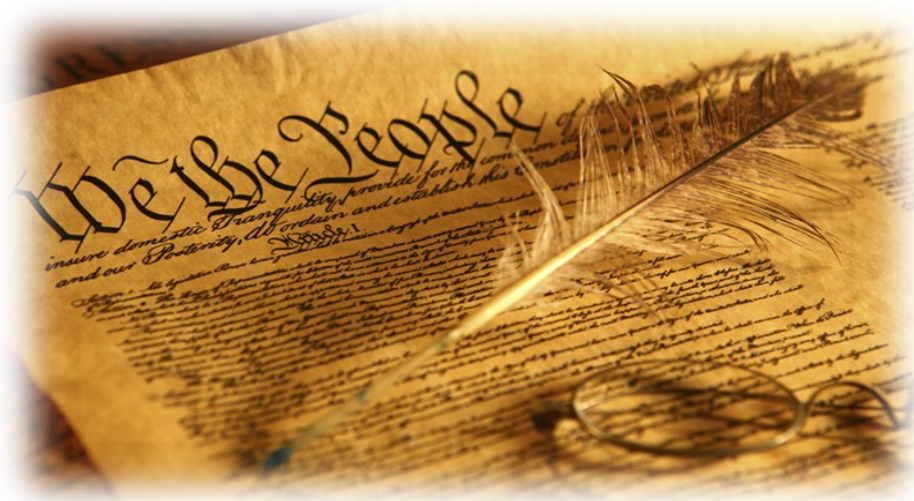




SAGINAW COUNTY
COMMUNITY MENTAL
HEALTH AUTHORITY

Recipient Rights Training



Saginaw County Community
Mental Health Authority
Office of Recipient Rights
(989) 797-3462 or (989) 797-3583
www.sccmha.org

DISCLAIMER:

- Participants are responsible for all information contained in this training packet.
- All individuals working within the SCCMHA Provider Network are responsible for the information contained in the SCCMHA Office of Recipient Rights Policies and Procedures.
- SCCMHA Recipient Rights policies are available through the Office of Recipient Rights, Network Provider, or Self Determination Coordinator.



SAGINAW COUNTY
COMMUNITY MENTAL
HEALTH AUTHORITY

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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
- Understand how the rights in the Mental Health Code are intended to protect and promote dignity and respect of the recipients

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

In order to qualify as a “right”, something must be defined by law, and have a legal means of protecting it.

THE INFORMATION CONTAINED IN THIS PACKET IS REQUIRED BY LAW.

The “rights” described in this module are some that are protected by the Constitution of the United States, the Michigan Constitution, Federal and State laws, such as the Americans with Disabilities Act, and the Michigan Mental Health Code. **Remember, the people you care for still have these rights even if they are receiving mental health services.**



¹ Black's Law Dictionary

CIVIL RIGHTS: MHC 330.1704 AR330.7009



The **Right** to be presumed competent unless:

- ▶ A guardian has been appointed
 - ▶ A judicial ruling of incompetency has been made
- A recipient can conduct personal and business affairs and exercise all rights, benefits, and privileges not divested or limited.



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.



The **Right** to vote even if they have a guardian. A recipient shall be asked if they wish to participate in an official election and, if desired, shall be assisted.



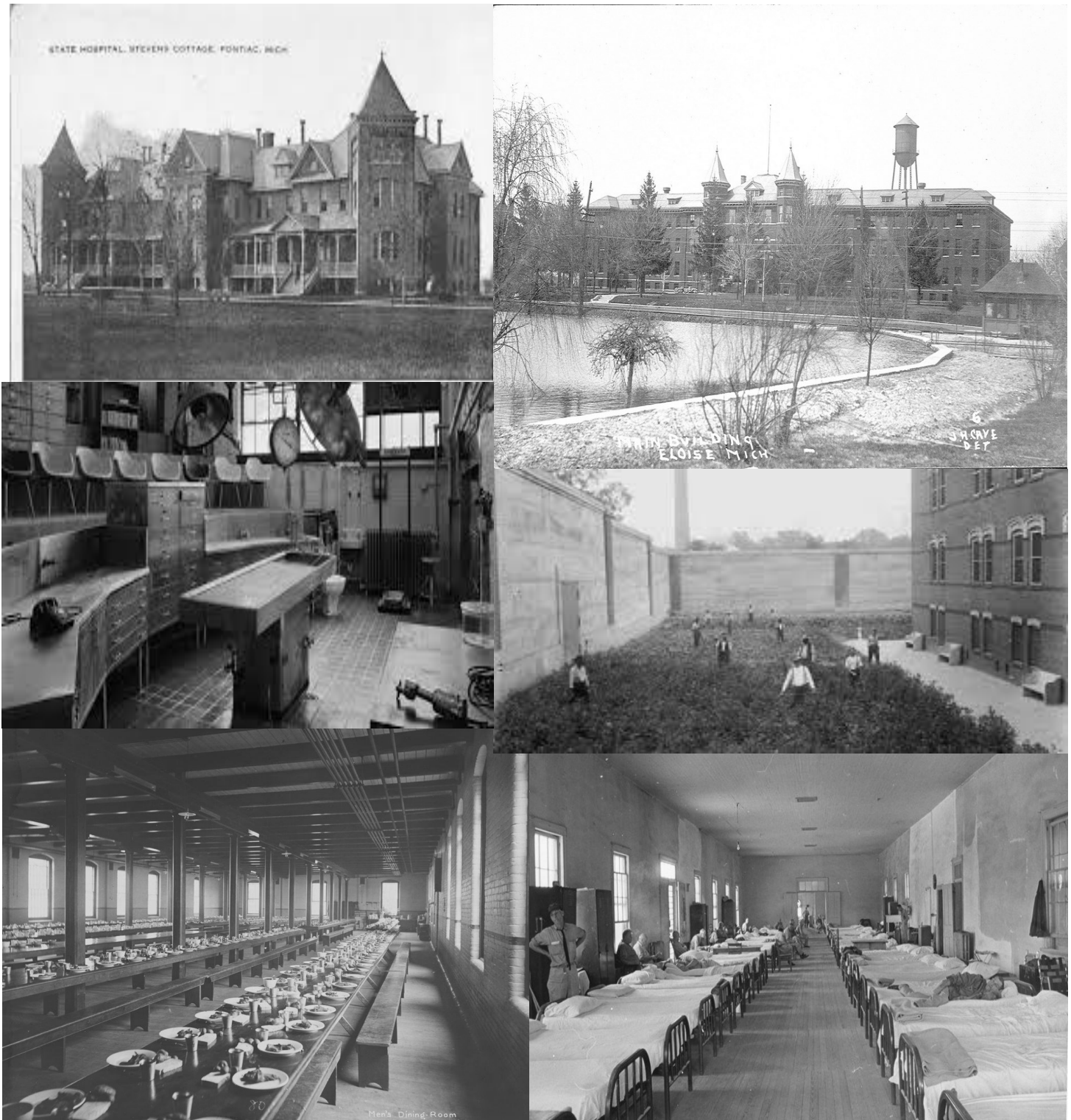
The **Right** to not be subjected to illegal search or seizure.

A violation of civil rights shall be regarded as a violation of Recipient Rights and shall be subject to remedies established for recipient rights violations.



THE MICHIGAN MENTAL HEALTH CODE (MMHC)

Created in 1974, and implemented in 1975, the MMHC says that persons who receive mental health services in Michigan have additional rights to ensure they receive mental health services suited to their condition in a humane environment. Prior to the creation of the MMHC, criminals had more rights than consumers of mental health services. The additional Rights granted that will be discussed in this training are found in **Chapters 7 and 7a** of the MMHC.





ABUSE AND NEGLECT **MHC 330.1722**

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
- Where and how to report suspected 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 Health & Human Services. 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 are ever abused or neglected. **The detailed definitions and explanations are listed later in the definition section.** The information below is a more simple description of what is meant when we talk about abuse and neglect.

EXAMPLES OF ABUSE: **(Not an inclusive list)**

- 1) Any sexual contact with a recipient. This means:
 - Engaging in sexual intercourse with a recipient, **even if** the recipient says it's okay.
 - Oral sex, of any nature, with a recipient, **even if** the recipient says it's okay.
 - Touching the intimate parts of a recipient for sexual gratification, **even if** the touching occurs over the recipients' clothing, **even if** the recipient says it's okay.
- 2) Hitting, slapping, biting, poking, kicking a recipient, or any action which would cause pain to a recipient
- 3) Use of weapons on a recipient
- 4) Swearing at, using foul language, racial or ethnic slurs, or using other means of communication to degrade or threaten a recipient
- 5) Sexually harassing a recipient
- 6) Making remarks or committing an act which could be emotionally harmful to a recipient
- 7) Using the recipient's "bridge card" to purchase something for yourself
- 8) Using a recipient's funds for your own purposes, for use in the home in general, or for other recipients (Exploitation)
- 9) Encouraging or prompting others (staff or recipients) to commit any actions that could be described as abusive
- 10) Physical Management – Unreasonable Force (including prone immobilization)

TYPES OF ABUSE

Class I Abuse:

- Hurting or causing someone to be hurt that lead to death, sexual abuse, or serious physical harm.
- Any type of sexual contact or sexual penetration as defined later in the definition section.

Class II Abuse:

- Hurting or causing someone to be hurt that lead to non-serious physical harm or doing something that could cause a recipient to suffer pain.
- Doing something to someone that caused or contributed to emotional harm.
- Taking an action 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 (misuse or misappropriation of a Recipient's funds or property) by an employee, volunteer, or agent of a provider.
- The use of unreasonable force on a recipient with or without apparent harm.

Class III Abuse:

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

Other means of communication:

- Body language
- Facial expressions
- Posture



Further definitions of abuse may also be found in the Adult Protective Services Act⁴
⁴Public Act 519 of 1982

EXAMPLES OF NEGLECT: (Not an inclusive list)

- 1) Leaving a recipient, who is not able to care for him or herself, unattended
- 2) Driving with recipients in a vehicle and not following the Michigan Vehicle Code
- 3) Not providing the proper medication, the correct dosage of a medication, or leaving the medication cabinet unlocked, when required by laws or other written standards
- 4) Not providing services as outlined in the IPOS that places the recipient at risk of harm or results in harm
- 5) Not addressing a problem behavior in the IPOS (i.e. self-abusive behavior) that places the recipient at risk of harm or results in harm
- 6) 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

TYPES OF NEGLECT:

Neglect Class I: means either of the following:

- Doing or not doing something that is noncompliant with a standard of care or treatment required by law or other written standard that causes or contributes to the death, sexual abuse, or serious physical harm.
- Not reporting apparent or suspected Abuse Class I or Neglect Class I.

Neglect Class II: means either of the following:

- Doing or not doing something that is noncompliant with a standard of care or treatment required by law or other written standard that causes or contributes to non-serious physical harm or emotional harm.
- Not reporting apparent or suspected Abuse Class II or Neglect Class II.

Neglect Class III: means either of the following:

- Doing or not doing something that is noncompliant with a standard of care or treatment required by law or other written standard, which either placed or could have placed someone at risk of physical harm or sexual abuse.
- Not reporting apparent or suspected Abuse Class III or Neglect Class III.

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.

REPORTING REQUIREMENTS



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. Your failure to report abuse or neglect could result in your being charged with neglect, as well!** At the time of shift change, staff leaving should tell you about any injuries, or other issues, 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.

- 1) It is your personal responsibility to **DIRECTLY** report Abuse or Neglect or ANY potential Rights complaints to the ORR (Office of Recipient Rights) and to any and all applicable agencies as required by law. This includes law enforcement, Licensing, Adult Protective Services (APS) and Child Protective Services (CPS). When reporting to APS or CPS, SCCMHA employees are required to submit the reporting verification to the SCCMHA Quality department for processing at 989-272-0290.
- 2) Immediately report to the ORR by calling (989) 797-3462 or (989) 797-3583, as well as contacting the designated supervisor.
- 3) Recipient rights complaints and alleged violations occurring in the lives of consumers while receiving services from SCCMHA and the Provider Network will be reported to the SCCMHA ORR within 24 hours.
- 4) Incidents involving a death or significant physical or psychological injury or serious rights complaint (which includes abuse and neglect) should be **immediately** reported by phone to the SCCMHA ORR.
- 5) **Filling out an Incident Report DOES NOT satisfy your requirement to DIRECTLY report to the ORR.**
- 6) All individuals shall have unimpeded access to the ORR.
- 7) Immediately take action to protect, comfort, and get any necessary treatment for any injured person in your care.
- 8) Record the information on an Incident Report and send to the SCCMHA Quality Department within 24 hours, as required by SCCMHA policy 04.01.02.
- 9) Emergency and non-urgent care facilities must be specifically identified in the Incident Report.
- 10) Document specific medication names and doses relevant to the incident.
- 11) Document any follow up or care given for the incident.
- 12) 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.
- 13) Give the report to a supervisor before the end of your shift.
- 14) Report any injuries or other concerns to oncoming staff.
- 15) Don't be anonymous; you **must** leave your name when you report.
- 16) Remember we are all **Mandated Reporters** by law.

Saginaw County Community Mental Health Authority
Recipient Rights Complaint Form

Complaint Number	Category
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<p>Instructions: If you believe that one of your rights has been violated you (or someone on your behalf) may use this form to make a complaint. A Rights Officer/Advisor will review the complaint and follow up with you. Send your complaint to::</p> <p style="text-align: center;">Saginaw County Community Mental Health Authority Office of Recipient Rights 500 Hancock Saginaw, MI 48602</p>		
Complainant's Name	Recipient's Name (if different from complainant)	
Complainant's Address	Phone Number	
Where did the alleged violation happen?	When did it happen? (Date & Time)	
What right was violated?		
Describe what happened		

What do you want to have happen in order to correct the problem?		

Complainant's Signature	Date	Name of Person Assisting Complainant



In addition to all the reporting requirements above, the Department of Licensing and Regulatory Affairs (LARA), Community and Health Systems, 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 file a complaint with LARA in any of the following ways:

Fill Out the Online Complaint Form at:

http://www.michigan.gov/lara/0,4601,7-154-63294_27723-353044--,00.html

Mail the Complaint to:

**Bureau of Community and Health Systems
Children and Adult Licensing – Complaint Intake Unit
611 W. Ottawa, 1st Floor
PO Box 30664
Lansing, MI 48909**

FAX the Complaint to:

(517) 284-9739

Call the Complaint Intake Unit toll free:

1-866-856-0126

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

REQUIREMENTS FOR REPORTING ABUSE AND NEGLECT

<p>WHERE is the report made?</p>	<p>Section 723, Public Act 258 of 1974 as amended (Mental Health Code-Recipient Abuse) To the OFFICE of RECIPIENT RIGHTS (ORR) at your Hospital or Community Mental Health Services Program (CMHSP) A list of local rights offices can be found at: http://tinyurl.com/orroffices</p>	<p>Public Act 238 of 1975 (Child Protection Law) To the MDHHS Office of Childrens Protective Services (CPS)</p>	<p>Public Act 519 of 1982 (Adult Protective Services Law) To the MDHHS Office of Adult Protective Services (APS)</p>	<p>Section 723, Public Act 258 of 1974 as amended (Mental Health Code-Criminal Abuse) To the Michigan State Police (MSP) or Local Sheriff or Local Police Department MSP 517-332-2521</p>
<p>WHAT must be reported?</p>	<p>Sexual, Physical, Emotional or Verbal Abuse, Neglect, Serious Injury, Death, Retaliation or Harassment</p>	<p>Sexual, Physical or Mental Abuse, Neglect, Sexual Exploitation</p>	<p>Sexual, Physical or Mental Abuse, Neglect, Maltreatment, Exploitation</p>	<p>Assault (Other than patient-patient assault/battery), Criminal Sexual Abuse, Homicide, Vulnerable Adult Abuse, Child Abuse</p>
<p>WHO is required to report?</p>	<p>All employees, contract employees, or volunteers of Michigan Department of Health and Human Services, Community Health Services Programs, Licensed Private Psychiatric Hospitals</p>	<p>Physicians, nurses, coroners, medical examiners, dentists, licensed emergency care personnel, audiologists, psychologists, social workers, school administrators, teachers, counselors, law enforcement officers, and child care providers.</p>	<p>Any person employed by an agency licensed to provide, anyone who is licensed, registered, or certified to provide health care, education, social, or other human services, law enforcement officers and child care providers.</p>	<p>All employees, contract employees of: Michigan Department of Health and Human Services, Community Mental Health Services Programs, Licensed Private Psychiatric Hospitals; All mental health professionals.</p>
<p>WHAT is the CRITERIA for reporting?</p>	<p>You must report if you: Suspect a recipient has been abused or neglected or any allegations of abuse or neglect made by a recipient.</p>	<p>You must report if you: Have reasonable cause to suspect a child has been abused, neglected, or sexually exploited.</p>	<p>You must report if you: Have reasonable cause to suspect or believe an adult has been abused, neglected, exploited or maltreated.</p>	<p>You must report if you: Suspect a recipient or vulnerable adult has been abused or neglected, sexually assaulted, or if you suspect a homicide has occurred. You do not have to report if the incident occurred more than one year before your knowledge of it.</p>
<p>WHEN must the report be made and in what format?</p>	<p>A verbal report must be made immediately. A written report on an incident report form must be made before the end of your shift.</p>	<p>A verbal report must be made immediately. A written report on DHS form 3200 must be made within 72 hours.</p>	<p>A verbal report must be made immediately. A written report at the discretion of the reporting person.</p>	<p>A verbal report must be made immediately. A written report must be made within 72 hours of the oral report</p>
<p>TO WHOM are reports made?</p>	<p>To your immediate supervisor and to the Recipient Rights Office at your agency or hospital</p>	<p>Report to Protective Services Reporting Hotline 855-444-3911</p>	<p>Report to Protective Services Reporting Hotline 855-444-3911</p>	<p>The law enforcement agency for the county or city in which the alleged violation occurred or the State Police. A copy of the written report goes to the chief administrator of the agency responsible for the recipient.</p>
<p>If there is more than one person with knowledge must all of them make a report?</p>	<p>Not necessarily. Reporting should comply with the policies and procedures set up by each agency.</p>	<p>Someone who has knowledge must report or cause a report to be made in the case of a school, hospital or agency, one report is adequate.</p>	<p>Everyone who has knowledge of a violation or an alleged violation must make a report. MDHHS has typically accepted one report from agencies.</p>	<p>Someone who has knowledge must report or cause a report to be made.</p>
<p>Is there a penalty for failure to report? YES</p>	<p>Disciplinary action may be taken and you may be held liable.</p>	<p>You may be held liable. Failure to report is also a criminal misdemeanor.</p>	<p>You may be held liable and have to pay a \$500 fine.</p>	<p>The law states that failure to report or false reporting is a criminal misdemeanor.</p>
<p>Is it necessary to report to more than one agency? YES</p>	<p>Each of these laws requires that the designated agency be contacted, if an allegation is suspected to have occurred, which 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 of having to report to other agencies, as statutorily required.</p>	<p>The Bureau of Community and Health Systems (LARA) is responsible for investigating abuse and neglect in Nursing Homes, Hospitals and Home Health Care. Call the NURSING HOME ABUSE HOTLINE 1-800-882-6006 The Michigan Attorney General's Office has an Abuse Investigation Unit which may also investigate abuse in Nursing Homes. Call the ATTORNEY GENERAL HEALTH CARE FRAUD HOTLINE 1-800-24-ABUSE/ 1-800-242-2873 The LARA Adult Foster Care (AFC) Division is responsible for investigating abuse or neglect in a licensed foster care home. Call The Bureau of Community and Health Systems COMPLAINT INTAKE UNIT 1-866-856-0126</p>	<p>The Bureau of Community and Health Systems (LARA) is responsible for investigating abuse and neglect in Nursing Homes, Hospitals and Home Health Care. Call the NURSING HOME ABUSE HOTLINE 1-800-882-6006 The Michigan Attorney General's Office has an Abuse Investigation Unit which may also investigate abuse in Nursing Homes. Call the ATTORNEY GENERAL HEALTH CARE FRAUD HOTLINE 1-800-24-ABUSE/ 1-800-242-2873 The LARA Adult Foster Care (AFC) Division is responsible for investigating abuse or neglect in a licensed foster care home. Call The Bureau of Community and Health Systems COMPLAINT INTAKE UNIT 1-866-856-0126</p>	



CONFIDENTIALITY
MHC 330.1748

**“When in Doubt...
Don’t Give it Out”**

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
- Understand guardianship and the legal rights and powers of each type of guardian

CONFIDENTIALITY **MHC 330.1748**

The right to confidentiality is one of the most important rights granted to recipients. Information in the record of a recipient, and other information acquired in the course of providing services to a recipient (written AND unwritten), shall be kept confidential and shall not be open to public inspection. If information made confidential by this section is disclosed, the identity of the individual to whom it pertains shall be protected and shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought; and, when practicable, no other information shall be disclosed unless it is germane to the authorized purpose for which disclosure was sought.

PRIVACY is the right of an individual to control their personal information, and not have it disclosed or used without permission.

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 service professionals. Individuals receiving information made confidential by this section shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained. For case record entries made subsequent to March 28, 1996, information made confidential by this section shall be disclosed to an adult recipient, upon the recipient's request, if the recipient does not have a guardian and has not been adjudicated legally incompetent. Information may be shared as necessary for the delivery of mental health services in accordance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996. (Public Law 104-01).

CONFIDENTIALITY is the obligation of another party to respect privacy by protecting the personal information he/she receives, and preventing it from being used or disclosed without the subject's knowledge and permission.

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.

Recipients who are adults and do not have a guardian are entitled to review their record without exception. For recipients with a guardian and those under 18 information can be withheld if determined by a physician to be detrimental. Per SCCMHA policy a consumer, guardian, or parent of a minor consumer, after having gained access to treatment records, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the consumer's record; the consumer or other empowered representative will be allowed to insert into the record a statement correcting or amending the information at issue; the statement will become part of the record.

When answering the telephone SCCMHA staff and staff of the provider network will inform the caller "I can neither confirm nor deny that individual lives here or receives services" so as not to disclose information if a release of information has not been signed. SCCMHA staff and staff of the provider network are to maintain confidentiality with law enforcement unless it is regarding calling 911 and/or communicating with emergency responders, a warrant, pick up order, or to fulfill the Duty to Warn and Protect. If you are unsure please consult with your supervisor or the ORR.

CONFIDENTIALITY

Consent means a written agreement executed by a recipient, a minor's parent, or a recipient's legal representative with authority to execute a consent, or a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment.

Informed Consent

Required **BEFORE** giving out any information. This means the recipient:

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

Mandatory Disclosure without Consent

- Case record information entered after March 28, 1996 (eliminated by HIPAA) if requested by a competent adult recipient.
- Case record information requested:
 - Through orders or subpoenas of a court of record (judges order) or by the legislature unless privileged by law.
 - By a prosecuting attorney for proceedings governed by MMHC
 - To comply with another provision of law, i.e. Duty to Warn and Protect
 - By MDHHS in order for it to discharge its responsibilities
 - By the auditor general
 - By the surviving spouse, etc. of a recipient in order to apply for, or receive, benefits
 - By Michigan Protection and Advocacy Services if required by federal law

Mandatory Disclosure with Consent

- To an attorney representing a recipient with the consent of the recipient or his/her legal representative.

Discretionary Disclosure without Consent

- As necessary in order for the recipient to apply for or receive benefits (only if these benefits accrue to the provider for liability for payment of mental health services).
- As necessary for outside research, evaluation, accreditation, etc.
- To providers of mental health services, health services or a public agency if compelling need for disclosure based upon a substantial probability of harm to the recipient or others
- To comply with DHHS request under 1748a

Discretionary Disclosure with Consent

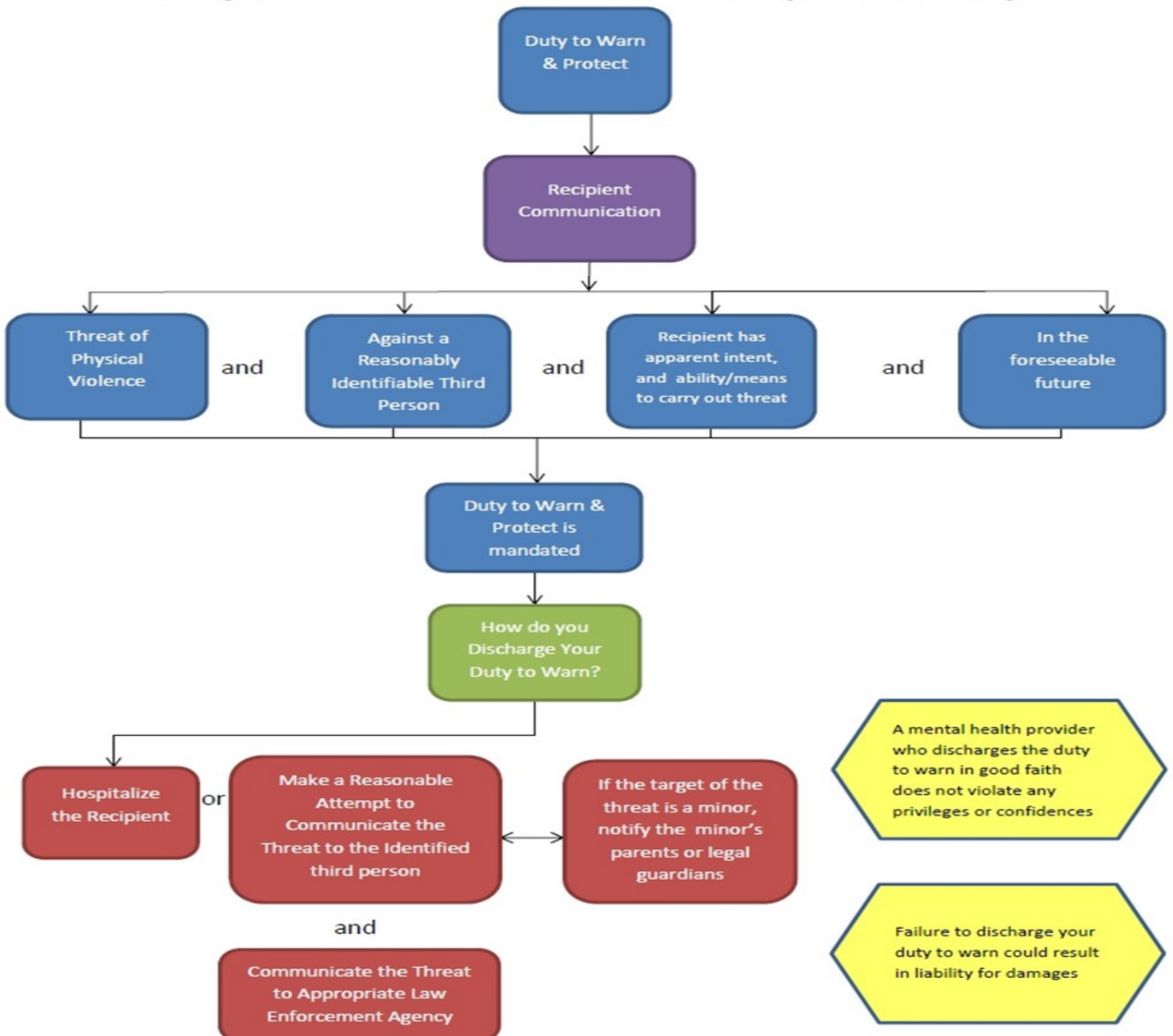
- To a Provider of mental health services to the recipient
- To the recipient (with a guardian) or guardian or parent of a minor recipient or another person or agency UNLESS in the written judgement of the holder of the record the disclosure would be detrimental to the recipient or others (discretion for detriment) (1748 6).

DUTY TO WARN AND PROTECT

The Duty to Warn and Protect refers to the responsibility of a mental health professional to breach confidentiality if a recipient or other identifiable person is in clear or imminent danger. You are required to inform third parties if a recipient poses a risk to himself or herself or to another identifiable individual. This includes petitioning an individual for involuntarily hospitalization.

The legal Duty to Warn and Protect was established in the case of *Tarasoff v. Regents of the University of California* (1976) where a therapist failed to inform a young woman of specific death threats made by a recipient of services. The young woman was subsequently killed by the recipient and her family sued the provider. The court ruled there is a duty to breach confidentially when doing so is the only way in which a potential victim (or victims) can be protected. **Informing the police and petitioning a recipient does not fully satisfy the law; the potential victim must be notified.**

Duty to Warn & Protect Third Parties (Tarasoff Law)



PRIVILEGED COMMUNICATION **MHC 330.1750**

- (1) Privileged communications shall not be disclosed in civil, criminal, legislative, or administrative cases or proceedings, or in proceedings preliminary to such cases or proceedings, unless the patient has waived the privilege, except in the circumstances set forth in this section.
- (2) Privileged communications shall be disclosed upon request under 1 or more of the following circumstances:
- (a) If the privileged communication is relevant to a physical or mental condition of the patient that the patient has introduced as an element of the patient's claim or defense in a civil or administrative case or proceeding or that, after the death of the patient, has been introduced as an element of the patient's claim or defense by a party to a civil or administrative case or proceeding.
 - (b) If the privileged communication is relevant to a matter under consideration in a proceeding governed by this act, but only if the patient was informed that any communications could be used in the proceeding.
 - (c) If the privileged communication is relevant to a matter under consideration in a proceeding to determine the legal competence of the patient or the patient's need for a guardian but only if the patient was informed that any communications made could be used in such a proceeding.
 - (d) In a civil action by or on behalf of the patient or a criminal action arising from the treatment of the patient against the mental health professional for malpractice.
 - (e) If the privileged communication was made during an examination ordered by a court, prior to which the patient was informed that a communication made would not be privileged, but only with respect to the particular purpose for which the examination was ordered.
 - (f) If the privileged communication was made during treatment that the patient was ordered to undergo to render the patient competent to stand trial on a criminal charge, but only with respect to issues to be determined in proceedings concerned with the competence of the patient to stand trial.
- (3) In a proceeding in which subsections (1) and (2) prohibit disclosure of a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, the fact that the patient has been examined or treated or undergone a diagnosis also shall not be disclosed unless that fact is relevant to a determination by a health care insurer, health care corporation, nonprofit dental care corporation, or health maintenance organization of its rights and liabilities under a policy, contract, or certificate of insurance or health care benefits.
- (4) Privileged communications may be disclosed under section 946 to comply with the duty set forth in that section.



CONFIDENTIALITY **MHC 330.1748**



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.

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, friends, or on social media
- Giving information over the phone to persons who say they are relatives
- Taking photographs, video recordings, or voice recordings (taping) 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
- Referring to a recipient by name in an incident report for another recipient **IF** they are from another county
- Referring to a recipient by full name when speaking with another recipient's family, friends, or teachers
- Talking about recipient information in public or common areas
- Using recipient information in emails outside secured systems or without encryption

EMAIL AND PROTECTED HEALTH INFORMATION (PHI) COMPLIANCE TIPS

- 1) Never use a consumer name in **external** e-mails; this includes sending any attachments which contain a consumer name or other similar PHI. External emails are any not SCCMHA.org, or those of your internal system as contracted provider.
- 2) External e-mails include any e-mails outside of the SCCMHA outlook system, including to any contracted providers, who certainly may have legitimate need for receipt of consumer PHI information from SCCMHA staff.
- 3) For all consumer related communications with contracted providers, the preferred method is the *sen*tri // Messaging system if possible. If you need guidance on how to use this system inside the SCCMHA electronic health record, please check with your supervisor or SCCMHA.
- 4) Other options for external consumer related communications are: encrypted e-mails, (see your Information Technology department for assistance for assistance) fax, regular mail, hand delivery or voice mails; any of these options are acceptable in the protection of PHI.
- 5) External PHI e-mail cautions also apply to primary care or any other service delivery or supports coordination for the consumer being served; a release signed by the consumer to share information with that party does not negate the restrictions about PHI and external e-mails.
- 6) **If sending internal e-mails inside SCCMHA, or your contracted organization, it is expected you use somewhere in the subject header the following content: PHI Content Caution. This will alert others not to forward the e-mail externally and to exercise caution with the e-mail.**
- 7) While you may technically include a consumer name or other necessary PHI relative to the intended purpose of the communication in internal e-mails inside SCCMHA, please do so with caution and as always against 'need to know' practice standards. Use only the PHI needed for the communication purpose. When feasible, use *sen*tri case numbers rather than the name or initials to identify the individual.
- 8) PHI regulatory compliance violations by individuals are subject to rights and compliance hotline reports, and may result in employee discipline and/or provider sanctions.
- 9) Be cautious about e-mails you might receive from others which contain a consumer name, sometimes the name is embedded in the content of the e-mail chain; if you receive an internal e-mail containing a consumer name anywhere in the content or attachments, and you forward the e-mail externally for some reason, you have violated the PHI protection requirements.
- 10) Remember, PHI is any information that could be used to identify a specific person, including but not limited to: demographic and individually identifiable health information, such as name, address, zip code, admission or discharge dates, social security number, e-mail address or unique webpage, phone/fax number(s), date of birth, beneficiary health or record numbers, photographs, finger/voice prints, vehicle serial or license plate numbers, any personal account or license numbers, or any other descriptors that might promote identification of a specific person. Use of multiple identifiers increases the risk of PHI breach.
- 11) E-mails are not part of the consumer record and do not replace correct documentation in the record about consumer plans and progress; summary information at times may need to be taken from e-mail content to place in the record, however do be thoughtful about what needs to be included from e-mail in the record, and this should be done by the author, not others.
- 12) If you receive, read or become aware of inappropriate or questionable email use of PHI by anyone in the SCCMHA system, or if you have any questions about the protection of PHI, please promptly contact the SCCMHA Recipient Rights Office or the Compliance Administrator with this information so that it may be addressed.

GUARDIANSHIP



Do all guardians have the same powers?

- No. By law, the judge must tailor each guardianship to the needs of the individual, and cannot grant a guardian power over areas where an individual can still make informed decisions. For example, an individual may not be able to participate in medical treatment without guardian consent, but still be able to decide where to live on their own.
- Full or Plenary Guardianship means the guardian has the authority to make all legal decisions on behalf of the person they are guardian for. Anything less than a full or plenary guardian is known as a “Partial Guardian.” The court determines what areas of a person’s life the Partial Guardian has the authority to make decisions.
- At the expiration of the Partial guardianship, a new petition for guardianship may be filed. Partial guardianships last for five years.
- It is important to look for the expiration date on guardianship papers!

Plenary/Full Guardian

A guardian who possesses the legal rights and powers of a **full guardian**.

- of the person
- of the estate
- or both

Partial/Limited Guardian

- A guardian who possesses fewer than all of the legal rights and powers of a full or plenary guardian, and whose rights, powers, and duties have been specifically detailed by court order.
- A **partial guardian** shall not be appointed for a term greater than 5 years.

Conservator/Payee is a person or financial institution appointed by the probate court to handle an individual’s property and financial affairs. Sometimes the same person serves as both guardian and conservator. There are separate court petitions for guardianship and for conservatorship.

DIGNITY AND RESPECT

MHC 330.1708

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

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, Case Holder, and the Rights Officer immediately
- Reporting unsafe conditions or rights violations to the appropriate agency if you are unable to resolve a situation through your supervisor
- Intervening to stop abusive actions of other staff

Examples of how you can promote the dignity and respect of recipients:

- 1) Calling a person by his or her preferred name
- 2) Knocking on a closed door before entering
- 3) Using positive language (including language with co-workers)
- 4) Encouraging the person to make choices instead of making assumptions about what he or she wants
- 5) 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.



RIGHTS OF FAMILY MEMBERS **MHC 330.1711**

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 professional. Agency protocols are to be discussed with family members who want to provide information.
- Receive information from or provide information to family members shall be carried out within the confidentiality constraints of Section 748 of the Mental Health Code.
- 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. These materials can be requested at SCCMHA Customer Service.

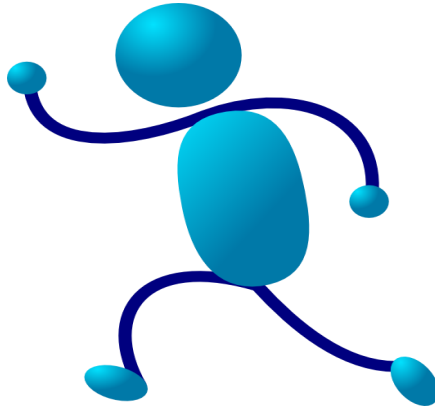
FINGERPRINTS, PHOTOGRAPHS, AUDIO RECORDINGS, VIDEORECORDINGS AND USE OF ONE-WAY GLASS **MHC 330.1724**

- Prior written consent from the recipient, the recipient's guardian or a parent with legal and physical custody of a minor recipient must be obtained before fingerprinting, photographing, audio-recording, or viewing through one-way glass.
- The procedures above shall only be utilized in order to provide services (including research) to identify, recipient, or for education and training purposes.
- Photographs include still pictures, motion pictures and videotapes.
- Photographs may to be taken for purely personal or social purposes and must be treated as the recipient's personal property. Photographs must not be taken for this purpose if the recipient has objected.
- Fingerprints, photographs and audio-recordings and any copies of these are to be made part of the recipient record and are to be destroyed or returned to the recipient when no longer essential or upon discharge, whichever occurs first.
- If fingerprints, photographs or audio-recordings are done and sent out to others to help determine the name of the recipient, the individual receiving the items must be informed that return is required for inclusion in the recipient record.
- Restrictions may be put in place if the recipient is receiving services pursuant to the criminal provisions of Chapter 10 of the Mental Health Code – Incompetent to Stand Trial, Not Guilty by Reason of Insanity, recipient of the Department of Corrections Mental Health Services Program.

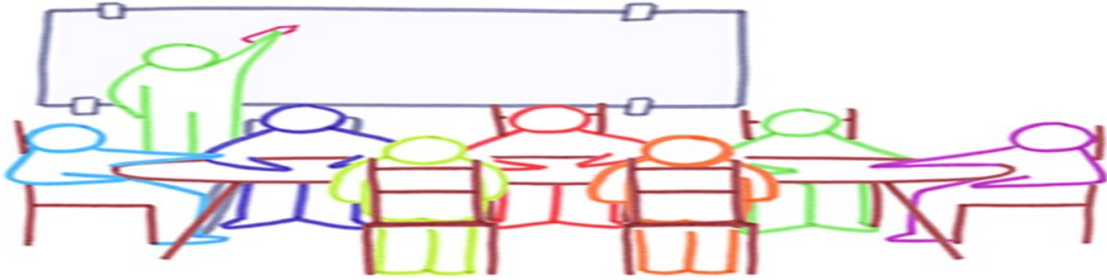
PERSONAL PROPERTY **MHC 330.1728**

- A recipient is entitled to receive, possess, and use all personal property, including clothing unless a limitation has been placed in the IPOS. A receipt shall be given to a recipient or guardian for any personal property taken into possession of the facility. Each facility shall properly store and safeguard property. Any personal property in the possession of a facility shall be returned to the recipient upon release.

**FREEDOM OF MOVEMENT/
LEAST RESTRICTIVE SETTING**
MHC 330.1744 & MHC 330.1708



- Mental health services shall be offered in the least restrictive setting that is appropriate and available.
- A recipient has the right to move about his or her residence, environment, and community.
- The freedom of movement of a recipient shall not be restricted more than necessary to provide mental health services, to prevent injury to himself, herself or others, or to prevent substantial property damage.
- Seclusion and restraint are prohibited except in a MDHHS operated or licensed hospital.
- Physical management may only be used when a recipient is presenting an imminent risk of serious or non-serious physical harm to himself, herself or others and lesser restrictive interventions have been unsuccessful in reducing or eliminating an imminent risk of serious or non-serious physical harm.
- Physical management must not be included as a component of a behavior treatment plan.
- Prone immobilization of a recipient for the purpose of behavioral control is prohibited.
- This right can be limited but only as allowed in the individual plan of service (IPOS) following review and approval by the Behavior Treatment Committee.



INDIVIDUALIZED WRITTEN PLANS OF SERVICE (IPOS) **PERSON-CENTERED PLANNING (PCP) PROCESS**

- SCCMHA and all contracted service providers shall ensure that a process is used to develop a written individual plan of services in partnership with the recipient.
- A preliminary plan shall be developed within 7 days of the commencement of services.
- The IPOS shall consist of a treatment plan, a support plan, or both. A treatment plan shall establish meaningful and measurable goals with the recipient.
- The purpose of person-centered planning is to provide a process for individuals to define the life **THEY** want and to determine what needs to be in place for the achievement of that life.
- Minimally, the IPOS must address the need for food, shelter, clothing, health care, employment opportunities, education opportunities, legal services, transportation and recreation.
- The PCP process should address more than the above mentioned criteria to encompass all the dreams, goals, and desires of the individual.
- Before a PCP meeting is initiated a Pre-Planning meeting needs to occur and be documented.
- Individuals/families are to be full participants in driving decisions for developing, implementing, monitoring and evaluating their own plans, including incorporation of individual choice and preference. An individual chosen or required by the recipient may be excluded from participation in the planning process only if inclusion of that individual would constitute a substantial risk of physical or emotional harm to the recipient or substantial disruption of the planning process.
- The main focus should **NOT** be compliance and technical aspects of the IPOS.
- Independent Facilitation should be thoroughly explained to the recipient/family to give them an opportunity to make an informed decision regarding all options available.
- Choice of formats and tools (MAPS, PATH, etc.) to facilitate the PCP process should be explained and the individual has the power to choose which format will best meet their needs.
- A formal review of the plan with the beneficiary and his/her guardian or authorized representative shall occur **not less than annually** through the PCP process to review progress towards goals and objectives and to assess beneficiary satisfaction. The plan shall be kept current and shall be modified when indicated.
- If a recipient is not satisfied with his or her IPOS, the recipient, the person authorized by the recipient to make decisions regarding the IPOS, the guardian of the recipient, or the parent of a minor recipient may make a request for review to the designated individual in charge of implementing the plan. The review shall be completed within 30 days and shall be carried out in a manner approved by the appropriate governing body.



LIMITATIONS AND RESTRICTIONS AR 330.7199

The Mental Health Code says that some of the rights granted to recipients can't be limited. These "un-limitable" 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, primarily health and safety concerns:

- 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, the home may have designated smoking areas.

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 (approval from the Behavior Treatment Committee and special consent of the individual/guardian may be needed.)
- Measures to reduce or eliminate the behavior (this is the action you will take when the behavior occurs).

SAFE, SANITARY, HUMANE, TREATMENT ENVIRONMENT

MHC 330.1708 AR 330.7171

- Recipients of services have the right to live in a safe, sanitary and humane treatment environment.
- If a recipient is receiving services from an Adult Foster Care home, the home must have adequate lighting, be heated at a temperature range between 68 and 72 degrees Fahrenheit during non-sleeping hours (avoiding prolonged exposure of non-circulating air that is at a temperature of 90 degrees Fahrenheit or above), have hot and cold water, a bathroom with privacy, personal storage space, and be free from unpleasant odors. *Additional Licensing Rules apply and can be found at www.michigan.gov/afchfa.
- The provider is expected to adhere to all Licensing Rules regarding resident nutrition, hygiene (this includes bathing and personal grooming assistance and the opportunity to bathe at least every 2 days), handling of funds and valuables, medication, and food service. *Additional Licensing Rules apply and can be found at www.michigan.gov/afchfa.
- The provider must supply toilet articles, toothbrush and dentifrice, opportunity to shower or bathe at least once every 2 days, regular services of a barber or beautician and the opportunity to shave daily (males).
- The ORR visits all contracted service sites annually to monitor the treatment environment for health and safety concerns.
- All SCCMHA Providers and staff members have a responsibility to observe, monitor, support, document, report and/or address health and safety conditions and risk with consumers who are receiving services.





ENTERTAINMENT MATERIALS, INFORMATION AND NEWS **AR 330.7139**

Every recipient has the right to acquire entertainment materials, information and news at his or her own expense; to read written or printed materials and to view or listen to television, radio, recordings

- Provider must never prevent a resident from exercising this right for reasons of, or similar to, censorship.
- Provider must establish written policies and procedures that provide for determining a resident's interest in, and provide for, a daily newspaper.
- Assure material not prohibited by law may be read or viewed by a minor unless there is an objection by the minor's parent or guardian.
- Permit attempts by the staff person in charge of the minor's IPOS to persuade a parent or guardian of a minor to withdraw objections to material desired by the minor.
- Provider may require that materials acquired by the resident that are of a sexual or violent nature be read or viewed in the privacy of the resident's room.

COMMUNICATIONS AND VISITS **330.1726**

Every recipient is entitled to unimpeded, private and uncensored communication with others by mail, telephone and to visit with the person of their choice.

- Residents are allowed to use mail and telephone services. These communications must not be censored; staff should not open mail for residents without authorization. If necessary, funds must be provided (in reasonable amounts) for postage, stationary, telephone.
- Limitations can be made on these rights for individuals but only as allowed in the individual plan of service (IPOS) and may require review and approval by the Behavior Treatment Plan Review Committee and the special consent of the resident or his//her legal representative.
- Communication by mail, telephone and the ability to have visitors shall not be limited if the communications are between a resident and his/her attorney or a court, or between a resident and any other individuals when the communication involves legal matters or may be the subject of legal inquiry.

FAMILY PLANNING

AR 330.7029

The individual in charge of the recipient's written plan of service shall provide recipients, their guardians, and parents of minor recipients with notice of the availability of family planning, and health information services and, upon request, provide referral assistance to providers of such services. The notice shall include a statement that receiving mental health services does not depend in any way on requesting or not requesting family planning or health information services.

MENTAL HEALTH SERVICES SUITED TO CONDITION

MHC 330.1708

A recipient shall receive mental health services suited to his or her condition. SCCMHA policy further outlines the right to a second opinion and use of the PCP process to develop the IPOS.

CHOICE OF PHYSICIAN/MENTAL HEALTH PROFESSIONAL

MHC 330.1713

A recipient shall be given a choice of physician or other mental health professional in accordance with the policies of the community mental health services program, licensed hospital, or service provider under contract with the community mental health services program, or licensed hospital providing services and within the limits of available staff in the community mental health services program, licensed hospital, or service provider under contract with the community mental health services program, or licensed hospital.

NOTICE OF CLINICAL STATUS

MHC 330.1714

A recipient shall be informed orally and in writing of his or her clinical status and progress at reasonable intervals established in the individual plan of services in a manner appropriate to his or her clinical condition. This is typically done in the IPOS through the PCP process.

SERVICES OF MENTAL HEALTH PROFESSIONAL

MHC 330.1715

If a resident is able to secure the services of a mental health professional, he or she shall be allowed to see the professional at any reasonable time. SCCMHA and/or the service provider will ensure a consumer is given a choice of the physician or mental health professional within the limits of available staff.

PSYCHOTROPIC DRUG TREATMENT

MHC 330.1719

Before initiating a course of psychotropic drug treatment for a recipient, the prescriber or a licensed health professional acting under the delegated authority of the prescriber shall do both of the following: A) Explain the specific risks and the most common adverse effects that have been associated with that drug. B) Provide the individual with a written summary of the most common adverse effects associated with that drug.



INVESTIGATING RIGHTS ALLEGATIONS 330.1755

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 AT SCCMHA

The Office of Recipient Rights protects recipients from potential rights violations. Each Department of Health and Human Services 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. The SCCMHA will provide training on an annual basis for staff working at SCCMHA and contracted service providers.

**For questions and consultation,
please contact the Rights Office at:**

JUWAN CHAPMAN

989-797-3583



JUDY SAUSEDO

989-797-3462

THE INVESTIGATIVE PROCESS

When an investigation into an alleged rights violation is started, 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, or Department of Health & Human Services (MDHHS) authorities who are conducting a review or investigation. Per SCCMHA policy the ORR may request the alleged perpetrators of abuse and neglect be removed from the schedule pending investigation.

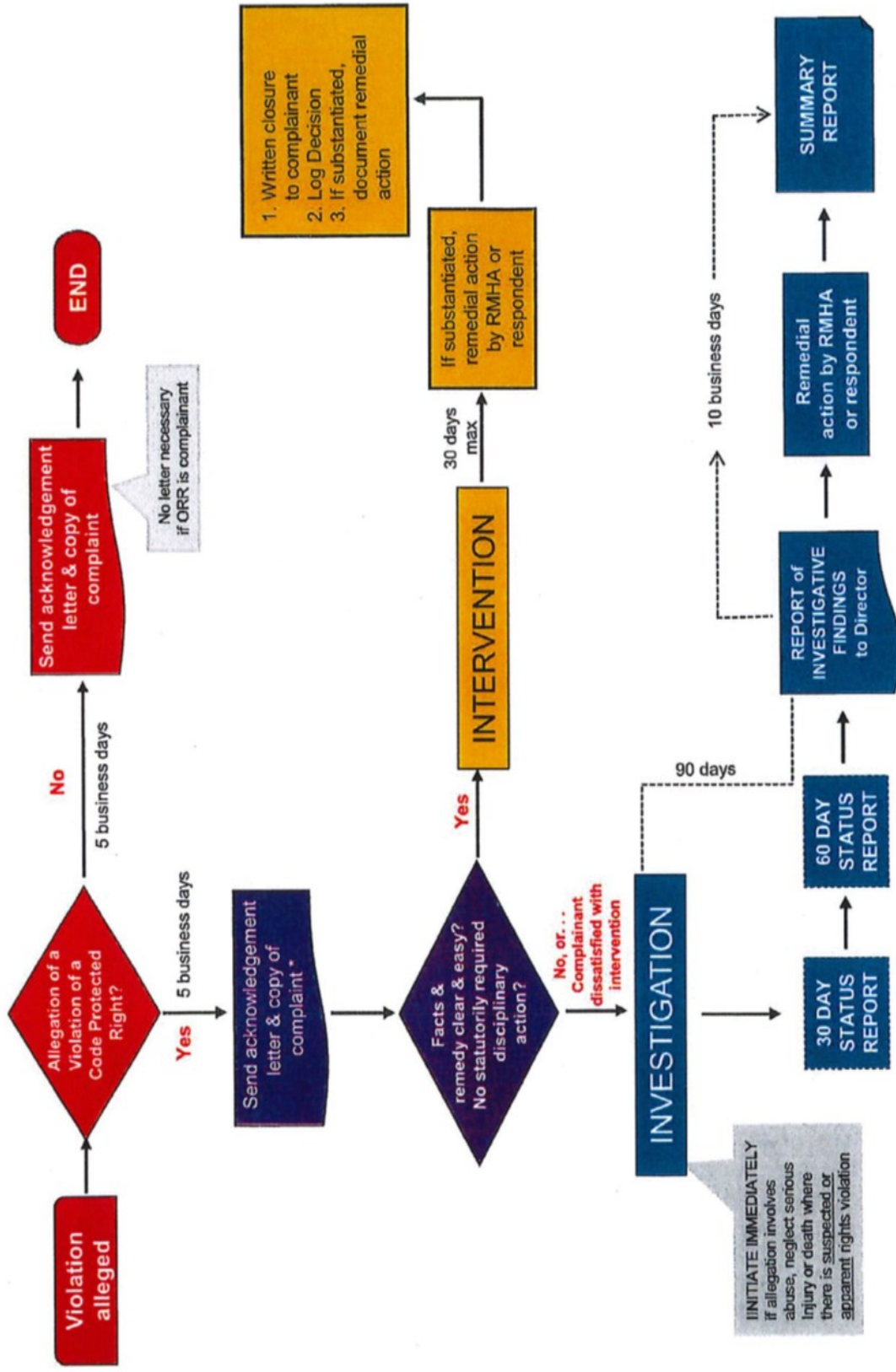
The Mental Health Code requires that an investigation be completed within 90 days from the receipt of a complaint. A "Report of Investigative Findings" will be given to the Director of the Community Mental Health agency and to the service provider. It is up to the CMH Director to issue a report summarizing the investigation to the complainant and the recipient within 10 business 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 Michigan Mental Health Code (330.1778) (3) states that, "The office shall determine whether a right was violated by using the preponderance of the evidence as its standard of proof." Black's Law Dictionary (Sixth Edition) defines a preponderance of the evidence as:

"Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it. . . . Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence, which does not necessarily mean the greater number of witnesses, but the opportunity for knowledge, information possessed, and manner of testifying determines the weight of testimony."

Recipient Rights Complaint Process



ADVISORY COMMITTEE

The SCCMHA Advisory Committee will provide support and guidance to the ORR. The committee will protect the ORR from pressure that could interfere with the impartial, even-handed, and thorough performance of its functions. The committee reviews the findings of the ORR on an annual basis. The committee also serves as the Appeals Committee.

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 is 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 Health & Human Services Office of Recipient Rights. If you wish to do so write, or call:

**Office of Recipient Rights
Michigan Department of Health & Human Services
Lewis Cass Building
Lansing, MI 48913
1-800-854-9090**



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 Health & 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 Health & Human Services licensing consultant may investigate. Finally, if it is believed that a criminal act has occurred, law enforcement agency may become involved.

EMPLOYEE RIGHTS

Mental Health Code 330.1755 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.

Whistleblower's 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.

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.**



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 a recipient.

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 a recipient.
- (ii) The use of unreasonable force on a recipient 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 a recipient.
- (iv) An action taken on behalf of a recipient by a provider who assumes the recipient is incompetent, despite the fact that a guardian has not been appointed, that results in substantial economic, material, or emotional harm to the recipient.
- (v) Exploitation of a recipient by an employee, volunteer, or agent of a provider.

ABUSE CLASS III: 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 a recipient.

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 and/or 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 and/or 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.

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.

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.

SEXUAL ABUSE: means any of the following:

- 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.
- 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
- Any sexual contact or sexual penetration 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:

- Revenge
- To inflict humiliation
- Out of anger

SEXUAL PENATRATION: 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.

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.

INCOMPETENT: means a judicial ruling that a person is incapable, inefficient and without the qualities needed to discharge their obligations and duties.

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.

SEXUAL HARRASSMENT: Sexual advances to a recipient, requests for sexual favors from a recipient, other conduct or communication of a sexual nature toward a recipient. (AR 330.7001 [p])

PHYSICAL MANGEMENT: 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 him or herself, or others.

- Physical management may only be used as an emergency intervention in order to prevent a recipient from harming him or 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.

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 someone a humiliating loss of status or reputation, or cause someone 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.

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

TREATMENT BY SPIRITUAL MEANS: means a spiritual discipline or school of thought that a recipient wishes to rely on to aid physical or mental recovery.

*Additional Definitions, Code Language, and competency information can be found at SCCMHA.org under the Recipient Rights section in the MDHHS/CMHSP Recipient Rights Training Standards for CMH and Provider Staff Technical Requirement FY19.



It's your right ...

... to not be neglected or abused

... to not be retaliated against or harassed

... to have your complaints heard

... to be treated with dignity, respect and confidentiality

... to be fully informed about your treatment and participate in its planning

While you receive mental health services, you have many rights. You should know what they are.

To know more, contact:

Juwan Chapman
Recipient Rights Advisor
(989) 797-3583

Judy Sausedo
Recipient Rights Advisor
(989) 797-3462

Office of Recipient Rights
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The Office of Recipient Rights thanks you for helping to protect the rights of the people we serve!