



HIGHLIGHTS OF THE 2007 ADMINISTRATIVE RULE CHANGES

MDCH

**Office of Recipient Rights
Training Division**

12/5/2007

DEFINITIONS



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

Changes to Abuse Class I

The definition of sexual abuse has been modified and references to PA 318 made consistent



(a) "Abuse class I" means a nonaccidental 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.

(s) "Sexual abuse" means:

(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) or any sexual contact 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** between an employee, volunteer, or agent of a provider and a recipient for whom the employee, volunteer, or agent provides direct services.

Changes to Abuse Class I



The definition of sexual contact has been added to the Rules

(iii) 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.

(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:

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

Changes to Abuse Class II

Exploitation is now considered Abuse II. A definition of Exploitation has been added.



(b) "Abuse class II" means any of the following:

- (i) A nonaccidental act or provocation of another to act by an employee, volunteer, or agent of a provider that caused or contributed to nonserious physical harm to a recipient.
- (ii) The use of unreasonable force on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm.
- (iii) 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.
- (iv) 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.

ADDITION

(v) Exploitation of a recipient by an employee, volunteer, or agent of a provider.

Exploitation is defined in (h): Exploitation means an action that involves the misappropriation or misuse of a recipient's property or funds.

Changes to Abuse Class II

The definition of Emotional Harm has been revised.



PREVIOUS DEFINITION

Emotional Harm means either of the following:

- (i) Impaired psychological functioning, growth, or development of a significant nature as evidenced by observable physical symptomatology and as determined by a mental health professional.
- (ii) For an intermediate care facility for the mentally retarded only, impaired psychological functioning, growth, or development of a significant nature as evidenced by observable physical symptomatology or as determined by a mental health professional.

NEW DEFINITION

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

Changes to Abuse Class II



A definition of force has been added

DEFINITION

(ii) The use of unreasonable **force** on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm.

NEW 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.

Changes to Abuse Class II

The definition of unreasonable force has been changed



DEFINITION

(ii) The use of unreasonable **force** on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm.

CHANGED DEFINITION

(y) "Unreasonable force" means physical management or force that is applied by an employee, volunteer, or agent of a provider to a recipient where there is no ~~immediate risk of physical harm to staff or other recipients and no immediate risk of significant property damage~~ **imminent risk of significant injury to the recipient, staff or others** and **or** that is any of the following:

- (i) Not in compliance with approved behavior management techniques.
- (ii) Not in compliance with the recipient's individual ~~treatment plan~~. **plan of service,**
- (iii) Used when other less restrictive measures were not attempted immediately before the use of physical management or force.

Changes to Abuse Class III



The definition of Abuse Class III now refers to “verbal abuse” and a definition of verbal abuse has been added.

PREVIOUS 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.

NEW DEFINITIONS

"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.

Changes to Neglect Class I

The definition of Neglect Class I now includes a reference to Sexual Abuse. Part two of the definition has been simplified.



(k) "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.

(ii) The failure to report **apparent or suspected** abuse **Class I** or neglect Class I of a recipient.

Changes to Neglect Class II

Part two of the definition has been simplified.



(I) "Neglect class II" 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, rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to nonserious physical harm or emotional harm to a recipient.

(ii) The failure to report **apparent or suspected** abuse **Class II** or neglect **Class II** of a recipient.

Changes to Neglect Class III

The definition of Neglect Class III now includes a reference to Sexual Abuse. Part two of the definition has been simplified.



(m) “Neglect class III” 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 that either placed or could have placed a recipient at risk of physical harm **or sexual abuse.**

(ii) The failure to report **apparent or suspected** abuse **Class III** or neglect **Class III** of a recipient

The definition of non-serious physical harm has been broadened.



(n) "Nonserious physical harm" means 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.

A definition of therapeutic de-escalation has been added



(v) “Therapeutic de-escalation” means an intervention, the implementation of which is incorporated in the individualized written plan of service, wherein the recipient is placed in an area or room, accompanied by staff who shall therapeutically engage the recipient in behavioral de-escalation techniques and debriefing as to the cause and future prevention of the target behavior.

The Notification of Rights section now requires notification of the parent with legal custody.



Rule 7011. At the time services are first requested, a provider shall inform a recipient, his or her guardian or other legal representative or the parent with legal custody of a minor recipient of the recipient's lawful rights in an understandable manner

The Summary reports of extraordinary incidents rule now specifically indicates that an incident report or other peer review report does not constitute a summary as intended by this section and prohibits these reports from being kept in the clinical record



R 330.7046 Summary reports of extraordinary incidents.

In addition to other information required to be contained in the clinical record of the recipient by statute and rule, the record shall contain a summary of any extraordinary incidents involving the recipient. The report is to be entered into the record by a staff member who has personal knowledge of the extraordinary incident. **An incident or peer review report generated pursuant to MCL 330.1143a does not constitute a summary report as intended by this section and shall not be maintained in the clinical record of a recipient.**

Rule 7199 (g) now requires a review by mental health professionals of any restriction, limitation, or aversive or intrusive behavior treatment techniques.



R 330.7199 Written plan of services...

(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.