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DEPARTMENT OF PUBLIC WELFARE
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OFFICE OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES BULLETIN

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March 10, 2011	March 10, 2011	OMHSAS-11-06

SUBJECT:	BY:
Administrative Investigations	Sherry H. Snyder Acting Deputy Secretary Office of Mental Health and Substance Abuse Services

SCOPE:

State Mental Hospitals
South Mountain Restoration Center
Sexual Responsibility Treatment Program.

PURPOSE:

To provide a uniform policy and procedure for the definition, reporting and investigation of allegations of consumer abuse for use within all Pennsylvania State Mental Hospitals, the South Mountain Restoration Center and the Sexual Responsibility Treatment Program that assures the involvement of external advocates, communication of the outcome of the investigation to the individual consumer, and completion of necessary reporting to other authorities to include those representing the criminal justice and Department of Aging (PDA). This policy supplements OMH 92-14 “Patient Abuse Investigations Investigator’s Resource Manual,” and assures full compliance with Older Adult Protective Services Act (OAPSA): 6 Pa. Code 15.45 (c) of OAPSA, 35 PS §§ 10225.701-708.

BACKGROUND:

The Department of Public Welfare’s (DPW) program to insure the reporting and investigation of consumer abuse has been in place since the 1980’s. The State Mental Hospital system initiated a Quality Assurance/Risk Management Program to insure compliance with DPW Manual section 7178. Based upon the DPW Personnel and Administrative Manual subsections 7178.4, OMH 92-14 bulletin provided the exclusive policy and procedure. Subsequently, Office of Mental Health and Substance Abuse Services (OMHSAS) Policy: Bulletin SMH-P-09-01: Inclusion of External Advocates in Hospital Administrative Investigations established the role of the External Advocate (EA) in the process.

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO: Office of Mental Health and Substance Abuse Services, Bureau of Policy, Planning & Program Development, P.O. Box 2675, Harrisburg, PA 17105. General Office Number 717-772-7900.

Definitions: #1-6: Department of Public Welfare (DPW) Personnel Manual, Section 7178 and #7: Older Adult Protective Services Act (OAPSA)

A. Definitions of Abuse:

1. **Physical** - Any act or omission which may cause or causes physical pain, harm, or injury to the consumer or where it is reasonable to believe that pain, harm, or injury would result from:

   a. Slapping or kicking;
   b. Pushing or rough handling, or
   c. Failing to intervene in a fight between consumers which results in physical harm to the persons involved.

2. **Non-Physical** - Any act or omission which reasonably may cause or causes emotional harm, psychological harm, mental distress or humiliation, or where it is reasonable to believe that harm would result regardless of the cognitive or sensory level of the consumer. The actions could include:

   a. Verbal assault;
   b. Ignoring a need, or
   c. Teasing or degrading.

3. **Neglect** - Any act or omission which causes or may cause emotional or physical pain, harm, or injury to a consumer or which violates the consumer's rights done carelessly and unintentionally, which falls below reasonable standards of conduct expected of employees in performing their jobs. These actions could include:

   a. Leaving a consumer who is care dependent unattended;
   b. Allowing a consumer access to harmful substances (e.g., chemicals, sharp instruments), or
   c. Failing to observe safety precautions.

4. **Exploitation** - Consumer exploitation is an unjust or improper use of a person for the benefit or advantage of another. Employees commit an act of abuse when they exploit a consumer for their own benefit or benefit of others or condone or encourage exploitation of a consumer by another person. Exploitation also includes any sexual contact between staff and consumers, which is absolutely forbidden. These actions could include:

   a. Appropriating, borrowing or taking without authorization monies or personal property belonging to the consumer;
   b. Engaging in sexual activity with a consumer;
   c. Taking advantage of a consumer in any manner because of his/her inability to protect themselves or their rights, or

d. Making plans with a consumer while in the hospital to meet after discharge for the purpose of dating or sexual activity.

5. **Violation of Regulation, Policy/Procedure** - Any act which violates regulations, or procedure relating to either a consumers' rights or care, where failure to observe the regulation, or procedure may reasonably cause or causes the consumer emotional or physical pain, harm, or injury.

6. **Offenses Related to Consumer Abuse** - Any action or omission by an employee, (either directly or indirectly), which in any way hinders, impedes, interferes with or effects the successful completion of a consumer abuse investigation and/or any subsequent administrative or criminal action contemplated or taken as a result of the investigation. An example would be the failure to render a written statement of personal testimony when asked by an investigator, or failure to provide full, complete and accurate information to an investigator. Intent to cause harm to consumers, or to otherwise violate the Consumer Abuse Policy is not a requirement for substantiation of a violation. In some instances, especially in cases of failure to follow consumer care policies, consumer abuse can occur despite the absence of intent to cause actual harm or suffering. These offenses could include:

   a. Failure to report knowledge of consumer abuse or suspected consumer abuse or failure to take appropriate action when informed or after becoming aware of an allegation of consumer abuse (either actual or suspected);
   b. Making false and/or misleading statements to appropriate investigators/officials regarding a matter or circumstances surrounding an incident of actual or suspected consumer abuse;
   c. Failure and/or refusal to answer appropriate or reasonable questions or provide signed written statements regarding an incident or circumstances surrounding an incident of actual or suspected consumer abuse, and/or
   d. Destroying, refusing to turn over, falsifying or altering records, documents or other evidence which relates or may relate to an incident of actual or suspected consumer abuse.

7. **Abuse as defined by the OAPSA** - The occurrence of one or more of the following acts:

   a. The infliction of injury, unreasonable confinement, intimidation or punishment resulting in physical harm, pain or mental anguish;
   b. The willful deprivation by a caretaker of goods or services which are necessary to maintain physical or mental health, and/or
   c. Sexual harassment, rape or abuse, as defined in the act of October 7, 1976 (P.L. 1090 No. 218), known as the Protection from Abuse Act.

8. **Serious bodily injury** – Injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ.

9. **Serious physical injury** – An injury that:

   a. Causes a person severe pain; or
   b. Significantly impairs a person's physical functioning, either temporarily or permanently.

10. **Sexual abuse** – Intentionally, knowingly or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest.

11. **Other Definitions/Acronyms:**

   a. CEO – Chief Executive Officer
   b. AOC – Administrator on Call
   c. Administrative Investigation (AI) formerly called Patient Abuse Investigation
   d. AIC – Administrative Investigation Coordinator
   e. AI – Administrative Investigator

Policy:

Acts of consumer abuse are forbidden. All individuals served by the state mental hospital system will be treated with dignity and respect, assured of all civil and human rights in the most humane manner possible and be represented by an advocate of his/her choosing. The presence of disability would in no way diminish these rights. This policy establishes a uniform approach to protect consumers from abuse and is also intended to protect employees and others from unfounded charges and/or prosecution.

A. Reporting Consumer Abuse Allegations

1. Consumer Reporting

Any consumer witnessing or alleging abuse may:

a. Report the allegation to the CEO or any staff person. The employee will immediately report the allegation to the CEO or designee;
b. Contact the External Mental Health Advocate (EA) at the pertinent State Mental Hospital or the South Mountain Restoration Center. (The EA will immediately report the allegation by phone and then submit the Advocate's Incident Reporting Form to the CEO or designee.) and,
c. Contact the Pennsylvania Department of Aging Abuse hotline at 1-800-990-8505.

2. Employee Reporting

a. Any employee witnessing or informed of an allegation of consumer abuse will ensure the safety of the consumer and immediately report by phone the incident to the CEO or designee and complete an Incident Report (Form SI-815);
b. During regular working hours, the CEO or designee will assure the assignment of a trained Administrative Investigator (AI). The investigator shall not be assigned to an investigation involving a consumer or staff member from their direct area of supervision or work site;
c. On weekends, holidays or after hours, an employee will report by phone the allegation to the nurse manager (NM) or registered nurse supervisor (RNS) on duty. The RNS then notifies the Administrator-on-Call (AOC), arranges for a physical exam of the consumer/alleged victim, if indicated, and ensures that pictures are taken and evidence if any, is preserved, and
d. On weekends, holidays or after hours, the AOC in concert with the RNS will initiate the investigative process. The AOC will have access to a list of investigators to assign the investigation. The nature of the incident, the type of alleged abuse and the name of the investigator assigned will be reported to the CEO or designee on the next scheduled working day.

3. Other Reporting

Any consumer, visitor, family member, student, volunteer, or contractor who observes an action or situation which is abusive in nature; anyone who receives a report of alleged abuse; or has reason to believe that an abusive act may have occurred is asked to immediately report the circumstances in person or by telephone to one of the following:

a. Any Supervisor on duty;
b. The Department Manager; or
c. The CEO or designee.

B. Investigating Allegations Of Consumer Abuse

1. Notification

Upon notification of an allegation of consumer abuse, the CEO or AOC or designee ensures that the consumer's safety and treatment needs have been addressed and then directs completion of necessary notification as follows:

a. The AIC or designee will immediately make an oral report of any allegation involving any suspected abuse as defined by OAPSA to the local Area Agency on Aging (AAA) at any time of day at 1-800-490-8505;
b. For allegations involving serious abuse as defined by OAPSA, (see definitions on page 4), the CEO, AOC or designee will telephone the Pennsylvania State Police

(PSP) at any time; the (PDA) at 717-265-7887 during the same business day or at the opening of the next business day if the allegation occurred after hours; and, the Director, Bureau of Hospital and Community Programs, OMHSAS;

c. For allegations of abuse resulting in death, the CEO or AOC or designee will telephone the County Coroner, and
d. The AIC or designee will complete the Mandatory Abuse Reporting Form, (Attachment 1), within 24 working hours and faxes it to the following:

   i. Local AAA;
   ii. Disability Rights Network (717-236-0192);
   iii. PSP if the allegation involves abuse meeting the OAPSA serious abuse standard, page 4, or
   iv. External Advocate.

2. Investigation Completion and Review Process

a. Upon completion of the Administrative Investigation, the investigator will forward to the AIC the complete investigatory packet including evidence gathered to the AIC for review;
b. The AIC will thoroughly review the information provided and contact the investigator if additional information is warranted;
c. The AIC will provide written initial/preliminary recommendations and forward packet to the CEO;
d. The CEO Office will notify the EA of the availability of the packet for review and comment. Any additionally requested follow-up will be conveyed to the AIC to ensure these items are addressed by the investigator;
e. A final review meeting including the CEO, respective Assistant Superintendent, Department Head or designated supervisor of the target, Human Resource Staff, the assigned investigator, EA and the AIC will be held to review the findings and recommendations from the investigation;
f. Non-staff related recommendations will be forwarded to the appropriate department/committee for follow-up. The designated supervisor will be accountable for scheduling a pre-disciplinary conference as indicated by the findings of the investigation and the review group's conclusions;
g. The AAA and DRN will be informed of the activities, findings and results of investigations through written records of the investigative activities and remedial actions as they develop;
h. In situations where the AAA has decided to conduct its own investigations, the Protective Services staff of the AAA shall be considered to be state investigative personnel pursuant to Management Directive 505.18, effective February 14, 2003 and, if relevant to the investigation, shall be given access to non-public information within employee personnel files as provided by and in accordance with Management Directive under Section 7(f)(3)(b) relating to medical information and Section 7(f)(7) relating generally to employee non-public information;

i. The CEO will send a letter to the victim to inform him/her that the review has been completed and that based upon the findings the allegation could or could not be substantiated. A copy of the letter will be sent to the EA;
j. The EA will provide support to the victim and respond to additional questions;
k. Performance Improvement Department staff shall ensure that all related information from the SI-815 is entered into the statewide information system, and
l. In accordance with DPW Manual Section 7178.3, "In all instances in which an allegation of consumer/resident abuse has been investigated, (whether or not disciplinary or criminal action has resulted), the record of the investigation, including all documents produced, as well as a rationale for the final action/inaction is to be maintained indefinitely in a centrally located, confidential file at the facility."

3. Responsibilities

Responsibilities and roles relative to the investigation process are explained in the "Patient Abuse Investigator's Resource Manual" Bulletin OMH-92-14 issued December 14, 1992. Further emphasis of specific roles is clarified below:

a. CEO/(AOC) or designee shall:

i. Assign, insure implementation and follow up on all abuse investigations;
ii. Provide oversight of the overall process of an abuse investigation and all follow-up actions to insure the rights of all persons served and employed by the facility are protected by established policies and procedures and the completion of personnel actions in a fair, consistent and equitable manner and consistent with labor management requirements;
iii. Insure all incidents of abuse, neglect, exploitation or abandonment involving any adult being served will be reported according to legal requirements;
iv. Insure the provision of continuous coverage in his/her absence;
v. Assure prompt receipt of and timely and comprehensive response to all allegations of consumer abuse;
vi. Provide a sufficient number of trained abuse investigators;
vii. Insure thorough and timely administrative investigations consistent with Bulletin OMH-92-14, Patient Abuse Investigations Investigator's Manual;
viii. Appoint a facility Administrative Investigation Coordinator, and
ix. Assure completion of applicable training by all employees which provides opportunities to discuss:

a) Early intervention or redirection to avoid the use of more restrictive procedures;
b) Consumer rights and abuse regulations and procedures, and
c) Proper reporting procedure to assure necessary internal reporting and reporting to external bodies as needed.

b. Administrative Investigation Coordinator (AIC):

i. Maintains a roster of trained investigators;
ii. Tracks the assignment and completion of investigations;
iii. Communicates assignment to investigator's supervisor;
iv. Tracks timeliness of investigations and provides oversight of preparation of investigatory reports to insure completion per requirements;
v. Receives and immediately assigns for investigation all reported allegations of consumer abuse;
vi. Reviews with the CEO or AOC or designee the seriousness of the allegation as well as assures completion follow-up including immediate actions to reassure and/or treatment of the identified victim, notifications of external reporting authorities, family/significant other(s), criminal authorities, labor union representative(s), and/or the need to re-assign or suspend the targeted employee;
vii. Insures coverage during absences through the appropriate supervisor;
viii. Identifies training needs or supply needs of investigators. Will conduct periodic meetings with all trained investigators to identify problems encountered and problem-solve;
ix. Ensures that all consumers and staff are provided training regarding the need and appropriate method for reporting allegations of abuse. This training shall be provided upon admissions for consumers, during the hiring process for staff and regular reviews provided thereafter;
x. Provides visitors/contractors of the hospital access to information regarding the importance and method for reporting any abuse-related information, and
xi. Provides initial/preliminary recommendations of all Administrative Investigation Reports for final review/discussion by prescribed participants.

c. Chief Performance Improvement Executive:

i. Insures facility incident report is completed.

d. Human Resources Department:

i. Provides technical guidance concerning labor relations and the disciplinary process.

e. All Supervisors:

i. Complete investigators' training;
ii. Immediately report any incident of suspected consumer abuse to the CEO or AOC or designee in person or by telephone;
iii. If the situation involves sexual or physical abuse, immediately contact the consumer's physician or on-call physician and arrange for the necessary care and follow-up;

iv. Segregate all possible or potential witnesses and ensure that physical evidence is secured pending the arrival of the assigned investigator;
v. Insure the documentation of the alleged abuse on the SI 815 (SMH) or the RC-87 (SMRC).Support the investigation program by providing back up to investigator to insure timely completion of report, and
vi. Insure pertinent employees receive adequate training to promote the rights protection program.

f. All Employees:

i. Complete all assigned rights-related training;
ii. Recognize and protect the rights of those served by the facility and prevent their rights from being violated;
iii. Provide consumer care services in the most dignified manner possible;
iv. Treat each person served with respect and dignity. This includes the modeling of respect and dignity in all interactions with co-workers, visitors, contractors and the public;
v. Immediately report any knowledge of an act or suspected act of abuse in the manner prescribed by policy, and
vi. Cooperate to the fullest extent during an investigation of abuse to include provision of a written and signed statement when directed.

g. Area Agency on Aging (AAA):

i. Any allegation of consumer abuse as defined under OAPSA shall be reported to the AAA. Statutory provisions at 35 P.S. 10225.701-708 are applicable to OMHSAS operated facilities for consumers of any age. According to an agreement between the DPW and Department of Aging the investigation of such allegations will be conducted primarily by the institutional staff. However, the institutional staff shall keep the AAA or PDA fully informed of the activities, findings and results of the investigations through written records of the investigative activities and remedial actions as they develop;
ii. The AAA will closely monitor an investigation to determine whether the investigation is effectively implemented and appropriate resolution has been implemented to correct the situation. If not, the AAA shall conduct its own investigation to fulfill its obligation to provide protective services;
iii. Administrative investigations by the Office of Mental Health do not relieve the Area Agency on Aging of its mandated authority and responsibility to provide protective services. If the AAA determines if an older adult needs protective services or if his/her needs are not adequately being met, the Area Agency on Aging shall intervene and conduct its own investigation. All information will be maintained under the confidentially provisions outlined by OAPSA, and
iv. In situations where the AAA has decided to conduct its own investigation, the protective services staff of the AAA shall be considered to be state investigative personnel for purposes of Management Directive 505.18 effective

February 14, 2003 and, if relevant to the investigation, shall be given access to nonpublic information within employee personnel files as provided in accordance with Management Directive under Section 7(f)(3)(b) relating to medical information and Section 7(f)(7) relating to employee non-public information.

Attachment: Act-13 Mandatory Abuse Report Form and the Mandatory Abuse Report Form Instruction Sheet.