

SANILAC COUNTY COMMUNITY MENTAL HEALTH AUTHORITY

CLINICAL POLICY

NUMBER: RR004

NAME: INDIVIDUALS RECEIVING SERVICES - ABUSE AND NEGLECT

INITIAL APPROVAL DATE:	12/19/2001	BY: Administrative Committee
CONSUMER/STAKEHOLDER REVIEW:	02/21/2023	BY: Recipient Rights Advisory Comm.
(LAST) REVISION DATE:	02/15/2022	BY: Recipient Rights Officer
(LAST) REVIEW DATE:	03/16/2023	BY: Policy Committee
DISCONTINUED DATE:	NA	REPLACED BY: NA

I. PURPOSE

To establish a policy to safeguard individuals receiving services of mental health services from abuse, neglect and/or mistreatment. Further, to promote the safety, security and wellbeing of individuals receiving services and the protection of their rights and properties. This policy also establishes procedures for reporting and investigation of physical injuries, unexpected deaths and sexual abuse.

II. APPLICATION

Populations: **ALL**
Programs: Direct: **ALL**
Contracted: **ALL**

III. POLICY

Acts of commission and omission which, by their nature, jeopardize or impair the rights, safety and wellbeing, best interests and properties of individuals receiving services are prohibited. (Actions include, but are not limited to, those stated in the definitions.) Willful acts of employees and volunteers are prohibited which adversely affect the care and treatment of individuals receiving services of Sanilac County Community Mental Health. Instances of, or knowledge of suspected abuse, neglect or mistreatment are to be reported immediately. A responsive system of accountability for safeguarding individuals receiving services from abuse, neglect or mistreatment will be assured.

IV. DEFINITIONS

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 an individual receiving services.

ABUSE CLASS II: means any of the following:

(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 non-serious physical harm to an individual receiving services.

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

ABUSE CLASS III: means verbal abuse as defined in this policy.

DEGRADE: means either of the following:

- (i) 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 the respect or good opinion of others. (syn) degrade, debase, demean, humble, humiliate. These verbs mean to deprive of self-esteem or self-worth, to shame or disgrace.
- (ii) 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.

NEGLECT CLASS I: means either of the following:

- (i) 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 or sexual abuse of an individual receiving services.
- (ii) The failure to report apparent or suspected abuse Class I or neglect Class I of individuals receiving services.

NEGLECT CLASS II: means either of the following:

- (i) 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 an individual receiving services.
- (ii) The failure to report apparent or suspected abuse Class II or neglect Class II of an individual receiving services.

NEGLECT CLASS III: means either of the following:

- (i) 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 an individual receiving services at risk of physical harm or sexual abuse.
- (ii) The failure to report apparent or suspected abuse Class III or neglect Class III of an individual receiving services.

ACTS OF COMMISSION: Committing or perpetrating an act that results in physically striking or assaulting an individual receiving services, being rude to an individual receiving services, ridiculing, coercing or threatening an individual receiving services.

ACTS OF OMISSION: Omitting or neglecting to act in a manner that causes physical or emotional injuries to an individual receiving services.

ALLEGATION: A written or verbal statement made by an individual, which asserts their belief that an individual receiving services has been abused or mistreated.

ANATOMICAL SUPPORT: means body positioning or a physical support ordered by a physical or occupational therapist for the purpose of maintaining or improving an individual's physical functioning. All other applications of appliances that restrict a resident's movement, regardless of their stated purpose, shall be considered physical restraint.

APPARENT OR SUSPECTED: Shall be construed to mean any and all incidents that the employee, volunteer or agent of the provider has either witnessed, or received reports of, that constitute or may constitute abuse or neglect, as defined in this policy, whether or not the person believes the allegation to be true.

BODILY FUNCTION: means the usual action of any region or organ of the body.

EMOTIONAL HARM: means 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: means an action by an employee, volunteer, or agent of a provider that involves the misappropriation or misuse of an individual's property or funds for the benefit of an individual(s) other than the recipient.

FAILURE TO REPORT: Means to intentionally omit communication concerning one's firsthand knowledge or witnessing of any abuse, neglect, accident, injury or illness.

FALSIFICATION OF RECORD: Means to willfully cause untrue observations or introduce untrue notations or entries into an individual receiving services' record or to fail to make timely entries of observations as well as necessary information into the record.

FORCE: means non-accidental physical contact with or physical strength exerted against the body of an individual receiving services by an employee, volunteer, or agent of a provider that is not an approved physical management technique or that is not used to prevent the individual from harming himself, herself, or others.

MISTREATMENT: Means an action, or lack of action, which is detrimental to care or treatment [e.g., to misuse, to ill use, to maltreat, to exploit].

NON-SERIOUS HARM: means physical damage or what could reasonably be construed as pain suffered by an individual receiving services that a physician or registered nurse determines could not have caused, or contributed to, the death of a individual's receiving services, he permanent disfigurement of a individuals receiving services, or an impairment of his or her bodily functions.

PHYSICAL MANAGEMENT: means a technique used by staff as an emergency intervention to restrict the movement of an individual receiving services by direct physical contact in order to prevent the individual receiving services from harming himself, herself, or others.

PREPONDERANCE OF EVIDENCE: Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

REASONABLE CAUSE: means a suspicion founded upon circumstances sufficiently strong to warrant a reasonable person to believe that the suspicion is true.

REMEDIAL ACTION: means action taken by a provider to correct the violation[s] of a Mental Health Code protected right and to remove contributing conditions.

SERIOUS PHYSICAL HARM: means physical damage suffered by an individual receiving services that a physician or registered nurse determines caused or could have caused the death of the individual, caused the impairment of his or her bodily functions, or caused the permanent disfigurement of the individual.

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 an individual receiving services.

(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 an individual receiving services.

(iii) Any sexual contact between an employee, volunteer, or agent of a provider and an individual receiving services for whom the employee, volunteer, or agent provides direct services.

SEXUAL CONTACT: means the intentional touching of the individual receiving services' or employee's intimate parts or the touching of the clothing covering the immediate area of the individual receiving services' 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:

(i) Revenge.

(ii) To inflict humiliation.

(iii) Out of anger.

SEXUAL HARASSMENT: means sexual advances to an individual receiving services, requests for sexual favors from an individual receiving services, or other conduct or communication of a sexual nature toward an individual receiving services.

THERAPEUTIC DE-ESCALATION: an intervention, the implementation of which is incorporated in the individualized written plan of service, wherein the individual receiving services is placed in an area or room, accompanied by staff who shall therapeutically engage the individual receiving services in behavioral de-escalation techniques and debriefing as to the cause and future prevention of the target behavior.

THREATEN: means to tell someone that you will hurt them or cause problems if they do not do what you want.

TIME OUT: means a voluntary response to the therapeutic suggestion to an individual receiving services to remove himself or herself from a stressful situation in order to prevent a potentially hazardous outcome.

UNREASONABLE FORCE: means physical management or force that is applied by an employee, volunteer, or agent of a provider to an individual receiving services where there is no imminent risk of significant injury to the individual, staff or others or that is any of the following:

- (i) Not in compliance with approved behavior management techniques.
- (ii) Not in compliance with the individual receiving services' plan of service,
- (iii) Used when other less restrictive measures were not attempted immediately before the use of physical management or force.

VERBAL ABUSE: 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 an individual receiving services.

V. STANDARDS

- A. All employees [direct and contractual] and volunteers are responsible for safeguarding individuals receiving services, vulnerable adults and children from abuse, neglect or mistreatment. It is the assigned duty and legal responsibility of the employee who has reasonable cause to suspect 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 [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 abuse, neglect and mistreatment to report it to their immediate supervisor and to the Office of Recipient Rights.

- B. Allegations of abuse, neglect or mistreatment shall be reported in accordance with individuals receiving services rights procedures related to Sanilac County Community Mental Health Authority policy and state law. The reporting employee shall assure that an Incident Note form is filed.
- C. Incidents that, according to the direct observation of the reporting person, result from an accidental cause or from self-abuse shall be reported to the reporting person's immediate supervisor.
- D. During police investigation of alleged abuse:
1. Police shall be given full cooperation and support by SCCMHA staff and contract service agency personnel 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.
- E. Statements of alleged abuse shall neither be discounted because the individual receiving services is receiving mental health services nor shall such statements be used to deprive an individual receiving services of their rights and benefits unless the cause for such discounting is clearly documented in the individuals receiving services records.
- F. Services provided by contract agencies and direct service sites shall comply with all recording and investigative requirements of this policy.
- G. 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 is civilly liable for damages proximately caused by the violation.
- H. When there is reasonable cause to suspect that an employee, either directly or as an accomplice, has been involved in abusing an individual receiving services, the employee will not continue in his/her assignment during the investigation of allegations of abuse.
- I. 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 that may lead to prosecution. Sanilac County Community Mental Health employees, contract providers and volunteers shall cooperate with authorized investigators from other agencies assigned to inquire into other violations that by law are within their jurisdiction. For example, Michigan Department of Civil Rights, Department of Human Services, Protective Services, etc.

VI. REPORTING/INVESTIGATION PROCEDURES:

- A. All allegations or incidents of suspected abuse, neglect or mistreatment toward an individual receiving services will be reported to the employee's immediate supervisor/designee and to the Sanilac County Community Mental Health Office of Recipient Rights.
- B. When necessary pursuant to Public Act 32, Section 723, a verbal report shall be made immediately to the law enforcement agency for the county or city in which the abuse is suspected to have occurred or to the State Police. Within seventy-two [72] hours after making the oral report to the appropriate law enforcement agency, the reporting person shall file a written report with the law enforcement agency and the Sanilac County Community Mental Health Authority Office of Recipient Rights. If the person making the report is not the party making the initial allegation, 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 individuals receiving services, a description of the above and other available information which might establish the cause and manner of the alleged abuse. This report becomes part of the individual receiving services' clinical record. Upon placement in the clinical record, the names of the reporting person and the person accused of committing the alleged abuse are deleted.
 3. The identity of the individual who makes a report under this section is confidential and is not subject to disclosure without the consent of the individual or by order or subpoena of a court of record. An individual acting in good faith and making a report of criminal abuse against an individual receiving services is immune from civil or criminal liability that might otherwise be incurred. The immunity from civil or criminal liability granted by this section extends only to acts done under this section and does not extend to a negligent act that causes personal injury or death.
 4. These reporting requirements do not relieve a staff person from the duty to report abuse under other applicable laws.
 5. An individual who makes a report of suspected abuse shall not be dismissed or penalized by Sanilac County Community Mental Health or the contract employer for making the report.
- 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:
 - a. Mental health professional.
 - b. A person employed by or under contract to Sanilac County Community Mental Health Authority.
 - c. A person employed by an entity under contract to Sanilac County Community Mental Health Authority.
 2. Suspected abuse is alleged to have been committed in:
 - a. Residential setting (Licensed AFC Home, SIP home, etc.)
 - b. A Sanilac County Community Mental Health Authority program site.
 - c. The work site of a person employed by or under contract to Sanilac County Community Mental Health Authority.
 - d. An entity under contract to Sanilac County Community Mental Health Authority.
 - e. Any place where an individual receiving services is under the supervision of a person employed by or under contract to Sanilac County Community Mental Health Authority.
 - f. State facility
- D. Upon receipt of written notification of alleged abuse, neglect or mistreatment, the Office of Recipient Rights shall determine through investigation if there is reasonable cause to believe that abuse, neglect or mistreatment may have occurred. As appropriate, the

Office of Recipient Rights shall notify the Chief Executive Officer of the situation, keeping him/her apprised of the situation, the investigation and the findings and assures that appropriate procedures for notification to various departments in law enforcement and protective services agencies are completed.

For all substantiated violations, SCCMHA will ensure that appropriate remedial action is taken. In cases of substantiated abuse or neglect, SCCMHA will ensure appropriate disciplinary action is taken.

- E. The Office of Recipient Rights shall implement approved procedures for investigating complaints/allegations as outlined in SCCMHA Recipient Rights Policy RR006 – Recipient Rights System.
- F. The Recipient Rights Officer shall present cumulative data detailing submitted reports of abuse, neglect and mistreatment to the Recipient Rights Advisory Committee at their regularly scheduled meetings.
- G. The Recipient Rights Officer, on a monthly basis, shall present cumulative data detailing submitted reports of abuse, neglect and mistreatment to the Chief Executive Officer for review and assessment.

VI. ATTACHMENTS

Sanilac CMH Incident Note Form
Recipient Rights Complaint form [DCH 0030]

VII. REFERENCES

Sanilac CMH Recipient Policy RR006
DHHS Administrative Rule R330.7001, R330.7035 (Public Act 258).