



## MONTANA STATE HOSPITAL POLICY AND PROCEDURE

### Allegations Of Abuse Or Neglect

**Effective Date:** December 1, 2015

**Policy #:** TX-17

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#### **I. PURPOSE:**

- A. To provide procedures for reporting, investigating, and following up when an allegation of patient abuse or neglect is made, or when other information is received indicating that patient abuse or neglect may have occurred.
- B. To provide procedures for providing notice of allegations or investigations and investigation findings to external agencies as required.

#### **II. POLICY:**

All patients have the right to be free from abuse or neglect as well as the fear of being abused or neglected. Allegations or information indicating that abuse or neglect may have occurred will be thoroughly and promptly investigated with appropriate follow-up action taken.

All Hospital employees have an obligation to protect patients, prevent abuse or neglect from occurring, and to report any and all information concerning occurrences where abuse or neglect may have occurred.

The Hospital recognizes that allegations of abuse or neglect may be the product of the symptoms of a person's mental illness, may be a reaction to restrictions placed upon an individual, or a mistaken interpretation of information. The Hospital also recognizes that persons with mental illness are vulnerable and are at risk for abuse or neglect. Investigation procedures will focus on determining facts and providing hospital managers and supervisors with the best possible information on which to base actions to protect patients and employees who may be the subject of allegations that prove to be untrue.

Abuse of patients, either verbal, physical or sexual, or by exploitation or neglect, is not tolerated and is considered grounds for disciplinary action up to and including termination. Retaliation, discrimination, or coercion against patients, employees, or others who report abuse or neglect is also not tolerated and is considered grounds for disciplinary action up to and including termination.

The Hospital recognizes that abuse or neglect may occur unintentionally. The fact that it was unintended does not diminish the fact that it occurred.

It may be confirmed that abuse or neglect occurred even though there may be no obvious evidence that a patient suffered harm. The risk of being harmed is sufficient to conclude that abuse or neglect occurred. The extent of the harm or risk of harm will be considered in determining the appropriate level of employee discipline or corrective action to take place when abuse or neglect is confirmed.

Dissatisfaction with care or treatment provided may not in and of itself constitute abuse or neglect. A disagreement about assessment findings, diagnosis, or care or treatment needed or provided is not grounds for conducting an investigation of abuse or neglect. Examples of disagreements may include but are not limited to; change of level, ward hold, visits, medical care, medications prescribed and professional opinions and judgment. These issues are more appropriately addressed through other processes such as discussion with the patient's treatment team, the grievance process, or review by clinical supervisors or administrative personnel.

Other agencies and organizations may also have obligations to investigate allegations of abuse or neglect. These include the Mental Disabilities Board of Visitors, the Montana Advocacy Program, the DPHHS Quality Assurance Bureau, and local, state, and federal law enforcement agencies. Montana State Hospital (MSH) will cooperate and coordinate investigation procedures with these or other agencies as requested.

Patients who are victims of abuse or neglect will be provided counseling and support directed at re-establishing therapeutic relationships and addressing the impact of the abuse or neglect on the individual. Also, at times people may perceive themselves to be the victim of abuse or neglect even though this cannot be substantiated by the facts. In this situation, appropriate counseling and treatment should be given as part of the individual's individualized plan of care.

### III. DEFINITIONS:

- A. Abuse – any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility. (M.C.A. § 53-21-102(1))
- B. Neglect – failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

The term includes but is not limited to:

1. deprivation of food, shelter, appropriate clothing, nursing care, or other services;
2. failure to follow a prescribed plan of care and treatment; or

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3. failure to respond to a person in an emergency situation by indifference, carelessness, or intention. (M.C.A. § 53-21-102(12))
- C. Investigator – The person or persons assigned to find facts about an incident or allegation of abuse or neglect.
- D. Investigation Committee – A Committee made up of two or more of the individuals in the following positions: Hospital Administrator, Human Resources Director, Medical Director, Director of Nursing, and Director of Quality Improvement.
- E. Types of Abuse or Neglect – Abuse and neglect may take different forms. The following terms are described to help investigators determine what to look for when collecting facts or following up on a complaint.
1. Abandonment – The desertion of a patient by a staff member who has responsibility for providing care and resulting in harm or the risk of harm occurring to the patient. Examples include leaving a patient unattended who requires constant supervision or care.
  2. Abuse, emotional or psychological – An act which results, or has the potential to result, in mental impairment of a patient’s intellectual or psychological functioning. Examples include, but are not limited to, humiliation, harassment, imitating or mocking behavior, inappropriate threats of punishment or deprivation, use of derogatory nicknames, establishing relationships with patients involving a focus or purpose other than accepted therapeutic practice.
  3. Abuse, physical – An act that results, or has the potential to result in death, pain, temporary or permanent disfigurement, or impairment of any bodily organ or function. Examples include, but are not limited to, rough handling, hitting, slapping, pinching, pushing, shoving, kicking, and controlling behavior through corporal punishment.
  4. Abuse, sexual – An act which defies the sexual integrity of a patient through gestures, verbal and/or physical actions. Examples include, but are not limited to, verbal or physical sexual harassment such as inappropriate touching of private body parts, kissing, fondling, intercourse, or sexually offensive language, jokes and gestures, sexual coercion, or sexual assault.
  5. Abuse, verbal – The use of oral, written or gestured language that willfully includes disparaging and derogatory terms to patients or their families, or within their hearing distance, regardless of their age, ability to comprehend or disability. Examples of verbal abuse include, but are not limited to, tone of voice, such as yelling, screaming or arguing; harassment, threats of harm;

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saying things to frighten a patient, such as telling a patient he/she will never be able to see his/her family again or he/she will never be able to leave the hospital.

6. Financial or Material Exploitation – Illegal or improper use of a patient’s funds, property, or assets without informed consent and resulting in monetary, personal, or other benefit, gain, or profit for the perpetrator, or monetary or personal loss by the patient.
7. Medical Neglect – Failure to provide care for existing medical problems. Examples include: Not taking action on medical problems, prescribed treatment, or therapies; not calling a physician when necessary; failure to monitor for adverse drug reactions.
8. Misappropriation of personal property – The deliberate misplacement, exploitation or wrongful, temporary or permanent use of a patient belongings or personal property located within or outside of the facility. Examples include, but are not limited to, inappropriate use, disposal or mishandling of personal funds, real estate, automobiles, clothing and other belongings, entering into financial transactions with patients, and trading articles with patients.

#### IV. Responsibilities:

##### Employee Responsibilities and Initial Notification Procedures

- A. Employees who witness or have knowledge of patient abuse shall immediately report it to a registered nurse assigned to the program where the patient resides or to a nurse supervisor. If for some reason, the employee believes they cannot or should not inform a registered nurse or a nursing supervisor, the employee may contact the Hospital Administrator, Director of Nursing, Director of Quality Improvement, Medical Director, Licensed Independent Practitioner (LIP), or Administrator of the DPHHS Addictive and Mental Disorders Division directly.
- B. Employees may report their concern to an outside protection and advocacy program such as the Mental Disabilities Board of Visitors or the Montana Advocacy Program. However, reporting to an advocacy program does not relieve the employee of their responsibilities to report their observations or concerns through appropriate channels within the organization (line of authority). Several options for reporting observations or concerns are available to employees including the Hospital Administrator and the Administrator of the DPHHS Addictive and Mental Disorders Division. Employees may be subject to disciplinary action for failure to report abuse or neglect through appropriate channels within the organization.

- C. The Hospital Administrator or designee is to be informed immediately when information arises to indicate that patient abuse may have occurred. This may be done directly by any employee when they see or otherwise learn of a situation that constitutes abuse or neglect, or it may be done by the supervisor (e.g., registered nurse on the unit) who received the report from the employee. When the Hospital Administrator cannot be reached, a message is to be left on his/her voice mail (693-7010) and the Associate Hospital Administrator, Director of Nursing, Medical Director, Director of Quality Improvement, or DPHHS/AMDD Division Administrator are to be informed.
- D. Documentation in the form of incident reports, progress notes, or written statements are to be completed and provided to a Nursing Supervisor or Director of Nursing by employees reporting allegations of abuse or neglect.

**V. PROCEDURE:**

Review and Investigation

- A. The investigation process begins when a Nursing Supervisor, the Director of Nursing, the Hospital Administrator, the Medical Director, or the Director of Quality Improvement receives information that abuse or neglect may have taken place. Information may come from a staff member, a patient, visitor, or family member of a patient, a patient advocate, another agency, or other sources. Information may be received orally, in writing, or via electronic communications. The receipt of information triggers a process for taking action to protect patients and employees and collecting information to determine facts that will either substantiate a finding that abuse or neglect took place or lead to the conclusion that it did not. In all cases, the emphasis is on finding facts and taking appropriate action to protect all parties, including people who may be victims of abuse and neglect and people who may be unfairly accused.
- B. The Hospital Administrator or his/her designee will take a lead role in coordinating the fact-finding investigation. This process involves gathering relevant information and evidence that will allow supervisory personnel to conclude whether abuse or neglect occurred, and if it occurred, why it happened and who was responsible.

Depending on the nature of the information received by the Hospital Administrator or designee, the investigation process will take different forms. The following are the steps that will normally be followed:

1. A preliminary review of the situation will be conducted to determine:
  - a. the nature of the allegation;
  - b. identity of patient(s) who may have been a victim(s) or are at risk for being a victim(s);

- c. physical and mental status of any person who may be the subject of abuse or neglect or who made the complaint;
  - d. identity of staff who may be responsible for abuse or neglect;
  - e. identify of possible witnesses, either staff, patients, family members, or visitors;
  - f. immediate actions that may be necessary to protect patients and staff, and preserve evidence;
  - g. other evidence that will uncover facts that will lead to conclusions about what occurred.
2. When applicable, the incident scene will be secured and physical control will be maintained of relevant documents. Photographs or others records of evidence or the patient's condition should be made. When appropriate, potential witnesses should be kept apart pending the arrival of an investigator.
  3. If the allegation(s) involves physical abuse, an incident report must be completed by the reporting supervisor and the patient must be seen at the earliest reasonable opportunity (generally within two hours), by the attending physician/psychiatrist who must note any injuries in the medical record. Injuries must be described in detail noting size, shape, color, probable time of injury and, if possible, probable cause of injury. The reporting supervisor will contact the psychiatrist/physician or other licensed prescriber to arrange for an examination of the patient.

If the allegation(s) involves sexual assault/rape refer to and follow MSH policy ER-01, *Allegation of Rape or Sexual Assault* (located in the Emergency Response section of Volume I of the MSH Policy Manuals) when appropriate.

4. The Hospital Administrator or designee will assign an investigator to collect all available evidence. The assignment of an investigator will occur as soon as possible. The assignment of the investigator will be made with due consideration to ensure the investigator can be effective, thorough, fair, and impartial when collecting evidence and seeking to find facts. The appointment of the investigator will take into consideration training and skills in investigation procedures. The appointment will also make every reasonable effort to avoid potential conflicts that could compromise the integrity of the investigation.
5. Under some circumstances it may be appropriate for the investigation to be conducted by a person or persons who are independent from the organization (MSH). This decision to use an outside investigator will be made by the Hospital Administrator or DPHHS/AMDD Administrator. Factors to be considered in making the decision to use an outside investigator include, but are not limited to timeliness; availability; knowledge of the patient population and the organization; experience; independence; and potential conflicts.

6. The investigation will proceed without unreasonable delay.
7. If at any point in the investigation, there is enough information to conclude that a particular employee (or group of employees) is accused of committing an act of abuse or neglect, they will be informed by the supervisor of their department of the accusation and asked to submit a statement or other evidence to be considered. A determination will be made at that time regarding whether to continue the employee in their current assignment, reassign the employee, suspend the employee with pay, or under certain circumstances, suspend the employee without pay.
8. The investigator will collect any physical, demonstrative, or documentary evidence which might be related to the incident. The investigator must also try to collect statements from:
  - a. the individual(s) bringing the allegation(s),
  - b. the alleged victim(s),
  - c. other persons (including patients) with knowledge or potential knowledge of the incident(s), and
  - d. the individual(s) accused of abuse or neglect.
9. If necessary, employees may be held beyond the end of their shift. An employee who refuses to provide a statement to the investigator will be subject to disciplinary action.
10. All physical, demonstrative, or documentary evidence must be properly stored and identified and must remain in the custody of the investigator who collected it until it can be forwarded to the Hospital Administrator or Human Resources Director.
11. Upon completion of the investigation, the investigator will prepare a summary report of the findings and provide it to the Investigation Committee.
12. Investigation procedures may be altered or adjusted to meet the particular circumstances of any case. The Hospital Administrator or designee will authorize changes in procedure and ensure the investigation proceeds promptly and thoroughly.

#### Investigation Findings

- A. At the conclusion of the investigation, the Investigation Committee (comprised of two or more of the following administrative staff members: Hospital Administrator, Human Resources Director, Medical Director, Director of Nursing, Director of Quality Improvement) will convene to review all available evidence and

documentation. In order to ensure the committee can convene promptly, only two members need be present in order for the committee to take action, though broader participation is desirable when considering more complex issues. Members may be excluded if the allegations involve employees in the direct line of supervision or in order to avoid a conflict of interest.

- B. The committee may consult with or question the investigator(s) regarding their interpretation of the evidence, or to request clarification or more information.
- C. If the committee determines that, based upon the findings reported by the investigator, abuse or neglect has occurred and one or more employees are responsible, the departmental supervisor of the employee(s) and the Human Resources Director will be informed. The Human Resources Director will advise the supervisor on the appropriate disciplinary action to be considered and procedures for administering discipline. Any disciplinary measures will be implemented in accordance with state law and personnel policies and collective bargaining agreements when applicable. The departmental supervisor is responsible for administering any disciplinary action taken and ensuring proper procedures are followed. This will be done in consultation with the Hospital Administrator.
- D. The committee also may find that abuse or neglect did not occur or that the finding of the investigation is inconclusive. In this case, the Hospital Administrator and departmental supervisor will determine whether other action should be taken.
- E. A file with a summary of the investigation and other significant reports and documents will be maintained by the Hospital Administrator.

Special Considerations

- A. If at any point in the process described in this policy, management determines there is reasonable evidence indicating possible patient abuse; an employee may be reassigned and/or suspended with or without pay until an investigation has been completed.
- B. If at any step of the investigation, it appears that the alleged abuse or neglect might constitute a criminal offense (felony or misdemeanor); the Hospital Administrator or designee will report the incident to a local or state law enforcement agency and inform the Division Administrator. Hospital investigation may continue simultaneously and collaboratively with a criminal investigation if one occurs.
- C. An extension to any time limit identified in this policy may be granted by the Investigation Committee and/or Hospital Administrator when circumstances of the investigation so warrant. Such extensions will be documented.

- D. Any employee who has been suspended or terminated has the right to appeal through established grievance procedures.

Reporting

- A. The Hospital Administrator will notify the Mental Disabilities Board of Visitors and the Division Administrator any time an investigation of abuse or neglect is initiated (see M.C.A § 53-21-107).
- B. Upon conclusion of the investigation, a summary of the findings will be reported to the Mental Disabilities Board of Visitors and the Director of the Department of Public Health and Human Services (M.C.A. § 53-21-107). A copy will also be provided to the Division Administrator and other parties on a need to know basis.
- C. If the victim or alleged victim of abuse or neglect is 60 years old or older or has a developmental disability, notification and reporting procedures will be carried out consistent with the Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act will be completed (see , M.C.A. § 52-3-801 through 52-3-825).
- D. The DPHHS Quality Assurance Division will receive notice and reports of findings as required by licensure or certification standards.
1. The written report (Attachment A) will be completed for all allegations of abuse and will include:
    - a. name, address, and age of the abused;
    - b. person responsible for the patient's care;
    - c. name and address of the person who is alleged to have abused, neglected or exploited the older person, if known;
    - d. date allegation reported;
    - e. date allegation occurred;
    - f. date investigation started and completed;
    - g. rationale for selection of the investigator(s)
    - h. details of the investigation process;
    - i. extent of the abuse, neglect or exploitation, including any evidence of previous injuries;
    - j. details of any corrective or disciplinary action taken;
    - k. agencies notified of investigation/results;
    - l. name and address of the person making the report.

**VI. REFERENCES:** MSH policies

- A. #ER-01, *Allegation of Rape or Sexual Assault*  
B. #SF-04, *Incident Response and Reporting*  
C. #TX-16, *Use of Seclusion & Restraint Interventions*



MONTANA STATE HOSPITAL  
 ABUSE INVESTIGATION  
 FINAL SUMMARY

Details of Allegation	
Date initial allegation received	
Date Hospital Administrator Notified	
Date of Initial Notification to Board of Visitors	
Name of Staff against whom allegation is made	
Description of rationale for appointment of the investigator (address in-house or outside personnel)	
Describe Investigation Process	
Conclusions	
Details of Corrective Action Taken	
Other notifications made	
Other Remarks	
Date Final Summary Completed	
Copies to	
Signature and Date	