

## War Memorial Hospital

**TYPE:** DEPARTMENTAL – BEHAVIORAL HEALTH

**POLICY:** ABUSE REPORTING FOR EXTERNAL AND INTERNAL EVENTS

**REPLACES:** 7/10, 5/11, 2/14, 12/16

**PURPOSE:** To guide staff in the proper procedures regarding reporting suspected cases of abuse of individuals admitted as patients and cases of patient abuse.

**PROCEDURE:**

- A. Patients have the right to be free from mental, physical, sexual, and verbal abuse, neglect, and exploitation. It is program policy that any/all suspected cases of prior physical abuse, neglect or exploitation of individuals admitted as patients are reported in accordance with the War Memorial Hospital policy and Michigan law by notifying the Office of Recipient Rights. It is also program policy that all cases of patient abuse or neglect be reported in accordance with hospital policy and Michigan law including the Office of Recipient Rights.
  
- B. Definitions
  - 1. Abuse
    - a. 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 service provider under contract with the Department of Health and Human Services or the Community Mental Health Services Program, or Licensed Hospital. [MHC 330.1100(2)]
  
  - 2. Abuse, Class I
    - a. A non-accidental act or provocation of another to act by an employee, volunteer, or agent of a provider which caused or contributed to death, sexual abuse of, or serious physical harm to, a recipient. [AR 330.7001(a)]
  
  - 3. Abuse, Class II
    - a. A non-accidental act or provocation of another to act by an employee, volunteer, or agent of a provider which caused, or contributed to, non-serious 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 which causes, or contributes to, emotional harm to a recipient.

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- 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. [AR 330.7001(b)(i-v)]
4. Abuse, Class III
- a. 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. [AR 330.7001(c)]
5. Bodily Function
- a. The usual action of any region or organ of the body.
6. Criminal Abuse
- a. 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 as defined by section 520b to 520 e of 1931 PA 318, MCL 750.520b to MCL 750. 520e involving the employee, volunteer or agent of a provider and a recipient.
    - 3. 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.
    - 4. Child Abuse means those terms as defined in section 2 of the child protection law, 1975 {A238, MCL 722.622}
7. Emotional Harm
- a. Impaired psychological functioning, growth, or development of a significant nature as evidenced by observable, physical symptomology and as determined by a mental health professional.

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8. Endangerment
  - a. A life threatening situation caused by the inability of the person whose life is threatened, to respond.
9. Exploitation
  - a. 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.
10. Law Enforcement
  - a. City Police, Sheriff Department, Tribal Law Enforcement, State Police, or Federal agency that has jurisdiction where alleged incident occurred.
11. Neglect
  - a. An act or failure to act committed by an employee or volunteer of the Department of Health and Human Services, a Community Mental Health Services Program, or a Licensed Hospital; a service provider under contract with the Department of Health and Human Services, 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 Health and Human Services, 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. [MHC 330.110(b)(19)]
12. Neglect - Class I
  - a. Acts of commission, or omission, of, or 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, 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.
  - b. The failure to report apparent or suspected abuse Class I or neglect Class I of a recipient. [AR 330.7001(i)(i-ii)]
13. Neglect - Class II
  - a. Acts of commission, or omission, by an employee, direct or under contract with the War Memorial Hospital Behavioral Health Center, 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 non-serious physical harm or emotional harm to a recipient.

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- b. The failure to report abuse or neglect of a recipient when the abuse or neglect results in non-serious harm to the recipient. [AR 330.7001(j)(i-ii)]

### 14. Neglect - Class III

- a. Acts 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, rules, policies, guidelines, procedures, or Individual Plan of Services (IPOS) that cause or contribute to non-serious 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. [AR 330.7001(k)(i-ii)]

### 15. Non-Serious Physical Harm

- a. Physical damage, or what could be reasonably construed as pain suffered by a recipient, that a physician or registered nurses determine 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.

### 16. Reasonable Cause

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

### 17. Remedial Action

- a. 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.

### 18. Reporting Person

- a. 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.

### 19. Serious Physical Harm

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

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### 20. Sexual Abuse

- a. Criminal sexual conduct as defined by Section 520b to 520 e of 1931 PA 318, MCL 750.520b to MCL 750. 520e involving an employee, volunteer, or agent of a provider and 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 recipient for whom the employee, volunteer, or agent provides direct services.

### 21. Sexual Contact

- a. The intentional touching of the recipient's or 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. Inflict humiliation
3. Out of anger

### 22. Sexual Harassment

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

### 23. Sexual Penetration

- a. Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, into any part of a person's body or 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.

### 24. Unreasonable Force

- a. 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.

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3. The physical management used is not in compliance with the emergency interventions authorized in the recipient's individual plan of service.
  - (i) 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.

### 25. Volunteer

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

### **PROCEDURE FOR REPORTING EXTERNAL EVENT:**

A. All staff members, direct service, contract service, and volunteers of the War Memorial Hospital Behavioral Health Center who become aware of a suspected case of prior physical abuse, neglect, or exploitation of individuals as patients, shall immediately inform the unit Social Worker as well as the unit Director of Nursing. [MHC 330.1723(1); P.A. 238, 1978; P.A. 519, 1982; and MHC 330.1722(2)]

B. Whenever suspected prior physical abuse, neglect and/or exploitation is reported, the BHC Social Worker or Director of Nursing will discuss the situation with the patient to obtain more information and shall report the situation to the hospital Risk Management Department and responsible Department of Health and Human Services Protective Services for the county in which the patient was residing in at the time of the alleged abuse, neglect or exploitation. The unit Social Worker and Director of Nursing will notify the Program Director of the situation.

C. The Program Director will be responsible for overseeing that all reports required by law filed.

### **POLICY FOR REPORTING INTERNAL EVENT:**

A. All staff members, direct service, contract service, and volunteers of the War Memorial Hospital Behavioral Health Center who become aware of a suspected case of prior physical abuse, neglect, or exploitation of individuals as patients, shall immediately inform the unit Social Worker as well as the unit Director of Nursing. [MHC 330.1723(1); P.A. 238, 1978; P.A. 519, 1982; and MHC 330.1722(2)]

B. The Program Director shall cause an Occurrence Report to be prepared and filed.

C. The Program Director will be responsible for overseeing that all written reports required to law enforcement are filed. [MHC 330.1723(2)]

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D. The Program Director/Director of Nursing shall immediately suspend any employee allegedly involved in the incident until the incident has been investigated and resolved.

1. Anyone who is witness, or discovers evidence, or has suspicion of any degree of abuse or neglect, including but not limited to abuse to any vulnerable adult or child shall: [MHC 330.1723(1-10)(a-b)(i-iv)]

a. Provide care, comfort, and protection to the patient.

b. When sexual misconduct or abuse is alleged and/or suspected to have occurred, the reporting person shall ensure that assistance is provided to the patient 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. 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 Program Director of the Behavioral Health Center.

e. The written report required (by paragraph d. listed above) shall contain the name of the patient and a description of the criminal abuse and other information available to the reporting individual. The report shall become a part of the patient's Medical Record.

2. 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 that makes a report of criminal abuse against a patient 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.

3. 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.

a. Before the report becomes part of the patient's Medical Record the names of the reporting individuals and the individual accused of committing the suspected abuse shall be deleted.

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

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5. All employees, volunteers, direct or under contract, with the War Memorial Hospital Behavioral Health Center shall cooperate in the prosecution of appropriate criminal charges against those who have engaged in criminal abuse.
6. 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.
7. This section does not require an individual required to report suspected criminal abuse under Section 723 of the Michigan Mental Health Code 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 with War Memorial Hospital Behavioral Health Center.
  - 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 to the department, a licensed facility, or a community mental health services program or a provider under contract to the department, a licensed facility, or a community mental health services program.
    - (iv) A place where a recipient is under the supervision of an individual employed directly or under contract or a volunteer of the War Memorial Hospital Behavioral Health Center

### E. PROGRAM DIRECTOR

1. The War Memorial Hospital Behavioral Health Center Program Director shall ensure that:
  - a. All employees, volunteers, direct or under contract with War Memorial Hospital Behavioral Health Center, who have knowledge of alleged abuse or neglect are available to cooperate with and respond to questions from those conducting official investigations.

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b. All employees, direct or under contract with the War Memorial Hospital Behavioral Health Center, 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. War Memorial Hospital's Behavioral Health Center, and each service provider with WMH's BHC, shall ensure that appropriate disciplinary action is taken against those who have engaged in abuse or neglect. [MHC 330.1722(2)]

d. Appropriate remedial, firm, and fair disciplinary action is taken in accordance with personnel policies for substantiated allegations of abuse or neglect. (MHC 330.1780)

### F. OFFICE OF RECIPIENT RIGHTS REQUIREMENTS:

1. The ORR shall initiate investigation of apparent or suspected rights violations in a timely and efficient manner. Subject to delays involving pending action by external agencies as described in subsection (5), the ORR shall complete the investigation not later than 90 days after it receives the rights complaint. Investigations shall be initiated immediately in cases involving alleged abuse, neglect, serious injury, or death of a recipient involving an apparent or suspected rights violation. [MHC 330.1778(1)]
2. The ORR shall ensure notification of the Program Director in cases of suspected criminal abuse, as well as, allegations of neglect. Keeping him/her informed of the investigation and the findings. The ORR shall also:
  - a. 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.
  - b. Immediately notify the Department of Health and Human Services (DHHS) Protective Services, as required by law.
  - c. Conduct timely investigations of alleged abuse or neglect. [MHC 330.1778(1)]
  - d. Provide assistance, as needed, to any outside agency with jurisdiction in investigation.
  - e. Patient information will be shared among agencies according to procedures established in the War Memorial Hospital Behavioral Health Center's Policy & Procedure identified as Confidentiality/Disclosure.

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f. A patient or anyone else who believes the patient 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.

3. The Office of Recipient Rights, in effort with the Program Director, will provide annual and new hire Abuse and Neglect policy education to all employees and volunteers. This will ensure that this policy is followed.

### 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. War Memorial Behavioral Health Center Complaint and Appeal Process Policy & Procedure

G. War Memorial Behavioral Health Confidentiality/Disclosure Policy & Procedure

**WRITTEN BY:** Recipient Rights Committee

Date: July 8, 2010

**REVIEWED BY:** Christina Wilkins, Recipient Rights Officer

Date: July 8, 2010

**REVIEWED BY:** Janet Farrish-Gravelle, LMSW, Program Director / Jessica Jannetta, RN-BC, Nurse Manager

Date: February 4, 2014

**REVIEWED BY:** Corinna Haller, Director of Nursing

Date: February 4, 2016

**REVIEWED BY:** Corinna Haller, Director of Nursing

Date: December 14, 2016

**REVIEWED/UPDATED BY:** Allison NM Campbell, Recipient Rights Officer

Date: December 21<sup>st</sup>, 2016

**APPROVED:** Recipient Rights Advisory Committee

Date: April 28, 2017

**REVIEWED BY:** Corinna Haller, Director of Nursing

Date: November 6, 2017