

Recipient Rights

Mental Health Code (Chapter 7)

Administrative Rules

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.

- ❖ 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.
- ❖ 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 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 between an employee, volunteer, or agent of a provider and (b)(6) recipient for whom the employee, volunteer, or agent provides direct services.
- ❖ 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.
- ❖ 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
 - (i) Revenge.
 - (ii) To inflict humiliation.
 - (iii) Out of anger.

Abuse Class II: 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 recipient.
 - ❖ Non-serious 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.

- The use of unreasonable force on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm.
 - ❖ 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: (i) There is no imminent risk of serious or non-serious physical harm to the recipient, 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 recipient's individual plan of service. (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

- 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.
 - ❖ Emotional harm means impaired psychological functioning, growth, or development of a significant nature as evidenced by observable physical symptomatology and as determined by a mental health professional. AR330.7001(g)

- 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.

- Exploitation of a recipient by an employee, volunteer, or agent of a provider.
 - ❖ 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. AR330.7001(h)

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.

- ❖ Threaten-telling someone that you will hurt them or cause them problems if they do not do what you want.
- ❖ Degrade: 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 respect or good opinions of others. (syn) degrade, debase, demean, humble, humiliate. These verbs mean to deprive of self-esteem or self-worth; to shame or disgrace. (b) degrading behavior shall further define as any language or epithets that insult the person's heritage, mental status, race, sexual orientation, gender, intelligence, etc...
- ❖ 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.

Neglect Class I: either of the following:

- 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 serious physical harm to a recipient.
- The failure to report apparent or suspected abuse Class I or neglect Class I of a recipient.

Neglect class II: either of the following:

- 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.
- The failure to report apparent or suspected abuse Class II or neglect Class II of a recipient.

Neglect class III: either of the following:

- 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 that either placed or could have placed a recipient at risk of physical harm or sexual abuse.

- The failure to report apparent or suspected abuse Class III or neglect Class III of a recipient.

MANDATORY REPORTING

IF YOU Suspect, are notified of, or witness ANY rights violation

All employees, volunteers and agents of TBHS shall:

- Immediately report, verbally or in writing, any apparent or suspected rights violations to their supervisor and to the ORR.
- Safeguard recipients from abuse and/or neglect and act to obtain treatment for observed injuries and to prevent additional harm.
- Immediately report to their supervisor and to the ORR, verbally or in writing, when they witness, discover, or have reasonable cause to suspect, abuse or neglect of recipients.
- Assure a report is made to the designated law enforcement agency, as required by law (MCL 330.1723 Criminal Abuse).

Confidentiality:

Information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and shall not be open to public inspection. Except:

Mandatory Disclosure without consent

- Information requested:
 - Through orders or subpoenas of a court of record (judge's order) or by the legislature unless privileged by law
 - By a prosecuting attorney for involuntary commitment proceedings
 - To comply with another provision of law, i.e. Duty to Warn
 - By MDHHS in order for it to discharge its responsibilities
 - By the Auditor General
 - By the surviving spouse, etc. of a recipient in order to apply for, or receive, benefits
 - By Michigan Protection and Advocacy Services in compliance with Federal law.
 - As necessary for treatment, coordination of care or payment for mental health services.

Mandatory Disclosure with consent

- Case record information requested by a competent adult recipient (1748 (4))
- To an attorney representing a recipient with the consent of the recipient or his/her legal representative

Discretionary Disclosure without consent

- As necessary in order for the recipient to apply for or receive benefits (only if these benefits accrue to the provider for liability for payment of mental health services)
- As necessary for outside research, evaluation, accreditation, etc.
No recipient identifiers unless impracticable and in no circumstance where recipient may be harmed by identification
- To providers of mental health services, health services, or a public agency if compelling need for disclosure based upon a substantial probability of harm to the recipient or others.
- To comply with MDHHS request under 1748a

Discretionary Disclosure with consent

- To the recipient (with a guardian) or guardian or parent of a minor recipient or another person or agency UNLESS in the written judgment of the holder of the record the disclosure would be detrimental to the recipient or others (discretion for detriment) [1748(6)]

Dignity and Respect

Dignity is the state or quality of being worthy of honor or respect.

Respect is to feel admiration for someone: to regard someone as being worthy of admiration because of good qualities: to act in a way which shows that you are aware of someone's rights, wishes, etc.

Family Rights

- Treated with dignity and respect.
- Opportunity to provide information to treating professionals.
- Provided an opportunity to request and receive educational information about the nature of disorders, medications and their side effects, available support services, advocacy and support groups, financial assistance and coping strategies.

Civil Rights

- Permitted to exercise all rights, benefits and privileges that are not limited.
- Be presumed legally competent, unless a court appoints a guardian.
- Right to enter into a marriage contract or obtain/oppose a divorce
- Right to vote
- Right to access religious services and worship on a nondiscriminatory basis.
- Right to not have living area searched
 - ❖ Unless authorized in PCP
 - ❖ Contraband/property is in written policies/procedures or rules
 - ❖ Occurs in the presence of a witness
 - ❖ Recipient is to be present unless they decline
 - ❖ Documentation that includes-reason for the search, names of staff involved/witnessed, results of search/description of property seized

Communication and Visits

- A resident is entitled to unimpeded, private, and uncensored communication with others by mail and telephone and to visit with persons of his or her choice, except when limitations per Behavioral Modification Plan. No limitations for communication with attorney/court.
- Correspondence can be conveniently and confidentially received and mailed, and by making space for visits available. Writing materials, telephone usage funds, and postage shall be provided in reasonable amounts to residents who are unable to procure such items.

Financial Issues/Personal Property

- A resident is entitled to receive, possess, and use all personal property/monies.
- Each facility shall provide a reasonable amount of storage space to each resident for his or her clothing and other personal property. The resident shall be permitted to inspect personal property at reasonable times.
- A facility may exclude particular kinds of personal property from the facility. Any exclusions should be in the Residential Agreement or within the IPOS
 - ❖ In order to prevent theft, loss, or destruction of the property, unless a waiver is signed by the resident.
 - ❖ In order to prevent the resident from physically harming himself, herself, or others.
- A receipt shall be given to a resident and guardian if applicable for any of his or her personal property taken into the possession of the facility. Any personal property in the possession of a facility at the time the resident to whom the property belongs is released from the facility shall be returned to the resident.

Freedom of Movement

- The freedom of movement of a recipient shall not be restricted more than is necessary to provide mental health services to him or her:
 - ❖ to prevent injury to him or her or to others
 - ❖ to prevent substantial property damage
- In the PCP, Behavioral Modification Plan
- Reviewed and approved by Behavioral Treatment Plan Review Committee
- Reviewed on a regular basis
- Removed when no longer needed.

Limitations

- Limitations: For an individual through a Behavioral Modification Plan based on their unique health and safety concerns

Medication Rights

- Only administer medication per doctor's order
- Not use medication as punishment, for the convenience of the staff, or as a substitute for other appropriate treatment.
- Review the administration of a psychotropic medication
- Medication is administered by or under the supervision of personnel who are qualified and trained.
- Record the administration of all medication in the recipient's clinical record.
- Medication errors and adverse drug reactions are immediately and properly reported to a physician and recorded in the recipient's clinical record.
- Recipient has the right to refuse medication.

Person Centered Planning

- Person-centered planning process is used to develop a written individual plan of services in partnership with the recipient.
 - ❖ Recipient decides the date, time, place and individuals invited to the PCP meeting.
- A preliminary plan shall be developed within 7 days of the commencement of services.
- The individual plan of services shall consist of a treatment plan, a support plan, or both.
 - ❖ A treatment plan shall establish meaningful and measurable goals with the recipient.
- The individual plan of services shall address, as either desired or required by the recipient, the recipient's need for food, shelter, clothing, health care, employment

opportunities, educational opportunities, legal services, transportation, and recreation.

- The plan shall be kept current and shall be modified when indicated.
- The individual in charge of implementing the plan of services shall be designated in the plan.
- If a recipient is not satisfied with his or her individual plan of services, the recipient, the person authorized by the recipient to make decisions regarding the individual plan of services, the guardian of the recipient, or the parent of a minor recipient may make a request for review to the designated individual in charge of implementing the plan. The review shall be completed within 30 days.
- An individual chosen or required by the recipient may be excluded from participation in the planning process only if inclusion of that individual would constitute a substantial risk of physical or emotional harm to the recipient or substantial disruption of the planning process. Justification for an individual's exclusion shall be documented in the case record.

Photographs, Fingerprinting, One-way glass, Taping

- A recipient of mental health services shall not be fingerprinted, photographed, audiotaped, or viewed through a 1-way glass except in the circumstances and under the conditions set forth in this section. As used in this section, photographs include still pictures, motion pictures, and videotapes.
- Fingerprints, photographs, or audiotapes may be taken and used and 1-way glass may be used in order to provide services, including research, to a recipient or in order to determine the name of the recipient only when prior written consent.
- Fingerprints, photographs, or audiotapes taken in order to provide services to a recipient, and any copies of them, shall be kept as part of the record of the recipient.
- Fingerprints, photographs, or audiotapes taken in order to determine the name of a recipient shall be kept as part of the record of the recipient, except that when necessary the fingerprints, photographs, or audiotapes may be delivered to others for assistance in determining the name of the recipient. Fingerprints, photographs, or audiotapes so delivered shall be returned together with copies that were made. An individual receiving fingerprints, photographs, or audiotapes shall be informed of the requirement that return be made. Upon return, the fingerprints, photographs, or audiotapes, together with copies, shall be kept as part of the record of the recipient.
- Fingerprints, photographs, or audiotapes in the record of a recipient, and any copies of them, shall be given to the recipient or destroyed when they are no longer essential in order to achieve 1 of the objectives set forth, or upon discharge of the resident, whichever occurs first.
- Photographs may be taken for purely personal or social purposes. A photograph of a recipient shall not be taken or used under this subsection if the recipient has indicated his or her objection.

- Photographs or audiotapes may be taken and 1-way glass may be used for educational or training purposes only when express written consent is obtained.

Safe, Sanitary, Humane Environment

- Mental health services shall be provided in a safe, sanitary, and humane treatment environment
- Provisions for resident health, hygiene, and personal grooming shall include assisting and training residents to exercise maximum capability in personal grooming practices, including bathing, tooth brushing, shampooing, hair grooming, shaving, and care of nails. In addition, a resident shall be provided with all of the following:
 - ❖ Toilet articles.
 - ❖ A toothbrush and dentifrice.
 - ❖ An opportunity for shower or tub bath at least once every 2 days, unless medically contraindicated.
 - ❖ The services of a barber or a beautician on a regular basis. If a male, the opportunity to shave daily.

Seclusion/Restraint

- “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-**PROHIBITED**
- “Seclusion” means the temporary placement of a recipient in a room, alone, where egress is prevented by any means-**PROHIBITED**