/09 (Abuse Class III, Emotional Harm, Exploitation, Force, Neglect Class I, Neglect Class II, Neglect Class III, Non-Serious Physical Harm, Sexual Abuse, Sexual Contact, Therapeutic De-escalation, Unreasonable Force). Removed definition of "Force",
F	01/23/12	Reviewed by the HBH Recipient Rights Advisory Committee w/ no content changes.
G	05/15/13	Annual review conducted – no content changes made
H	01/13/15	Reviewed by Recipient Rights Advisory Committee – in "Information" section 1 st statement in "Policy" changed "commission and omission" to "commission and/or omission", no other content changes made.
I	07/27/16	Reviewed by Recipient Rights Advisory Committee – in "Purpose" section changed last word (consumer" to "individuals served", in "Information" section changed "contracted employees" to "contracted providers" and reordered words in second sentence without changing sentence content, no other content changes made.