

# HIAWATHA BEHAVIORAL HEALTH BOARD

## Administrative Policy

Chapter: Recipient Rights  
Section: Abuse and Neglect (6.8)  
Approved: 5/28/08  
Rescinds: 6.8 - Dated 11/26/07  
Review Committee: Recipient Rights Advisory Committee  
Review Date: 1/28/2010

### I. Purpose

Establish definitions of abuse and neglect and standards for the reporting and investigation of abuse and neglect.

### II. Policy

It is the policy of the Hiawatha Behavioral Health Authority to ensure that individuals receiving services shall not be subjected to abuse or neglect. Any individual that becomes aware of or suspects any degree of abuse or neglect shall be responsible for promptly reporting the situation to the appropriate authorities.

### III. Definitions

#### Abuse:

Nonaccidental 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 employee or volunteer of the Department, a Community Mental Health Services Program, or a licensed hospital or by an employee or volunteer of a provider under contract with the Department of Community Health or the Community Mental Health Services Program, or licensed hospital.

Abuse, Class I:

A non-accidental act or provocation of another to act by an employee, direct or under contract to the Hiawatha Behavioral Health, volunteer or agent of a provider which caused or contributed to death, serious physical harm, or sexual abuse of, or serious physical harm to a recipient.

Abuse, Class II:

1. A non-accidental act or provocation of another to act by an employee, direct or under contract to the Hiawatha Behavioral Health, volunteer or agent of a provider which caused or contributed to non-serious physical harm to a recipient.
2. The use of unreasonable force on a recipient by an employee, direct or under contract to the Hiawatha Behavioral Health, volunteer, or agent of a provider with or without apparent harm.
3. Any action or provocation of another to act by an employee, direct or under contract to the Hiawatha Behavioral Health, volunteer, or agent of a provider which causes or contributes to emotional harm to a recipient.
4. 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, which results in substantial economic, material, or emotional harm to the recipient.
5. Exploitation of a recipient by an employee, direct or under contract to the Hiawatha Behavioral Health, volunteer or agent of a provider.

Abuse, Class III:

Means verbal abuse defined as the use of language or other means of communication by an employee, direct or under contract to the Hiawatha Behavioral Health, volunteer, or agent of a provider to degrade, threaten, or sexually harass a recipient.

Bodily Function:

The usual action of any region or organ of the body.

Criminal Abuse:

One or more of the following:

1. 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.

2. A Criminal Homicide that is a violation or an attempt or conspiracy to commit a violation of Sections 316, 317, or 321 of Act No. 328 of the Public Acts of 1931 being section 750.316, 750.317, and 750.321 of the Michigan Compiled Laws.

3. 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 MI Compiled Laws.

4. Vulnerable Adult Abuse that is a violation or an attempt or conspiracy to commit a violation of Section 145n of the MI Penal Code Act No. 328 of the Public Acts of 1931 being Sections 750.145n of the MI Compiled Laws

5. 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.

Emotional Harm:

Impaired psychological functioning, growth, or development of a significant nature as evidenced by observable, physical symptomology and as determined by a psychiatrist or fully-limited licensed psychologist or social worker.

Endangerment:

A life threatening situation caused by the inability of the person whose life is threatened, to respond.

Exploitation:

An action which involves the misappropriation or misuse of funds, property, or personal dignity by another person.

Force:

Non-accidental physical contact with or physical strength exerted against the body of recipient by an employee, direct or under contract to the Hiawatha Behavioral Health, volunteer, or agent of a provider that is not an approved physical management technique or that is not used to prevent the recipient from harming himself, herself, or others or from causing substantial property damage.

Law Enforcement:

City Police, Sheriff Department, Tribal Law Enforcement, State Police, or Federal agency who has jurisdiction where alleged incident occurred.

Neglect:

An act or failure to act committed by an employee or volunteer of the Department of Community Health, a Community Mental Health Services Program, or a licensed hospital; a service provider under contract with the Department of Community Health, a Community Mental Health Services Program, or a licensed hospital; or an employee or volunteer of a service provider under contract with the Department of Community Health, or a Community Mental Health Services Program, or a 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:

1. Acts of commission or omission of or by an employee, direct or under contract with the Hiawatha Behavioral Health, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, procedures, or Individual Plan of Services (IPOS) and that cause or contribute to serious physical harm to or sexual abuse of a recipient.
2. The failure to report apparent or suspected abuse class I or neglect class I of a recipient.

Neglect - Class II:

1. Acts of commission or omission by an employee, direct or under contract of the Hiawatha Behavioral Health, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, procedures, written directives, or Individual Plan of Services (IPOS) and that cause or contribute to non-serious physical harm or emotional harm to a recipient.
2. The failure to report apparent or suspected abuse class II or neglect class II of a recipient.

Neglect - Class III:

1. Acts of commission or omission by an employee, direct or under contract with the Hiawatha Behavioral Health, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, written directives, guidelines, procedures, or Individual Plan of Services (IPOS) that either placed or could have placed a recipient at-risk of physical harm or sexual abuse.

2. The failure to report apparent or suspected abuse class III or neglect class III of a recipient.

Non-Serious Physical Harm:

Physical damage or what could be construed as pain suffered by a recipient which 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/her bodily functions.

Reasonable Cause:

A suspicion founded upon circumstances sufficiently strong to warrant a reasonable person to believe that the suspicion is true.

Remedial Action:

Action taken by a program, agency, or home provider to correct conditions leading to, and to prevent recurrence of, an unusual incident or rights violation, including firm and fair disciplinary action when necessary.

Reporting Person

The employee, volunteer, or any individual who has reasonable cause to suspect the criminal abuse of a recipient, or the abuse, neglect, endangerment, or exploitation of a recipient who is a child or a vulnerable adult.

Serious Physical Harm:

Physical damage suffered by a recipient which a physician or registered nurse determines caused or could have caused the death of a recipient, caused the impairment of his/her bodily function(s), or caused the permanent disfigurement of a recipient.

Sexual Abuse:

1. Criminal sexual conduct involving an employee, direct or under contract with the Hiawatha Behavioral Health, volunteer, or agent of a provider and a recipient. as defined in 750.520b Criminal sexual conduct in the first degree; felony; consecutive terms. Sec. 520b.

(1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

- (ii) The actor is related to the victim by blood or affinity to the fourth degree.
- (iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
- (iv) The actor is a teacher, substitute teacher, or administrator of the public or nonpublic school in which that other person is enrolled.
- (c) Sexual penetration occurs under circumstances involving the commission of any other felony.
- (d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:
  - (i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
  - (ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes, but is not limited to, the circumstances listed in subdivision (e).
- (e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.

2. Any sexual contact involving an employee, direct or under contract with the Hiawatha Behavioral Health, volunteer, or agent of a provider and a recipient for whom the employee, volunteer, or agent provides direct services.

Sexual Contact:

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 the employee's intimate parts of a recipient's or employee's intimate parts (genitals, buttocks, breasts, groin, inner thigh, or rectum) 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:

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

Sexual Harassment:

Any action, by any person, which can be construed as sexual advances toward 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, into any part of a person's body or any intrusion of any object into the genital or

anal openings of a recipient's body if the intrusion can reasonably be construed as being for the purposes of sexual arousal or gratification. Emission of semen is not required.

Unreasonable Force:

Physical management or force that is applied by an employee, volunteer, or agent of a provider to a recipient where there is no imminent risk of significant injury to the recipient, staff or others or that is any of the following:

- a. Not in compliance with approved behavior management techniques;
- b. Not in compliance with the recipient's Individual Plan of Services (IPOS);
- c. Used when other less restrictive measures were not attempted immediately before the use of physical management or force.

Volunteer:

An individual who, without compensation, other than reimbursement for expenses performs activities for Hiawatha Behavioral Health or an entity under contract to the Hiawatha Behavioral Health under specified conditions.

IV. Procedure

A. REPORTING REQUIREMENTS:

The purpose of this procedure is to ensure that all employees, direct service, contract service, and volunteers of the Hiawatha Behavioral Health Authority are aware of what constitutes abuse and neglect and to ensure that all evidence or suspicion of abuse or neglect is promptly reported and investigated through the mechanisms established in this procedure.

1. Anyone who is witness or discovers evidence or has suspicion of any degree of abuse or neglect shall:

- a. Provide care, comfort, and protection to the recipient.
- b. When sexual misconduct or abuse is alleged and/or suspected to have occurred, the reporting person shall make every effort to assist the recipient in obtaining necessary medical evaluation. Obtaining physical evidence is critical in any type of investigation of this nature.
- c. Immediately notify the responsible law enforcement agency for the county or city in which the suspected abuse or neglect occurred and/or the State Police.
- d. Immediately notify the Department of Human Services (DHS) Protective Services, as required by law.
- e. Immediately notify and file an Incident Report to the Hiawatha Behavioral Health Office of Recipient Rights.

f. Within 72 hours after making the oral report, the reporting individual shall file a written report with the law enforcement agency to which the oral report was made and with the Hiawatha Behavioral Health Office of Recipient Rights (ORR).

g. The identity of an individual who makes a report under this section is confidential and is not subject to disclosure without consent of that individual or by order or subpoena of a court of record. An individual acting in good faith who makes a report of criminal abuse against a recipient is immune from civil or criminal liability that might otherwise be incurred. The immunity from civil or criminal liability granted by this subsection extends only to acts done under this section and does not extend to a negligent act that causes personal injury or death.

h. An 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.

2. This section does not relieve an individual from the duty to report criminal abuse under other applicable law.

3. All employees, volunteers, direct or under contract, with the Hiawatha Behavioral Health shall cooperate in the prosecution of appropriate criminal charges against those who have engaged in criminal abuse.

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 appropriate law enforcement agency 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 Subsection (1) 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, an individual employed by or under contract or a volunteer with Hiawatha Behavioral Health.

b. If the suspected abuse is alleged to have been committed in one of the following:

(i) A state facility or a licensed facility.

(ii) A county community mental health services program site.

(iii) The work site of an individual employed by or under contract with the Hiawatha Behavioral Health.

(iv) A place where a recipient is under the supervision of an individual employed directly or under contract or a volunteer of the Hiawatha Behavioral Health.

**B. CHIEF EXECUTIVE OFFICER:**

1. The Hiawatha Behavioral Health Chief Executive Officer shall ensure that:

a. All employees, volunteers, direct or under contract with Hiawatha Behavioral Health, who have knowledge of alleged abuse or neglect are available to cooperate with and respond to questions from those conducting official investigations.

b. All employees, direct or under contract with the Hiawatha Behavioral Health, volunteers, recipients, and others who report suspected abuse or neglect or who cooperate in an investigation are protected from discrimination, harassment, or retaliation in accordance with applicable laws agency policies and procedures and appropriate disciplinary action is taken if this does occur.

c. Appropriate remedial, firm, and fair disciplinary action is taken in accordance with personnel policies for substantiated allegations of abuse or neglect.

**C. OFFICE OF RECIPIENT RIGHTS REQUIREMENTS:**

1. The ORR shall ensure notification of the Chief Executive Officer in cases of suspected criminal abuse, as well as, allegations of neglect, keeping him/her informed of the investigation and the findings. The Office of Recipient Rights shall also:

a. Assure notification to the Department of Human Services (DHS), law enforcement agency(s), and/or the authorized legal representative for the recipient.

b. Conduct timely investigations of alleged abuse or neglect as stated in the Hiawatha Behavioral Health Complaint and Appeal Process Policy and Procedure.

c. Provide assistance, as needed, to any outside agency with jurisdiction in investigation.

d. Recipient information will be shared among agencies according to procedures established in the Confidentiality/Disclosure Policy & Procedure and the agreement between Hiawatha Behavioral Health and the Department of Human Services Adult Foster Care Licensing.

e. A recipient or anyone else who suspects that a recipient has been abused or neglected shall not be discouraged or denied an opportunity to seek legal assistance or from pursuing other administrative or civil remedy.

V. Application

All Programs Operated By and Under Contract With Hiawatha Behavioral Health Authority

VI. Cross Reference and Legal Authority

- A. Act 258 of the Public Acts of 1974 as amended - Mental Health Code - Sections 330.1100a, 330.1100b, 330.1700, 330.1707, 330.1722, 330.1723, 330.1748, 330.1748a, 330.1755.
- B. Department of Community Health Administrative Rules R - 330.7001 & 330.7035.
- C. Child Protection Act 238 of the Public Acts of 1975.
- D. Adult Protection Law Act 519 of the Public Acts of 1982.
- E. Michigan Penal Code Act 266 of the Public Acts of 1974.
- F. Hiawatha Behavioral Health Complaint and Appeal Process Policy & Procedure
- G. Hiawatha Behavioral Health Confidentiality/Disclosure Policy & Procedure