

Attachment I.

9 CSR 10-5.200 Complaints of Abuse, Neglect and Misuse of Funds/Property

PURPOSE: This rule prescribes procedures for reporting and investigating complaints of abuse, neglect, and misuse of funds/property in an agency that is licensed, certified, accredited, in possession of deemed status, and/or funded by the Department of Mental Health (department) as required by sections 630.135, 630.167, 630.168, 630.655, and 630.710, RSMo. The rule also sets forth due process procedures for persons who have been accused of abuse, neglect, and misuse of funds/property.

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

- (A) Agency: An organization that is licensed, certified, accredited, in possession of deemed status, and/or funded by the Department of Mental Health;
- (B) Consumer: An individual (client, resident, patient) receiving department-funded services directly from an agency;
- (C) Department: Department of Mental Health;
- (D) Employee: A person employed by or contracted by an agency or a person serving as a volunteer or student for the agency;
- (E) 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;
- (F) 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;
- (G) 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;
- (H) Sexual abuse: Any touching, directly or through clothing, of a consumer 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 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 attempting to stop inappropriate sexual activity or performance between consumers; and/or

6. Encouraging inappropriate sexual activity or performance between consumers; and

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

(2) This rule applies to any director, supervisor, or employee of any agency. Facilities, programs, and services that are operated by the department are regulated by the department's operating regulations and are not included in this rule.

(A) Any such person shall immediately file a written complaint if that person has reasonable cause to believe that a consumer has been subjected to any of the following while under the care of an agency:

1. Physical abuse;
2. Sexual abuse;
3. Misuse of funds/property;
4. Neglect; or
5. Verbal abuse.

(B) A complaint under subsection (2)(A) above shall be made to the head of the agency and to the department's regional office, supported community living placement office, or district administrator office. If the allegation results in an investigation, the head of the agency shall make reasonable arrangements with respect to the alleged perpetrator to assure the safety of all of the agency's consumers. Such arrangements may include, but are not limited to, leave with or without pay or transfer to a position where there is no client contact.

(C) The head of the agency shall forward the complaint to—

1. The Children's Division if the alleged victim is under the age of eighteen (18); or
2. The Division of Senior Services and Regulation if the alleged victim is a resident or client of a facility licensed by the Division of Senior Services and Regulation or receiving services from an entity under contract with the Division of Senior Services and Regulation.

(D) Failure to report shall be cause for disciplinary action, criminal prosecution, or both.

(3) The head of the agency shall immediately report to the local law enforcement official if there is a reasonable suspicion that any of the following abuse or neglect has occurred—

(A) Sexual abuse; or

(B) Abuse or neglect that results in physical injury; or

(C) Abuse, neglect, or misuse of funds/property if the head of the agency has cause to believe that criminal misconduct is involved.

(4) If a complaint has been made under this rule, the head of the agency 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.

(5) 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 a time frame established under the department's operating regulations.

Upon completion of the investigation, the investigator shall present written findings of facts to the head of the supervising facility.

(6) Within twenty (20) calendar days of receiving the final report from the investigator, if there is a preliminary determination of abuse, neglect, or misuse of funds/property, the head of the supervising facility or department designee shall send to the alleged perpetrator a letter summarizing the allegations and findings that are the basis for the alleged abuse/neglect/misuse of funds or property; the agency will be copied. The letter shall comply with the constraints regarding confidentiality contained in section 630.167, RSMo, and shall be sent by regular and certified mail.

(A) The alleged perpetrator may meet with the head of the supervising facility or department designee, submit comments, or present evidence; the agency may be present and present comments or evidence in support of the alleged perpetrator. If the alleged perpetrator wishes to have this meeting, s/he must notify the head of the supervising facility or department designee within twenty (20) calendar days from the date of the letter.

(B) This meeting shall take place within twenty (20) calendar days from the date of the letter, unless the parties mutually agree upon an extension.

(C) Within twenty (20) calendar days of the meeting, or if no request for a meeting is received within twenty (20) calendar days from the date of the letter, the head of the supervising facility 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 agency will be copied. If the charges do not meet the criteria in section (10), the decision of the head of the supervising facility or department designee shall be the final decision of the department.

(D) If the charges meet the criteria in section (10), the letter shall advise the perpetrator that they have twenty (20) calendar days from the date 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.

(E) If there is no appeal, the decision of the head of the supervising facility or department designee shall be the final decision of the department.

(F) 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.

(7) If an appeal is requested, the hearings administrator shall schedule the hearing to take place within ninety (90) calendar days of the request, but may delay the hearing for good cause shown. Hearings shall be conducted in accordance with the procedures set forth in 9 CSR 10-5.230.

(8) The decision of the hearings administrator shall be the final decision of the department. The hearings administrator shall notify the perpetrator, by certified mail, and the head of the supervising facility or department designee of the decision within twenty (20) calendar days of the appeal hearing; the agency will be copied.

(9) For those charges in section (10), an alleged perpetrator does not forfeit his/her right to an appeal with the department's hearings administrator when s/he declines to meet with the head of the supervising facility under subsections (6)(A) and (6)(B) of this rule.

(10) If the department substantiates that a person has perpetrated physical abuse, sexual abuse, verbal abuse, 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 an agency. 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.

(11) 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.

(12) No director, supervisor, or employee of an agency shall evict, harass, dismiss, or retaliate against a consumer 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 consumer 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.

(13) If an event deadline falls on a Saturday, Sunday, or legal holiday, the last day of the period so computed shall extend to the next calendar day that is not a Saturday, Sunday, or legal holiday.