



CMHA-CEI Policies and Procedure Manual

Title:	3.3.14, Abuse, Neglect, or Mistreatment of Recipients		
Subject:	CONSUMER TREATMENT, TRAINING, AND LIVING		
Section:	Clinical		
Policy: <input type="checkbox"/> Procedure: <input checked="" type="checkbox"/>	Issued by: Director, Quality, Customer Service, and Recipient Rights	Effective Date: 04/09/81	Applies to: <input type="checkbox"/> All CMHA-CEI staff <input checked="" type="checkbox"/> Contract Providers
Page: 1 of 9	Approved by: N/A	Review Date: 2/21/17	X Other:

I. Purpose:

To safeguard recipients of mental health services from abuse, neglect, or mistreatment, to promote the safety, security, and well-being of recipients, and to ensure protection of their person, rights, and properties.

II. Procedures:

- A. Any staff person of the CMHA-CEI Network or provider who has reasonable cause to suspect criminal abuse, including vulnerable adult abuse and child abuse, shall IMMEDIATELY report the suspicion, or cause a report to be made, to law enforcement, the Recipient Rights Office (RRO), and administration. Any staff person who has reasonable cause to suspect any form of abuse or neglect shall IMMEDIATELY notify the RRO and administration.
- B. Mandatory reporting requirements concerning criminal abuse:
 - 1. Any staff person who has reasonable cause to suspect criminal abuse of a recipient shall immediately make, or cause to be made, by telephone or otherwise, an oral report 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.
 - 2. Any staff person who suspects that any form of abuse or neglect has occurred shall immediately notify the RRO. The RRO shall ensure that referrals are made to the protective services department and the foster care licensing division of Michigan’s Michigan Department of Human Services, as appropriate.
 - 3. Any staff person who suspects that any form of abuse or neglect has occurred shall notify their supervisor or program director/designee. A report to a supervisor or program director/designee does not relieve the individual staff person from the mandatory reporting requirements.
 - 4. Within 72 hours after making the oral report to law enforcement (III.A), the reporting person shall file a written report with that law enforcement agency, the CMH Executive Director, the provider, and the RRO. If the individual making the oral and written reports to law enforcement is not the person with reasonable cause to suspect abuse, the person who caused the report to be made shall receive a copy of the written report. The written report

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- a. Shall contain the name of the recipient.
 - b. Shall contain a description of the criminal abuse and other information available to the reporting person that might establish the cause of the criminal abuse and the manner in which it occurred.
 - c. Shall become part of the recipient's record, with the name of the reporting person and the name of the person accused of criminal abuse deleted.
5. The identity of an individual who makes a mandatory report of criminal abuse is confidential and is not subject to disclosure without the consent of that individual or by order or subpoena of a court of record. An individual acting in good faith who makes a report of criminal abuse against a recipient is immune from civil or criminal liability that might otherwise be incurred. This immunity from civil or criminal liability extends only to the mandatory reporting and does not extend to a negligent act that causes personal injury or death.
6. An individual who makes a mandatory report of criminal abuse in good faith shall not be dismissed or otherwise penalized by the CMH Network or provider for making the report.
7. Suspected criminal abuse is not required to be reported either
- a. If the suspected criminal abuse has been reported to the appropriate law enforcement agency, or
 - b. If the suspected criminal abuse occurred more than one year before the date on which it first became known to an individual who would otherwise be required to make a report.
8. Confidential information or privileged communications shall not be included in the mandatory report of criminal abuse unless either (or both) of the following circumstances apply:
- a. The suspected criminal abuse is alleged to have been committed or caused by
 - (1) A mental health professional.
 - (2) An individual employed by or under contract to the Michigan Department of Community Health.
 - (3) An individual employed by or under contract to a licensed facility.
 - (4) An individual employed by or under contract to the CMH Network or provider.
 - (5) An individual employed by a service provider under contract to the Department of Community Health.
 - (6) An individual employed by a service provider under contract to a licensed facility.
 - (7) An individual employed by a service provider under contract to the CMH Network or provider.
 - b. The suspected criminal abuse is alleged to have occurred in
 - (1) A state facility.
 - (2) A licensed facility.
 - (3) A CMH Network program site.
 - (4) A CMH Network provider program site.
 - (5) The work site of an individual employed by or under contract to the Department of Community Health.

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- (6) The work site of an individual employed by or under contract to a licensed facility.
 - (7) The work site of an individual employed by or under contract to the CMH Network.
 - (8) A place where a recipient is under the supervision of an individual employed by or under contract to the Department of Community Health.
 - (9) A place where a recipient is under the supervision of an individual employed by or under contract to a licensed facility.
 - (10) A place where a recipient is under the supervision of an individual employed by or under contract to the CMH Network.
 - (11) A place where a recipient is under the supervision of an individual employed by or under contract to a CMH Network provider.
9. Mental health professionals are also required to report allegations of abuse and neglect to protective service departments of the Michigan Department of Human Services.
 10. All staff shall cooperate fully with law enforcement, the RRO, and any other investigators during an investigation. Failure to cooperate with an investigation shall result in administrative action.
 11. Staff shall cooperate in the prosecution of appropriate criminal charges against those who have engaged in criminal abuse.
 12. A staff person who intentionally fails to report a reasonable suspicion of criminal abuse or who knowingly makes a false report is guilty of a misdemeanor and civilly liable for damages caused by the violation.
- C. Reporting requirements for all allegations of abuse or neglect
1. A staff person shall IMMEDIATELY report every incident of suspected abuse, neglect, or mistreatment, and incidents for which abuse cannot be ruled out, to the RRO.
 2. The RRO shall ensure that referrals are made to the protective services department and the foster care licensing division of Michigan's Michigan Department of Human Services, as appropriate. Investigation by RRO shall be completed in cooperation with law enforcement and other investigative authorities.
 3. Any employee, volunteer, or agent of the CMH Network and provider who suspects that any form of abuse or neglect has occurred shall notify their supervisor or program director/designee. A report to a supervisor or program director/designee does not relieve the individual staff person from the mandatory reporting requirements. Failure to report suspected abuse in a timely manner shall be considered neglect, and may result in administrative action.
 4. All employees, volunteers or agents of the CMH Network and providers shall cooperate fully with the RRO and any other investigators during an investigation. Failure to cooperate with an investigation shall result in administrative action.

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5. When there is reasonable cause to suspect that a staff person, either directly or as an accomplice, has been involved in the abuse of a recipient, that staff person shall not continue in his/her present work assignment during the investigation of allegation(s) of abuse.
6. The Director of Quality Customer Service and Recipient Rights shall assure that allegations of abuse and neglect are investigated.
 - a. The RRO shall provide a prompt and thorough review of allegations of abuse and neglect that is fair to both the recipient alleged to have been abused, and to the employee, volunteer, or agent of the CMH Network or provider alleged to have violated the recipient's rights.
 - b. Investigations conducted by the RRO shall be done in cooperation with law enforcement, DHS protective services and AFC licensing, as appropriate.
 - c. The RRO shall use the preponderance of the evidence standard in determining whether a right has been violated.
 - d. If an allegation is found to be substantiated, the complaint shall be considered closed only when appropriate remedial action, including disciplinary action as appropriate, has been taken.
7. The CMH Executive Director shall ensure that an appropriate penalty shall be given to the staff in cases of substantiated allegations of abuse or neglect. Such penalty may include official reprimand, demotion, suspension, reassignment, or dismissal, each of which shall be considered discipline.
8. All staff are required to report, orally and in writing, allegations of child abuse or neglect to the Michigan Department of Human Services in accordance with the Child Protection Law, even if the child is not a recipient of the CMH Network, when the staff has reasonable cause to suspect child abuse or neglect.
9. All staff are required to make an oral report of suspected cases of adult abuse, neglect, or exploitation to the Michigan Department of Human Services in accordance with the Adult Protective Services Act, even if the adult is not a recipient of the CMH Network, when the staff has reasonable cause to suspect adult abuse, neglect, or exploitation.

III. Definitions:

- A. 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, Act No 328 of the Public Acts of 1931, being section 750.520a of the Michigan Compiled Laws, that is committed by an employee or volunteer, or agent of the CMH Network or provider.
- B. Abuse, Class I: A non-accidental act or provocation of another to act by an employee, volunteer, or agent of the CMH Network or provider that caused or contributed to the death of, sexual abuse of, or serious physical harm to a recipient.
- C. Abuse, Class II: Any of the following:

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1. A non-accidental act, or provocation by another to act, by an employee, volunteer, or agent of the CMH Network or provider that caused or contributed to non-serious physical harm to a recipient.
 2. The use of unreasonable force on a recipient by an employee, volunteer, or agent of the CMH Network or provider, with or without apparent harm.
 3. Any action, or provocation of another to act, by an employee, volunteer or agent of the CMH Network or provider that causes or contributes to emotional harm to a recipient.
 4. An action taken on behalf of a recipient by an employee, volunteer, or agent of the CMH Network or 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.
- D. Abuse, Class III: The use of language or other means of communication by an employee, volunteer, or agent of the CMH Network or provider to degrade, threaten, or sexually harass a recipient.
- E. Accident: An event that is unexpected and unintended.
- F. Allegation: An assertion that a recipient's right may have been violated.
- G. Assault: Any willful attempt or threat to inflict injury when coupled with the apparent present ability to do so and any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm.
- H. Battery: Any unlawful touching of another which is without justification or excuse.
- I. Criminal abuse:
1. Any of the following
 - a. 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. This is
 - (1) Assault.
 - (2) Assault and battery.
 - (3) Aggravated assault.
 - (4) Felonious assault (deadly weapon).
 - (5) Assault with intent to murder.
 - (6) Assault with intent to do great bodily harm less than murder.
 - (7) Assault with intent to maim.
 - (8) Assault with intent to commit a felony.
 - (9) Assault with intent to rob while unarmed.
 - (10) Assault with intent to rob while armed.
 - b. 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. This is
 - (1) First degree murder.
 - (2) Second degree murder.

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- (3) Manslaughter
- c. 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. This is
 - (1) Criminal sexual conduct in the first degree.
 - (2) Criminal sexual conduct in the second degree.
 - (3) Criminal sexual conduct in the third degree.
 - (4) Criminal sexual conduct in the fourth degree.
- d. Vulnerable adult abuse that is a violation or an attempt or conspiracy to commit a violation of section 145n of the Michigan Penal Code, Act No. 328 of the Public Acts of 1931, being section 750.145n of the Michigan Compiled Laws.
- e. Child abuse that is a violation or an attempt or conspiracy to commit a violation of section 136b of Act No. 328 of Public Acts of 1931, being section 750.136b of the Michigan Compiled Laws.
 - (1) "Child abuse" means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare or by a teacher or teacher's aide that occurs through non-accidental physical or mental injury; sexual abuse, sexual exploitation, or maltreatment.
 - (a) "Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting a child engaged in a listed sexual act as defined in section 145c of Act No. 328 of the Public Acts of 1931, being section 750.145c of the Michigan Compiled Laws.
 - (2) "Child neglect" means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that occurs through either of the following
 - (a) Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.
 - (b) Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or any other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.
- 2. 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 1931, being section 750.81 of the Michigan Compiled Laws, that is committed by a recipient against another recipient.
- J. Emotional harm: Impaired psychological functioning, growth, or development of a significant nature as evidenced by observable physical symptomatology and as determined by a mental health professional.

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- K. Failure to report: Deliberately omitting communication concerning firsthand knowledge or witnessing of any abuse, neglect, accident, injury, or illness.

- L. Falsification of care and treatment records: Any of the following
 1. Willfully causing entry of untrue observations.
 2. Introducing untrue notations and entries.
 3. Failing to make timely entries of observations and/or necessary information.

- M. Force: The use of power or violence to compel or restrain.

- N. Neglect: An act or failure to act committed by an employee, volunteer, or agent of the CMH Network or provider that denies a recipient the standard of care or treatment to which he or she is entitled.

- O. Neglect, Class I: Either of the following
 1. An act of commission or omission by an employee, volunteer, or agent of the CMH Network or provider that results from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service that cause or contribute to the death of, or serious physical harm to, a recipient.
 2. The failure to report abuse or neglect of a recipient when the abuse or neglect results in the death of, or serious physical harm to, the recipient.

- P. Neglect, Class II: Either of the following
 1. An act of commission or omission by an employee, volunteer, or agent of the CMH Network or provider that results from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service that cause or contribute to non-serious physical harm or emotional harm to a recipient.
 2. The failure to report abuse or neglect of a recipient when the abuse or neglect results in non-serious physical harm to the recipient.

- Q. Neglect, Class III: Either of the following
 1. An act of commission or omission by an employee, volunteer, or agent of the CMH Network or provider that results 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.
 2. Failure to report abuse or neglect of a recipient when the abuse or neglect places the recipient at risk of serious or non-serious harm.

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- R. Non-serious physical harm: Physical damage suffered by a recipient that a physician or registered nurse determine 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.
- S. Mistreatment: An action, or lack of action, by staff which is detrimental to care or treatment.
- T. Reasonable cause: A suspicion founded upon circumstances sufficiently strong to warrant a reasonable person to believe that the suspicion is true.
- U. Recipient: An individual who receives mental health or substance abuse services from the CMH Network or provider.
- V. Self-abuse: An act by a recipient which results, or may result, in self-inflicted injury to the recipient.
- W. Serious physical harm: Physical damage suffered by a recipient that a physician or registered nurse determine caused or could have caused the death of a recipient, caused the impairment of a recipient's bodily functions, or caused the permanent disfigurement of a recipient.
- X. Sexual abuse: Any sexual contact or sexual penetration as defined in section 520a(k) and (l) of Act No. 328 of the Public Acts of 1931, as amended, being section 750.520a (k) and (l) of the Michigan Compiled Laws, involving an employee, volunteer, or agent of the CMH Network or provider, and a recipient.
- Y. Sexual harassment: Action by an employee, volunteer, or agent of the CMH Network or provider which is a sexual advance to a recipient, request for sexual favors from a recipient, or other conduct or communication of a sexual nature toward a recipient.
- Z. Staff: An employee, volunteer, or agent of the CMH Network or provider

IV. Monitor and Review:

This procedure is reviewed annually by the Director of Quality, Customer Service, and Recipient Rights. This procedure is monitored by accrediting bodies and regulatory agencies as applicable.

V. References:

- A. PA 258 of 1974, "Michigan's Mental Health Code", as amended
 - 1. 330.1100a--Definitions
 - 2. 330.1100b--Definitions
 - 3. 330.1700--Definitions
 - 4. 330.1722--Protection of recipient from abuse or neglect
 - 5. 330.1723--Suspected abuse of recipient or resident; report to law enforcement agency
 - 6. 330.1723c--Violation of [section] 330.1723 or making of false report as misdemeanor; civil liability
- B. PA 238 of 1975, "Child Protection Law", as amended

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VI. Related Policies and Procedures:

CMHA-CEI Policy 3.3.14

VII. Review Log:

Review Date	Reviewed By	Changes (if any)
05/12/04		
03/16/05		
01/31/07		
12/04/07		
05/26/10		
02/06/12		
03/10/13		
07/06/16		
2/21/17	QCSRR Director	Update to New Format

VIII. Attachments:

N/A