

## PATHWAYS CMH

<b>POLICY TITLE:</b> ABUSE AND NEGLECT	<b>CATEGORY:</b> RECIPIENT RIGHTS	
<b>EFFECTIVE DATE:</b> April 14, 2003	<b>BOARD APPROVAL DATE:</b> April 14, 2003	
<b>REVIEW DATE:</b> December 4, 2019	<b>REVISION(S) TO POLICY STATEMENT:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>OTHER REVISION(S):</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>RESPONSIBLE PARTY:</b> Recipient Rights Supervisor or Designee	<b>CEO APPROVAL:</b> Mary J. Swift, CEO	

### **APPLIES TO:**

Employees, volunteers and contractual providers of Pathways CMH

### **POLICY:**

It is the policy of the Pathways Board 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.
4. The written Pathways policies and procedures concerning recipient rights and the operation of an Office of Recipient Rights shall provide a mechanism for prompt reporting, review, investigation, and resolution of apparent or suspected violations of the rights guaranteed by Chapter 7 and Chapter 7A of the Mental Health Code Policy Manual and shall be designed to protect recipients from, and prevent repetition of, violations of rights guaranteed by Chapter 7 and Chapter 7A.

The following standards shall be adhered to:

- A. The Chief Executive Officer (CEO) shall ensure that:
  1. Specific policies and procedures relating to the reporting of abuse and neglect are developed and that these policies are reviewed annually;
  2. All employees, volunteers, and contractual agents are trained in the requirements for reporting alleged incidents of abuse or neglect, and in the rights and responsibilities of recipients, before or within 30 days of being employed.
- B. The Chief Executive Officer shall ensure that:
  1. Notification of the appropriate law enforcement agencies occurs, as required by law; Notification of the Department of Health and Human Services Adult or Child Protective Services occurs, as required by law;
  2. Notification of the Department of Health and Human Services, Office of Children and Adult Licensing occurs, as required by law;
  3. Notification of Pathways administration and the Office of Recipient Rights occurs in accordance with agency policy and procedure.
- C. The Chief Executive Officer shall ensure that:
  1. Upon receipt of an allegation of abuse or neglect, immediate action is taken to protect the recipient and to prevent further abuse or neglect. This may include suspending or transferring the involved employee, volunteer, or contractual agent, during the investigation and notifying the applicable parent or guardian;
  2. All employees, volunteers, and contractual agents who may have knowledge of alleged abuse or neglect are available to cooperate with, and respond to questions from those conducting official investigations;

3. All employees, volunteers, contractual agents, 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 and agency policies/procedures, and appropriate disciplinary action is taken if this does occur.
- D. The Chief Executive Officer shall ensure that:
1. Appropriate remedial action and firm and fair disciplinary action is taken in accordance with personnel policies for substantiated allegations of abuse or neglect.

**PURPOSE:**

To protect the rights of recipients

**DEFINITIONS:**

**Abuse**

Abuse means 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 520 of the Michigan Penal Code, 1931 P.A. 328, MCL 750.520a, that is committed by an employee or volunteer of the Department, 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 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 non serious physical harm to a recipient; or
- B. The use of unreasonable force on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm; or,
- 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; or,
- 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.

**Abuse, Department of Health and Human Services Protective Services:** As defined by the Child Protection Law, Act 238 of 1975, MCL722.622.

**Act**

The mental health code, 1974 PA258, MCL 330.1001 et seq.

**Agents of the Provider:** People who work for agencies that contract with the Department, a CMHSP or PIHP, or an LPH.

### **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.

### **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 MCL 750.81 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 MCL 750.316, 750.317, and 750.321;
- 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 MCL 750.520b to 750.520e and 750.520g;
- D. Vulnerable adult abuse that is a violation or an attempt or conspiracy to commit a violation of section 145n of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being MCL 750.145n;
- 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 MCL 750.136b.

### **Degrade**

“Degrade” means:

- (a) Treat humiliatingly: to cause somebody a humiliating loss of status or reputation or cause somebody a humiliating loss of self-esteem; make worthless; to cause a person to feel that they or other people are worthless and do not have a respect or good opinion of others. Synonyms: degrade, debase, demean, humble, humiliate. These verbs mean to deprive of self-esteem or self-worth; to shame or disgrace.
- (b) 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 or as determined by a mental health professional.

### **Employee**

An individual who works for Pathways or under contract with Pathways and receives compensation for that work.

### **Endangerment, Department of Health and Human Services Protective Services**

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.

### **Neglect**

Neglect means 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, a Community Mental Health Services Program, or licensed hospital; or an employee or volunteer of a service provider under contract with the Department, a 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 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 causes or contributes to the death, or sexual abuse of, or serious physical harm to a recipient; or,
- B. The 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 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 non serious physical harm or emotional harm to a recipient; or,
- B. The 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 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 that (a reasonable person would determine) 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.

**Neglect, Department of Health and Human Services Protective Services:** As defined by the Child Protection Law, Act 238 of 1975, MCL722.622.

### **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 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 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.

### **Remedial Action**

Action that corrects or provides a remedy for a rights violation, is implemented in a timely manner, and attempts to prevent a recurrence of the rights violation.

### **Reporting Person**

The employee, volunteer, or agent of a provider 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 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**

- A. Criminal Sexual conduct as defined by section 520b to 520e of 1931 PA 318, MCL 750.520b to MCL 750.520e involving an employee, volunteer, 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**

Sexual contact is 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 as being for the purpose of sexual arousal or gratification, done for sexual purpose, or in a sexual manner for any of the following: revenge, to inflict humiliation, or 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.

### **Suspect**

Any and all incidents that the employee or volunteer has either witnessed, or received reports of, that constitute or may constitute abuse or neglect as defined by this policy, whether or not the employee believes the allegation to be true.

### **Threaten**

"Threaten" means to tell someone that you will hurt them or cause problems if they do not do what you want.

### **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:

- A. There is no imminent risk of serious or non-serious 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.

**Volunteer**

An individual who, without compensation, other than reimbursement for expenses, performs activities for Pathways under specified conditions.

**Written Directives**

Clinical directives, house rules, meeting minutes, letters, memos, logs, or any other written communication to an employee, volunteer, or agent of a provider regarding the care and treatment of a recipient.

**REFERENCES:**

- A. Act 258 of the Public Acts of 1974, as amended (Mental Health Code) Sections 100 (18), 723 (1) (2). Administrative Rules 7001 (a-c), (g-i), 7035.
- B. Act 266 of the Public Acts of 1974, MCL 750.520(a) - 750.520 (e).
- C. Act 238 of the Public Acts of 1975, as amended (Child Protection Law)
- D. Act 519 of the Public Acts of 1982, as amended (Adult Protection Law)
- E. Act 116 of the Public Acts of 1973 (Child Licensing Act)
- F. MDHHS Contract Attachment 6.3.2.3 (B)

**HISTORY:**

Dates Reviewed: March 2007; June 2008; June 2009; May 2011; July 11, 2013; July 11, 2014; May 5, 2015; April 1, 2016; April 1, 2017; March 26, 2018; June 13, 2019

Dates Revised: March 2007; June 2008; June 2009; May 2011; July 11, 2013; June 13, 2019

Dates Approved: April 14, 2003

## PROCEDURES:

### A. Prevention and Protection

1. All employees, volunteers, and contractual agents shall safeguard recipients from abuse and neglect, obtain treatment for observed injuries, and act to prevent additional harm.
2. The Office of Recipient Rights (ORR) shall provide training on the definitions of abuse and neglect, and the mandated reporting requirements.

### B. Reporting

1. All employees, volunteers, and contractual agents shall:
  - a. Immediately make an oral report to their supervisor and to a person in the Office of Recipient Rights, when they witness, discover, or have reasonable cause to suspect abuse or neglect of a recipient, and submit a written Incident Report to ORR within 24 hours;
  - b. Immediately make an oral report to their supervisor and to a person in the Office of Recipient Rights, and submit an Incident Report to ORR 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 when they have reasonable cause to suspect the criminal abuse of a recipient. They immediately shall make or cause to be made, by telephone or otherwise, an oral 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 the state police. 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 Chief Executive Officer/designee and the Office of Recipient Rights.
  - d. Report to the Department of Health and Human Services Protective Services 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 file a written report (DHS form 3200);
  - e. Report to the Department of Health and Human Services, Children and Adult Licensing as required by law and file an Incident Report.
2. An employee, volunteer, or contractual agent who fails to make a 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 initiate investigations of apparent or suspected rights violations in a timely and efficient manner. Subject to delays involving pending action by external agencies, the Office shall complete the investigation no later than ninety days after it receives the rights complaint. Investigation shall be initiated immediately in cases involving alleged abuse, neglect, serious injury, or death of a recipient involving an apparent or suspected rights violation. The Office of Recipient Rights shall conduct timely investigations of alleged abuse or neglect in accordance with the agency's investigation procedure.