

## NORTHPOINTE BEHAVIORAL HEALTHCARE SYSTEMS

**POLICY TITLE:** Protection of Service Recipients from Abuse and Neglect

**PAGE:** 1 of 5

**MANUAL:** Recipient Rights

**SECTION:** Rights

**ORIGINAL EFFECTIVE DATE:** 10/01/03

**BOARD APPROVAL DATE:** 11/25/13

**REVIEWED/REVISED ON DATE:** 3/15/18

**CURRENT EFFECTIVE DATE:** 4/1/18

**REVISIONS TO POLICY STATEMENT:**  YES  NO

**OTHER REVISIONS:**  YES  NO

### **APPLIES TO:**

All programs operated by or under contract with Northpointe Behavioral Healthcare Systems.

### **POLICY:**

It is the policy of Northpointe Behavioral Healthcare Systems that:

1. Recipients shall not be subjected to abuse or neglect.
2. Any suspected abuse or neglect is promptly reported.
3. Appropriate disciplinary action is taken for substantiated allegations of abuse or neglect.

### **PURPOSE:**

To establish policy and procedures to protect Northpointe Behavioral Healthcare Systems service recipients from being abused and neglected.

### **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 (Michigan Department of Health and Human Services definition):**

The harm or threatened harm to a child or vulnerable adult's health or welfare caused by another person, including non-accidental physical or mental injury, sexual abuse, or maltreatment.

#### **Abuse Class I:**

A non-accidental act, or provocation of another to act, by an employee, volunteer, or trainee which caused, or contributed to, death, serious physical harm, or sexual abuse of a recipient.

#### **Abuse Class II:**

- A) A non-accidental act, or provocation of another to act, by an employee, trainee, or volunteer, which caused or contributed non-serious physical harm to a recipient; or
- B) The use of unreasonable force on a recipient by an employee, trainee, or volunteer, with or without apparent harm; or,
- C) Any action, or provocation of another to act, by an employee, trainee, or volunteer which causes, or contributes to, emotional harm to a recipient; or,
- D) An action taken on behalf of a recipient, by assuming incompetence, although a guardian has not been appointed or sought, which results in substantial economic, material, or emotional harm to the recipient; or,
- E) Exploitation of a recipient by an employee, volunteer, or agent of a provider.

#### **Abuse Class III:**

Verbal abuse-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.

#### **Bodily Function**

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

#### **Chief Executive Officer/Designee**

The individual appointed to direct the agency, or his/her designee, or a supervisor who normally receives Incident Reports.

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### Criminal Abuse

One 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 that is committed by a recipient against another recipient unless it results in serious physical injury;
- 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 Sections 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 750.136n of the Michigan Compiled Laws.

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

Employee - An individual who works for NBHS or under contract with NBHS and receives compensation for that work.

Endangerment (MDHHS definition):

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

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.

Exploitation (MDHHS definition) - An action which involves the misuse of funds, property, or personal dignity by another person.

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 licensed hospital, that denies a recipient the standard of care or treatment to which he or she is entitled under this act.

Neglect (MDHHS definition)

Harm to a child or vulnerable adult's health or welfare caused by the conduct of a person responsible for their health or welfare, including the failure to provide adequate food, clothing, shelter or medical care.

Neglect Class I

- a) Acts of commission or omission by an employee, volunteer, or agent of a provider which result from noncompliance with a standard of care or treatment required by law, rules, policies, procedures, guidelines, written directives, training, or individual plan of service and which cause, or contribute to, serious physical harm to or sexual abuse of a recipient; or,

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- b) Failure to report apparent or suspected Abuse Class I or Neglect Class I of a recipient.

### Neglect Class II

- a) Acts of commission or omission by an employee, volunteer, or agent of a provider which result from noncompliance with a standard of care or treatment required by law, rules, policies, procedures, guidelines, written directives, or individual plan of service and which cause, or contribute to, non-serious physical harm, or emotional harm to a recipient; or,
- b) Failure to report apparent or suspected Abuse Class II or Neglect Class II of a recipient.

### Neglect Class III

- a) Acts of commission or omission by an employee, volunteer, or agent of a provider which result from noncompliance with a standard of care or treatment required by law, rules, policies, procedures, guidelines, written directives, 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.

### Non-Serious Physical Harm

Physical damage or what could reasonably 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.

### Physical Management

A technique used by staff to restrict the movement of a recipient by direct physical contact in order to prevent the recipient from harming himself, herself, or others.

### Reasonable Cause

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

### Reporting Person

The employee, volunteer, or trainee 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 a registered nurse determines caused or could have caused the death of a recipient, or caused the impairment of his/her bodily function(s), or caused the permanent disfigurement of a recipient.

### Sexual Abuse

- a) Criminal sexual conduct as defined by section 520b to 520e or 1931 PA 318, being MCL 750.520b to MCL 750.520e involving an employee, volunteer, or agent of a provider and a recipient
- b) Any sexual conduct 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 between an employee, 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 employee's intimate parts, if that intentional touching can reasonably be construed

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as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

- a) Revenge
- b) To inflict humiliation
- c) Out of anger

### Sexual Harassment

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

### Unreasonable Force

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:

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 service.
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.

### Verbal Abuse

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.

### **PROCEDURES:**

#### A. Prevention and Protection

1. All employees, volunteers, and trainees shall safeguard recipients from abuse and neglect, obtain treatment for observed injuries, and act to prevent additional harm.
2. The Office of Recipient Rights shall provide training on the definitions of abuse and neglect, and the mandated reporting requirements.
3. There are special reporting requirements for persons receiving Substance Abuse treatment. See 42 CFR Part 2 Policy.

#### B. Reporting

1. All employees and volunteers shall:
  - a. Immediately make an oral report to the Office of Recipient Rights when they witness, discover, or have reasonable cause to suspect abuse or neglect of a recipient, and follow-up with a written Incident Report within 24 hours;
  - b. Write an Incident Report within 24 hours when they witness, discover, or otherwise become aware of an assault by one recipient against another if it results in serious physical harm;
  - c. Report to the designated law enforcement agency as required by law. The reporting person shall immediately make or cause to be made, by telephone or otherwise, an oral report of suspected criminal abuse to the law enforcement agency. Within 72 hours after making the oral report, the reporting person shall file a written report with the law enforcement agency, and the Office of Recipient Rights in accordance with applicable laws and procedures;
  - d. Report to the MDHHS according to their definitions of abuse, endangerment, exploitation or neglect, as required by law. The reporting person shall make an oral report immediately, by telephone or otherwise and may file a written report;
  - e. Report to the Department of Consumer and Industry Services Bureau of Regulatory Services as required by law.

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- f. Any suspicion of child abuse shall be reported within 24 hours to licensing authority and guardian.
2. An employee, volunteer, or trainee who fails to make required report shall be subject to disciplinary action, and legal penalties and liabilities.
3. The employee in charge of implementing the recipient's plan of service shall notify the guardian or parent of a minor of any suspected abuse or neglect of that recipient.

### C. Investigation

The Office of Recipient Rights shall conduct timely investigations of alleged abuse or neglect in accordance with the agency's investigation procedure. All substantiated violations of abuse or neglect allegations will result in firm and fair disciplinary action.