12. Education and Training

Continuing Education Requirements for Recipient Rights Staff
Training Standards for CMH staff
LARA Curriculum Guidelines

Technical Requirement
Continuing Education Requirements for Recipient Rights Staff

I. Background/Regulatory Overview

The purpose of this Technical Requirement is to establish processes for meeting the educational mandates for Recipient Rights Officers/Advisors set forth in the following sections of the Michigan Mental Health Code and MDHHS/CMHSP Managed Mental Health Supports and Services Contract.

330.1754 State office of recipient rights; establishment by department; selection of director; powers and authority of state office of recipient rights.
(2) The department shall ensure all of the following: (f) Technical assistance and training in recipient rights protection are available to all community mental health services programs and other mental health service providers subject to this act.

330.1755 Office of recipient rights; establishment by community mental health services program and hospital.
(2) Each community mental health services program and each licensed hospital shall ensure all of the following: (e) Staff of the office of recipient rights receive training each year in recipient rights protection.

MDHHS/CMHSP Managed Mental Health Supports and Services Contract:
The Community Mental Health Services Program (CMHSP) shall assure that, within the first three months (90 days) of employment, the Recipient Rights Office Director, and all Rights Office staff (excluding clerical staff) shall attend and successfully complete the Basic Skills Training programs offered by the Department's Office of Recipient Rights. In addition, within every three (3) year period subsequent to their completion of Basic Skills, the Recipient Rights Office Director and all Rights Office staff (excluding clerical staff) must comply with the requirements specified in Attachment C6.3.2.3A "Continuing Education Requirements for Recipient Rights Staff".

II. Definitions

A. Continuing Education Unit:
One Continuing Education Unit (CEU) is defined as one clock hour (60 minutes) of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction. The primary purpose of the CEU is to provide a permanent record of the educational accomplishments of an individual who has completed one or more significant educational experiences.

B. Category I Credits: Operations
This category includes programs that support and enhance the fundamental scope of responsibilities and effective work of recipient rights staff. These may be directly related to prevention, complaint resolution, and monitoring and education that support the fundamental scope of a Rights Office's operations. Examples include:
- Rights Office Operations Techniques

- Enhancing Investigative Skills
- Inpatient Rights
- Out-of-catchment rights protection
- Writing effective rights-related contract language
- Conducting effective site visits
- How to protect rights in a dual rights protection system

C. Category II Credits: Legal Foundations

This category includes programs that enhance the understanding and application of the Mental Health Code, Administrative Rules, Disability and Human Rights Laws, HIPAA and the MHC, Federal Laws and regulations and any other laws addressing the legal rights of a mental health recipient.

D. Category III Credits: Leadership

This category includes programs that support and enhance the leadership abilities of rights staff. Examples include:

- Community Mental Health Services Program (CMHSP) issues
- How to establish a rights presence in an organization
- Understanding rights data and how to use it to trigger systemic organizational changes
- What goes on in a Failure Mode Event Analysis (FMEA)/Adverse Event Review
- Working with key individuals in your organization—Customer Services, Contracts Unit, and how it can enhance rights

E. Category IV Credits: Augmented Training

This category includes training sessions that contains information that would help rights staff have a better understand the people they serve, their disabilities, their families, or training indirectly related to rights but affecting rights. These may include trainings in mental health conditions and disabilities, treatment and support modalities, recovery, and self-determination as long as these topics can be ascertained to have a component that relates to assisting the attendee in the protection of rights. Examples include:

- Understanding MI/SUD Co-occurring disorders
- How to communicate with people with disabilities
- Ethics
- Consumers from different cultures
- Diversity Issues

F. CMHSP: Community Mental Health Services Program

G. Continuing Education Committee: A committee appointed by from the Director of the Director of the MDHHS-ORR Education, Training, and Compliance Unit. This committee shall consist of rights staff and management from MDHHS-ORR, CMHSP's, and LPH/U's and shall have at least one representative who is a Licensed Master's Social Worker (LMSW). This committee shall review applications and assign an appropriate category to each approved application. Committee members shall be appointed for a three-year term and may be re-appointed at the discretion of the Director of ORR.

H. Department: Michigan Department of Health and Human Services (MDHHS)

I. LPH Licensed Private Hospital

III. Standards

A. Basic Requirements

All staff of the Department, a community mental health services program (CMHSP), or a licensed private Hospital (LPH), employed for the purpose of providing recipient rights services shall, within the first 90 days of employment, attend, and successfully complete, the Basic Skills Training curriculum as determined by the Michigan Department of Health and Human Services Office of Recipient Rights. The Basic Skills curriculum shall consist of the following classes:

Basic Skills – Part 1

The first part of the mandatory training, this course is designed to provide participants with the knowledge of the laws required to carry out the mandates of the Mental Health Code and the activities necessary to operate an ORR office in compliance with applicable laws, rules, and standards.

Basic Skills – Part 2

The second part of the mandatory training, this course is designed to provide participants with the skills related to investigation, report writing and processing, that are needed to carry out the requirements of the Michigan Mental Health Code.

B. Continuing Education Requirements

1. All staff employed or contracted to provide recipient rights services shall receive education and training oriented toward maintenance, improvement or enhancement of the skills required to effectively perform the functions as rights staff.
2. A minimum of 36 contact hours of education or training shall be required over a three (3) year period subsequent to the completion of the Basic Skills requirements, and in every three (3) year period thereafter.
3. The 36 contact hours obtained must be in rights-related activities and must fall within one or more of the categories identified in the definitions above. At least 3 credits must be earned each calendar year.
4. A minimum of 12 contact hours must be obtained in programs classified as Category I or II.
5. No more than 12 credits in a 3 year period may be earned through the use of online learning resources.
6. CEU's may be received by attending programs or conferences developed by the Department, other rights-related organizations, organizations that have applied to the Office of Recipient Rights Education, Training and Compliance Unit for approval of their programs or through online training.
7. Rights staff may request approval for other educational programs by utilizing the established approval process described within this document.
8. Recipient rights staff should retain documentation of meeting the CEU requirements for a period of four (4) years from the date of attendance. It is suggested that the following

information be kept on file:

a. The title of the course or program and any identification number assigned to it by the MDHHS ORR Education, Training, and Compliance Unit.
b. The number of CEU hours completed.
c. The provider's name.
d. Verification of attendance by the provider.
e. The date and location of the course.

9. Reviews will be conducted by the MDHHS Office of Recipient Rights-staff at each assessment of a recipient rights program to determine if all rights staff have met both the basic and continuing education requirements.
10. CMHSPs who contract with Licensed Private Hospitals/Units shall mandate compliance with the standards in this Technical Requirement by the Recipient Rights Office staff of those entities.

C. Procedures for Training approval

1. Training that is automatically approved for CEU credits:
   a) MDHHS ORR training excluding Basic Skills
   b) All sessions at the MDHHS-ORR Annual Conference, including the Pre-Conference session
   c) Training provided by, or sponsored by, MDHHS Office of Recipient Rights
2. Training that may be approved for CEU credits, if meeting the criteria above and with the submission of the necessary documents by the applicant:
   a) ROAM sponsored training
   b) CMH/LPH/U sponsored training
   c) Training provided by other agencies, entities, professionals, accreditation bodies, risk management, corporation counsel/lawyer, etc.
   d) Training provided to the Rights Officer/Advisor for their profession's licensure.
   e) Other training in the community at large, including on-line training, if requirements as detailed above are met.
3. CEU Documentation and Notification
   a) Application

      To apply for CEU credits for a training, complete the MDHHS ORR Continuing Education Course Summary (Exhibit A) form and send by email, mail or FAX, within 30 calendar days of the event to:

MDHHS ORR Education, Training, and Compliance Unit
18471 Haggerty Road
Northville, MI 48168
FAX: 248-348-9963
Email: MDHHS-ORR-Training@michigan.gov

b) Verification of attendance.
Attendance can be verified through provision of a Certificate of Attendance, copies of a training record, copy of an attendance/sign in sheet, a copy of the training agenda or outline with a self-attestation statement that the applicant did attend the training. Verification of attendance shall be kept on file with the applicant and be readily available for review by MDHHS-ORR, if requested.

c) Notification
Applicants will receive notification of approval determination for CEU credits no later than 30 business days following receipt of the required documents. Approved courses, credit and category information will be posted on the ORR website.

d) Application Review, Approval and Appeal
Applications from organizations outside the Department, or applications from individuals who have attended, or plan to attend, training programs shall be reviewed and approved or rejected by the Continuing Education Committee. If an application is rejected by the Continuing Education Committee it may be appealed to the director of the Office of Recipient Rights. The decision of the Director of ORR is the final MDHHS position on the application.

Exhibit A: APPLICATION FOR RECIPIENT RIGHTS CEU CREDIT

OFFICE OF RECIPIENT RIGHTS
APPLICATION FOR RECIPIENT RIGHTS CEU CREDIT

APPLICANT (ORGANIZATION OR INDIVIDUAL)					
APPLICANT'S CONTACT INFORMATION	EMAIL: PHONE: ADDRESS: CITY/ZIP:				
COURSE DATE **COURSE TITLE** **LOCATION**					
COURSE PRESENTER					
COURSE DESCRIPTION					
COURSE OBJECTIVES	**Description of Learning Objectives**				**Class Time**
	1				
	2				
	3				
	4				
	5				
Requested Category	Category I Operations	Category II Legal Foundations	Category III Leadership	Category IV Augmented	
Describe how the content relates to Rights?					

Please attach a detailed agenda.

Technical Requirement
Recipient Rights Training Standards Requirements for CMH and Provider Staff

Rationale

The purpose of this Technical Requirement is to establish consistent content for the training of new staff in the CMHSPs and their provider agencies. Establishment of these criteria is required in order to provide a standardized knowledge base to all staff that assures the rights of recipients are applied in a consistent manner across the state. This consistency should also enable various CMH agencies to accept the training of similar agencies and, thus, decrease cost of training by eliminating the need for redundant retraining.

Authority

330.1753 Recipient rights system; review by department.

The department shall review the recipient rights system of each community mental health services program in accordance with standards established under section 232a, to ensure a uniformly high standard of recipient rights protection throughout the state. For purposes of certification review, the department shall have access to all information pertaining to the rights protections system of the community mental health services program.

330.1754 State office of recipient rights; establishment by department; selection of director; powers and authority of state office of recipient rights.

(2) The department shall ensure all of the following: (f) Technical assistance and training in recipient rights protection are available to all community mental health services programs and other mental health service providers subject to this act.

330.1755 Office of recipient rights; establishment by community mental health services program and hospital.

(5) Each office of recipient rights established under this section shall do all of the following: (f) Ensure that all individuals employed by the community mental health services program, contract agency, or licensed hospital receive training related to recipient rights protection before or within 30 days after being employed.

Definitions

Content Requirements:
The content requirements are a set of skills necessary for an understanding of the rights of mental health recipients. These requirements reflect foundational knowledge that professionals and paraprofessionals engaging in the provision of services to public mental health recipients, as well as ancillary bodies such as committees and board members, must have in order to provide services in accordance with Chapter 7 of the Michigan Mental Health Code.

Recipient:
An individual who receives mental health services from the department, a community mental health services program, or a facility or from a provider that is under contract with the department or a community mental health services program.

Resident:
An individual who receives services in either a state operated facility, a licensed psychiatric hospital or unit or an adult foster care facility.

STANDARDS:

1. Training for newly hired agency and provider staff shall encompass the entirety of the core learning areas identified in Exhibit A.

2. If provided or required, annual rights training may focus on any or all of the learning areas.

3. Agencies may require documentation of competency in these areas through testing.

Exhibit A – Areas to be covered in Training

This chart represents the topics that minimally must be covered for the specific groups listed.

	Board of Directors	Administration	Clinical Staff - Non-Residential	Clinical Staff - Specialized Residential	Direct Care Staff - Spec'd Exp'd Residential	Direct Care Staff - Non Residential	Outpatient Clinic - All Staff	Volunteers	Advisory Committee	Appeals Committee	General Hospital Staff
Abuse and Neglect	*	*	*	*	*	*	*	*	*	*	*
Civil Rights		*	*	*	*	*	*	*			
Communications and Visits		*		*	*	*					*
Confidentiality	*	*	*	*	*	*	*	*	*	*	*
Consent/Informed Consent		*	*	*	*	*	*	*			*
Dignity & Respect	*	*	*	*	*	*	*	*			
Entertainment, Information, and News		*		*	*	*					
Fingerprints, Photographs, Recording		*		*	*						
Freedom of Movement		*		*	*	*					
Limitations/Restrictions		*	*	*	*	*	*	*			
Psychotropic Medication		*		*	*						
Person Centered Planning		*	*	*	*	*	*	*			
Personal Property		*		*	*						
Rights of Family Members	*	*	*	*	*	*	*	*			
Safe, Sanitary, Humane Environment		*	*	*	*	*	*	*			*
Seclusion/Restraint		*		*	*						
Suitable Services - Family Planning		*	*				*				
Suitable Services - Svcs Suited to Condition		*	*	*	*	*	*				
Suitable Services - Choice of Physician		*	*	*	*	*	*				
Suitable Services - Notice of Clinical Status		*	*	*	*	*	*				
THE RECIPIENT RIGHTS SYSTEM											
Role of the Advisory Committee	*	*							*		
Appeals Process	*	*			*				*	*	
Employee Rights		*	*	*	*	*	*				
ORR Investigative Process	*	*	*	*	*	*	*	*	*	*	*
Overview of the Rights System	*	*	*	*	*	*	*	*	*	*	
Reporting Requirements	*	*	*	*	*	*	*	*	*		
Responsibilities of the Agency Director	*	*			*				*	*	
Responsibilities of the Board of Directors	*	*							*	*	

Exhibit B – Training Standards for New Hire Training

Code Citation and Title
MHC 330.1722 ABUSE AND NEGLECT

Code Language
A recipient of mental health services shall not be subjected to abuse or neglect.

CONTENT REQUIREMENTS

- "Abuse" means:
  - An act (or provocation of another to act) by an employee, volunteer or agent of the provider that causes or contributes to a recipient's death, sexual abuse, serious or non-serious physical harm or emotional harm.
  - The use of unreasonable force on a recipient with or without apparent harm;
  - An action taken on behalf of a recipient by a provider, who assumes the recipient is incompetent, which results in substantial economic, material, or emotional harm to the recipient;
  - 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
  - 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.
- Agents of the Provider: people who work for agencies that contract with the Department, a CMHSP or PIHP, or an LPH
- "Bodily function" means the usual action of any region or organ of the body.
- "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.
- "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.
- "Neglect" means:
  - 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 caused or contributed to the death, sexual abuse of, serious, or non- serious physical harm or emotional harm to a recipient, or
    - that placed, or could have placed, a recipient at risk of physical harm or sexual abuse.
  - The failure to report apparent or suspected abuse or neglect of a recipient.
- "Non-serious 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.
- "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.
- "Serious physical harm" means 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" means any of the following:

  - 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.
  - 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.
  - 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" 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:
  - Revenge.
  - To inflict humiliation.
  - Out of anger.
- "Sexual harassment" means 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” 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.
- “Threaten” means to tell someone that you will hurt them or cause problems if they do not do what you want.
- "Time out" means a voluntary response to the therapeutic suggestion to a recipient to remove himself or herself from a stressful situation in order to prevent a potentially hazardous outcome.
- "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:
  - There is no imminent risk of serious or non-serious physical harm to the recipient, staff or others.
  - The physical management used is not in compliance with techniques approved by the provider and the responsible mental health agency.
  - The physical management used is not in compliance with the emergency interventions authorized in the recipient's individual plan of service.
  - 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

Code Citation and Title
MHC 330.1704 AR 330.7009 CIVIL RIGHTS

Code Language

In addition to the rights, benefits, and privileges guaranteed by other provisions of law, the state constitution of 1963, and the constitution of the United States, a recipient of mental health services shall have the rights guaranteed by this chapter unless otherwise restricted by law.

The rights enumerated in this chapter shall not be construed to replace or limit any other rights, benefits, or privileges of a recipient of services including the right to treatment by spiritual means if requested by the recipient, parent, or guardian.

A provider shall establish measures to prevent and correct a possible violation of civil rights related to the service provision. A violation of civil rights shall be regarded as a violation of recipient rights and shall be subject to remedies established for recipient rights violations.

A recipient shall be permitted, to the maximum extent feasible and in any legal manner, to conduct personal and business affairs and otherwise exercise all rights, benefits, and privileges not divested or limited.

CONTENT REQUIREMENTS

- A recipient shall be permitted, to the maximum extent feasible and in any legal manner, to conduct personal and business affairs and otherwise exercise all rights, benefits, and privileges not divested or limited.
- A violation of civil rights shall be regarded as a violation of recipient rights
- A recipient shall be asked if they wish to participate in an official election and, if desired, shall be assisted in doing so.
- A recipient shall be permitted to exercise the right to practice their religion
- A recipient shall have the right to NOT have a religion prescribed for them
- A Recipient is presumed competent unless a guardian has been appointed
- A recipient shall not be subject to illegal search or seizure.

Code Citation and Title
MHC 330.1748 CONFIDENTIALITY

Code Language

- *Information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and shall not be open to public inspection.*
- *If information made confidential by this section is disclosed, the identity of the individual to whom it pertains shall be protected and shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought; and, when practicable, no other information shall be disclosed unless it is germane to the authorized purpose for which disclosure was sought.*
- *Individuals receiving information made confidential by this section shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained.*
- *For case record entries made subsequent to March 28, 1996, information made confidential by this section shall be disclosed to an adult recipient, upon the recipient's request, if the recipient does not have a guardian and has not been adjudicated legally incompetent*
- *Information may be shared as necessary for the for the treatment, coordination of care, or payment for the delivery of mental health services in accordance with the health insurance portability and accountability act of 1996. (Public Law 104-91)*

CONTENT REQUIREMENTS

- Recipients who are adults and do not have a guardian are entitled to review their record without exception; discuss agency protocol for assuring this.
- For recipients with a guardian and those under 18 information can be withheld determined by a physician to be detrimental.
- Explain the difference between mandatory disclosure, discretionary with consent and discretionary
- Discuss agency policy on Correction of Record (statement by recipient)
- Preferred method for answering the phone so as not to disclose information
- Agency protocol for inquiries by law enforcement (what happens when the police show up at the door)
- Under circumstances allowed in the Code language this right may be limited.
- MPAS can access a recipient's record if it has received a complaint on behalf of the recipient or has probable cause to believe based on monitoring or other evidence that the recipient has been subject to abuse or neglect.
- Discuss privileged communications 33.1750 (psychiatrists and psychologists only)

Code Citation and Title
MHC 330.1708 DIGNITY AND RESPECT

Code Language

A recipient has the right to be treated with dignity and respect.

CONTENT REQUIREMENTS

Showing respect for recipients shall include:

- Discuss what it means to treat someone with dignity and respect.

- Provide definitions of dignity and respect (Use dictionary definitions below or agency's definitions if they are in policy)

  Dignity: To be treated with esteem, honor, politeness; to be addressed in a manner that is not patronizing, condescending or demeaning; to be treated as an equal; to be treated the way any individual would like to be treated.

  Respect: To show deferential regard for; to be treated with esteem, concern, consideration or appreciation; to protect the individual's privacy; to be sensitive to cultural differences; to allow an individual to make choices.
- Provide some examples such as:
  - Calling a person by his or her preferred name
  - Knocking on a closed door before entering
  - Using positive language
  - Encouraging the person to make choices instead of making assumptions about what he or she wants
  - Taking the person's opinion seriously, including the person in conversations; allowing the person to do things independently or to try new things.

Code Citation and Title
MHC 330.1711 RIGHTS OF FAMILY MEMBERS

Code Language

Family members of recipients shall be treated with dignity and respect. They shall be given an opportunity to provide information to the treating professionals. They shall also be provided an opportunity to request and receive educational information about the nature of disorders, medications and their side effects, available support services, advocacy and support groups, financial assistance and coping strategies.

CONTENT REQUIREMENTS

- Providing family members an opportunity to request and receive educational information about the nature of disorders, medications and their side effects, available support services, advocacy and support groups, financial assistance and coping strategies.
- Receive information from or provide information to family members within the confidentiality constraints of Section 748 of the Mental Health Code.
- Discuss agency protocols regarding family members who want to provide information
- Be aware of the location of these materials
- Assure that family members are treated with dignity and respect

Code Language

Code Citation and Title
MCL 330.1724 FINGERPRINTS, PHOTOGRAPHS, AUDIORECORDINGS, VIDEORECORDINGS AND USE OF ONE-WAY GLASS

A recipient shall not be fingerprinted, photographed, audiotaped or viewed through one-way glass for purposes of identification, in order to provide services (including research) or for educational or training purposes without prior written consent.

CONTENT REQUIREMENTS

- Prior written consent from the recipient, the recipient's guardian or a parent with legal and physical custody of a minor recipient must be obtained before fingerprinting, photographing, audio-recording, or viewing through one-way glass.
- The procedures above shall only be utilized in order to provide services (including research) to identify, recipient, or for education and training purposes.

- Photographs include still pictures, motion pictures and videotapes.
- Photographs may to be taken for purely personal or social purposes and must be treated as the recipient's personal property. Photographs must not be taken for this purpose if the recipient has objected.
- Fingerprints, photographs and audio-recordings and any copies of these are to be made part of the recipient record and are to be destroyed or returned to the recipient when no longer essential or upon discharge, whichever occurs first.
- If fingerprints, photographs or audio-recordings are done and sent out to others to help determine the name of the recipient, the individual receiving the items must be informed that return is required for inclusion in the recipient record.
- Restrictions may be put in place if the recipient is receiving services pursuant to the criminal provisions of Chapter 10 of the Mental Health Code – Incompetent to Stand Trial, Not Guilty by Reason of Insanity, recipient of the Department of Corrections Mental Health Services Program

Code Citation and Title	
MCL 330.1744	**FREEDOM OF MOVEMENT**
MCL 330.1708	**LEAST RESTRICTIVE SETTING**

Code Language

Mental health services shall be offered in the least restrictive setting that is appropriate and available.
The freedom of movement of a recipient shall not be restricted more than is necessary to provide mental health services to him or her, to prevent injury to him or her or to others, or to prevent substantial property damage, except that security precautions appropriate to the condition and circumstances of an individual admitted by order of a criminal court or transferred as a sentence-serving convict from a penal institution may be taken.

CONTENT REQUIREMENTS

- Mental health services shall be offered in the least restrictive setting that is appropriate and available.
- The freedom of movement of a recipient shall not be restricted more than necessary to provide mental health services, to prevent injury to himself, herself or others, or to prevent substantial property damage
- House rules may restrict freedom of movement only by general restrictions:
    - From areas that could cause health or safety or problems
    - Temporary restrictions from areas for reasonable unforeseeable activities including repair or maintenance
    - For emergencies in case of fire, tornadoes, floods, etc.
- Seclusion and restraint are prohibited except in a MDHHS operated or licensed hospital. Every patient in one of those settings has the right not to be secluded or restrained unless it is essential to prevent the patient from physically harming himself, herself or others.
- Time out, defined as a VOLUNTARY response to a therapeutic suggestion to a recipient to remove himself or herself from a stressful situation to another area to regain control. (AR 330.7001[x])
- Physical management, defined as 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. (AR 330.7001[m])
- Physical management may only be used 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 an imminent risk of serious or non-serious physical harm.
- Physical management must not be included as a component of a behavior treatment plan

- Prone immobilization of a recipient for the purpose of behavioral control is prohibited (by agency policy) or implementation of physical management techniques other than prone immobilization is medically contraindicated and documented in the recipient's record) (AR 330. 7243 [11][i][ii])
- This right can be limited but only as allowed in the individual plan of service (IPOS) following review and approval by the Behavior Treatment Plan Review Committee (CMH only) and the special consent of the 47

Code Citation and Title
MHC 330.1712 AR 330.7199 INDIVIDUALIZED WRITTEN PLAN OF SERVICES
MDHHS PRACTICE GUIDELINE
TECHNICAL REQUIREMENT FOR BEHAVIOR TREATMENT REVIEW COMMITTEES

Code Language

The responsible mental health agency for each recipient shall ensure that a person-centered planning process is used to develop a written individual plan of services in partnership with the recipient. A preliminary plan shall be developed within 7 days of the commencement of services or, if an individual is hospitalized for less than 7 days, before discharge or release.

CONTENT REQUIREMENTS

- The responsible mental health agency for each recipient shall ensure that a person-centered planning process is used to develop a written individual plan of services in partnership with the recipient.
- A preliminary plan shall be developed within 7 days of the commencement of services or, if an individual is hospitalized for less than 7 days, before discharge or release.
- The individual plan of services shall consist of a treatment plan, a support plan, or both.
- A treatment plan shall establish meaningful and measurable goals with the recipient.
- The individual plan of services shall address, as either desired or required by the recipient, the recipient's need for food, shelter, clothing, health care, employment opportunities, educational opportunities, legal services, transportation, and recreation.
- The plan shall be kept current and shall be modified when indicated. The individual in charge of implementing the plan of services shall be designated in the plan.
- If a recipient is not satisfied with his or her individual plan of services, the recipient, the person authorized by the recipient to make decisions regarding the individual plan of services, the guardian of the recipient, or the parent of a minor recipient may make a request for review to the designated individual in charge of implementing the plan. The review shall be completed within 30 days and shall be carried out in a manner approved by the appropriate governing body.
- An individual chosen or required by the recipient may be excluded from participation in the planning process only if inclusion of that individual would constitute a substantial risk of physical or emotional harm to the recipient or substantial disruption of the planning process. Justification for an individual's exclusion shall be documented in the case record.

Code Citation and Title
MCL 330. 1708 (1) (2) AR **330.7171 SAFE, SANITARY, HUMANE, TREATMENT ENVIRONMENT**

Code Language

Mental health services shall be provided in a safe, sanitary, and humane treatment environment

CONTENT REQUIREMENTS

- Mental Health Code requires safe, sanitary, humane treatment environment in the least restrictive setting.
- The MHC does not define what this means so we use Adult Foster Care Licensing Rules (400.14401 – 14403) to determine if the residential setting was safe, sanitary or humane.

- Assure pressurized hot and cold water
- Hot water temp no more than 105 degrees to 120 degrees at the faucet
- Assure all sewage is disposed of in a public sewer system or as approved by the health department
- Maintain an insect, rodent or pest control program
- Store and safeguard poisons, caustics and other dangerous materials in non-resident and non-food reparation storage areas
- Assure adequate preparation and storage of food items.
- Assure premises are constructed, arranged and maintained to adequately provide for the health, safety and well-being of occupants

- Provide for resident health, hygiene and personal grooming including assistance and training in personal grooming practices, including bathing, tooth brushing, shampooing, hair grooming, shaving and care of nails. Provider must supply toilet articles, toothbrush and dentifrice, opportunity to shower or bathe at least once every 2 days, regular services of a barber or beautician and the opportunity to shave daily (males) [AR 7171]

Code Citation and Title
VARIOUS CODE SECTIONS PERTAINING TO THE RECIPIENT RIGHTS SYSTEM

Code Language

330.1706 Notice of rights. Except as provided in section 707, applicants for and recipients of mental health services and in the case of minors, the applicant's or recipient's parent or guardian, shall be notified by the providers of those services of the rights guaranteed by this chapter. Notice shall be accomplished by providing an accurate summary of this chapter and chapter 7a to the applicant or recipient at the time services are first requested and by having a complete copy of this chapter and chapter 7a readily available for review by applicants and recipients.

330.1776 Rights complaint; filing; contents; recording; acknowledgment; notice; assistance; conduct of investigation. (1) A recipient, or another individual on behalf of a recipient, may file a rights complaint with the office alleging a violation of this act or rules promulgated under this act.

330.1778 Investigation; initiation; recording; standard of proof; written status report; written investigative report; new evidence.

330.1784 Summary report; appeal. (1) Not later than 45 days after receipt of the summary report under section 782, the complainant may file a written appeal with the appeals committee with jurisdiction over the office of recipient rights that issued the summary report.

CONTENT REQUIREMENTS

- Discuss the operation of the Rights Office
- What are the various roles: Prevention, Monitoring, Education, Complaints Resolution
- Discuss the complaint process
- What is your (staff) role in complaints (1776)?
- Employee Rights (retaliation/harassment (1755 3), Whistleblowers (Civil Action), Bullard-Plawecki (by HR or waived): emphasis on non-retaliation & disciplinary action)
- Basics of rights appeals - What do staff need to know and be able to explain about appeals? (1784)
- Access by ORR to all evidence
- Preponderance of Evidence standard
- Discuss the role of the Advisory Committee
- Discuss the provision of required notice of rights; availability of complaints

Code Citation and Title
MHC 330.1100(a) (19) AR 330.1703 CONSENT AND INFORMED CONSENT

Code Language

"Consent" means a written agreement executed by a recipient, a minor recipient's parent, or a recipient's legal representative with authority to execute a consent, or a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment.

CONTENT REQUIREMENTS

(1) All of the following are elements of informed consent:

(a) Legal competency. An individual shall be presumed to be legally competent. This presumption may be rebutted only by a court appointment of a guardian or exercise by a court of guardianship powers and only to the extent of the scope and duration of the guardianship. An individual shall be presumed legally competent regarding matters that are not within the scope and authority of the guardianship.

(b) Knowledge. To consent, a recipient or legal representative must have basic information about the procedure, risks, other related consequences, and other relevant information. The standard governing required disclosure by a doctor is what a reasonable patient needs to know in order to make an informed decision. Other relevant information includes all of the following:

(i) The purpose of the procedures.

(ii) A description of the attendant discomforts, risks, and benefits that can reasonably be expected.

(iii) A disclosure of appropriate alternatives advantageous to the recipient.

(iv) An offer to answer further inquiries.

(c) Comprehension. An individual must be able to understand what the personal implications of providing consent will be based upon the information provided under subdivision (b)

(d) Voluntariness. There shall be free power of choice without the intervention of an element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion, including promises or assurances of privileges or freedom. There shall be an instruction that an individual is free to withdraw consent and to discontinue participation or activity at any time without prejudice to the recipient.

Code Citation and Title
MHC 330.7029 SUITABLE SERVICES – FAMILY PLANNING

Code Language

The individual in charge of the recipient's written plan of service shall provide recipients, their guardians, and parents of minor recipients with notice of the availability of family planning, and health information services and, upon request, provide referral assistance to providers of such services. The notice shall include a statement that receiving mental health services does not depend in any way on requesting or not requesting family planning or health information services.

CONTENT REQUIREMENTS:

- Discuss the procedures for how this is accomplished in your agency

Code Citation and Title
SUITABLE SERVICES – TREATMENT BY SPIRITUAL MEANS

R 330.7135 Treatment by spiritual means.

A provider shall permit a recipient to have access to treatment by spiritual means upon the request of the recipient, a guardian, if any, or a parent of a minor recipient.

Code Citation and Title
MHC 330.1708 SUITABLE SERVICES – MENTAL HEALTH SERVICES SUITED TO CONDITION

Code Language
A recipient shall receive mental health services suited to his or her condition.
CONTENT REQUIREMENTS:

- Discuss the procedures for how this is accomplished in your agency

Code Citation and Title
MHC 330.1713 SUITABLE SERVICES – CHOICE OF PHYSICIAN/MHP

Code Language
A recipient shall be given a choice of physician or other mental health professional in accordance with the policies of the community mental health services program, licensed hospital, or service provider under contract with the community mental health services program, or licensed hospital providing services and within the limits of available staff in the community mental health services program, licensed hospital, or service provider under contract with the community mental health services program, or licensed hospital
CONTENT REQUIREMENTS:

- Discuss the procedures for how this is accomplished in your agency

Code Citation and Title
MHC 330.1714 SUITABLE SERVICES – NOTICE OF CLINICAL STATUS

Code Language

A recipient shall be informed orally and in writing of his or her clinical status and progress at reasonable intervals established in the individual plan of services in a manner appropriate to his or her clinical condition.
CONTENT REQUIREMENTS:

- Discuss the procedures for how this is accomplished in your agency

Code Citation and Title
330.1715 SUITABLE SERVICES – SERVICES OF MENTAL HEALTH PROFESSIONAL

Code Language
If a resident is able to secure the services of a mental health professional, he or she shall be allowed to see the professional at any reasonable time.

CONTENT REQUIREMENTS

- Discuss the procedures for how this is accomplished in your agency

Code Citation and Title
330.1719 SUITABLE SERVICES – PSYCHOTROPIC DRUG TREATMENT

Code Language
Before initiating a course of psychotropic drug treatment for a recipient, the prescriber or a licensed health professional acting under the delegated authority of the prescriber shall do both of the following: (a) Explain the specific risks and the most common adverse effects that have been associated with that drug. (b) Provide the individual with a written summary of the most common adverse effects associated with that drug.

CONTENT REQUIREMENTS

- Discuss the specifics of this section with medical professionals and those who pass medication.

Code Citation and Title
MHC 330.1726 COMMUNICATIONS AND VISITS

Code Language

Every resident is entitled to unimpeded, private and uncensored communication with others by mail, telephone and to visit with person of his/her choice. Each facility shall endeavor to implement the rights guaranteed by subsection (1) by making telephones reasonably accessible, by ensuring that correspondence can be conveniently and confidentially received and mailed, and by making space for visits available. Writing materials, telephone usage funds, and postage shall be provided in reasonable amounts to residents who are unable to procure such items.

CONTENT REQUIREMENTS

- Residents are allowed to use mail and telephone services. These communications must not be censored; staff should not open mail for residents without authorization. If necessary, funds must be provided (in reasonable amounts) for postage, stationary, telephone.
- Residents must be allowed access to computers to use for communication.
- If house rules are to be established regarding telephone calls and visits, these must be reasonable and support the right as indicated above.
- House rules (restrictions) must be posted in conspicuous areas for residents, guardians, visitors and others to see.
- Limitations can be made on these rights for individuals, but only as allowed in the individual plan of service (IPOS) following review and approval by the Behavior Treatment Plan Review Committee and the special consent of the resident or his/her legal representative.
- Communication by mail, telephone and the ability to have visitors shall not be limited the communications are between a resident and his/her attorney or a court, or between a resident and any other individuals when the communication involves legal matters or may be the subject of legal inquiry.

Code Citation and Title	
AR 330.7139	**ENTERTAINMENT MATERIALS, INFORMATION AND NEWS**

Code Language

Every resident has the right to acquire entertainment materials, information and news at his or her own expense, to read written or printed materials and to view or listen to television, radio, recordings or movies made available at a facility.

CONTENT REQUIREMENTS

- Provider must never prevent a resident from exercising this right for reasons of, or similar to, censorship.
- Provider must establish written policies and procedures that provide for all of the following:
    - Any general program restrictions on access to material for reading, listening or viewing
    - Determining a resident's interest in, and provide for, a daily newspaper
    - Assure material not prohibited by law may be read or viewed by a minor unless there is an objection by the minor's parent or guardian
    - Permit attempts by the staff person in charge of the minor's IPOS to persuade a parent or guardian of a minor to withdraw objections to material desired by the minor.
    - Provider may require that materials acquired by the resident that are of a sexual or violent nature be read or viewed in the privacy of the resident's room

- **LARA includes all previous pages and adds the following:**

Code Citation and Title
VARIOUS STATE AND FEDERAL LAWS AND REGUALTIONS **SECLUSION AND RESTRAINT**

330.1740 Physical restraint. (see also administrative rule 330.7243)

A resident shall not be placed in physical restraint except in the circumstances and under the conditions set forth in this section or in other law.

A resident may be restrained only as follows: A resident may be temporarily restrained for a maximum of 30 minutes without an order or authorization in an emergency.
Immediately after imposition of the temporary restraint, a physician shall be contacted. If, after being contacted, the physician does not order or authorize the restraint, the restraint shall be removed.
A resident may be restrained prior to examination pursuant to an authorization by a physician. An authorized restraint may continue only until a physician can personally examine the resident or for 2 hours, whichever is less. If it is not possible for the physician to examine the resident within 2 hours, a physician may reauthorize the restraint for another 2 hours. Authorized restraint may not continue for more than 4 hours.
A resident may be restrained pursuant to an order by a physician made after personal examination of the resident. An ordered restraint shall continue only for that period of time specified in the order or for 8 hours, whichever is less
A resident may be restrained only after less restrictive interventions have been considered, and only if restraint is essential in order to prevent the resident from physically harming himself, herself, or others, or in order to prevent him or her from causing substantial property damage.
Consideration of less restrictive measures shall be documented in the medical record. If restraint is essential in order to prevent the resident from physically harming himself, herself, or others, the resident may be physically held with no more force than is necessary to limit the resident's movement, until a restraint may be applied.

A restrained resident shall continue to receive food, shall be kept in sanitary conditions, shall be clothed or otherwise covered, shall be given access to toilet facilities, and shall be given the opportunity to sit or lie down.

Restraints shall be removed every 2 hours for not less than 15 minutes unless medically contraindicated or whenever they are no longer essential in order to achieve the objective which justified their initial application.

Each instance of restraint requires full justification for its application, and the results of each periodic examination shall be placed promptly in the record of the resident.

If a resident is restrained repeatedly, the resident's individual plan of services shall be reviewed and modified to facilitate the reduction of the use of restraints.

330.1742 Seclusion. (see also administrative rule 330.7243)

Seclusion shall be used only in a hospital.... A resident placed in a hospital … shall not be kept in seclusion unless it is essential in order to prevent the resident from physically harming others, or in order to prevent the resident from causing substantial property damage, and only in the circumstances and under the conditions described below:

Seclusion may be temporarily employed for a maximum of 30 minutes in an emergency without an authorization or an order. Immediately after the resident is placed in temporary seclusion, a physician shall be contacted. If, after being contacted, the physician does not authorize or order the seclusion, the resident shall be removed from seclusion.

A resident may be placed in seclusion under an authorization by a physician. Authorized seclusion shall continue only until a physician can personally examine the resident or for 1 hour, whichever is less.

- **LARA ADDITIONS:**

A resident may be placed in seclusion under an order of a physician made after personal examination of the resident to determine if the ordered seclusion poses an undue health risk to the resident. Ordered seclusion shall continue only for that period of time specified in the order or for 8 hours, whichever is less. An order for a minor shall continue for a maximum of 4 hours.

A secluded resident shall continue to receive food, shall remain clothed unless his or her actions make it impractical or inadvisable, shall be kept in sanitary conditions, and shall be provided a bed or similar piece of furniture unless his or her actions make it impractical or inadvisable.

A secluded resident shall be released from seclusion whenever the circumstance that justified its use ceases to exist.

Each instance of seclusion requires full justification for its use, and the results of each periodic examination shall be placed promptly in the record of the resident.

If a resident is secluded repeatedly, the resident's individual plan of services shall be reviewed and modified to facilitate the reduced use of seclusion.

In addition to the above the Administrative rules impose other requirements in imposing seclusion:

Rule 330.7243 Restraint and seclusion.
(1) A provider shall keep a separate, permanent chronological record specifically identifying all instances when restraint or seclusion has been used. The record shall include all of the following information:
(a) The name of the recipient.
(b) The type of restraint or conditions of seclusion.
(c) The name of the authorizing and ordering physician.
(d) The date and time placed in temporary, authorized, and ordered restraint or seclusion.
(e) The date and time the recipient was removed from temporary, authorized, and ordered restraint or seclusion.
(2) A recipient who is in restraint or seclusion shall be inspected at least once every 15 minutes by designated personnel.
(3) A provider shall ensure that documentation of staff monitoring, and observation is entered into the medical record of the recipient.
(4) A recipient in restraint or seclusion shall be provided hourly access to a toilet.
(5) A recipient in 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 with both of the following provisions:
(a) If the 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 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 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.
(7) If a recipient is removed from restraint or seclusion for more than 30 minutes, then the order or authorization shall terminate.
(8) A provider shall ensure that a secluded or restrained recipient is given an explanation of why he or she is being secluded or restrained and what he or she needs to do to have the restraint or seclusion order removed. The explanation shall be provided in clear behavioral terms and documented in the record.
(9) For restrained recipients, a provider shall ensure that an assessment of the circulation status of restrained limbs is conducted and documented at 15-minute intervals or more often if medically indicated.
(10) For purposes of this rule, a time out or therapeutic de-escalation program, as defined in R 330.7001, is not a form of seclusion.
(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

- **LARA ADDITIONS:**

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.

Other requirements for seclusion are found in the Code of Federal Regulations
Sec 482.13 Conditions of Participation:
(e)Standard: Restraint or seclusion. All patients have the right to be free from physical or mental abuse, and corporal punishment. All patients have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Restraint or seclusion may only be imposed to ensure the immediate physical safety of the patient, a staff member, or others and must be discontinued at the earliest possible time.

(1)Definitions.
(i) A restraint is -
(A) Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body, or head freely; or
(B) A drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard treatment or dosage for the patient's condition.
(C) A restraint does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a patient for the purpose of conducting routine physical examinations or tests, or to protect the patient from falling out of bed, or to permit the patient to participate in activities without the risk of physical harm (this does not include a physical escort).
(ii)Seclusion is the involuntary confinement of a patient alone in a room or area from which the patient is physically prevented from leaving. Seclusion may only be used for the management of violent or self-destructive behavior.
(2) Restraint or seclusion may only be used when less restrictive interventions have been determined to be ineffective to protect the patient a staff member or others from harm.
(3) The type or technique of restraint or seclusion used must be the least restrictive intervention that will be effective to protect the patient, a staff member, or others from harm.
(4) The use of restraint or seclusion must be -
(i) In accordance with a written modification to the patient's plan of care; and
(ii) Implemented in accordance with safe and appropriate restraint and seclusion techniques as determined by hospital policy in accordance with State law.
(5) The use of restraint or seclusion must be in accordance with the order of a physician or other licensed independent practitioner who is responsible for the care of the patient as specified under § 482.12(c) and authorized to order restraint or seclusion by hospital policy in accordance with State law.
(6) Orders for the use of restraint or seclusion must never be written as a standing order or on an as needed basis (PRN).
(7) The attending physician must be consulted as soon as possible if the attending physician did not order the restraint or seclusion.
(8) Unless superseded by State law that is more restrictive -
(i) Each order for restraint or seclusion used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the patient, a staff member, or others may only be renewed in accordance with the following limits for up to a total of 24 hours:
(A) 4 hours for adults 18 years of age or older;
(B) 2 hours for children and adolescents 9 to 17 years of age; or
(C) 1 hour for children under 9 years of age; and
(ii) After 24 hours, before writing a new order for the use of restraint or seclusion for the management of violent or self-destructive behavior, a physician or other licensed independent practitioner who is responsible for the care of the patient as specified under § 482.12(c) of this part and authorized to order restraint or seclusion by hospital policy in accordance with State law must see and assess the patient.
(iii) Each order for restraint used to ensure the physical safety of the non-violent or non-self-destructive patient may be renewed as authorized by hospital policy.

- **LARA ADDITIONS:**

(9) Restraint or seclusion must be discontinued at the earliest possible time, regardless of the length of time identified in the order.
(10) The condition of the patient who is restrained or secluded must be monitored by a physician, other licensed independent practitioner or trained staff that have completed the training criteria specified in paragraph (f) of this section at an interval determined by hospital policy.
(11) Physician and other licensed independent practitioner training requirements must be specified in hospital policy. At a minimum, physicians and other licensed independent practitioners authorized to order restraint or seclusion by hospital policy in accordance with State law must have a working knowledge of hospital policy regarding the use of restraint or seclusion.
(12) When restraint or seclusion is used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the patient, a staff member, or others, the patient must be seen face-to-face within 1 hour after the initiation of the intervention -
(i) By a -
(A) Physician or other licensed independent practitioner; or
(B) Registered nurse or physician assistant who has been trained in accordance with the requirements specified in paragraph (f) of this section.
(ii) To evaluate -
(A) The patient's immediate situation;
(B) The patient's reaction to the intervention;
(C) The patient's medical and behavioral condition; and
(D) The need to continue or terminate the restraint or seclusion.
(13) States are free to have requirements by statute or regulation that are more restrictive than those contained in paragraph (e)(12)(i) of this section.
(14) If the face-to-face evaluation specified in paragraph (e)(12) of this section is conducted by a trained registered nurse or physician assistant, the trained registered nurse or physician assistant must consult the attending physician or other licensed independent practitioner who is responsible for the care of the patient as specified under § 482.12(c) as soon as possible after the completion of the 1-hour face-to-face evaluation.
(15) All requirements specified under this paragraph are applicable to the simultaneous use of restraint and seclusion. Simultaneous restraint and seclusion use is only permitted if the patient is continually monitored -
(i) Face-to-face by an assigned, trained staff member; or
(ii) By trained staff using both video and audio equipment. This monitoring must be in close proximity to the patient.
(16) When restraint or seclusion is used, there must be documentation in the patient's medical record of the following:
(i) The 1-hour face-to-face medical and behavioral evaluation if restraint or seclusion is used to manage violent or self-destructive behavior;
(ii) A description of the patient's behavior and the intervention used;
(iii) Alternatives or other less restrictive interventions attempted (as applicable);
(iv) The patient's condition or symptom(s) that warranted the use of the restraint or seclusion; and
(v) The patient's response to the intervention(s) used, including the rationale for continued use of the intervention.
(f)Standard: Restraint or seclusion: Staff training requirements. The patient has the right to safe implementation of restraint or seclusion by trained staff.
(1) Training intervals. Staff must be trained and able to demonstrate competency in the application of restraints, implementation of seclusion, monitoring, assessment, and providing care for a patient in restraint or seclusion -
(i) Before performing any of the actions specified in this paragraph;
(ii) As part of orientation; and
(iii) Subsequently on a periodic basis consistent with hospital policy.
(2) Training content. The hospital must require appropriate staff to have education, training, and demonstrated knowledge based on the specific needs of the patient population in at least the following:
(i) Techniques to identify staff and patient behaviors, events, and environmental factors that may trigger circumstances that require the use of a restraint or seclusion.
(ii) The use of nonphysical intervention skills.
(iii) Choosing the least restrictive intervention based on an individualized assessment of the patient's medical, or behavioral status or condition.
(iv) The safe application and use of all types of restraint or seclusion used in the hospital, including training in how to recognize and respond to signs of physical and psychological distress (for example, positional asphyxia);
(v) Clinical identification of specific behavioral changes that indicate that restraint or seclusion is no longer necessary.

- **LARA ADDITIONS:**

(vi) Monitoring the physical and psychological well-being of the patient who is restrained or secluded, including but not limited to, respiratory and circulatory status, skin integrity, vital signs, and any special requirements specified by hospital policy associated with the 1-hour face-to-face evaluation.
(vii) The use of first aid techniques and certification in the use of cardiopulmonary resuscitation, including required periodic recertification.

- **Not in Contract or LARA ADDITIONS:**

Other considerations for Rights Officers:

Involuntary Admission (this means Court Hearing & Process)

- Watch timeframes read
- Staff must understand the court process – have staff read the form
- Use the patient explanation with staff - it's simple sequential & specific!

Termination of Voluntary Hospitalization

- Remind staff who the recipient tells & where is documented
- Who gives them the form
- Clock starts when patient says "I want to go" & turns in the form– make sure staff know how to explain & it does NOT include "you'll have to stay longer" language

Discharge Planning & coordination with CMH/ LPH/U (1209a (3))

- LPH/Us - be sure to inform CMHs of admissions- get treatment plan from CMH
- CMHs - be sure to pass on information to the LPH/Us

Incident Reporting

- Review who in your own agency teaches Incident Reporting
- Review the IR policy
- Be sure to stress the link between incident reporting and making a rights complaint – if there is abuse or neglect, call ORR
- Talk about where it goes & how it is reviewed by rights for trends & prevention

Overview of the Rights System

- Your (staff) role in complaints (1776) - Know how to assist recipients
- *You could show a video & do mock complaints*
- What happens when there is a complaint? Explain the complaint process
- Other Key Points: Access by ORR, preponderance of evidence standard, cooperation requirement
- Employee Rights
- R*etaliation/Harassment (1755 3),Whistleblowers (Civil Action), Bullard-Plawecki (by HR): emphasis on non-retaliation & disciplinary action)*
- *Disclosure of Employee Job Performance – to your next employer (optional)*
- Bullard Plawecki & the employee (from HR)
- Basics of rights appeals (1784) - *What do staff need to be able to explain about appeals?*

Medication Prior to Court

No administration of Psychotropic medication on the day prior to court (or day of) unless recipient consents or poses a risk to self or others

Be sure medication is shortest time lowest therapeutic dose and not readministered unless the. recipient decompensates and again poses a risk to himself, herself, or others.

Other: Remember, you may need a pre-reading or handout to give technical details about concepts you have presented, such as abuse and neglect, or confidentiality (see next page)

Abuse

Key Points:

- A nonaccidental act or provocation of another to act
- By an employee, volunteer, or agent of a provider
- Causes or contributes to some “harm”

Class I Abuse:

- Causes or contributes to the **death, or sexual abuse of, or serious physical harm** to a recipient.

"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.

"Sexual abuse" means:
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;

"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.

“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.

"Serious physical harm" means:
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.

"Bodily function" means:
The usual action of any region or organ of the body.

Class II Abuse:

- Causes or contributes to **NONSERIOUS PHYSICAL HARM** to a recipient.

“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.

- Causes or contributes to **EMOTIONAL HARM** to a recipient.

"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.

- Results in substantial **ECONOMIC, MATERIAL, OR EMOTIONAL HARM** to the recipient.
- Can be considered **EXPLOITATION** of a recipient by an employee, volunteer, or agent of a provider.

"Exploitation" means:
An action that involves the misappropriation or misuse of a recipient's property or funds.
OR:

- The **USE OF UNREASONABLE FORCE** on a recipient with or without apparent harm

"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 imminent risk of significant injury to the recipient, staff or others or that is any of the following: 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.

"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.

Class III Abuse:

- The use of language or other means of communication to **DEGRADE, THREATEN, OR SEXUALLY HARASS** a recipient.

"Sexual harassment" means:
Sexual advances to a recipient, requests for sexual favors from a recipient, or other conduct or communication of a sexual nature toward a recipient. ..

"Threaten" means any of the following:
To utter intentions of injury or punishment against;
To express a deliberate intention to deny the well-being, safety, or happiness of somebody unless the person does what is being demanded.

"Degrade" means any of the following:
To cause somebody or something a humiliating loss of status or reputation, or cause somebody a humiliating loss of self-esteem
To cause people to feel that they or other people are worthless and do not have the respect or good opinion of others
To use any language or epithets that insult the person's heritage, mental status, race, sexual orientation, gender, intelligence, etc.
Examples of behavior that is degrading, and must be reported as abuse include, but are not limited to:

- Swearing at recipients
- Using racial or ethnic slurs toward or about recipients
- Making emotionally harmful remarks toward recipients
- Causing or prompting others to commit the actions listed above

Neglect

Key Points:

1. Acts of commission *(something you do that you shouldn't have done)* or omission *(something you don't do that you should have done)*
2. By an employee, volunteer, or agent of a provider
3. That is in noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service
4. Causes or contributes to some "harm" (or risk of harm)

Class I Neglect:
That causes or contributes to **SERIOUS PHYSICAL HARM TO OR SEXUAL ABUSE OF** a recipient.

Class II Neglect:
That causes or contributes to **NONSERIOUS PHYSICAL HARM OR EMOTIONAL HARM** to a recipient.

Class III Neglect:
That either placed or could have placed a recipient at **RISK OF PHYSICAL HARM OR SEXUAL ABUSE**.

Neglect is also:

The **FAILURE TO REPORT ANY APPARENT OR SUSPECTED ABUSE OR NEGLECT** of a recipient.

Mandatory Reporting

IF YOU **Suspect, are Notified of, or Witness** ANY **rights violation** YOU **rmust report!!!**

All employees, volunteers and agents of the LPH shall:

- Immediately report, verbally or in writing, any apparent or suspected rights violations to the hospital or ORR.
- Safeguard recipients from abuse and/or neglect and act to obtain treatment for observed injuries and to prevent additional harm.
- Immediately report to the hospital ORR, verbally or in writing, when they witness, discover, or have reasonable cause to suspect, abuse or neglect of recipients.
- Immediately report to the hospital ORR, verbally or in writing, when they witness, discover, or otherwise become aware of, an assault by one recipient upon another.
- Assure a report is made to the designated law enforcement agency, as required by law (MCL 330.1723 Criminal Abuse).
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Other Important Mental Health Code Definitions

"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.

"Time out" means:

a voluntary response to the therapeutic suggestion to a recipient to remove himself or herself from a stressful situation in order to prevent a potentially hazardous outcome.

"Consent" MHC 330.1100a(19) means:

a written agreement executed by a recipient, a minor recipient's parent, or a recipient's legal representative with authority to execute a consent, or a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment.

"Informed consent" AR 330.7003 All of the following are elements of informed consent:

(a) Legal competency. An individual shall be presumed to be legally competent. This presumption may be rebutted only by a court appointment of a guardian or exercise by a court of guardianship powers and only to the extent of the scope and duration of the guardianship. An individual shall be presumed legally competent regarding matters that are not within the scope and authority of the guardianship.

(b) Knowledge. To consent, a recipient or legal representative must have basic information about the procedure, risks, other related consequences, and other relevant information. The standard governing required disclosure by a doctor is what a reasonable patient needs to know in order to make an informed decision. Other relevant information includes all of the following:

(i) The purpose of the procedures.

(ii) A description of the attendant discomforts, risks, and benefits that can reasonably be expected.

(iii) A disclosure of appropriate alternatives advantageous to the recipient.

(iv) An offer to answer further inquiries.

(c) Comprehension. An individual must be able to understand what the personal implications of providing consent will be based upon the information provided under subdivision (b)

(d) Voluntariness. There shall be free power of choice without the intervention of an element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion, including promises or assurances of privileges or freedom. There shall be an instruction that an individual is free to withdraw consent and to discontinue participation or activity at any time without prejudice to the recipient.

Confidentiality 330.1748

Information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and shall not be open to public inspection. The information may be disclosed outside the … licensed facility, or contract provider, whichever is the holder of the record, only in the circumstances and under the conditions set forth in this section or section 748a.

Key Points to Remember:

Records of a recipient of mental health services are confidential.

Adult recipients who do not have a guardian MUST be given access to their complete record upon request.

Any recipient may insert a "Statement of Correction" in their record.