

The Right Door for Hope, Recovery, and Wellness

Chapter Title Recipient Rights	Chapter # RR		Subject # 136.1
Subject Title <b>Abuse and Neglect</b>	Adopted 3/5/02	Revised 2/10/14	Reviewed 3/25/05; 12/10/07; 3/14/08; 3/29/10; 2/10/14; 1/4/17

**PROCEDURE**

**Application**

This procedure shall apply to The Right Door for Hope, Recovery, and Wellness and all services operated by or under contract with it. This procedure shall serve to implement and assure compliance with the Board policy regarding Abuse and Neglect.

**1.0 Purpose**

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

**2.0 Definitions**

- 2.1 Abuse: Non-accidental physical or emotional harm to a consumer, or sexual contact with or sexual penetration of a consumer 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 provider.
- 2.2 Abuse, Class I: A non-accidental act or provocation of another to act by an employee, volunteer, or agent of the provider that caused or contributed to the death of, sexual abuse of, or serious physical harm to a consumer.
- 2.3 Abuse, Class II: Any of the following:
  - 2.3.1 A non-accidental act, or provocation by another to act, by an employee, volunteer, or agent of the provider that caused or contributed to non-serious physical harm to a consumer.
  - 2.3.2 The use of unreasonable force on a consumer by an employee, volunteer, or agent of the provider, with or without apparent harm.
  - 2.3.3 Any action, or provocation of another to act, by an employee, volunteer or agent of the provider that causes or contributes to emotional harm to a consumer.
  - 2.3.4 An action taken on behalf of a consumer by an employee, volunteer, or agent of the 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.

## The Right Door for Hope, Recovery, and Wellness

Chapter Title	Chapter #		Subject #
Recipient Rights	RR		136.1
Subject Title <b>Abuse and Neglect</b>	Adopted 3/5/02	Revised 2/10/14	Reviewed 3/25/05; 12/10/07; 3/14/08; 3/29/10; 2/10/14; 1/4/17

- 2.3.5      Exploitation of a consumer by an employee, volunteer, or agent of a provider.
- 2.4      Abuse, Class III: Verbal abuse defined as 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.
- 2.5      Accident: An event that is unexpected and unintended.
- 2.6      Allegation: An assertion that a consumer's right may have been violated.
- 2.7      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.
- 2.8      Battery: Any unlawful touching of another, which is without justification or excuse.
- 2.9      Criminal abuse:
- 2.9.1      Any of the following:
- 2.9.1.1      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.
- 2.9.1.2      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.
  - (3) Manslaughter

The Right Door for Hope, Recovery, and Wellness

Chapter Title	Chapter #		Subject #
Recipient Rights	RR		136.1
Subject Title <b>Abuse and Neglect</b>	Adopted 3/5/02	Revised 2/10/14	Reviewed 3/25/05; 12/10/07; 3/14/08; 3/29/10; 2/10/14; 1/4/17

2.9.1.3 Criminal sexual conduct that is a violation or an attempt or conspiracy to commit a violation of sections 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 consumer, 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.

2.9.1.4 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.

2.9.1.5 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,

The Right Door for Hope, Recovery, and Wellness

Chapter Title Recipient Rights	Chapter # RR		Subject # 136.1
Subject Title <b>Abuse and Neglect</b>	Adopted 3/5/02	Revised 2/10/14	Reviewed 3/25/05; 12/10/07; 3/14/08; 3/29/10; 2/10/14; 1/4/17

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.

- 2.9.2 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 consumer against another consumer.
- 2.10 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.
- 2.11 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 individuals other than the recipient.
- 2.12 Failure to report: Deliberately omitting communication concerning firsthand knowledge or witnessing of any abuse, neglect, accident, injury, or illness.
- 2.13. Falsification of care and treatment records: Any of the following:
- 2.13.1 Willfully causing entry of untrue observations.
  - 2.13.2 Introducing untrue notations and entries.
  - 2.13.3 Failing to make timely entries of observations and/or necessary information.
- 2.14 Neglect: An act or failure to act committed by an employee, volunteer, or agent of the provider that denies a consumer the standard of care or treatment to which he or she is entitled.
- 2.15 Neglect, Class I: Either of the following:
- 2.15.1 An act of commission or omission by an employee, volunteer, or agent of the provider that results from noncompliance with a standard of care or treatment required by law, and/or rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to serious physical harm to, or sexual abuse of a consumer.
  - 2.15.2 The failure to report apparent or suspected abuse Class I or neglect Class I of a consumer.

## The Right Door for Hope, Recovery, and Wellness

Chapter Title <b>Recipient Rights</b>	Chapter # <b>RR</b>		Subject # <b>136.1</b>
Subject Title <b>Abuse and Neglect</b>	Adopted 3/5/02	Revised 2/10/14	Reviewed 3/25/05; 12/10/07; 3/14/08; 3/29/10; 2/10/14; 1/4/17

2.16 Neglect, Class II: Either of the following:

- 2.16.1 An act of commission or omission by an employee, volunteer, or agent of the provider that results from noncompliance with a standard of care or treatment required by law, and/or 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 consumer.
- 2.16.2 The failure to report apparent or suspected abuse Class II or neglect Class II of a consumer.

2.17 Neglect, Class III: Either of the following:

- 2.17.1 An act of commission or omission by an employee, volunteer, or agent of the provider that results from noncompliance with a standard of care or treatment required by law, and/or rules, policies, guidelines, written directives, procedures, or individual plan of service that either placed, or could have placed, a consumer at risk of physical harm or sexual abuse.
- 2.17.2 Failure to report apparent or suspected abuse Class III or neglect Class III of a consumer.

2.18 Non-serious physical harm: Physical damage or what could reasonably be construed as pain suffered by a consumer that 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 or her bodily functions.

2.19 Mistreatment: An action, or lack of action, by staff which is detrimental to care or treatment.

2.20 Reasonable cause: A suspicion founded upon circumstances sufficiently strong to warrant a reasonable person to believe that the suspicion is true.

2.21 Consumer: An individual who receives mental health or substance abuse services from the provider.

2.22 Self abuse: An act by a consumer which results, or may result, in self-inflicted injury to the consumer.

2.23 Serious physical harm: Physical damage suffered by a consumer that a physician or registered nurse determine caused or could have caused the death of a consumer, caused the impairment of a consumer's bodily functions, or caused the permanent disfigurement of a consumer.

## The Right Door for Hope, Recovery, and Wellness

Chapter Title <b>Recipient Rights</b>	Chapter # <b>RR</b>		Subject # <b>136.1</b>
Subject Title <b>Abuse and Neglect</b>	Adopted 3/5/02	Revised 2/10/14	Reviewed 3/25/05; 12/10/07; 3/14/08; 3/29/10; 2/10/14; 1/4/17

- 2.24 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 provider, and a consumer.
- 2.25 Sexual harassment: Action by an employee, volunteer, or agent of the provider which is a sexual advance to a consumer, request for sexual favors from a consumer, or other conduct or communication of a sexual nature toward a consumer.
- 2.26 Staff: An employee, volunteer, or agent of the provider.

### 3.0 Procedures

- 3.1 Mandatory reporting requirements concerning criminal abuse:
  - 3.1.1 Any staff person who has reasonable cause to suspect criminal abuse of a consumer 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.
    - 3.1.1.1 Any staff person making an oral report of suspected criminal abuse will provide a written statement to the appropriate law enforcement agency within 72 hours of making the oral report.
  - 3.1.2 Suspected criminal abuse is not required to be reported either:
    - 3.1.2.1 If the suspected criminal abuse has been reported to the appropriate law enforcement agency, or
    - 3.1.2.2 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.
  - 3.1.3 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 consumer 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.

The Right Door for Hope, Recovery, and Wellness

Chapter Title	Chapter #		Subject #
Recipient Rights	RR		136.1
Subject Title <b>Abuse and Neglect</b>	Adopted 3/5/02	Revised 2/10/14	Reviewed 3/25/05; 12/10/07; 3/14/08; 3/29/10; 2/10/14; 1/4/17

- 3.1.4 All employees, volunteers or agents of the network providers 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.
- 3.1.5 Staff shall cooperate in the prosecution of appropriate criminal charges against those who have engaged in criminal abuse.
- 3.1.6 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 and may receive disciplinary action.
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- 3.2 Reporting requirements for all allegations of abuse or neglect.
  - 3.2.1 Mandated reporters must make an immediate verbal report to MDHHS, Children’s Protective Services in accord with the Child Protection Law, upon suspecting child abuse or neglect, followed by a written report (3200) within 72 hours.
  - 3.2.2 All staff are required to make an oral report of suspected cases of adult abuse or neglect to the Michigan Department of Health and Human Services in accordance with the Adult Protective Services Act, even if the adult is not a recipient of CMH Services, when the staff has reasonable cause to suspect adult abuse or neglect.
  - 3.2.3 The RRO shall ensure that referrals are made Michigan’s Department of Health and Human Services, Adult Protective Services and Bureau of Children and Adult Licensing, as appropriate.
  - 3.2.4 A staff person shall IMMEDIATELY report every incident of suspected abuse, neglect, retaliation, harassment, or mistreatment, and incidents for which abuse cannot be ruled out, to the RRO.
  - 3.2.5 The RRO shall ensure that referrals are made to protective services and foster care licensing departments of Michigan’s Department of Health and Human Services, as appropriate. Investigation by RRO shall be completed in cooperation with law enforcement and other investigative authorities.
  - 3.2.6 Any employee, volunteer, or agent of the provider who suspects that any form of abuse or neglect has occurred shall notify their supervisor or program

## The Right Door for Hope, Recovery, and Wellness

Chapter Title	Chapter #		Subject #
Recipient Rights	RR		136.1
Subject Title <b>Abuse and Neglect</b>	Adopted 3/5/02	Revised 2/10/14	Reviewed 3/25/05; 12/10/07; 3/14/08; 3/29/10; 2/10/14; 1/4/17

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.

- 3.2.7 All employees, volunteers, or agents of the 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.
- 3.2.8 When there is reasonable cause to suspect that a staff person, or agent of a provider, either directly or as an accomplice, has been involved in the abuse of a consumer, that staff person shall not continue in his/her present work assignment during the investigation of allegation(s) of abuse.
- 3.2.9 The Recipient Rights Officer shall assure that allegations of abuse and neglect are investigated.
  - 3.2.9.1 The RRO shall provide a prompt and thorough review of allegations of abuse and neglect that is fair to both the consumer alleged to have been abused, and to the employee, volunteer, or agent of the provider alleged to have violated the consumer's rights.
  - 3.2.9.2 Investigations conducted by the RRO shall be done in cooperation with law enforcement, MDHHS--protective services, and MDHHS Bureau of Licensing--AFC licensing division, as appropriate.
  - 3.2.9.3 The RRO shall use the preponderance of the evidence standard in determining whether a right has been violated.
  - 3.2.9.4 If an allegation is found to be substantiated, the complaint shall be considered closed only when appropriate remedial action, including firm and appropriate disciplinary action as appropriate, has been taken.
- 3.2.10 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.

#### **4.0 Monitoring and Review**

This procedure is reviewed by the Recipient Rights Officer and the Executive Director.

#### **5.0 References**



The Right Door for Hope, Recovery, and Wellness

Chapter Title	Chapter #		Subject #
Recipient Rights	RR		136.1
Subject Title <b>Abuse and Neglect</b>	Adopted 3/5/02	Revised 2/10/14	Reviewed 3/25/05; 12/10/07; 3/14/08; 3/29/10; 2/10/14; 1/4/17

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 consumer from abuse or neglect
5. 330.1723--Suspected abuse of consumer or resident; report to law enforcement agency
6. 330.1723c--Violation of [section] 330.1723 or making of false report as misdemeanor; civil liability

PA 238 of 1975, "Child Protection Law", as amended

PA 519 of 1982, "Adult Protective Services Law", as amended

PA 328 of 1931, "Michigan's Penal Code"

Administrative Rules

1. R 330.7001--Definitions
2. R 330.7035--Abuse or neglect of consumers

CEI CMH Policy 3.6.1, "Recipient Rights"

CEI CMH Policy 3.6.2, "Rights of Recipients Including Consumers in Community Residences"

CEI CMH Policy 3.3.7 "Confidential Peer Review/QA Indicator Report"

Robert S. Lathers, Chief Executive Officer	Date		