

HIAWATHA BEHAVIORAL HEALTH
Administrative Policy

CHAPTER: Recipient Rights	SECTION: Abuse and Neglect – 6.8
EFFECTIVE DATE: 5/16/05	APPROVAL /REVISED DATE: 11/23/2020
REVIEW DATE: 11/24/2025	REVIEW COMMITTEE: Recipient Rights CHANGES: Yes: No: X

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 Hiawatha Behavioral Health 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 and agency administration.

III. Definitions

- A. 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 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 Michigan Department of Health and Human Services (MDHHS) or the Community Mental Health Services Program, or licensed hospital.
- B. 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, or sexual abuse of, or serious physical harm to a recipient.
- C. Abuse, Class II means any of the following:
1. A non-accidental act or provocation of another to act by an employee, direct or under contract to 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 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 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 Hiawatha Behavioral Health, volunteer or agent of a provider.
- D. 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 Hiawatha Behavioral Health, volunteer, or agent of a provider to degrade, threaten, or sexually harass a recipient.
- E. Bodily Function: The usual action of any region or organ of the body.
- F. Child/Minor: A person under 18 years of age in the United States.
- G. Child Abuse: Harm or threatened harm to a child's health or welfare that occurs through non-accidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy.
- H. Child Neglect: Harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that occurs through either of the following:
1. Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.
 2. Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.
- I. Criminal Abuse includes 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 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 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 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 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.

J. Degrade: Means any of the following:

1. Treat humiliatingly: to cause somebody or something a humiliating loss of status or reputation, or cause somebody a humiliating loss of self esteem
2. Abase, debase, demean, humble, and humiliate; to deprive of self- esteem or self-worth; to shame or disgrace.
3. Degrading behavior is further defined as any language or epithets that insult the person's heritage, mental status, race, sexual orientation, gender and / or intelligence.
 - a. Examples of behavior that is degrading, and must be reported as abuse; this list is not all inclusive:
 - Swearing at recipients
 - Using foul language at recipients
 - Using racial or ethnic slurs toward or about recipients
 - Making emotionally harmful remarks toward recipients
 - Causing or prompting others to commit the actions listed above

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

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

M. 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.

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

- O. Neglect: An act or failure to act committed by an employee or volunteer of the Michigan Department of Health and Human Services MDHHS, a Community Mental Health Services Program, or a licensed hospital; a service provider under contract with the MDHHS, a Community Mental Health Services Program, or a licensed hospital; or an employee or volunteer of a service provider under contract with the MDHHS, 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.
- P. Neglect - Class I means either of the following:
1. Acts of commission or omission by an employee, direct or under contract to Hiawatha Behavioral Health, 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 Services (IPOS) and causes or contributes to the death, or sexual abuse of, or serious physical harm to a recipient.
 2. The failure to report apparent or suspected abuse class I or neglect class I of a recipient.
- Q. Neglect - Class II means either of the following:
1. Acts of commission or omission by an employee, direct or under contract to 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, written directives, procedures, 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.
- R. Neglect - Class III means either of the following:
1. Acts of commission or omission by an employee, direct or under contract to Hiawatha Behavioral Health, 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 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.
- S. Non-Serious Physical Harm: 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/her bodily functions.

- T. Reasonable Cause: A suspicion founded upon circumstances sufficiently strong to warrant a reasonable person to believe that the suspicion is true.
- U. 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.
- V. 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.
- W. 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.
- X. Sexual Abuse means any of the following:
 - 1. Criminal sexual conduct involving an employee, direct or under contract with Hiawatha Behavioral Health, volunteer, or agent of a provider and a recipient. As defined by Michigan Compiled Laws (MCL) section 750.520b MCL 750.520e of 1931 Public Act (PA) 328, MCL 750.520b to MCL 750.520e.
 - 2. Any sexual contact or sexual penetration involving an employee, direct or under contract with Hiawatha Behavioral Health, volunteer, or agent of a hospital or center, a facility licensed by the Department under section PA 258 of 1974 section 330.137 of the act or an adult foster care facility and a recipient.
 - 3. Any sexual contact or penetration involving an employee, direct or under contract with Hiawatha Behavioral Health, volunteer, or agent of a provider and a recipient for whom the employee, direct or under contract with Hiawatha Behavioral Health, volunteer, or agent provides direct services.
- Y. 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, 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:
 - 1. Revenge
 - 2. To inflict humiliation
 - 3. Out of anger

- Z. 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.
- AA. 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
- BB. Threaten means the following: To tell someone that you will hurt them or cause problems if they do not do what you want.
- CC. Unreasonable Force: Physical management or force that is applied by an employee, direct or under contract to Hiawatha Behavioral Health, volunteer, or agent of a provider to a recipient in one or more of the following circumstances:
1. There is no imminent risk of serious or non-serious physical harm to the recipient, staff or others.
 2. The physical management used is not in compliance with techniques approved by the provider and the responsible mental health agency.
 3. The physical management used is not in compliance with the emergency interventions authorized in the Recipient's Individual Plan of Services.
 4. 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.
- DD. Volunteer: An individual who, without compensation, other than reimbursement for expenses performs activities for Hiawatha Behavioral Health or an entity under contract to Hiawatha Behavioral Health under specified conditions.
- EE. Vulnerable: A condition in which an adult is unable to protect himself or herself from abuse, neglect, or exploitation because of a mental or physical impairment or because of advanced age.

IV. Procedure

- A. Reporting Requirements: The purpose of this procedure is to ensure that all employees, direct service, contract service, and volunteers of Hiawatha Behavioral Health 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 has reasonable cause to suspect the criminal abuse of a recipient, vulnerable adult or child shall make or cause to be made, by telephone or otherwise, an oral and written report of the suspected criminal abuse to the law enforcement agency for the county or city in which the criminal abuse is suspected to have occurred or to the State Police.

2. 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. In all cases of suspected or known abuse, neglect and/ or mistreatment, it is the responsibility of the employee, volunteer or agent of a provider who has knowledge of or reasonable cause to suspect recipient abuse, neglect and mistreatment to immediately report it to their supervisor/designee, and to the Recipient Rights Office.

Immediately notify the Michigan Department of Health and Human Services (MDHHS) Protective Services hotline at 1-855-444-3911 for children and adults as required by law. The toll free number, 1-855-444-3911 is available to the general public and mandatory reporters. Hotline calls are answered 24 hours a day, seven days a week. If the subject of the suspected or known abuse or neglect is a minor, a MDHHS Form #3200; Report of Actual or Suspected Child Abuse or Neglect, must also be completed by the reporter and provided to Protective Services.
 - e. Immediately notify and file an Incident Report to the Hiawatha Behavioral Health Office of Recipient Rights (ORR).
 - f. 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.
 - g. 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.
3. This section does not relieve an individual from the duty to report criminal abuse under other applicable law.
4. All employees, volunteers, direct or under contract, with Hiawatha Behavioral Health shall cooperate in the prosecution of appropriate criminal charges against those who have engaged in criminal abuse.
5. 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.
- 6. 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 under contract with, 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 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 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 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 action which shall include, 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. Immediately initiate investigation of suspected or known abuse or neglect and conduct timely investigations that are carried out in cooperation with law enforcement and / or other entities conducting simultaneous investigations as

stated in the Hiawatha Behavioral Health Complaint and Appeal Process Policy and Procedure.

- b. Assure notification to the Michigan Department of Health and Human Services (MDHHS), law enforcement agency(s), and/or the authorized legal representative for the recipient.
- c. 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 MDHHS Adult Foster Care Licensing.
- d. 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

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. MDHHS 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.