



MISSOURI DEPARTMENT OF MENTAL HEALTH

KEITH SCHAFER, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
2.205

CHAPTER Clients Rights	SUBCHAPTER Investigation Procedures	EFFECTIVE DATE 12-1-13	NUMBER OF PAGES 11	PAGE NUMBER 1 of 11
SUBJECT Abuse and Neglect Definitions, Investigation Procedures and Penalties, State Operated Facilities		AUTHORITY Sections 630.050		HISTORY SEE BELOW
PERSON RESPONSIBLE Department Deputy Director			Sunset Date 7-1-17	

Purpose: Prescribes procedures for reporting, investigating and processing reports and complaints of abuse, neglect and misuse of funds/property of Department of Mental Health (department) consumers in state operated department facilities.

Application: Applies to department employees.

(1) As used in this DOR, the following terms shall mean:

(A) "Complainant," any person who files a complaint.

(B) "Complaint," allegation that physical, sexual or verbal abuse, neglect, or misuse of funds/property has occurred.

(C) "Consumer," individual receiving services from any facility operated by the department, and may also be referred to as client, resident or patient.

(D) "Disqualification Registry," the list maintained by the department pursuant to section 630.170.11, RSMo, that includes the names of any person who has been finally determined by the department to be disqualified from holding any position in any public or private facility, residential facility, day program or specialized service that is operated, licensed, certified, accredited, in possession of deemed status, or funded by the department or in any mental health facility or mental health program in which people are admitted on a voluntary or involuntary basis or are civilly detained pursuant to chapter 632, RSMo, based upon an administrative substantiation of abuse or neglect. Consistent with the requirements of section 630.170.13, RSMo, effective August 28, 2012, the head of the facility or designee shall determine whether a person with a substantiation of abuse or neglect on or after August 28, 2012 should be placed on the Disqualification Registry for a period of two (2) years, five (5) years, ten (10) years, or permanently.

(E) "Events Management and Tracking (EMT)," the automated database maintained by the department to collect and analyze data related to events that have actual or potential adverse outcomes for consumers.

(F) "Events Management and Tracking form," department approved form to collect relevant data on events that have actual or potential adverse outcomes for consumers.

(G) "Inquiry," a process used by the heads of facilities or designees to gather facts surrounding an event, complaint or upon discovery of unknown injury to determine if there is reasonable cause to believe that physical, sexual or verbal abuse, neglect, or misuse of funds/property has occurred.

(H) "Investigation," a process used by the investigations unit to gather facts surrounding an event once it is determined that there is reasonable cause to believe that physical, sexual or verbal abuse, neglect, or misuse of funds/property has occurred.



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(I) "Misuse of funds/property," the misappropriation or conversion for any purpose of a consumer's funds or property by an employee or employees with or without the consent of the consumer or the purchase of property or services from a consumer in which the purchase price substantially varies from the market value.

(J) "Neglect," failure of an employee to provide reasonable or necessary services to maintain the physical and mental health of any consumer when that failure presents either imminent danger to the health, safety or welfare of a consumer, 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 consumer causes serious injury to another consumer.

(K) "Physical abuse,"

1. An employee purposefully beating, striking, wounding or injuring any consumer;
2. In any manner whatsoever, an employee mistreating or maltreating a consumer in a brutal or inhumane manner; or
3. An employee handling a consumer with any more force than is reasonable for a consumer's proper control, treatment or management.

(L) "Report of physical, sexual or verbal abuse, neglect or misuse of funds/property," an allegation of physical, sexual or verbal abuse, neglect or misuse of funds/property that is based upon reasonable cause to believe that the allegation has occurred.

(M) "Sexual abuse," any touching, directly or through clothing by an employee of a consumer 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 a consumer to touch the employee for sexual purposes;
4. Promoting or observing for sexual purpose any activity or performance involving consumers including any play, motion picture, photography, dance, or other visual or written representation;
5. Failing to intervene or not attempting to stop inappropriate sexual activity or performance between consumers; and/or
6. Encouraging inappropriate sexual activity or performance between consumers.

(N) "Special Request Inquiry (SRI)," a process used by the investigations unit to gather facts surrounding an event when a compelling reason for an external review by a professional investigatory body exists but reasonable cause to believe that physical, sexual or verbal abuse, neglect, or misuse of funds/property has not been determined.

(O) "Verbal abuse," an employee making a threat of physical violence to a consumer, when such threats are made directly to a consumer or are made about a consumer in the presence of a consumer.



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(2) The department director delegates authority to heads of the facilities to perform duties and take appropriate action to ensure consumers reside in safe and therapeutic environments, subject to the supervision of the division director or department director. The heads of facilities or designees, upon receipt of any complaint or discovery of unknown injury, shall conduct an inquiry if necessary to determine whether there is reasonable cause to believe that any prohibited conduct as set forth herein has occurred.

(A) If there is reasonable cause to believe that physical, sexual or verbal abuse, neglect or misuse of funds/property has occurred, the head of facility or designee shall immediately refer the complaint to the investigations unit on the department approved form for initiating an investigation.

(B) The investigations unit shall process and investigate all complaints when there is reasonable cause to believe that physical, sexual or verbal abuse, neglect or misuse of funds/property has occurred. Once reasonable cause has been determined, the investigations unit shall assign an investigator immediately. The assigned investigator shall initiate contact with the facility within twenty-four (24) hours to arrange for securing evidence and such other activities as may be necessary. The heads of facilities or designees shall identify a contact person at each facility to assist in these tasks.

(C) The investigations unit may conduct SRIs at the request of heads of facilities or designees in situations when a compelling reason for external review by a professional investigatory body exists but reasonable cause to believe that physical, sexual or verbal abuse, neglect, or misuse of funds/property has not been determined. Assignment and initiation of SRIs shall be consistent with the requirements for investigations in subsection (2)(B) of this DOR. If during the SRI, it is determined that there is reasonable cause to believe that physical, sexual or verbal abuse, neglect, or misuse of funds/property has occurred, the SRI shall be converted to an investigation with notification to the head of facility or designee.

(D) The investigations unit is granted the authority to set criteria for the commencement of fieldwork for investigations and SRIs based upon the nature of the report. The criteria shall be incorporated into the procedures of the investigations unit.

(3) Complaints shall be immediately reported to the head of the facility or designee by any person including department employees, contract employees, or any other mandatory reporter as set out in section 630.165, RSMo, who knows through direct or indirect means that abuse or neglect defined herein has occurred, or suspects such has occurred or receives a complaint. Persons identified herein who fail to report complaints of known or suspected incidents of abuse or neglect as defined herein are subject to discipline, criminal prosecution or both.

(4) The head of the facility or designee shall record on the department EMT form all complaints and reports.

(A) The head of the facility or designee shall ensure that the form is thoroughly and accurately completed. All complaints and reports shall be entered into the EMT



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database as inquiries by the head of the facility or designee within twenty-four (24) hours of the incident, or by the end of the next working day after the incident occurred, was discovered, or notification of the incident was received.

(B) All complaints and reports involving a consumer death shall be entered into the EMT database to ensure that the Department of Social Services State Technical Assistance Team (STAT) is notified of all deaths of consumers under the age of eighteen (18). The data entered into the EMT application will be used to generate a report to STAT for each death of a consumer under the age of eighteen (18).

(5) The head of the facility or designee shall immediately report to:

(A) The Children’s Division - Child Abuse/Neglect Hotline any complaints if the alleged victim is under the age of eighteen (18).

(B) Local law enforcement official if there is a reasonable suspicion that any of the following abuse or neglect has occurred:

1. Sexual abuse, or;
2. Abuse, neglect or misuse of funds/property if the head of the facility has cause to believe that criminal misconduct is involved, or;
3. Abuse or neglect which results in physical injury.

(C) The Missouri State Highway Patrol any death, assault or other serious criminal misconduct.

(D) The local coroner or medical examiners of all deaths.

(E) The Department of Health and Senior Services, Division of Senior Services and Regulation—Elderly Abuse/Neglect Hotline any alleged or suspected abuse or neglect involving a consumer when that consumer is away from the facility with a family member, guardian or other person and that consumer is sixty (60) years of age or older or a covered adult as defined in section 660.250, RSMo.

(F) Copies of all notifications required by this section shall be provided to the assigned investigator if an investigation is initiated.

(6) After receiving a complaint or report, the head of the facility or designee shall ensure the following requirements are completed:

(A) In all cases of physical abuse or neglect resulting in injury, a physical examination of the consumer shall be performed by a qualified medical professional as soon as practicable. If there is reasonable cause to believe that sexual abuse has occurred, and it includes penetration, the examination shall be performed immediately by a medical professional at the facility qualified in the “rape kit” examination. If no qualified personnel are available at the facility, then the consumer shall be transported to a medical facility where an independent medical professional qualified in “rape kit” examination shall perform the medical examination. The examination shall take place with the consent of the consumer or the legal guardian. In those cases where medical examination or intervention is necessary due to a serious life-threatening injury and the consumer is unable to provide consent or the guardian is unavailable, the medical examination or intervention may be performed without consent.



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(B) Immediately notify by telephone, if possible, the parents of a minor consumer or the consumer's legal guardian of:

1. The nature of the injuries and the facts and circumstances surrounding the incident as they are then known, except the names of employees or other consumers shall not be disclosed;
2. The actions that have been taken or that are planned regarding the care of the consumer; and
3. The inquiry or investigation into the matter.

(C) The verbal notification to the parents or guardian shall be documented, which shall include the name of the person contacted, relationship to the consumer, brief description of the information communicated and received along with the date and time of the contact. In those cases in which a report is forwarded for investigations, this contact documentation shall be provided to the investigator assigned to the matter.

(D) As soon as practicable following the phone contact, provide written notification to the parents or legal guardian of the information provided in subsection (B) above, along with the current status of the matter. This correspondence shall also be provided to the assigned investigator.

(E) Take color photographs of all injuries and secure any evidence involved in the incident. Any area where an incident has occurred in which it is believed potential evidence may exist shall not be disturbed. The area shall not be disturbed until after review by authorized personnel such as the assigned investigator, law enforcement officials, or medical or emergency personnel, and only with the approval of the head of the facility or designee in consultation with the assigned investigator.

(F) Within five (5) working days after receiving the complaint, notice shall be sent by regular mail to the complainant acknowledging receipt of the complaint. The notice shall specify whether an investigation or inquiry has been initiated. Copies of the complainant notification shall be provided to the assigned investigator if an investigation is initiated. Notification shall be made as follows:

1. If the complainant is a minor, the notice shall be sent to the minor's parent(s) or guardian.
2. If the complainant has been adjudged incapacitated and has a guardian appointed pursuant to Chapter 475, RSMo, the notice shall be sent to the guardian.
3. If the complainant does not have a guardian, the notice shall be sent directly to the complainant. Notification is not required to be sent to a department employee who initiates a complaint.

(7) Facility employees shall cooperate fully with law enforcement and department or other state investigators authorized to investigate the matter. Failure to cooperate in the investigation or SRI may result in discipline up to and including dismissal. State employees shall forfeit their positions as set out in section 36.410, RSMo, if they willfully refuse or fail to appear, or having appeared, refuse to testify or answer



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questions before the investigator, or to the head of the facility or designee during an inquiry or investigation.

(8) Pending completion of the inquiry or investigation of the incident, the head of the facility may place the employee accused of any prohibited conduct as set forth herein on administrative leave with pay or assign the person to work in an area away from consumer contact, if such is available.

(9) The assigned investigator shall complete the investigative or SRI report within thirty (30) working days of the assignment of the investigation or SRI unless the facility is certified as an intermediate care facility for the mentally retarded (ICF-MR). Investigative and SRI reports concerning ICF-MR consumers shall be completed in five (5) working days following the date the incident occurred, was discovered, or notification of the incident was received.

(A) If an investigative or SRI report cannot be completed within the time provided in this section, a preliminary report, which includes a notice that additional time is required to complete the investigative or SRI report, shall be completed by the assigned investigator. The preliminary report shall be sent to the head of the facility.

(B) Extensions of time shall not be routinely made but may be allowed due to conditions outside of the control of the investigator, such as awaiting an autopsy report, awaiting other outside records, awaiting medical review, or other extenuating circumstances. The preliminary report shall contain a statement of the findings acquired during the period of the preliminary investigation, the reason for the need for additional time and proposed completion date.

(C) For investigations and SRIs that relate to medical health concerns that may have led to the death of a consumer, the investigations unit shall include as part of its fieldwork a medical review by two (2) physicians. The medical review of each physician shall be separate and independent of the other physician.

(10) After receiving a final investigative report, the head of the facility or designee should within fifteen (15) working days decide upon appropriate disposition of the matter or request further investigation.

(A) If the head of the facility or designee requests further investigation, a reasonable amount of time shall be permitted to complete the additional investigation.

(B) If the complaint is unsubstantiated, the head of the facility or designee shall enter the determination into EMT within one (1) working day of the decision and immediately submit a copy to the investigations unit.

(C) If the complaint is substantiated, the head of the facility shall take the following actions.

1. Dismiss any employee in accordance with Section 36.380, RSMo, with substantiated charge(s) of physical abuse; sexual abuse; neglect; misuse of funds/property; or verbal abuse. The employee shall be offered the appropriate appeal process as specified in (12) or (13).



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2. The employee shall be notified in written summary of the finding and handed the letter in person if at all possible. The date of the letter should be when the employee is given the letter. When it is not practicable to give the summary to an employee in person, it may be sent to the employee by certified or registered mail, return receipt requested.

3. The letter provided to the employee shall contain:

A. A summary of the action of the employee resulting in the determination;

B. A definition of the substantiated charge(s) from section (1);

C. Information listing the specific substantiated charges that disqualify an individual from employment as specified in (10)(C)1;

D. The length of time the employee's name shall appear on the department's Disqualification Registry.

E. Information regarding the Administrative Hearing Commission appeals right as specified in (12) or the department hearings administrator appeals right as specified in (13), whichever is applicable;

F. An offer for the employee to meet with the head of the facility or designee to submit comments or present evidence.

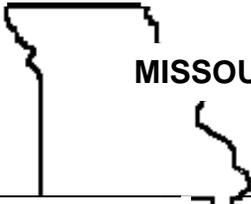
4. The meeting with the head of the facility or designee must take place within ten (10) calendar days of the date of the letter, unless the parties mutually agree on an extension.

5. Review the adequacy of the supervision provided to the employee at the time the abuse or neglect occurred. If deficiencies are identified, a plan of correction shall be implemented to rectify those deficiencies. The plan of correction may include disciplinary action, up to and including dismissal, for supervisory personnel who failed to provide appropriate oversight to staff or had knowledge of the employee misconduct and failed to intervene.

6. Review the adequacy of the system supports provided at the time the abuse or neglect occurred. If systemic deficiencies are identified, a plan of correction shall be implemented to rectify those deficiencies.

(11) Within ten (10) calendar days of the meeting, or if no meeting was requested, the head of the facility or designee shall make a final determination. The employee shall be provided written notice of this determination in person or by certified mail. If the charge is substantiated and is a charge listed in (10)(C)1 and the employee does not have Administrative Hearing Commission appeal rights as specified in (13), the letter shall inform the employee that he/she has twenty (20) calendar days from the date of the final determination letter to appeal the decision to the department hearings administrator or designee.

(A) The head of the facility or designee shall enter the final determination into EMT whether the complaint is substantiated or unsubstantiated within one (1) working day of the decision.



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(B) If the complaint is substantiated, the head of the facility or designee shall immediately submit to the Disqualification Registry Coordinator a final determination form accompanied by the following documentation:

1. Letters to the employee as required under paragraphs (10)(C)3 and (11) above;

2. Evidence that the employee has received the letters including a signature of the employee attesting to his or her receipt of the letters. This requirement is met by a document signed by department staff that the employee refused to acknowledge receipt of the letters or documentation from the postal authorities indicating their efforts to deliver the letters.

(12) An employee who has attained regular status under the Merit System and is suspended without pay for more than five (5) days, is involuntarily demoted, or is dismissed has rights to appeal the disciplinary action to the Administrative Hearing Commission within thirty (30) calendar days of the effective date of the disciplinary action. If the Administrative Hearing Commission upholds the action or no appeal is filed and the action meets the criteria in paragraph (10)(C)1:

(A) The employee's name shall be placed on the department's Disqualification Registry for the length of time determined by the head of the facility or designee, unless modified by the Administrative Hearing Commission as permitted by section 630.170.12, RSMo.

(B) While on the department's Disqualification Registry, unless an exception is obtained pursuant to section 630.170.4, RSMO, the employee 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 operated, licensed, certified, accredited, in possession of deemed status, or funded by the department or in any mental health facility or mental health program in which people are admitted on a voluntary or involuntary basis or are civilly detained pursuant to chapter 632, RSMo.

(13) When the rules of the Administrative Hearing Commission do not allow for the appeal of a substantiated charge in (10)(C)1 (employee does not have regular status, e.g. probationary, unclassified and resigned employees), the employee may appeal the substantiated charge(s) to the department hearings administrator or designee.

(A) All requests for hearing shall be made in writing by the employee or his/her attorney to the hearings administrator within twenty (20) calendar days from the date of the final determination letter substantiating charges of abuse, neglect, or misuse of funds/property.

(B) The employee appeals process shall be consistent with 9 CSR 10-5.200(7) and (8) and 9 CSR 10-5.230.

(C) The hearings administrator's or designee's decision will not affect the resignation of an employee or the termination of a probationary or unclassified employee.



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(D) If the hearings administrator or designee upholds the action or no appeal is filed and the action meets the criteria in (10)(C)1, the employee's name shall be placed on the department's Disqualification Registry for the length of time determined by the head of the facility or designee, unless modified by the hearings administrator or designee as permitted by section 630.170.12, RSMo.

(E) Unless an exception is obtained pursuant to section 630.170.4, RSMo, individuals on the department's Disqualification Registry 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 operated, licensed, certified, accredited, in possession of deemed status or funded by the department or in any mental health facility or mental health program in which people are admitted on a voluntary or involuntary basis or are civilly detained pursuant to chapter 632, RSMo.

(14) After the investigation is completed, and after the effective date of any disciplinary action, the head of the facility or designee shall notify: the parent(s) of a minor consumer; or a consumer's legal guardian(s); or a consumer who is their own guardian of the findings of the investigation, a summary of the facts and circumstances and actions taken, except that the names of any employees or other consumers shall not be disclosed. The head of the facility or designee shall maintain a record of this notification.

(15) All plans of action or correction shall be entered into EMT within ten (10) working days of the determination.

(16) All investigative materials (including final reports) shall be confidential, except as otherwise provided for in this DOR or by statute.

(A) Final investigative reports of substantiated abuse or neglect shall be released as follows:

1. The consumer who has not been adjudged incapacitated under Chapter 475, RSMo, the custodial or guardian parents or other guardian of the consumer who is the subject of such report may submit a written request to the investigations unit to obtain a copy of the investigative report. Reports released under this section shall be redacted to remove the names and other descriptive information of the complainant, witnesses, or other persons against whom findings of abuse or neglect are not made.

2. The public may submit a written request to the investigations unit to obtain a copy of the investigative report. Reports released under this section shall be redacted to remove the names and all other identifying information, including diagnosis and treatment information, about the consumer who is the subject of the report. The names and other descriptive information of the complainant, witnesses, or other persons against whom findings of abuse or neglect are not made shall also be redacted.



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(B) Final investigative reports of unsubstantiated abuse or neglect and final SRI reports shall be released as follows:

1. The consumer who has not been adjudged incapacitated under Chapter 475, RSMo, the custodial or guardian parents or other guardian of the consumer who is the subject of such report, and the department vendor, provider, agent or facility where the consumer was receiving services at the time the event being reviewed in the investigation or SRI may submit a written request to the investigations unit to obtain a copy of the investigative report. Reports released under this section shall be redacted to remove the names and other descriptive information of the complainant, witnesses, or other persons mentioned in the report.

(C) Requests for final investigative reports received from consumers who have not been adjudged incapacitated under Chapter 475, RSMo, may be denied if the director of the department or his or her designee determines that such release would jeopardize the consumer's therapeutic care, treatment, habilitation, rehabilitation, or the safety of others. If the request is denied, the reasons for the denial shall be submitted to the consumer in writing and documented in the consumer's chart.

(D) Requests for release of the investigative report not applicable to section (A) or (B) shall be submitted by the investigations unit to the Office of General Counsel for their review and advice.

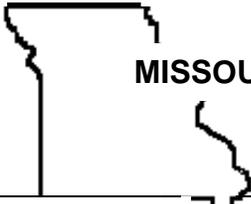
(E) The investigative report shall be admissible in any judicial proceeding or hearing in accordance with section 36.390, RSMo, or any administrative hearing before the director of the department or director's designee.

(F) The investigative or SRI report shall not be placed in the consumer record.

(17) All investigative materials (including final reports) shall be retained by the investigations unit.

(18) No director, supervisor or employee of a residential facility, day program or specialized service shall evict, harass, dismiss or retaliate against a patient, resident, consumer, or employee because he or she or any member of his or her family has made a report or complaint of physical, sexual or verbal abuse, neglect or misuse of funds/property of a consumer. Persons committing such retaliation shall be subject to disciplinary action up to and including dismissal.

(19) Persons who are responsible for implementing this DOR, or for assuring its implementation, and fail to do so, may be subject to disciplinary action up to and including dismissal.



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References:

1. DOR 6.050
2. Sections 36.380, 36.390, 36.410, 630.155, 630.165, 630.167, 630.168, 630.170, 660.250, RSMo.
3. 9 CSR 10-5.200
4. 9 CSR 10-5.230