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References:

Abuse and Neglect

POLICY

It is the policy of the Detroit Wayne Mental Health Authority (DWMHA) that all acts of commission or omission, which are abusive or neglectful of recipients, are prohibited. All incidents of abuse or neglect, which are apparent, reported, or suspected by, a staff, volunteer, or agent covered under this Policy, shall be reported immediately to the appropriate entity as required by law or this Policy.

PURPOSE

The purpose of this policy is to indicate and identify the appropriate actions that must be taken when there are allegations of violations abuse and neglect

APPLICATION

1. The following groups are required to implement and adhere to this policy: DWMHA Board, DWMHA Staff, Contractual Staff, Access Center, MCPN Staff, Network Providers, Crisis services vendor
2. This policy serves the following populations: Adults, Children, I/DD, SMI/SEI, SED, Autism
3. This policy impacts the following contracts/service lines: MI-HEALTH LINK, Medicaid, Autism, Grants, General Fund

KEYWORDS

1. Abuse: Non-accidental physical or emotional harm to a recipient, or sexual contact with or sexual penetration of a recipient as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, that is committed by an employee or volunteer of DWMHA, MCPN, contractor or subcontractor.
2. Abuse, Class I: A non-accidental act or provocation of another to act, by an employee, volunteer, or agent of DWMHA, MCPN, contractor or subcontractor that caused or contributed to death, serious physical harm, or sexual abuse of a recipient.
3. Abuse, Class II:
 - a. A non-accidental act or provocation of another to act, by an employee, volunteer, or agent of DWMHA, MCPN, contractor or subcontractor that caused or contributed to non-serious physical harm to a recipient; or,

- b. The use of unreasonable force on a recipient by an employee, volunteer, or agent of DWMHA, MCPN, contractor or subcontractor with or without apparent harm; or,
 - c. Any action or provocation of another to act, by an employee, volunteer, or agent of DWMHA, MCPN, contractor or subcontractor that causes or contributes to emotional harm to a recipient; or,
 - d. An action taken on behalf of a recipient by an employee, volunteer, or agent of DWMHA, MCPN, contractor or subcontractor that assumes the recipient is incompetent, although a guardian has not been appointed or sought, which results in substantial economic, material, or emotional harm to the recipient.
 - e. Exploitation of a recipient by an employee, volunteer, or agent of DWMHA, MCPN, contractor or subcontractor.
4. Abuse, Class III: The use of language or other means of communication by an employee, volunteer, or agent of DWMHA, MCPN, contractor or subcontractor to degrade, threaten, or sexually harass a recipient.
 5. Adult Foster Care facility
 6. Agent
 7. Bodily Function
 8. Contractor
 9. Criminal abuse: Means 1 or more of the following:
 - a. An assault that is a violation or an attempt or conspiracy to commit a violation of sections 81 to 90 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.81 to 750.90 of the Michigan Compiled Laws. Criminal abuse does not include an assault or an assault and battery that is a violation of section 81 of Act No. 328 of the Public Acts of 1939, being section 750.81 of the Michigan Compiled Laws, and that is committed by a recipient against another recipient.
 - b. A criminal homicide that is a violation or an attempt or conspiracy to commit a violation of section 316, 317, or 321 of Act No. 328 of the Public Acts of 1931, being sections 750.316, 750.317, and 750.321 of the Michigan Compiled Laws.
 - c. Criminal sexual conduct that is a violation or an attempt or conspiracy to commit a violation of sections 520b to 520e or 520g of Act No. 328 of the Public Acts of 1931, being sections 750.520b to 750.520e and 750.520g of the Michigan Compiled Laws.
 - d. Vulnerable adult abuse that is a violation or an attempt or conspiracy to commit a violation of section 145n of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.145n of the Michigan Compiled Laws
 - e. Child abuse that is a violation or an attempt or conspiracy to commit a violation of section 136b of Act No. 328 of the Public Acts of 1931, being section 750.136b of the Michigan Compiled Laws
 10. Degrade
 11. Disciplinary Action
 12. Emotional Harm.
 13. Exploitation.
 14. Facility
 15. Licensed Facility

16. Mental Health Professional.
17. Neglect: An act or failure to act committed by an employee, volunteer or agent of DWMHA, MCPN, contractor or subcontractor that denies a recipient the standard of care or treatment to which he or she is entitled under the Michigan Mental Health Code.
18. Neglect, Class I:
 - a. Acts of commission or omission by an employee, volunteer, or agent of DWMHA, MCPN, contractor or subcontractor that result from non-compliance 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 death, serious physical harm to or sexual abuse of a recipient; or,
 - b. The failure to report apparent or suspected Abuse Class I or Neglect Class I of a recipient.
19. Neglect, Class II:
 - a. Acts of commission or omission by an employee, volunteer, or agent of DWMHA, MCPN, contractor or subcontractor that result from non-compliance 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, or,
 - b. The failure to report apparent or suspected Abuse Class II or Neglect Class II of a recipient.
20. Neglect, Class III:
 - a. Acts of commission or omission by an employee, volunteer, or agent DWMHA, MCPN, contractor or subcontractor which result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service which either placed or could have placed, a recipient at risk of physical harm or sexual abuse; or
 - b. The failure to report apparent or suspected Abuse Class III or Neglect Class III of a recipient.
21. Non-Serious Physical Harm
22. Physical Management
23. Physician
24. Registered Nurse (R.N.)
25. Serious Physical Harm.
26. Sexual Abuse:
 - a. Criminal sexual conduct as defined by section 520b to 520e of 1931 PA 318, being MCL 750.520b to MCL 750.520e involving employee, volunteer, or agent of DWMHA, MCPN, contractor or subcontractor and a recipient; or
 - b. Any sexual contact or sexual penetration involving an employee, volunteer, or agent of an MDHHS operated hospital or center, a facility licensed by MDHHS under MCL 330.1137 or an adult foster care facility and a recipient; or
 - c. Any sexual contact or sexual penetration involving an employee, volunteer, or agent of DWMHA, MCPN, contractor or subcontractor and a recipient for whom the employee, volunteer, or agent provides direct services.
27. Sexual Contact
28. Sexual Harassment.

29. Sexual penetration
30. Subcontractor
31. Threaten:
32. Timely Investigation
33. Unreasonable Force

STANDARDS

1. All employees, volunteers, and agents of DWMHA, MCPN, contractor or subcontractor are prohibited from abusing or neglecting recipients.
2. A mechanism shall be established for reporting abuse and neglect to:
 - a. Administration (DWMHA's President/CEO, community hospital Directors, MCPN directors and contractor Directors)
 - b. ORR
 - c. Michigan Department of Human Services, Protective Services
 - d. Michigan Department of Licensing and Regulatory Affairs (LARA) Bureau of Community Health Systems, Bureau of Children and Adult Licensing(if applicable)
 - e. Law enforcement
3. All mental health professionals, employees, volunteers, or agents of the DWMHA, MCPN, contractor or subcontractor shall:
 - a. Safeguard recipients from abuse and/or neglect and act to obtain treatment for observed injuries and to prevent additional harm;
 - b. Immediately report to their immediate supervisor/designee and to the ORR, verbally and/or in writing, when they witness, discover, or otherwise become aware of, an assault by one recipient upon another;
 - c. Immediately report to their immediate supervisor/designee and to the ORR, verbally and/or in writing, when they witness, discover, or otherwise become aware of apparent or suspected abuse or neglect of recipients;
 - d. Immediately make or cause to be made, by telephone or otherwise, an oral report of the suspected criminal abuse to the law enforcement authority for the county or city in which the criminal abuse is suspected to have occurred or to the state police if there is reasonable cause to suspect the criminal abuse of a recipient.
 - e. Within 72 hours after making the oral report, the reporting individual shall file a written report with the law enforcement authority to which the oral report was made, and with the chief administrator or Executive Director of the facility, Executive Director of the MCPN or contractor responsible for the recipient, and DWMHA President/CEO.
 1. The written report shall contain the name of the recipient and a description of the criminal abuse and other information available to the reporting individual that might establish the cause of the criminal abuse and the manner in which it occurred.
 2. The identity of an individual who makes a report under this section is confidential and is not subject to disclosure without the consent of that individual or by order or subpoena of a court of

record.

3. The individual who makes a report under this section in good faith shall not be dismissed or otherwise penalized by an employer or contractor for making the report.
 - f. Assure a report is made to the Michigan Department of Human Services Adult Protective Services and/or Children's Protective Services, as applicable;
 - g. Assure a report is made to the Michigan Department of Licensing and Regulatory Affairs (LARA) Bureau of Community Health Systems, Bureau of Children and Adult Licensing, as applicable;
4. This section does not require a person to report suspected criminal abuse if either of the following applies:
 - a. The individual has knowledge that the incident of suspected criminal abuse has been reported to the appropriate law enforcement authority as provided in this section.
 - b. The suspected criminal abuse occurred more than 1 year before the date on which it first became known to an individual who would otherwise be required to make a report.
5. This section does not require an individual required to report suspected criminal abuse under this section to disclose confidential information or a privileged communication except under one or both of the following circumstances:
 - a. If the suspected criminal abuse is alleged to have been committed or caused by a mental health professional, employee, volunteer, or agent of DWMHA, MCPN, contractor or subcontractor.
 - b. If the suspected criminal abuse is alleged to have been committed in one of the following:
 1. A state facility or a licensed facility
 2. DWMHA mental health services program site
 3. The work site of an individual who is an employee, volunteer, or agent of DWMHA, MCPN, contractor or subcontractor or an individual employed by licensed facility.
 4. A place where a recipient is under the supervision of an employee, volunteer, or agent of DWMHA, MCPN, contractor or subcontractor, or an individual employed by licensed facility.
6. The President/CEO and/or designee of the DWMHA, MCPN, Contractor, and subcontractor shall:
 - a. Assure an oral report is immediately made, by telephone or otherwise, to the designated law enforcement authority for the county or city in which the criminal abuse is suspected to have occurred or to the state police, when there is reasonable cause to suspect criminal abuse of a recipient.
 - b. Within 72 hours after making the oral report, assure that a written report is filed with the law enforcement authority to which the oral report was made.
 1. The written report shall contain the name of the recipient and a description of the criminal abuse and other information available to the reporting individual that might establish the cause of the criminal abuse and the manner in which it occurred.
 - c. Assure a report is made to the Michigan Department of Human Services Adult Protective Services and/or Children's Protective Services, as applicable;
 - d. Assure a report is made to the Michigan Department of Licensing and Regulatory Affairs (LARA) Bureau of Community Health Systems, Bureau of Children and Adult Licensing, as applicable;
 - e. Cooperate with and respond to questions put forth, verbally and/or in writing, by investigators from the ORR and other authorized investigative bodies.

7. The ORR shall be responsible for:
 - a. The timely investigation of reports of abuse or neglect of recipients;
 - b. Monitoring progress toward remediation of all substantiated violations of rights; and
8. The ORR shall be given unimpeded access to all staff and any evidence determined necessary by the ORR to carry out a thorough and independent investigation. All records and other documentary or physical evidence shall be secured as necessary and protected from tampering, erasures, deletions, or any other type of falsification.
9. The President/CEO of DWMHA, MCPN, Contractor, and subcontractor shall be responsible for assuring that:
 - a. All employees and recipients who may have knowledge of an incident regarding the alleged abuse or neglect of a recipient are available to those conducting official investigations;
 - b. Notification of the appropriate DWMHA offices occurs, as required;
 - c. Notification of the appropriate law enforcement agencies occurs, as required by law;
 - d. Notification of the appropriate Michigan Department of Human Services offices occurs, as required by law;
 - e. Appropriate remedial action is taken for substantiated recipient rights violations within 10 business days of receipt of the investigative report submitted by the ORR;
 - f. Firm and appropriate disciplinary action shall be taken against those who have engaged in abuse or neglect.
 - g. Firm and appropriate disciplinary action shall be taken against those who failed to report suspected violations of abuse or neglect.
 - h. Written policies and procedures are established, and reviewed annually, which adopt and incorporate the definitions of abuse as abuse class I, abuse class II, or abuse class III and neglect as neglect class I, neglect class II, or neglect class III as described above.
 - i. A prompt and thorough review of charges of abuse is conducted that is fair to both the recipient alleged to have been abused and the charged employee, volunteer, or agent of DWMHA, MCPN, contractor or subcontractor.
 - j. All employees are trained in the requirements for reporting alleged incidents of abuse or neglect and in the rights and responsibilities of recipients, prior to, or within 30 days of, beginning work that requires contact with recipients of mental health services.
 - k. All contractual agreements for services include language intended to assure the protection of rights, and cooperation with investigations conducted by the ORR and other authorized investigative bodies

QUALITY ASSURANCE/IMPROVEMENT

DWMHA shall review and monitor contractor adherence to this policy as one element in its network management program, and as one element of the QAPIP Goals and Objectives.

The quality improvement programs of MCPNs, their subcontractors, and direct contractors must include measures for both the monitoring of and the continuous improvement of the programs or processes described in this policy.

COMPLIANCE WITH ALL APPLICABLE LAWS

DWMHA staff, MCPNs, contractors, and subcontractors are bound by all applicable local, state and federal laws, rules, regulations and policies, all federal waiver requirements, state and county contractual requirements, policies, and administrative directives, as amended.

LEGAL AUTHORITY

1. Michigan Mental Health Code, P.A. 258 of 1974, as amended, MCL 330.1722; MCL 330.1723; MCL 330.1752, MCL 330.1778, MCL 330.1780
2. Michigan Administrative Code, R330.7001, R330.7035 as amended

RELATED POLICIES

1. Complaint Resolution
2. Individual Plan of Service/Person-Centered Planning
3. Treatment with Dignity and Respect
4. Services Suited to Condition in the Least Restrictive Setting

RELATED DEPARTMENTS

1. Administration
2. Clinical Practice Improvement
3. Compliance
4. Customer Service
5. Integrated Health Care
6. Managed Care Operations
7. Quality Improvement
8. Recipient Rights

CLINICAL POLICY

YES

INTERNAL/EXTERNAL POLICY

EXTERNAL

Attachments:

No Attachments

Approval Signatures

Approver

Date

Dana Lasenby: Deputy Chief Operating Officer

08/2017

| Approver | Date |
|---|-------------|
| Allison Smith: Project Manager, PMP | 08/2017 |
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| Donna Coulter: Dir. of OPA | 08/2017 |
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| Corine Mann: Chief Strategic Officer/Quality Improvement | 08/2017 |
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| Jody Connally: Director, Human Resources | 08/2017 |
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| Michael Rangos: Director of Procurement | 08/2017 |
| Julia Kyle: Director of Integrated Care | 08/2017 |
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| Kip Kliber: Director, Recipient Rights | 08/2017 |

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