



## SHIAWASSEE HEALTH AND WELLNESS POLICY MANUAL

<b>Title:</b>	<b>Abuse and Neglect</b>
<b>Section:</b>	Recipient Rights
<b>Policy Number:</b>	03
<b>Issued By:</b>	Recipient Rights Director
<b>Approved by:</b> Leadership Team	<b>Effective Date:</b> 2/24/97 <b>Last Revision:</b> 02/28/2021
<b>Approved on:</b> 10/03/19	<b>Last Review:</b> 2/28/2021 <b>Annual Policy Statement Review:</b> 12/28/20

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### **POLICY STATEMENT:**

It shall be the policy of Shiawassee Health and Wellness (SHW) that a recipient of Board-sponsored services shall not be physically, sexually, or otherwise abused or subjected to neglect.

It shall also be the policy of the Shiawassee Health and Wellness to respond immediately to complaints of alleged or suspected abuse and/or neglect of a vulnerable adult.

It shall also be the policy of the Shiawassee Health and Wellness to take firm and appropriate disciplinary action up to and including termination of employment for substantiated abuse or neglect.

### **PURPOSE:**

To ensure compliance with the Michigan Mental Health Code and the Michigan Department of Licensing and Regulatory Affairs- Bureau of Mental Health and Substance Abuse Services, Administrative Rules related to rights of recipients. To ensure that Shiawassee Health and Wellness provides enrollees/recipients of services the right to be free from any form of abuse, neglect, exploitation, coercion, discipline, or retaliation.

### **APPLICATION:**

All SHW employees, contracted providers and employees, independent contractors, volunteers, Residents, and Interns.

### **DEFINITIONS:**

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 the department, a community mental health services program, or a licensed hospital or by an employee or

volunteer of a service provider under contract with the department, community mental health services program, or licensed hospital.

Abuse Class I: A non-accidental act, or provocation of another to act, by an employee, volunteer, or an 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:

- A. A non-accidental act, or provocation of another to act, by an employee, volunteer, or agent of a provider that caused or contributed to nonserious physical harm to a recipient.
- B. The use of unreasonable force on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm.
- C. 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.
- D. 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.
- E. Exploitation of a recipient by an employee, volunteer or agent of a provider.

Abuse Class III: 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.

Anatomical Support: Body positioning or a physical support ordered by a physical or occupational therapist for the purpose of maintaining or improving a recipient's physical functioning. All other applications of appliances that restrict a resident's movement, regardless of their stated purpose, shall be considered physical restraint.

Bodily Function: The usual action of any region or organ of the body.

Degrade: means any of the following:

- A. Treat humiliatingly - to cause somebody or something a humiliating loss of status or reputation, or cause somebody a humiliating loss of self-esteem.
- B. Make worthless - to cause people to feel that they or other people are worthless and do not have the respect or good opinion of others.
- C. Synonyms include degrade, abase, debase, demean, humble humiliate. These verbs mean to deprive of self-esteem or self-worth; to shame or disgrace.
- D. Degrading behavior shall be further defined as any language or epithets that insult the person's heritage, mental status, race, sexual orientation, gender, intelligence, etc.

Emotional Harm: Impaired psychological functioning, growth or development of a significant nature as evidenced by observable physical symptomatology and as determined by a mental health professional.

Exploitation: An action by an employee, volunteer, or agent of a provider that involves the misappropriation or misuse of a recipient's property or funds for the benefit of an individual or individuals other than the recipient.

Force: Non-accidental physical contact with or physical strength exerted against the body of a recipient

Neglect: An act or failure to act committed by an employee or volunteer of the department, a community mental health services program, or a licensed hospital; a service provider under contract with the department, community mental health services program, or an employee or volunteer of a service provider under contract with the department, community mental health services program, or licensed hospital, that denies a recipient the standard of care or treatment to which he or she is entitled under this act.

Neglect Class I:

- A. Acts of commission or omission by an employee, volunteer, or agency 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.
- B. The failure to report apparent or suspected abuse Class I or neglect Class I of a recipient.

Neglect Class II:

- A. Act of commission or omission by an employee, volunteer, or an 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 nonserious physical harm or emotional harm to a recipient.
- B. The failure to report apparent or suspected abuse Class II or neglect Class II of a recipient.

Neglect Class III:

- A. Act 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.
- B. The failure to report apparent or suspected abuse Class III or neglect Class III of a recipient.

Nonserious Physical Harm: Physical damage suffered by a recipient 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.

Physical Management: 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

Protective Device: A device or physical barrier to prevent the recipient from causing serious self-injury associated with documented and frequent incidents of the behavior. A protective device as defined in this subdivision and incorporated in the written individual plan of service shall not be considered a restraint as defined in subdivision (q) of this subrule.

Psychotropic Drug: Any medication administered for the treatment or amelioration of disorders of thought, mood, or behavior.

Restraint: the use of a physical device to restrict an individual's movement. Restraint does not include the use of a device primarily intended to provide anatomical support.

Serious Physical Harm: 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.

Sexual Abuse: Any of the following:

- A. Criminal sexual conduct as defined by section 520b to 520c of 1931 PA 318, being MCL 750.520b to MCL 750.520e involving an employee, volunteer or, or agent of a provider and a recipient.
- B. 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.
- C. 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: 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 intention 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:

1. Revenge
2. To inflict humiliation
3. Out of anger

Sexual Harassment: Sexual advances to a recipient, requests for sexual favors from a recipient, or other conduct or communication of a sexual nature toward a recipient.

Sexual Penetration: 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.

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

Threaten: means any of the following:

- A. To utter intentions of injury or punishment against
- B. To express a deliberate intention to deny the well-being, safety, or happiness of somebody unless the person does what is being demanded.
- C. To tell someone that you will hurt them or cause problems if they do not do what you want

Time Out: 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.

Unreasonable Force: The use of 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

- A. There is no imminent risk of serious or nonserious physical harm to the recipient, staff or others.
- B. The physical management used is not in compliance with techniques approved by the provider and the responsible mental health agency.
- C. The physical management used is not in compliance with the emergency interventions authorized in the recipient's individual plan of service.
- D. 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.

## **PROCEDURES:**

- A. All staff under the authority of this policy shall report all suspected allegations of abuse or neglect to the SHW Recipient Rights Office and to any external agencies mandated by statute to receive and investigate complaints of suspected abuse or neglect which the Board is required by the Michigan Mental Health Code and the Michigan Department of Health and Human Services Administrative Rules to inform.
  - 1. Staff are required to make an immediate verbal report to the Office of Recipient Rights and their immediate supervisor regarding all suspected or alleged cases of abuse and neglect. SHW and/or all SHW contracted providers shall comply with their policies and procedures related to staff allegedly involved in abuse and/or neglect cases.
  - 2. Staff are required to complete an AFC Licensing-Incident/Accident Report by the end of their shift documenting the suspected abuse or neglect. The completion of the Incident/Accident Report does not alleviate their responsibility to complete an immediate verbal report.
  - 3. All SHW employees, contract provider employees, volunteers, independent contractors, or Residents/Interns shall make an immediate report of suspected abuse or neglect, either verbally or in writing, to the SHW Chief Executive Officer or designee; and to the MDHHS Centralized Intake for Abuse and Neglect. Please

refer to Clinical Policy # 30: Reporting Suspected Abuse and/or Neglect (Child and Adult) to Protective Services.

- See Exhibit 2 and Exhibit 3 for definitions
  - If the suspected abuse or neglect occurs in an Adult Foster Care Facility, the Michigan Department of Licensing and Regulatory Affairs, Licensing Division shall also be contacted.
  - if the suspected abuse involves assault, homicide, or sexual contact, local law enforcement or the state police must also receive an immediate verbal report. Within seventy-two (72) hours of making a verbal report law enforcement, the reporting person shall provide a written report to the SHW Office of Recipient Rights, SHW Chief Executive Officer, and to the local law enforcement agency that received the verbal report.
    - See Exhibit 1 for definitions
- B. No employee acting under the authority of this policy shall not be dismissed, sanctioned, or in any way penalized for making the report.
- C. The SHW Recipient Rights Office shall begin an immediate investigation upon receiving a report of suspected abuse or neglect.
- D. If the SHW Recipient Rights Office substantiates an allegation of abuse or neglect the SHW Chief Executive Officer shall implement prompt, firm, and appropriate disciplinary action or ensure its occurrence. Any disciplinary action taken shall be in accordance with Board personnel policies and procedures, the applicable bargaining agreement, or Board policies and procedures related to volunteers, Residents, or Interns. Sanctions against independent contractors for substantiated abuse or neglect shall be referred to the SHW Contracts Manager for appropriate disciplinary type enforcement.
- E. Remedial Action for substantiated cases involving abuse, neglect, and/or harassment and retaliation shall comply with the definition of disciplinary action outlined in the MDHHS Administrative Rules (R 330.7035).
- A provider shall:
1. Establish written policies and procedures, which adopt and incorporate the definitions of abuse class I, abuse class II, and abuse class III and neglect class I, neglect class II, and neglect class III as described in rule 7001.
  2. Provide for a prompt and thorough review of all allegations of abuse/neglect that is fair to the recipient alleged to have been abused/neglected and to the alleged employee, volunteer, or agent of a provider.
- F. Duty to report abuse or neglect under other law is not relieved by this policy.

**COMPLIANCE:**

External: Michigan Mental Health Code

Michigan Department of Health and Human Services Administrative Rules

Internal: Clinical Policy #30- Reporting Suspected Abuse and/or Neglect (Child and Adult) to Protective Services

**EXHIBITS:**

Exhibit 1: Michigan Penal Code (Excerpt) Act 328 of 1931

Exhibit 2: Michigan Penal Code (Children) (Excerpt), Public Act 328 of 1931

Exhibit 3: Michigan Penal Code (Vulnerable Adults) (Excerpt), Public Act 328 of 1931

**Change Log:**

<b>Date of Change</b>	<b>Description of Change</b>	<b>Responsible Party</b>
8/3/98, 10/31/01, 1/18/05, 5/12/06, 10/30/06		Becke Browne
6/25/07		Becke Browne
7/8/08		Becke Browne
3/26/09		Becke Browne
9/24/09		Scott Gilman
5/9/16		Becke Browne
9/18/19	Formatting, change to definitions and procedures, addition of Exhibit 1-3 Penal Code definitions	Andrea Andrykovich
2/28/2021	Minor word additions-reviewed	Andrea Andrykovich