

Procedure No. 2-6-8
Replaces Procedure No. 2-6-8

Revised: 01-18-24
Issued: 06-08-98

SUBJECT: Abuse/Neglect Definitions, Reporting and Investigation

PURPOSE: This rule (9 CSR 10-5.200) as defined by the Department of Mental Health and further incorporates Woodhaven protocol for reporting and investigating complaints of abuse, neglect and misuse of funds/property in a residential facility, day program or specialized service that is licensed, certified or funded by the Department of Mental Health. The rule also sets forth due process procedures for persons who have been accused of abuse, neglect and misuse of funds/property.

All individuals receiving services from Woodhaven Learning Center are to be free from psychological and physical abuse, financial exploitation, humiliation or retaliation. No form of negligence, mistreatment, and seclusion of persons receiving services or misuse of consumer funds will be tolerated. All staff are expected to take appropriate action detailed below against co-workers who violate these laws.

All injuries to an individual receiving services are to receive immediate medical attention if needed and then should be reported to the supervisor of the employee noticing the injury. The employee should then complete a General Event Report (GER) on Therap. The Program Manager will then enter the information from the GER into the State CIMOR system within 24 hours. The Program Manager/Health Services RN if available will evaluate the injury and determine if immediate medical attention is needed.

The following words and terms, as used in this rule, mean:

- **Neglect:** Failure of an employee to provide reasonable or necessary services to maintain the physical and mental health of any individual supported when that failure presents either imminent danger to the health, safety, or welfare of an individual supported or a substantial probability that death or serious physical injury would result. This would include, but is not limited to, failure to provide adequate supervision during an event in which one individual supported causes serious injury to another individual supported.
- **Individual supported:** An individual (client, resident, patient) receiving department-funded services directly from an agency.
- **“Medication Error”**, a mistake in prescribing, dispensing, or administering medications. A medication error occurs if an individual supported receives an incorrect drug, drug dose, dosage form, quantity, route, concentration, or incorrectly charting medications administered. This includes failing to administer the drug or administering the drug on an incorrect schedule. Levels of medication errors are:
 1. **“Minimal”**, medication error is one in which the individual supported experiences no or minimal adverse consequences and receives no treatment or intervention other than monitoring or observation is required;
 2. **“Moderate”**, medication error is one in which the individual supported experiences short-term reversible adverse consequences and receives treatment and or intervention in addition to monitoring or observation; and
 3. **“Serious”**, medication error is one in which the individual supported experiences life-threatening and/or permanent adverse consequences or results in hospitalization or an emergency room episode of care. “Serious” medication errors may be considered abuse or neglect and shall be subject to investigation by the Department of Mental Health.

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- **Misuse of funds/property**, the misappropriation or conversion for any purpose of a individual supported funds or property by an employee or employees with or without the consent of the individual supported; or the purchase of property or services from a individual supported in which the purchase price substantially varies from the market value.
 1. Funds are allocated on applicable ISL budgets for staff to eat meals family style with the individual supported. Staff are allowed to share the consumer's meals. Staff are not allowed to remove any food from the home. Removing food items from the home will be construed as misuse of consumer's property.
- **Physical abuse** – An employee purposefully beating, striking, wounding or injuring any individual supported; or in any manner whatsoever, an employee mistreating or maltreating an individual supported in a brutal or inhumane manner. Or it can also be defined as an employee handling an individual supported with any more force than is reasonable for a individual supported's proper control, treatment or management;
- **Sexual abuse**, any touching, directly or through clothing, of a individual supported by an employee for sexual purpose or in a sexual manner. This includes but is not limited to:
 1. Kissing;
 2. Touching of the genitals, buttocks or breasts;
 3. Causing an individual supported to touch the employee for sexual purposes;
 4. Promoting or observing for sexual purpose any activity or performance involving individual supported including any play, motion picture, photography, dance, or other visual or written representation;
 5. Failing to intervene or attempt to stop, or encouraging inappropriate sexual activity or performance between individual supported.
 6. Encouraging inappropriate sexual activity or performance between individual supported.
 - 7.
- **Verbal Abuse:** An employee making a threat of physical violence to an individual supported, when such threats are made directly to an individual supported or about an individual supported in the presence of an individual supported.

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- **Employee Misconduct:** Failure of an employee to provide reasonable or necessary services to a individual supported according to the Individual Plan, if feasible, or according to acceptable standards of care. Includes action or behavior, which may cause psychological harm to an individual supported due to intimidating, causing fear or otherwise creating undue anxiety. Employees using profanity or speaking in a demeaning, non-therapeutic, undignified threatening or derogatory manner to an individual supported or about an individual supported in a individual supported's presence.

This section applies to any director, supervisor or employee of any residential facility, day program or specialized service, that is licensed, certified or funded by the Department of Mental Health This covers all Woodhaven employees regardless of department. **All staff are expected to treat participants with dignity and respect. If any employee suspects a participant has experienced any abuse, neglect, exploitation, or maltreatment, our first duty is to protect the health and safety of the participant.**

- A. Any such person shall immediately file a written or verbal complaint with their supervisor if that person has reasonable cause to believe that a individual supported has been subjected to any of the following misconducts while under the care of a residential facility, day program or specialized service:
 1. Physical abuse;
 2. Sexual abuse;
 3. Misuse of funds/property;
 4. Neglect
 5. Verbal abuse;
 6. Psychological Abuse;
 7. Serious medication error; or
 8. Diversion of medication from intended use by the individual supported for whom it was prescribed.
 9. Employee misconduct
- B. The supervisor will immediately ensure the safety of the individual supported. They will confer with the Director of Residential and Community Services or designee and determine if employee needs to go on Administrative leave. Supervisor will notify Human Resources if employee is placed on Administrative Leave on the next business day.
- C. A complaint under subsection (A) above shall be made to the COO, Director of Residential and Community Services, Director of Human Resources or any other management staff of the facility, day program or specialized service, and to the department's regional center, supported community living placement office or district administrator office.

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- D. The COO of Woodhaven or designee of Woodhaven facility, day program or specialized service shall forward the complaint to:
 - 1. The Children's Division if the alleged victim is under the age of eighteen (18); or
 - 2. The local Regional office or after hours number.
- E. Failure to report shall be cause for disciplinary action, criminal prosecution, or both.
- F. If a complaint has been made under this rule, the CEO, COO or designee of Woodhaven and all employees of the facility, program or service shall fully cooperate with law enforcement authorities and with department employees or employees from other agencies authorized to investigate the complaint. Failure to cooperate may result in contract termination or dismissal of the employee.
- G. The CEO, COO or designee of Woodhaven facility, day program or specialized service that is licensed, certified or funded by the department shall immediately report to the local law enforcement official any alleged or suspected:
 - 1. Sexual abuse; or
 - 2. Abuse or neglect which results in physical injury; or
 - 3. Abuse, neglect or misuse of funds/property if head of agency has cause to believe that criminal misconduct is involved.
- H. A department investigator shall gather facts and conduct an investigation regarding the alleged abuse or neglect. The investigation shall be conducted in accordance with the procedures and time frames established under the department's operating regulations. Upon completion of the investigation, the investigator shall present written findings of facts to the Director of Central Missouri Regional Office.
- I. Within twenty (20) working days of receiving the final report from the investigator, if there is a preliminary determination of abuse, neglect or misuse of funds/property, the Director of CMRO shall send to the alleged perpetrator a summary of the allegations and findings which are the basis for the alleged abuse/neglect/misuse of funds or property; the provider will be copied. The summary shall comply with the constraints regarding confidentiality contained in section 630.167, RSM and shall be sent by regular and certified mail.
 - 1. The alleged perpetrator may meet with the Director of CMRO or department designee, submit comments or present evidence; the provider may be present and present comments or evidence in support of the alleged perpetrator. If the alleged perpetrator wishes to have this meeting, he or she must notify the Director of CMRO or department designee within twenty (20) working days of receiving the summary.
 - 2. This meeting shall take place within twenty (20) working days of notification, unless the parties mutually agree upon an extension.

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3. Within twenty (20) working days of the meeting, or if no request for a meeting is received within twenty (20) working days of the alleged perpetrator's receipt of the summary, the Director of CMRO or department designee shall make a final determination as to whether abuse/neglect/misuse of funds or property took place. The perpetrator shall be notified of this decision by regular and certified mail; the provider will be copied. If the charges do not meet the criteria in paragraphs (L) & (M), the letter shall advise the perpetrator that they have twenty (20) working days following receipt of the letter to contact the department's hearings administrator if they wish to appeal a finding of abuse, neglect or misuse of funds/property.
 4. If there is no appeal, the decision of the Director of CMRO or department designee shall be the final decision of the department.
 5. The department's effort to notify the alleged perpetrator at his/her last known address by regular and certified mail shall serve as proper notice. The alleged perpetrator's refusal to receive certified mail does not limit the department's ability to make a final determination. Evidence of the alleged perpetrator's refusal to receive certified mail shall be sufficient notice of the department's determination.
- J. If an appeal is requested, the hearings administrator shall schedule the hearing to take place within ninety (90) working days of the request, but may delay the hearing for good cause shows. At the hearing, the Director of CMRO or department designee shall present evidence supporting its findings of abuse, neglect, misuse of funds/property, or all. The provider or perpetrator may submit comments or present evidence to show why the decision of the Director of CMRO or department designee should be modified or overruled. The hearings administrator may obtain additional information from department employees as he or she deems necessary.
- K. The decision of the hearings administrator shall be the final decision of the department. The hearings administrator shall notify the perpetrator, and the Director of CMRO or department designee by certified mail of the decision within twenty (20) working days of the appeal hearing; the provider will be copied.
- L. The opportunities described in sections (H), (I) and (J) of this rule regarding a meeting with the Director of CMRO and an appeal before the department's hearings administrator apply also to providers and alleged perpetrators in an investigation of misuse of funds/property.
- M. For those charges in paragraphs (L) & (M), an alleged perpetrator does not forfeit his/her right to an appeal with the department's hearings administrator when he or she declines to meet with the Director of CMRO under subsections (H) (1) and (2) of this rule.

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- N. If the department substantiates that a person has perpetrated physical abuse, sexual abuse, verbal abuse, class I neglect, or misuse of funds/property, the perpetrator shall not be employed by the department, nor be licensed, employed or provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department. The perpetrator's name shall be placed on the department Disqualification Registry pursuant to section 630.170, RSMo. Persons who have been disqualified from employment may request an exception by using the procedures described in 9 CSR 10-5.210 Exception Committee Procedures. If you were placed on the EDR prior to 8/28/12 you may request removal. Just like a request for exception, anyone seeking removal needs to contact the Exceptions Committee Coordinator, at exceptions@dmh.mo.gov to request instructions
 - O. If the agency substantiates that employee misconduct has occurred the employee will be subject to a 1 to 20 day suspension for the 1st count and if the employee receives 2 counts of employee misconduct within a 12 month period, they will be recommended for termination.
 - P. Regardless of the status of the investigation, Woodhaven, at its discretion may pursue separate disciplinary action, including termination of the employee. If disciplinary action occurs and the employee is suspended pending further investigation, the employee will be given a copy of Abuse/Neglect Definitions, Reporting the Investigation procedure 2-6-8 along with a letter of suspension.
 - Q. Disciplinary action not involving termination does allow the employee the right to file a grievance. The employee is required to follow the Grievance/Appeal Procedure No. 2-6-7 or recommendation of termination may be appealed to the Chief Executive Officer or Chief Operating Officer under separate Procedure.
 - R. Employees may also be terminated when a Woodhaven management representative recommends termination based upon a "reasonable belief" following an internal investigation that the employee committed an act of abuse as defined under the definition section of procedure 2-6-8. The definition of "reasonable belief" is where the available facts, when viewed in the light of surrounding circumstances, would cause a reasonable person to believe the client was abused or neglected.
 - S. In accordance with 9 CSR 10-5.190, no person convicted of specified crimes may serve in facilities or programs licensed, certified or funded by the department.
 - T. No director, supervisor or employee of a residential facility, day program or specialized service shall evict, harass, dismiss or retaliate against a individual supported or employee because he or she or any member of his or her family has made a report of any violation or suspected violation of individual supported abuse, neglect or misuse of funds/property. Penalties for retaliation may be imposed up to and including cancellation of agency contracts and/or dismissal of such person.
 - U. Individuals will not be retaliated against by any Woodhaven employee for reporting an allegation. Retaliation will be grounds for termination from employment at Woodhaven.
 - V. All employees, individuals served, and guardians can also report suspected abuse and/or neglect to the Missouri Adult Abuse and Neglect Hotline at 1-800-392-0210 24/7 for investigation. These reports can be made anonymously.

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ADMINISTRATIVE LEAVE – An individual placed on Administrative Leave because of an allegation of Abuse or Neglect or other violations of organizational rules, policies or procedures will be placed on such leave without pay but may utilize ETO up to the limits set below. At the outcome of the Abuse/Neglect investigation if the allegations are not substantiated, the individual may return to work if Woodhaven’s internal investigation has not recommended termination. An employee on suspension due to an investigation for allegations of abuse/neglect may use their ETO (up to 45 days of their weekly scheduled hours) or leave without pay. Employees will not accrue ETO during their suspension.

Approved by: _____
Director of Community and Residential Services Date