

**BAY-ARENAC BEHAVIORAL HEALTH AUTHORITY
POLICIES AND PROCEDURES MANUAL**

Chapter: 3	Member Rights and Responsibilities		
Section: 3	Rights of Consumers		
Topic: 1	Abuse and Neglect		
Page: 1 of 11	Supersedes Date: Pol: 7-28-08 Proc:3-14-23,6-23-2021, 6-15-09, 4-24-08, 3-11-08, 9-26-05, 7-26-05, 5-6-03, 11-19-02, 8-15-02, 6-3-02, 7-28-98	Approval Date: Pol: 6-3-02 Proc: 12-19-2024	<hr/> <i>Board Chairperson Signature</i> <hr/> <hr/> <i>Chief Executive Officer Signature</i>
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Policy

It is the policy of Bay-Arenac Behavioral Health Authority (BABHA) that all staff, direct or contracted, shall ensure recipients will not be subjected to abuse or neglect; any suspected abuse or neglect is promptly reported; and appropriate disciplinary action is taken for substantiated allegations of abuse or neglect.

Purpose

This policy and procedure are established to ensure the recipients of BABHA are protected from abuse and neglect. [This also includes retaliation and harassment.](#)

Education Applies to:

- All BABHA Staff
- Selected BABHA Staff, as follows:
- All Contracted Providers: Policy Only Policy and Procedure
- Selected Contracted Providers, as follows:
 - Policy Only Policy and Procedure
- BABHA's (Affiliates): Policy Only Policy and Procedure
- Other:

Definitions

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 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.

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Abuse, Class I

A non-accidental act, or provocation of another to act, by an employee, volunteer, or an agent of a provider, which 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 an 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 an agent of a provider with or without apparent harm; or
- C. Any action or provocation of another to act, by an employee, volunteer, or an 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 an agent of a provider.

Abuse, Class III

The use of language or other means of communication by an employee, volunteer, or an agent of a provider to degrade, threaten or sexually harass a recipient.

“Threaten” means to tell someone that you will hurt them or cause problems if they do not do what you want. The Merriam-Webster dictionary defines threaten as, “to cause to feel insecure or anxious. Or, to menace.”

“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 the respect or good opinion of others. (syn) 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. The Merriam-Webster dictionary defines degrade as, “to bring to low esteem or into disrepute.”

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Abuse, Department of Health and Human Services – Adult or Child Protective Services

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. Examples of abuse can be found in training manuals.

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 services provider under contract with the department, community mental health services program, or a licensed hospital; or an employee or volunteer of a service provider under contract with the department, 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

- 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.
- 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 an agent of a provider which results from noncompliance with a standard of care or treatment required by law, rules, policies, procedures, guidelines, written directives, or an individual plan of service and that 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 an 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 an

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individual plan of service that 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 – Adult or Child Protective Services
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. Examples of neglect can be found in training materials.

Bodily Function: The usual action of any region or organ of the body.

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 or the Michigan Compiled Laws.
- C. Criminal sexual conduct that is a violation of an attempt or conspiracy to commit a violation of sections 520b to 520e 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 section 145n of the Michigan Compiled Laws.
- E. Child abuse that is a violation of 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.

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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 BABHA or is under contract with BABHA and receives compensation for that work.

Endangerment, Department of Health and Human Services – Adult or Child 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.

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: means 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.

Protective Device: A device or physical barrier to prevent the recipient from causing serious self-injury associated with documented and frequent incidents of the behavior. A protective device as defined in this subdivision and incorporated in the written individual plan of service shall not be considered a restraint as defined in this policy.

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

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Reporting Person: The employee, [contractors, and contractors employees](#), volunteer, or an agent of the 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.

Restraint: The use of a physical device to restrict an individual’s movement. Restraint does not include the use of a device primarily intended to provide anatomical support.

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 or caused the impairment of his/her bodily function(s), or the permanent disfigurement of a recipient.

Sexual Abuse: (i) Sexual conduct, or sexual penetration, as defined in section 520b to 520e of Act No. 318 of the Public Act of 1931, as amended, 750.520b to 750.520e of the Michigan Compiled Laws involving an employee, volunteer, or an agent of a provider and a recipient,

(ii) Or any sexual contact or sexual penetration involving an employee, volunteer, or an 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,

(iii) Any sexual contact or sexual penetration involving an employee, volunteer, or an agent of a provider and a recipient for whom the employee, volunteer, or agent provides direct services.

Sexual Contact: Sexual contact means 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 a sexual purpose, or in a sexual manner for any of the following:

- A. Revenge.
- B. To inflict humiliation.
- C. Out of anger.

Sexual Harassment: Any action, by any person, which can be construed as a sexual advance toward a recipient, requests for sexual favors from a recipient, or other conduct or

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communication of a sexual nature toward a recipient as defined in title VII of the Civil Rights Act of 1991.

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 a person’s body, but emission of semen is not required.

Trainee: An individual participating in the Agency’s training curriculum for direct care workers who is not employed by BABHA.

Unreasonable Force: Physical management or force that is applied by an employee, volunteer or an 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. Utilizing a prone position during physical management is strictly prohibited.
- 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 of 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 BABHA under specified conditions.

Procedure

I. **Standards**

- A. The Chief Executive Officer (CEO) or designee 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.

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2. All employees, [contractors, and contractors employees](#), volunteers, and agents of a provider 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 Recipient Rights Officer shall ensure that:
1. Notification of the appropriate law enforcement agencies occurs for criminal abuse, as required by law;
 2. Notification of the Department of Health and Human Services Adult or Child Protective Services occurs, as required by law;
 3. Notification of the Department of Licensing and Regulatory Affairs (LARA) occurs, as required by law.
- C. The CEO and contract providers 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. Such action may include recommending that BABHA or contract providers follow policies and procedures related to abuse and neglect, suspending or transferring the involved employee, volunteer, agent of a provider, or recipient during the investigation, and notifying the applicable parent or guardian.
 2. All employees, volunteers, and agents of a provider 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, agents of a provider, 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 discrimination, harassment, or retaliation does occur.
- D. The CEO shall ensure that appropriate remedial and firm and fair disciplinary action is taken in accordance with personnel policies for substantiated allegations of abuse or neglect.
- II. Procedure
- A. Prevention and Protection

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1. All employees, volunteers, and agents of a provider shall safeguard recipients from abuse and neglect, obtain treatment for observed injuries of recipients, and act to prevent additional harm to recipients.
 2. The Office of Recipient Rights shall provide training on the definitions of abuse and neglect, and on the mandated reporting requirements.
- B. Reporting**
1. All employees, [contractors, and contractors employees](#), volunteers, and agents of a provider shall report:
 - a. All incidents of recipient abuse or neglect, which are apparent, or suspected by an employee, contract employee or volunteer, shall be immediately reported orally and in writing [within 24 hours, or at the end of their shift](#), to the Office of Recipient Rights and to the employee or volunteer’s supervisor or to another administrator. The terms “apparent” or “suspected” shall be construed to mean 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. Failure to report abuse and neglect shall subject the employee to administrative and potentially disciplinary action, up to and including termination.
 - b. Report criminal abuse [including vulnerable adult abuse and child abuse](#) to the designated law enforcement agency immediately by telephone or otherwise an oral report as required by law. 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.
 - c. Report to the Department of Health and Human Services – Adult or Child 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 may file a written report.
 - d. Report to the Department of Licensing and Regulatory Affairs as required by law.
 2. An employee, volunteer, or an agent of a provider 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**

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1. The Office of Recipient Rights shall immediately initiate and conduct timely investigations of alleged abuse or neglect in accordance with the Agency’s investigation procedure.
- ~~1.~~2. The rights office will provide a prompt and thorough review of charges of abuse that is fair to both the recipient alleged to have been abused and the charged employee, volunteer, or agent of a provider.

Attachments

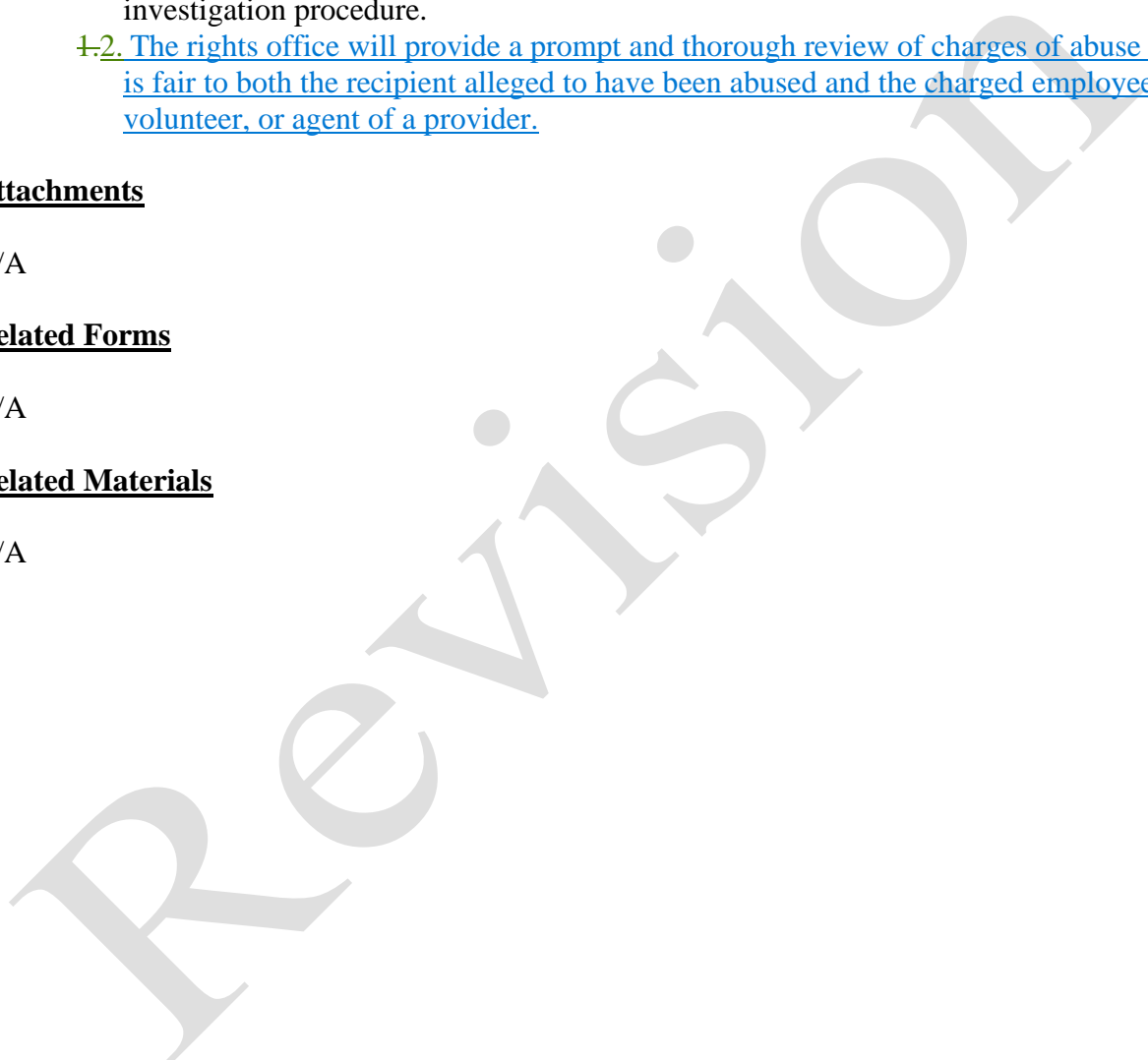
N/A

Related Forms

N/A

Related Materials

N/A



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References/Legal Authority

- A. Act 258 of the Public Acts of 1974, as amended (Mental Health Code) Sections 100a, 100b, 700, 722, 723, 755
- B. Act 266 of the Public Acts of 1974, 750.520(a) to 520, as amended (Penal Code, Criminal Sexual Conduct)
- C. Act 505 of the Public Acts of 2000, 750.520a (Michigan Penal Code)
- D. Act 505 of the Public Acts of 2000, 750.520e (Michigan Penal Code)
- E. Act 238 of the Public Acts of 1975, as amended (Child Protection Law)
- F. Act 519 of the Public Acts of 1982, as amended (Adult Protection Law)
- G. Act 116 of the Public Acts of 1973 (Child Licensing Act)
- H. Department of Community Health Administrative Rule 7035

SUBMISSION FORM				
AUTHOR/ REVIEWER	APPROVING BODY/COMMITTEE/ SUPERVISOR	APPROVAL /REVIEW DATE	ACTION (Deletion, New, No Changes, Replacement or Revision)	REASON FOR ACTION - If replacement list policy to be replaced
Sara Heydens	Linda Maze/Robert Blackford	6/15/09	Changes	Administration Rule changes.
		12/31/12	No changes	Triennial Review-No changes
Melissa Prusi	Christopher Pinter	6/27/16	Changes	Triennial Review-Minor changes to reflect state agency name changes.
Melissa Prusi	Christopher Pinter	06/28/2019	Revised	<u>Triennial and annual review – minor changes</u>
Melissa Prusi	Christopher Pinter	<u>08/04/2020</u>	No changes	Annual review
Melissa Prusi	Christopher Pinter	<u>06/23/2021</u>	Revised	Triennial review added language regarding prone position to reflect BTPRC Technical Requirement language.
Melissa Prusi	Christopher Pinter	03/14/2023	Revised	To reflect 2023 MDHHS ORR standards
Melissa Prusi	Christopher Pinter	12/19/2024	Revised	Triennial review to reflect 2024 MDHHS standards