

HIGHLIGHTS OF THE 2009 ADMINISTRATIVE RULE CHANGES

MDCH

**Office of Recipient
Rights**

Training Division

04/06/2009

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DEFINITIONS

Several additions, deletions, and changes to definitions are seen in the revised Administrative Rules. These have resulted, once again, in **significant changes** to lettering associated with the definitions. Please pay particular attention to these lettering changes as they will affect the way your citations are written!

ABUSE CLASS II

The definition of “Exploitation” has been clarified.

OLD DEFINITION: (h): Exploitation means an action that involves the misappropriation or misuse of a recipient’s property or funds.

CHANGE: (h) "Exploitation" means 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.**

ABUSE CLASS II

The definition of force has been **removed**

DEFINITION

(i) “Force” means non-accidental physical contact with or physical strength exerted against the body of a recipient by an employee, volunteer, or agent of a provider that is not an approved physical management technique or that is not used to prevent the recipient from harming himself, herself, or others or from causing substantial property damage.

ABUSE CLASS II

The definition of Abuse Class III has been simplified

PREVIOUS DEFINITION

"Abuse class III" means verbal abuse as defined in paragraph (y) of this subdivision.

(y) "Verbal abuse" means 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.

NEW DEFINITION

"Abuse class III" means 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.

NEGLECT CLASS I

The definition of Neglect Class I has been changed for grammatical clarity

OLD DEFINITION: (j) “Neglect class I” means either of the following:

(i) 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 and/or rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to serious physical harm to or sexual abuse of a recipient.

CHANGE: (i) “Neglect class I” means either of the following:

(i) 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 and/or 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.

Physical Management

The definition of physical management now indicates that physical management must be used **as an emergency intervention**

CHANGE: (m) "Physical management" means a technique used by staff **as an emergency intervention** to restrict the movement of a recipient by direct physical contact in order to prevent the recipient from harming himself, herself, or others, or from causing substantial property damage

Protective Device

A definition for protective device has been added

(n) “Protective device” means 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 subdivision (q) of this subrule.

Restraint

A definition for restraint has been added

(q) “Restraint” means 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.

Abuse Class I Sexual Abuse

The definition of sexual abuse has been revised for clarity

(s) "Sexual abuse" means any of the following:

- (i) Criminal sexual conduct as defined by section 520b to 520e of 1931 PA 318, being MCL 750.520b to MCL 750.520e involving an employee, volunteer, or agent of a provider and a recipient.
- (ii) 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.
- (iii) 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.

Abuse Class I Sexual Abuse

The definition of sexual contact has been revised for clarity

(t) "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**:

- (i) Revenge.
- (ii) To inflict humiliation.
- (iii) Out of anger.

Abuse Class I Sexual Abuse

A definition for sexual penetration has been added

(v) “Sexual penetration” means 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.

Unreasonable Force

The definition of unreasonable force has been revised for

(z) "Unreasonable force" means 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:**

(i) There is no imminent risk of serious or non-serious physical harm to the recipient, staff or others.

(ii) The physical management used is not in compliance with techniques approved by the provider and the responsible mental health agency.

(iii) The physical management used is not in compliance with the emergency interventions authorized in the recipient's individual plan of service,

(iv) 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.

Written plan of services

Removes the phrase “any aversive”

R 330.7199 Written plan of services.

(2) The plan shall identify, at a minimum, all of the following:

(g) Any restrictions or limitations of the recipient's rights. Such restrictions, limitations, or ~~any aversive or~~ intrusive behavior treatment techniques shall be reviewed and approved by a formally constituted committee of mental health professionals with specific knowledge, training, and expertise in applied behavioral analysis. Any restriction or limitation shall be justified, time-limited, and clearly documented in the plan of service. Documentation shall be included that describes attempts that have been made to avoid such restrictions as well as what actions will be taken as part of the plan to ameliorate or eliminate the need for the restrictions in the future.

Restraint, ~~and~~ seclusion, and **physical management**

Minor wording changes in each of these sections

(e) The date and time the recipient was removed from temporary, authorized, and ordered ~~physical~~ restraint or seclusion.

(4) A recipient in ~~physical~~ restraint or seclusion shall be provided hourly access to a toilet.

(5) A recipient in ~~physical~~ restraint or seclusion shall have an opportunity to bathe, or shall be bathed as often as needed, but at least once every 24 hours. (6) If an order for restraint or seclusion is to expire and the continued use of restraint or seclusion is clinically indicated and must be extended, then a physician's reauthorization or reordering of restraint or seclusion shall **comply** ~~be in compliance~~ with both of the following provisions: (a) If the ~~physical~~ restraint device is a cloth vest and is used to limit the resident's movement at night to prevent the recipient from injuring himself or herself in bed, the physician may reauthorize or reorder the continued use of the cloth vest device pursuant to ~~the provisions of~~ section 740(4) and(5) of the act. (b) Except as specified in subdivision (a) of this subrule, a physician who orders or reorders restraint or seclusion shall do so in accordance with ~~the provisions of~~ sections 740(5) and 742(5) of the act. The required examination by a physician shall be conducted not more than 30 minutes before the expiration of the expiring order for restraint or seclusion.

Restraint, ~~and~~ seclusion, and **physical management**

Paragraph 11 has been added

(11) Physical management, as defined in R 330.7001(m), may only be used in situations when a recipient is presenting an imminent risk of serious or non-serious physical harm to himself, herself or others and lesser restrictive interventions have been unsuccessful in reducing or eliminating the imminent risk of serious or non-serious physical harm.

Both of the following shall apply:

(i) Physical management shall not be included as a component in a behavior treatment plan.

(ii) Prone immobilization of a recipient for the purpose of behavior control is prohibited unless implementation of physical management techniques other than prone immobilization is medically contraindicated and documented in the recipient's record.