

Rights of Recipients of Mental Health Services

A guide to help Direct Support Professionals understand recipient rights, reporting requirements, and confidentiality

Outcomes:

- **Direct Support Professionals (DSP) will understand the rights of the individuals who receive services.**
- **DSP will understand reporting requirements, including when and how to complete an incident report.**
- **DSP will understand confidentiality and informed consent.**
- **DSP will understand the difference between abuse and Neglect.**

RECIPIENT RIGHTS TRAINING CHECKLIST

Trainer will assure that the following is completed for Recipient Rights Training.

Recipient Rights must be completed within 30 days of beginning employment or sooner if individual is to become a lead worker or to work independently.

1. The Recipient Rights training can be accessed at www.cmhcm.org then go to the Provider tab.

2. Or it may be accessed with the link below.

<http://www.cmhcm.org/provider/recipientrightstraining/presentation.html>

Once you have reviewed the information take the on-line test and then print the results to document that you have completed the training.

3. The Trainer will show the DSP where the Incident Reports are located and answer any questions related to when and how to complete an Incident Report.

4. Additional resources for recipient rights contained in this unit include: ORR Group Home training Curriculum 7-9-09, When and How to Complete an Incident Report, Recipient Rights Poster, Requirements for Reporting Abuse and Neglect, Rights of Recipients of Mental Health Services, and a quiz which can be used for annual update training.

5. Trainer will review the Resident Rights contained in AFC administrative rules- For Group Homes - R 400.14304/R.400.15304 Residents Rights; Licensee Responsibilities. For Family Homes- R 400.1409 Residents Rights; Licensee Responsibilities. And the reporting requirements contained in Act 280 and AFC administrative rules 400.14311(1-7) [400.15311(1-7)].

Trainer needs to emphasize that there is a difference between recipient rights and resident rights.

The trainer should assure that the DSP knows where the AFC Licensing rules are located in the home for easy reference.

Rights of Recipients of Mental Health Services

1. When a person receives mental health services, Michigan's Mental Health Code and other state and federal laws safeguard their rights. As staff you are responsible to protect these rights.
2. Michigan's Mental Health Code is state law.
3. A "Right" is something that is defined in law and protected by law.
4. People receiving services have the same the civil rights we all enjoy under the United States Constitution.
5. A recipient is considered competent in handling his/her own affairs unless a court has decided that they are legally incompetent and has appointed a guardian for them. A court appointed guardian is authorized by the judge to make certain decisions on behalf of the recipient.
6. People have the right to the appropriate services for their needs. They have the right to participate in planning for their future, identifying the services necessary to help make that happen and to identify who they would like to have participate with them in that planning.
7. People receiving services have the right to get a second opinion if they are not in agreement with some aspect of the service plan.
8. People have the right to send and receive mail, talk on the telephone, have visitors, watch television, read newspapers/magazines/books without restrictions designed for censorship.
9. People have the right to have possession of their personal property or knowledge of its storage within safety (or house rules) parameters. Specific steps must be taken and documented if a person's living area or property is to be searched.
10. Freedom of movement cannot be limited or restricted more than is necessary to provide services, prevent injury, or substantial property damage.
11. Limitations or restrictions on code protected rights requires a written plan be submitted to and approved by the Behavior Management Committee.
12. People receiving services have the right to be treated with dignity and respect. This right extends to family members of people receiving services. Family members have the right to provide information, get general education information about a diagnosis, treatments, and support services available.

Many times respect is shown through the speaker's words, tone, posture, etc.

Respect is also demonstrated by encouraging a person to make choices in what he or she wants or does not want to do and honoring such choices.

13. Confidentiality. A recipient has the right to have personal information and information about his/her services kept private. There are situations where the sharing of personal or service information may be allowed or even required.

HIPAA is a federal law that protects *health information*. In many cases it would allow information to be shared that the more protective Michigan Mental Health Code will not allow.

Michigan's Mental Health Code has generally stricter guidelines about what information may be given out. If these two laws (HIPAA and the Mental Health Code) are conflicting, the more protective (of a recipient's privacy) law (usually the Mental Health Code) rules.

42 CFR part 2 is a federal law that protects *patient identifying information*. Of the confidentiality laws, 42 CFR part 2 is the STRICTEST at protecting privacy.

This law applies to people and the substance abuse services they are receiving.

This is followed relative to people receiving services for substance abuse or co-occurring disorders. IF someone is receiving services for a co-occurring disorder and either or both HIPAA or Michigan's Mental Health Code allow a disclosure but 42 CFR part 2 prohibits the disclosure, it is likely the information CANNOT be shared.

Consent to share information is normally given through a Release of Information form. In order for a person to be legally able to sign a release, they must give *Informed Consent*. Informed consent requires a) Legal competency – not have an appointed guardian; b) Knowledge – have been provided basic information on the subject; c) Comprehension – the ability to understand the implications of giving consent; d) Voluntariness – free choice without coercion, force, deceit, etc.

Other circumstances can exist under each of these laws that will either allow or require disclosure of private information. These circumstances may vary dependent on the law and situation.

GENERAL RULE: Be protective of the personal information of our recipients!

14. Recipients have the right to be free from Abuse and Neglect.

Abuse is a non-accidental act and the result determines which class of abuse is identified. Results of abuse include: death, sexual assault, serious physical harm, non serious physical harm, having caused pain, using force (even without injury) in the absence of imminent risk or harm to someone, exploitation, sexual harassment, AND using words or other actions to threaten or degrade a recipient.

Neglect involves NOT doing something or doing something incorrectly and again the result determines which class of neglect is identified. Results of neglect include: death, sexual assault, serious physical harm, non serious physical harm, having caused pain, AND when the result **PLACED** or **COULD HAVE PLACED** the recipient at risk of physical injury or sexual abuse.

**FAILURE TO REPORT APPARENT OR SUSPECTED Abuse or Neglect
IS NEGLECT!!**



TO LEARN MORE ABOUT YOUR RIGHTS PLEASE ASK A RIGHTS ADVISOR

www.cmhcm.org

1-800-317-0708

RECIPIENT RIGHTS MAIN OFFICE

301 South Crapo Street, Suite 100
Mt. Pleasant, MI 48858
(989)772-5938

Recipient Rights Advisors

Katie Hohner
Angela Wend
Sarah Watson

Recipient Rights Officer

Jane Gilmore

If hearing or speech impaired

Michigan Relay 7-1-1

**FOR CUSTOMER SERVICE ASSISTANCE, OR INFORMATION ABOUT GRIEVANCES
AND APPEALS**

Emily Shaffer: (989) 772-5938 or (800) 317-0708

ACCESS AVAILABLE TO ALL SIX COUNTIES

Clare, Gladwin, Isabella, Mecosta, Midland and Osceola

COMPLETE AN INCIDENT REPORT WHEN:

A recipient of mental health services is **injured** and:

- Requires **first aid**, or
- Is taken to the **Emergency Room**, or is **hospitalized**.

A recipient **falls**, and:

- Is **injured**, or
- The fall was serious enough that an **injury is likely to show up later**.

A recipient is involved in a **traffic accident**.

An employee responsible for administering medications:

- Willfully disregards or changes a physician's order, documents falsely, or alters documentation.
- **Misses or delays** passing a medication, and **no protocol** instructs the employee how to proceed.
- **Misses or delays** passing a medication due to **circumstances beyond the employee's control**, and **no protocol** instructs the employee how to proceed.
- **Fails to follow the Five Rights** of Medications (wrong person, wrong dosage, wrong route, wrong time, wrong medication).
- **Fails to follow a medical protocol** (e.g. makes a charting error or administers medications but fails to document).

A recipient **refuses** (or spits out) **medications**, and **does not ultimately take** them.

A recipient is suspected of committing a **criminal offense**, is arrested or convicted.

A recipient displays **unusual challenging behavior**.

Emergency physical intervention is used.

A recipient **dies** or is **seriously injured**.

You suspect or are told that a recipient has been **abused** or **neglected***, or any other **rights violation** has occurred.

You suspect/are told that a recipient has been **exploited by sexual acts**.

***Allegations or suspicion of abuse or neglect and serious injuries shall be immediately verbally reported to your Supervisor, and to the CMHCM Rights Office, after you assure the recipient's safety (as needed).**

HOW TO CONSTRUCT AN INCIDENT REPORT

Completing the top section of the incident report:



In the upper right hand corner, fill in the recipient's first and last name, his/her case number, age, birth date, and sex.

Fill in the report date (the day you wrote the report) and time.

Fill in the name of the agency you work for (e.g. Listening Ear, Personal Assistance Options, Valley Residential Services).

Fill in the name of your worksite (e.g. Mt. Pleasant AFC, Reed City AFC).

Fill in the date and time when you discovered the incident, when it happened, and where it happened (be specific).

Fill in the first and last initials of other recipients involved or present. Alternatively, you can use other recipients' first names or first name and last initial.

Use the full names of any employees involved and/or present.



When describing the incident, explain in simple terms what happened. Be clear and specific. If other recipients were involved in the situation you are describing, use only their initials or first names.

Action taken by staff: Describe what you did in response to the incident. Describe what you did to prevent another, similar incident from occurring. Check "yes" or "no" to indicate whether signs of an injury were present.

Sign and date the report.

*In Licensed homes AFC Licensing Division -Incident/Accident report form BCAL- 4607 must also be completed and distributed as required.



PART ONE: THE LEGAL BASIS OF RIGHTS

OBJECTIVES:

As a result of reading this section you will be able to:

- Understand the rights guaranteed to all United States citizens
- Understand the rights guaranteed to all persons receiving mental health services in Michigan

Persons who receive mental health services have the same rights as you. It is important to understand where rights come from, what they are, and what additional rights are granted to recipients of mental health services in Michigan

You have heard, and perhaps used, such expressions as: "I know my rights!", "That's against my rights!", or "I have the right to do it!" In our democratic society, rights are extremely important, particularly when we think ours have been violated! A right is defined as:

"That which a person is entitled to have, to do, or to receive from others, within the limits prescribed by law" ¹

Therefore, in order to qualify as a "right", something must be defined by law, and have a legal means of protecting it.

The "rights" described in this module are some that are protected by the Constitution of the United States, the Michigan Constitution, or by Federal and State laws such as the Americans with Disabilities Act or the Michigan Mental Health Code. Remember, the people you care for still have

these rights, even though they are receiving mental health services. Some of these include:



The Right to Religious Expression

- To practice the religion of one's choice
- Not to attend any religious service against one's wishes
- Not to be discriminated against based upon one's religious beliefs



The right to freedom of speech

- To speak freely and to write, or express, one's views without restrictions
- To make and receive phone calls, in private
- To send and receive mail without censorship



The right not to be discriminated against because of race, sex, national origin, or disability

¹ Black's Law Dictionary



The right to vote



The right to have a free public education

The Michigan Mental Health Code says that persons who receive mental health services in Michigan have some additional rights to assure that they receive mental health services suited to their condition in a humane environment. The “Code” also says that, under certain circumstances, some of these additional rights may be limited.

The additional rights granted by the Code are:

- The right to be free from abuse or neglect
- The right to independent evaluations and consultations, and to see a private physician or healthcare professional at any reasonable time.
- The right to be treated with dignity, to be treated without discrimination, to have privacy, to practice one's religion, and to get paid for work that is done.
- The right to send and receive mail; have visitors, use the telephone, and get legal advice.
- The right to have information about the person receiving treatment kept confidential.
- The right to have access to information contained in the clinical record ²
- The right to a hearing, to be represented by an attorney, and to discharge planning that assures that appropriate mental health services are provided in the least restrictive setting.
- The right to be treated in a safe, sanitary, and humane environment.
- The right to have access to his or her own funds, and to be able to use them as they see fit.
- The right to have personal property safely kept and to have any rules regarding any limitations on using it clearly stated, consistent, and posted in a place where all can see.
- The right not to be forced or coerced to take medication, or to take more medication than desired, and the right to be provided with informed consent regarding medication and possible side effects.

² The Mental Health Code requires that, upon request, a competent adult recipient (meaning the recipient has no guardian) be given access to ALL information entered in their record after March 29, 1996, *without exception* (MHC §330.1748 (4)).

- The right to have a written plan of service developed through a person-centered planning process. Person-centered planning means a process for planning and supporting the individual receiving services that builds upon the individual's capacity to engage in activities that promote community life and that honors the individual's preferences, choices, and abilities. The person-centered planning process involves families, friends, and professionals, as the individual desires or requires.
- The right to refuse treatment unless the law requires it and a court orders it.

As indicated above, the Mental Health Code says that some of the rights it grants to recipients can't be limited. These "unlimitable" rights are:

- ▶ Freedom from abuse and neglect
- ▶ Treatment suited to condition
- ▶ Dignity and respect
- ▶ Safe, sanitary, humane treatment environment
- ▶ IPOS developed using a person-centered planning process
- ▶ Contact with attorneys regarding legal matters

The Code also provides that some rights it gives can be modified under certain circumstances. These are:

- ▶ Communication by mail, phone, visits
- ▶ Personal property
- ▶ Money
- ▶ Freedom of movement
- ▶ Confidentiality/privilege
- ▶ Consent to treatment

and they can only be modified through the use of **restrictions or limitations**.

Restrictions are made for all the recipients in a particular setting and are determined by policy. For example, there may be a restriction on the hours that phone calls can be made or what personal items a recipient can have in the home. **Restrictions must be clearly posted where everyone can see them.**

Limitations are placed on an individual and can only be made through the person centered planning process. In the recipient's record you should find:

- A description of the behavior and the limitation
- A time limit on the limitation
- An indication that previous measures to stop the behavior were unsuccessful
- An indication that the limitation is the least restrictive or intrusive action possible
- Measures to reduce or eliminate the behavior (this is the action you will take when the behavior occurs)



PART TWO: CONFIDENTIALITY

OBJECTIVES:

As a result of reading this section you will be able to:

- Define confidentiality and informed consent
- Identify rules you must observe when sharing information about a recipient
- Recognize instances when confidentiality has been violated

Ask your supervisor who is authorized to release information about a recipient. Know who the persons or agencies are that are authorized to receive information about a particular recipient. It may be different for each recipient. If you are not sure about releasing information, ask your supervisor prior to providing any information about a recipient.

The right to confidentiality is one of the most important rights granted to recipients. Each mental health service provider is required to have policies and procedures which provide for maintaining the confidentiality of those receiving services. Each recipient is entitled to confidentiality when seeking the services of a lawyer, a doctor or other mental health services professional. In order to assure the confidentiality of recipients, all staff must protect written and unwritten information gained while providing mental health services.

The Mental Health Code requires that:

- Every recipient is informed about the law requiring confidentiality.
- A record is maintained of any information about the recipient that is disclosed. This record must indicate what information was released, to whom it was released, and the reason for the release.
- Under certain circumstances, the release of information may be delayed, or even withheld.

However, a competent adult recipient is entitled to receive

any and all information contained in his or her record subsequent to March 28, 1996.

Some information can be provided to legal and medical personnel who provide services to the recipient, without obtaining a release of information. However, this information is limited to that which relates to the services being provided.

There are times when it is appropriate to disclose information about a recipient. Some of these are:

- When the person agrees, and the person who requested the information has a legitimate need for the information.
- To mental health, or other public agencies, when there is a strong chance that the recipient or others will be seriously hurt if no action is taken.
- To other agencies such as Social Security or the Department of Human Services when necessary in order for service providers to receive payment.
- When required by court order, or to comply with the law.
- To a prosecuting attorney when necessary to participate in proceedings governed by the Mental Health Code, for example, a civil commitment proceeding.
- To the recipient's attorney when the recipient has given consent.
- To the surviving spouse of a recipient in order to apply for and receive benefits, but only if the surviving spouse has been appointed personal representative of the estate by the court.

Confidentiality is a right of every recipient of mental health services. **Everyone involved with the delivery of services must work to maintain and protect this right.** All information in a person's record, and any information about the person discovered while providing services, is confidential. Consent of the recipient, or the recipient's guardian, is required before giving out any information.

A recipient cannot simply agree to have confidential information released. In order for a release of information to be valid, it must be given with **Informed Consent**³. This means the recipient:

- Has the legal capacity to give consent
- Is not pressured in any way to give consent
- Is able to understand what information he/she is agreeing to release
- Understands the risks, benefits and consequences of agreeing, or not agreeing, to the release of the information requested.

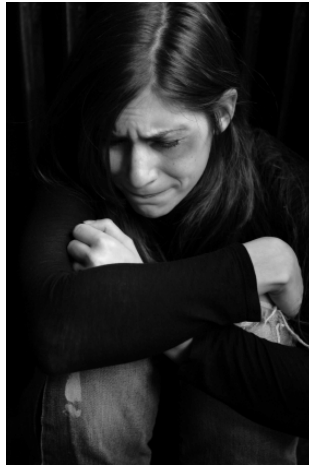
A person who has a guardian is not legally capable of giving informed consent. In most cases involving children, informed consent must be obtained from their parents. Generally, decisions about release of confidential information are made by clinical or management staff. However, there are many times when you must make immediate decisions regarding the release of a recipient's confidential information. **Don't let anyone pressure you.** Even if someone gets upset because you don't give out information they were entitled to, your first responsibility is to the recipient. Each agency has its own rules to ensure employees follow confidentiality guidelines. Sometimes, you may not be aware that you are violating the confidentiality of recipients. If you have questions about releasing information, or whether someone is authorized to receive information, check with your supervisor.

³ All of the following are elements of informed consent: (a) legal competency (b) knowledge, (c) comprehension, and (d) voluntariness (Administrative Rule 330.7003)

Protecting confidentiality means that, when you are not at work, you cannot talk to anyone about what happened with a recipient. When at work, you cannot discuss any information with those who are not authorized to receive it. It also means that you have a responsibility to make sure that unauthorized persons are not able to identify recipients.

Listed here are some examples of how you may unknowingly violate confidentiality:

- Talking about recipients outside of work
- Referring to recipients by name when discussing work with family or friends
- Giving information over the phone to persons who say they are relatives
- Taking photographs or videotapes of recipients without permission
- Listening in on a recipient's phone calls
- Discussing information in a recipient's record with staff from another home or with other mental health or service professionals who are not authorized to receive the information
- Referring to a recipient by name in another recipient's record or on an incident report for another recipient
- Referring to a recipient by full name when speaking with another recipient's family or teachers.



PART THREE: ABUSE AND NEGLECT

OBJECTIVES:

As a result of reading this section you will be able to:

- Understand what constitutes abuse and neglect
- Understand what to do in order to comply with laws requiring the reporting of abuse and neglect

The abuse or neglect of a recipient will not be tolerated! It is important to understand what is meant by abuse and neglect, to recognize a situation that is abusive or neglectful, and to know what the law requires you to do when you become aware that a recipient has been abused or neglected.

The definitions of Abuse and Neglect are found in the Administrative Rules of the Department of Community Health. These rules supplement the Mental Health Code and have the force of law. The Abuse and Neglect definitions have several classes and are based upon the action taken and the severity of the injury to the recipient. It is your responsibility to know these definitions and to make sure that none of the recipients in your care is ever abused or neglected.

Types of Abuse

Class I Abuse:

- A non-accidental act or provocation of another to act which caused or contributed to the death, or sexual abuse of, or serious physical harm to a recipient.

Key Points

Abuse is:

A nonaccidental act

By an employee, volunteer or agent of a provider (contract employee)

That causes harm to 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 or sexual penetration 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 or sexual penetration between an involving an employee, volunteer, or agent of a provider and a recipient for whom the employee, volunteer, or agent provides direct services.

"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.

"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.

"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.

Further definitions of abuse may also be found in the **Adult Protective Services Act**⁴

⁴ Public Act 519 of 1982

Class II Abuse:

- ▶ A non-accidental act or provocation of another to act that caused or contributed to non-serious physical harm to a recipient, or an act that could cause a recipient to suffer pain.

"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.

- ▶ A non-accidental act or provocation of another to act that caused or contributed 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 or as determined by a mental health professional.

- ▶ An action taken on behalf of a recipient by a provider who assumes the recipient is incompetent, even though 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.

- ▶ The use of unreasonable force on a recipient 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.

Key Points

- Physical management may only be used as an emergency intervention in order to prevent a recipient from harming himself, herself, or others.
- Physical management shall not be included as a component in a behavior treatment plan.
- Prone immobilization of a recipient for the purpose of behavior control **is prohibited**, unless implementation of physical management techniques, other than prone immobilization, is medically contraindicated and documented in the recipient's record.

"Physical management" means a technique used by staff **as an emergency intervention** to restrict the movement of a recipient by direct physical contact in order to prevent the recipient from harming himself, herself, or others.

Class III Abuse:

- Use of language or other means of communication to degrade, threaten, or sexually harass a recipient.

Other important definitions:

"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. (AR 330.7001 [p])

"Threaten" means any of the following:

- To utter intentions of injury or punishment against an individual
- To express a deliberate intention to deny the well-being, safety, or happiness of somebody unless the person does what is being demanded.

"Degrade" means any of the following:

- To cause somebody or something a humiliating loss of status or reputation, or cause somebody a humiliating loss of self-esteem
- To cause people to feel that they or other people are worthless and do not have the respect or good opinion of others
- To use any language or epithets that insult the person's heritage, mental status, race, sexual orientation, gender, intelligence, etc.

Examples of abuse:

- Any sexual contact with a recipient. This means:
 - Engaging in sexual intercourse with a recipient, *even if* the recipient says its ok
 - Oral sex of any nature with a recipient, *even if* the recipient says its ok
 - Touching the intimate parts of a recipient for sexual gratification, even if the touching occurs over the recipients' clothes.
- Hitting, slapping, biting, poking, or kicking a recipient or taking any other action which would cause pain to a recipient
- Use of weapons on a recipient
- Swearing at, using foul language, racial or ethnic slurs, or using other means of communication to degrade or threaten a recipient
- Sexually harassing a recipient
- Using the recipient's "bridge card" to purchase something for yourself
- Making remarks which could be emotionally harmful to a recipient
- Using a recipient's funds for your own purposes, for use in the home in general, or for other recipients
- Encouraging or prompting others (staff or recipients) to commit any actions that could be described as abusive

Key Points

Neglect is:

***Acts of commission
(something you do that you
shouldn't have done) or
omission (something you
didn't do that you should
have done)***

***By an employee, volunteer
or agent of a provider
(contract employee)***

***That causes harm to a
recipient***

***Is in noncompliance with a
standard of care or
treatment.***

Types of Neglect

“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 causes or contributes to the death, or sexual abuse of, or serious physical harm to a recipient.
- (ii) The failure to report apparent or suspected abuse Class I or neglect Class I of a recipient.

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

“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 a recipient at risk of physical harm or sexual abuse.
- (ii) The failure to report apparent or suspected abuse Class III or neglect Class III of a recipient.

No actual harm has to occur to a recipient for Class III Neglect to be substantiated. It is only required that the recipient be placed at *risk* of harm.

Further definitions of neglect may be found in the **Adult Protective Services Act**⁴

Examples of neglect:

- Leaving a recipient, who is not able to care for himself, unattended.
- Not providing the proper medication, the correct dosage of a medication, or leaving the medication cabinet unlocked.
- Being aware of, or suspecting, that an abusive or neglectful situation is occurring and not reporting it to the Rights Office and to your supervisor.
- Not addressing a problem behavior in the treatment plan (i.e. self-abusive behavior) which may result in harm to the recipient or to others.

If you suspect that abuse or neglect contributed to an unexplained injury, contact the Rights Office and complete a recipient rights complaint form. A copy of this form is included in your handouts.

- Not reporting an action by another staff which you suspect or know is abusive or neglectful.

REPORTING ABUSE AND NEGLECT

When you see or hear about a recipient being abused or neglected, it is important that you take action quickly. Protecting the recipient is your primary responsibility. **AND...your failure to report abuse or neglect could result in your being charged with neglect also!** At the time of shift change, staff leaving should tell you about any injuries that happened on their shift or earlier shifts. They should have documented these as well. During your first hour on duty, check to see that anything reported to you verbally was also recorded in the person's chart. Observe the people in your care for signs or changes in their

condition. Look for bruises, bumps, limping, or other obvious signs of pain or illness. This should also be done when a recipient first comes to you or returns from another setting. If you notice anything that is not explained or charted:

- Immediately report it to the designated supervisor;
- Immediately take action to protect, comfort, and get any necessary treatment for any injured person in your care;
- Record the information on an Incident Report. The first staff person who sees an unexplained injury must report it and record it. Include any signs that abuse or neglect might have been involved. Your trainer or Rights Advisor will show you how to correctly complete an Incident Report form;
- Give the report to a supervisor as soon as possible, but never later than the end of your shift;
- Report any injuries to oncoming staff.

In addition to all the reporting requirements above, the Michigan Department of Human Services, Bureau of Children and Adult Licensing is responsible for investigating alleged adult foster care administrative rule and/or statutory violations – including abuse and neglect - in adult foster care homes. You may also file a complaint with this bureau and can do this in any of the following ways:

- △ Fill Out the On-line Complaint Form at: <http://www.michigan.gov/afchfa>
Go to "Contact Us" then select "Complaints"
- △ Mail the Complaint to: Michigan Department of Human Services Bureau of Children and Adult Licensing, Complaint Intake Unit 7109 W. Saginaw, 2nd Floor PO Box 30650
Lansing, MI 48909-8150
- △ FAX the Complaint to 517-241-1680 OR
- △ Call the Complaint Intake Unit toll free at 1-866-856-0126.



PART FOUR: INVESTIGATING RIGHTS ALLEGATIONS

OBJECTIVES:

As a result of reading this section you will be able to:

- Understand the role of the Office of Recipient Rights
- Understand the process whereby allegations of rights violations are investigated
- Understand the rights of appeal provided by the Mental Health Code

THE OFFICE OF RECIPIENT RIGHTS

If you become aware that a recipient's rights may have been – or are being – violated YOU MUST REPORT this information to the Rights Office. Anyone can file a complaint on behalf of a recipient.

Most employees do not intentionally abuse, neglect, or violate the rights of recipients. The Office of Recipient Rights protects recipients from the few that do. Each Department of Community Health hospital or center, Community Mental Health Services Program, and licensed private hospital has a Recipient Rights Officer. The Rights Officer from the local Community Mental Health Board reviews all allegations of rights violations and all incident reports involving recipients in their jurisdiction. The Office may investigate, and can make recommendations about remedial action to the service provider and the responsible Community Mental Health Services Program. Rights Officers often serve as advocates for individuals and groups of recipients. You can contact the local Rights Office at:

The decision about what happens to a staff person who has committed abuse or neglect, or otherwise violated the rights of a recipient, rests with the employer.

THE INVESTIGATIVE PROCESS

When an investigation into alleged rights violation is started (see the diagram on the next page), the Rights Officer will have access to all documentation, and any staff, necessary to complete the investigation. You are expected to answer questions about work-related matters asked by the Rights Officer, a representative of your provider, the State Police, Department of Community Health (DCH), or Department of Human Services (DHS) authorities who are conducting a review or investigation.

The Mental Health Code requires that an investigation be completed within 90 days from the receipt of a complaint. A "Report of Investigative Findings" will be given to the Director of the Community Mental Health agency and to the service

provider. It is up to the CMH Director to issue a report summarizing the investigation to the complainant and the recipient within 10 days after receiving the Rights Officers' investigative report.

Each provider should have policies and procedures for dealing with offenses. These should emphasize the seriousness of improper actions. Since procedures vary among providers, check with your supervisor or look in your policy or personnel manual.

THE APPEAL PROCESS

Upon completion of a recipient rights investigation and the issuance of a summary report, the recipient, a legal representative of a recipient, and, of course, the person who made the complaint, (if that is someone other than the recipient) all have the right to appeal the decision. This appeal can be made for the following reasons:

- 1] The findings of the investigation are inconsistent with the law, facts, rules, policies or guidelines;
- 2] The action, or plan of action, is inadequate; or,
- 3] The investigation was untimely.

Unless they were the complainant, staff are not eligible to file an appeal even if they were the subject of the investigation.

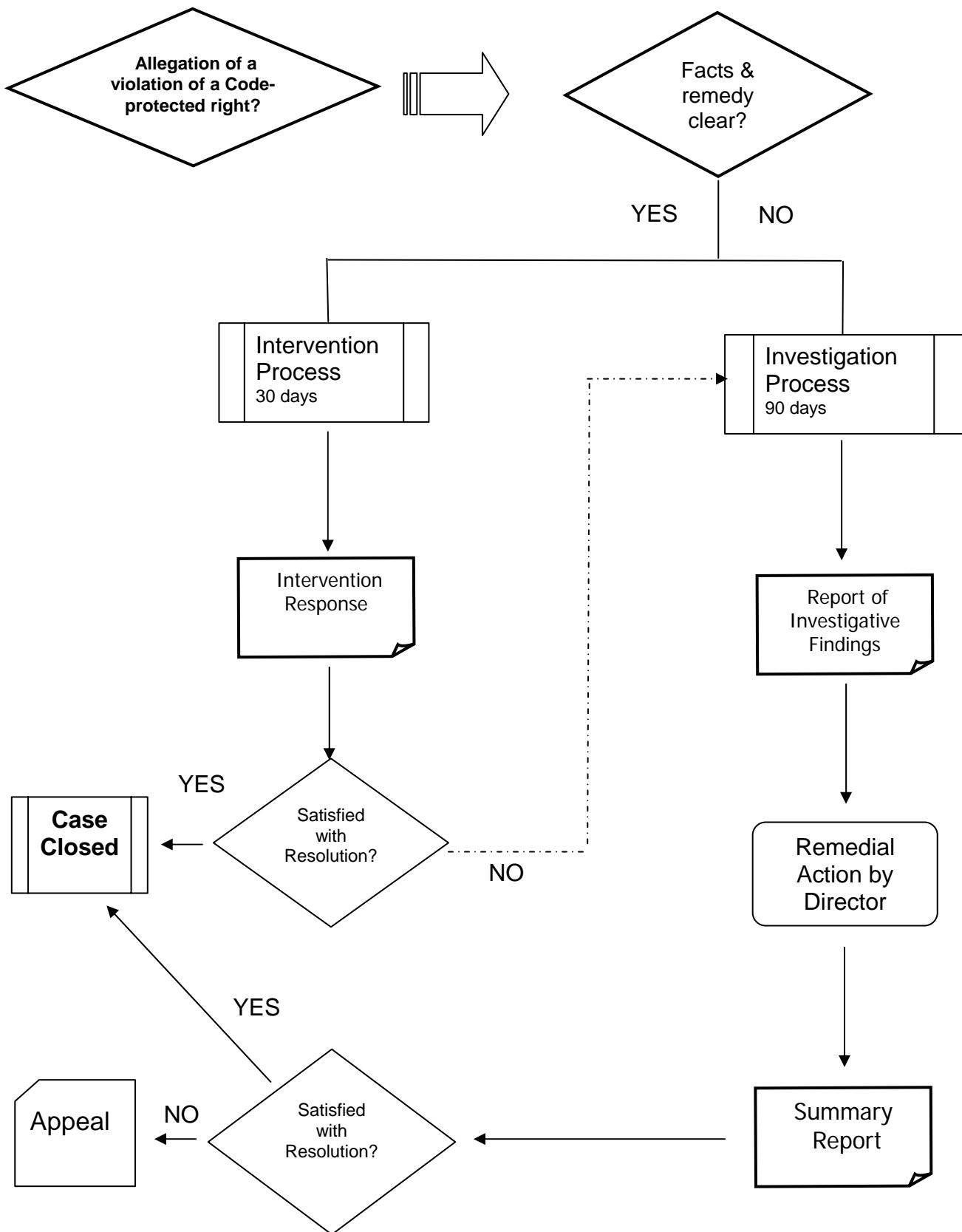
If the action of your local rights office does not solve the problem, you can contact the Michigan Department of Community Health Office of Recipient Rights. If you wish to do so write, or call:

Office of Recipient Rights
Michigan Department of Community Health
Lewis Cass Building
Lansing, MI 48913
800-854-9090

OTHER INVESTIGATIVE AGENCIES

Depending on the circumstances, several other organizations may investigate allegations of abuse or neglect. When there is a question of abuse, the Adult, or Child, Protective Services Divisions of the Michigan Department of Human Services may be involved. If your home may have violated state standards, or if it may not be suitable for a particular recipient, a Michigan Department of Human Services licensing consultant may investigate. Finally, if it is believed that a criminal act has occurred, the State Police or a local law enforcement agency may become involved.

The Recipient Rights Investigative Process





PART FIVE: RIGHTS AND RESPONSIBILITIES

OBJECTIVES:

As a result of reading this section you will be able to:

- Understand the rights you have as an employee
- Understand the responsibilities you have as an employee
- Understand the responsibilities of recipients

EMPLOYEE RIGHTS

The **Mental Health Code** mandates that complainants, staff of the Office of Recipient Rights, and any staff acting on behalf of a recipient will be protected from harassment or retaliation resulting from recipient rights activities and that appropriate disciplinary action will be taken if there is evidence of these activities.⁵

The **Whistleblowers Protection Act** (P. A. 469 OF 1980) protects employees who report rights violations. This law states that It is illegal for employers in Michigan to discharge, threaten, or otherwise discriminate against you regarding compensation, terms, conditions, locations, or privileges of employment because you, or a person acting on your behalf, reports, or is about to report, a violation, or a suspected violation, of Federal, State, or local laws, rules, or regulations, to a public body. It is illegal for employers in Michigan to discharge, threaten, or otherwise discriminate against you regarding your compensation, terms, conditions, locations, or privileges of employment because you take part in a public hearing, investigation, inquiry, or court action.

You have rights which protect you from actions based on incorrect or malicious information. There are laws which protect employees when they report rights violations.

This law does not diminish or impair either your rights, or the rights of your employer, under any collective bargaining agreement. The Act does not require your employer to compensate you for your participation in a public hearing, investigation, inquiry, or court action. The Act does not protect you from disciplinary action if you make a report to a public body that you know is false. **If you believe that your employer has violated this Act you may bring a civil action in a circuit court within 90 days of the alleged violation of this Act.** Persons found in violation of this act may be subject to a civil fine of up to \$500.00. If your employer has violated this Act, the court can order your reinstatement, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. The court may also award all, or a portion of, the costs of litigation, including reasonable attorney fees and witness fees to the complainant if the court believes such an award is appropriate.

The Bullard-Plawecki Employee Right To Know Act (P.A. 397 of 1978) requires that you be provided written notice when your employer, or a former employer, divulges a disciplinary report, letter of reprimand, or other disciplinary action given to you to someone outside your agency (unless they are representing you). This notice must be sent by first-class mail to the employee's last known address, and must be mailed on or before the day the information is divulged. **This act provides you notice only; you cannot stop the agency from divulging the information.**

EMPLOYEE RESPONSIBILITIES

The additional rights specified by the Code are intended to protect and promote the basic human dignity of recipients. You have the responsibility to treat recipients with dignity and respect and to protect them from harm. Here are the dictionary definitions of dignity and respect:

► Dignity

To be treated with esteem, honor, politeness; to be addressed in a manner that is not patronizing, condescending or demeaning; to be treated as an equal; to be treated the way any individual would like to be treated.

► Respect

To show deferential regard for; to be treated with esteem, concern, consideration or appreciation; to protect the individual's privacy; to be sensitive to cultural differences; to allow an individual to make choices.

Here are some example of how you can promote the dignity and respect of recipients:

- Calling a person by his or her preferred name
- Knocking on a closed door before entering
- Using positive language
- Encouraging the person to make choices instead of making assumptions about what he or she wants
- Taking the person's opinion seriously, including the person in conversations, allowing the person to do things independently or to try new things.

However, regulations don't necessarily change how people act. You must constantly remind yourself to treat people with respect. For example, you must address recipients as they wish to be addressed, give them privacy and freedom of choice. Most disrespect is unintentional -- you may slip into poor practices without realizing it.

You are also required to report abuse and neglect under several different laws of the State of Michigan. These reporting requirements are summarized in the chart on the next page.

As a service provider you must ensure that the rights of people are respected and protected at all times. That means you are responsible for the following:

- Your own acts, either intentional or accidental.
- Your failure to act appropriately or quickly.
- Reporting abusive actions of staff to the supervisor, a Client Service Manager, and the Rights Officer immediately.
- Reporting unsafe conditions or right violations to the appropriate agency if you are unable to resolve a situation through your supervisor.
- Intervening to stop abusive actions of other staff.

SUMMARY OF ABUSE AND NEGLECT REPORTING REQUIREMENTS

LAWS

ACTION ➔					
Section 722, Public Act 258 of 1974, as amended (Mental Health Code: Recipient Abuse)					
Public Act 238 of 1975 (Child Protection Law)					
Public Act 519 of 1982 (Adult Protective Services Act)					
Section 723, Public Act 258 of 1974, as amended (Mental Health Code: Criminal Abuse)					
WHERE is the report made?	The Office of Recipient Rights See: www.mi.gov/recipientrights				
WHAT must be reported?	Michigan Department of Community Health Community Mental Health Service Programs Licensed Private Psychiatric Hospitals or Units				
WHO is required to report?	Emotional Abuse, Sexual Abuse Neglect, Serious Injury or Death Physical or Verbal Abuse, Exploitation All employees, contract employees, or volunteers of: Michigan Department of Community Health, Community Health Services Programs, Licensed Private Psychiatric Hospitals or Units				
WHAT is the CRITERIA for reporting?	You must report if you: Suspect a recipient has been abused or neglected; become aware of any allegations of abuse or neglect made by a recipient.				
WHEN must the report be made and in what format?	A verbal report must be made immediately. A written report, on an incident report form, must be made before the end of your shift.				
TO WHOM are reports made?	To your immediate supervisor and to the Recipient Rights Office.				
If there is more than one person with knowledge must all of them make a report?	Not necessarily. Reporting should comply with the policies and procedures set up by each agency				
Is there a penalty for failure to report?	Yes. Disciplinary action may be taken and you may be held civilly liable				
Is it necessary to report to more than one agency?	Yes Each of these laws requires that the designated agency be contacted if an allegation suspected to have occurred falls under its specific jurisdiction. There are several references in each law indicating that reporting to one agency does not absolve the reporting person from the responsibility to report to other agencies as statutorily required.				
Are there other agencies to which a report can be made?	FOR NURSING HOMES The MDCH Bureau of Health Systems is responsible for investigating alleged abuse and neglect Nursing Home Abuse Hotline: 1-800-882-6006 The Michigan Attorney General's Office has an abuse investigation unit which may also investigate abuse Attorney General 24-hour Health Care Fraud Hotline: 1-800-24-ABUSE / 1-800-242-2873 FOR LICENSED ADULT FOSTER CARE HOMES The Michigan Department of Human Services Bureau of Children and Adult Licensing is responsible for investigating abuse and neglect Children and Adult Licensing Complaint Hotline: 1-866-856-0126				

Michigan Department
Of Community Health

MDCH

RECIPIENT RESPONSIBILITIES

Recipients also have responsibilities. They may be held legally responsible for breaking the law. For example, recipients may be civilly or criminally liable if they deliberately hurt another resident, an employee or any other person, or if they destroy or steal property. Recipients may keep personal property, but are responsible for taking care of it and for protecting it from theft loss. Recipients also have the responsibility not to interfere with the care or treatment of others.

FAMILY RIGHTS

Families of mental health recipients have some rights specified in the Mental Health Code.

- Family members of recipients shall be treated with dignity and respect.
- Family members shall be given an opportunity to provide information to the treating professionals.
- Family members of recipients shall be 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.
- Receiving information from or providing information to family members shall be carried out within the confidentiality constraints of Section 748 of the Mental Health Code.

***“Safeguarding the rights of others
is the most noble and beautiful
end of a human being”
Kahlil Gibran***

The Office of Recipient Rights thanks you for helping to protect the rights of our recipients!

RESOURCE MATERIALS

Some content in this section has been adapted from the following resource materials:

Michigan Mental Health Code:

http://www.michigan.gov/documents/mentalhealthcode_113313_7.pdf

Department of Human Services, Division of Adult Foster Care and Home for the Aged
Licensing:

<http://www.michigan.gov/afchfa>

Licensing Rules for Adult Foster Care family Homes

http://www.michigan.gov/documents/dhs/BCAL-PUB-0332_281384_7.pdf

Licensing Rules for Adult foster Care large Group Homes (13-20)

http://www.michigan.gov/documents/dhs/DHS-BCAL-PUB-334_276575_7.pdf

Licensing Rules for Adult Foster Care Group Homes (12 or Less)

http://www.michigan.gov/documents/dhs/BCAL-PUB-0333_241598_7.pdf

Certification of Specialized Programs Offered In Adult Foster Care Home To Clients
With Mental Illness or Developmental Disability

http://www.michigan.gov/documents/dhs/BCAL-PUB-0336_214333_7.pdf

Michigan Department of Community Health (MDCH)

<http://www.michigan.gov/mdch>

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