



MONTANA STATE HOSPITAL POLICY AND PROCEDURE

ACCESS TO PATIENTS AND TREATMENT AREAS BY DESIGNATED PROTECTION AND ADVOCACY SYSTEM

Effective Date: March 26, 2020

Policy: ADM-13

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I. PURPOSE: To assure that representatives of the protection and advocacy system designated by the State of Montana pursuant to 42 USC § 10801 et seq. and § 53-21-169 MCA, are provided reasonable unaccompanied access to patients of Montana State Hospital (MSH) as required by 42 U.S.C. § 10805, and 42 CFR § 51.42. MSH seeks to provide this access in a manner which respects the therapeutic purpose of the hospital, protects the privacy of all patients, and promotes the safety of all concerned.

II. POLICY:

- A. MSH recognizes staff and authorized agents of a protection and advocacy system have a right to reasonable unaccompanied access to MSH patients and areas of MSH as established in Federal law.
- B. MSH will provide a procedure for the protection and advocacy system to obtain reasonable unaccompanied access to areas of the hospital and/or patients of the hospital upon request consistent with 42 CFR 51.42.

III. DEFINITIONS:

- A. **Protection and advocacy (or P&A) system:** The agency designated by the Governor to provide mental health protection and advocacy system pursuant to 42 USC § 10801 *et seq.*, and § 53-21-169, MCA.
- B. **Staff and authorized agents of protection and advocacy system:** Protection and advocacy system employees with appropriate P&A-issued identification, and any other person for whom the protection and advocacy system has provided written designation as an authorized agent of the protection and advocacy system.
- C. **Areas of the facility which are used by patients or are accessible to patients:**
 - 1. Spratt, and Units A, B, D and E hallways, day halls and dining rooms and, when an investigation involves a particular patient, rooms such as seclusion rooms, observation rooms and patient rooms which have been occupied by that patient.
 - 2. Mental Health Group Homes including Johnson House, Mickelberry House, Mount Haggin Group Home and Pintlar Lodge day rooms, kitchen/dining areas

- and, when an investigation involves a particular patient, the room occupied by the patient.
3. Forensic Mental Health Facility (FMHF) including Pods A, B, C and D, hallways, day halls, dining rooms, classrooms and gymnasium and, when an investigation involves a particular patient, rooms such as seclusion rooms, observation rooms and patient rooms which have been occupied by a specific patient.
 4. Therapeutic Learning Center all patient areas.
 5. Recovery Center all patient areas inclusive of the Mental Disabilities Board of Visitors Offices.
 6. Main Hospital Cafeteria and Rotunda.
 7. Patient Accounts located in the administrative annex.

Access does not include any staff or administrative offices.

- D. Reasonable: The term “reasonable” is commonly defined as follows; an adjective
1. Agreeable to reason or sound judgment; logical.
 2. Not exceeding the limit prescribed by reason; not excessive.
 3. Moderate, especially in price; not expensive.
 4. Endowed with reason.
 5. Capable of rational behavior, decision, etc.

IV. RESPONSIBILITIES:

MSH Staff and Administration: Allow the protection and advocacy system and its authorized agents reasonable unaccompanied access to facilities and patients as provided in this policy. Unless specifically indicated otherwise under this policy, staff will apply MSH policy ADM-08, “Patient Visitation”, FP-04, “Forensic (D Unit) Security Procedures”, and MSH FMHF, “Security Procedures: Patient Visitation for the FMHF.

It is the responsibility of, and expectation for all parties referenced in this policy to conduct themselves in a professional and courteous manner during any form of interaction between each other, and with MSH patients. In the event an agent of a protection and advocacy system involved in exercising business managed via this policy begins to conduct themselves inappropriately or outside the boundaries of professional decorum, the offending party shall be warned and a request made of them to regain their composure, and perform their tasks in a professional, courteous fashion.

Should the offending party continue to display an inability to maintain a professional demeanor, and/or are unable to conduct themselves appropriately, the involved activity shall be suspended, and the individual shall be directed to vacate hospital grounds immediately. Inappropriate behavior and conduct is considered a significant disruption to patient care and treatment and is not an acceptable component to the therapeutic milieu at the MSH.

V. **PROCEDURE:** *

* This is MSH's preferred method to implement this policy.

- A. MSH Administrator or designee provides Request for Unaccompanied Access form to the protection and advocacy system or its authorized agents upon request (see attached).
- B. Protection and advocacy system staff or authorized agents submit completed Request for Unaccompanied Access form to MSH Administrator or designee.
- C. MSH Administrator or designee promptly approves, modifies, or delays requested access with reasons for any delay or modification of the access provided in writing, on the Request for Unaccompanied Access form, and provides a copy to the protection and advocacy system representative and to the front desk staff as far in advance to the requested visit as possible.

D. **ACCESS TO AREAS:**

- 1. **For investigations of abuse or neglect.** Pursuant to 42 CFR 51.42(b), staff and authorized agents of a protection and advocacy system will be permitted reasonable unaccompanied access to areas of the facility which are used by patients or are accessible to patients when an employee or authorized agent of a protection and advocacy system has certified in writing that:
 - a. An incident of abuse or neglect has been reported, or a complaint has been made to the protection and advocacy system;
 - b. The protection and advocacy system has determined there is probable cause to believe an incident of abuse or neglect has or may have occurred; or
 - c. The protection and advocacy system has determined there is or may be imminent danger of serious abuse or neglect of a patient.

The written certification must indicate the nature of the incident or provide a statement for the basis of probable cause to believe an incident has occurred, and identify the areas of the facility and the patient or patients involved so access may be granted to relevant areas of the facility.

- 2. **For information, training, monitoring and inspection.** Pursuant to 42 CFR 51.42(c), staff and authorized agents of a protection and advocacy system will be permitted reasonable unaccompanied access to areas of the facility which are used by patients or are accessible to patients, upon request, for the purposes of:
 - a. Providing information and training on, and referral to programs addressing the needs of individuals with mental illness, and information

and training about individual rights and the services available from the protection and advocacy system, including the name, address, and telephone number of the protection and advocacy system.

- b. Monitoring compliance with respect to the rights and safety of patients; and
- c. Inspecting, viewing and photographing all areas of the facility which are used by patients or are accessible to patients. Patients may not be photographed without documentation of appropriate written consent.

Such access will include, at a minimum, normal working hours and visiting hours. Protection and advocacy system visits for these purposes will be announced to patients in advance.

- E. **ACCESS TO PATIENTS:** Pursuant to 42 CFR 51.42(b) and (d), staff and authorized agents of a protection and advocacy system will be permitted unaccompanied access to patients during normal working and visiting hours, and at other times necessary to conduct a full investigation of an incident of abuse or neglect. Access will include the opportunity to meet and communicate privately with individuals regularly, both formally and informally, by telephone, mail and in person, subject to each patient's right to refuse. Patients include adults who have legal guardians, conservators, or other legal representatives.
- F. **ACCESS TO STAFF:** Pursuant to 42 CFR 51.42(b), the Montana State Hospital shall make every effort to provide access to employees for the purpose of fact finding and/or investigative discussion. Authorized agents of advocacy systems shall provide advanced notice of the names of employees who they desire to interview in an effort to ensure both the facility and employee are afforded the best opportunity for advanced preparation. This notice will also ensure patient care is not impacted and all involved parties are able to facilitate the investigative process in a timely manner. In the event staff are noticed regarding the need for an interview, they may choose to have an employee advocate present during any related discussion. Employee interviews may be recorded, and should a recording device be utilized, all parties present shall be noticed prior to the activation of the recording device. MSH staff may choose to participate in an interview without an advocate, and the use of a recording device. Electronic records of interviews shall be preserved for future reference and recall should such become necessary.

- VI. **REFERENCES:** 42 USC § 10801, et seq. (*Protection and Advocacy System Authority and Responsibilities*); 42 CFR § 51.42 (*Protection and Advocacy System reasonable unaccompanied access to patients and areas of mental health facilities*); § 53-21-169, MCA (*Protection and Advocacy System designation and authority*); MSH Policy ADM-08, Patient Visitation; MSH Policy FP-04, Forensic (D Unit) Security Procedures.

- VII. COLLABORATED WITH:** Director of Nursing Services, Director of Health Information, Director of Treatment, AMDD Administrator, and DPHHS Office of Legal Affairs.
- VIII. RESCISSIONS:** ADM-13, *Access to Patient and Treatment Areas by Designated Protection and Advocacy System* dated April 8, 2016; ADM-13, *Access to Patients and Treatment Areas by Designated Protection and Advocacy System* dated November 16, 2012.
- IX. DISTRIBUTION:** All hospital policy manuals.
- X. ANNUAL REVIEW AND AUTHORIZATION:** This policy is subject to annual review and authorization for use by either the Administrator or the Medical Director with written documentation of the review per ARM § 37-106-330.
- XI. FOLLOW-UP RESPONSIBILITY:** Hospital Administrator
- XII. ATTACHMENTS:** None.

Signature:

Kyle Fouts
Hospital Administrator