
**REFERRALS/
COMPLAINTS THAT
INVOLVE OTHER
AGENCIES**

This manual item outlines the Michigan Department of Health and Human Services (MDHSS) reporting and investigating responsibilities when other agencies are involved.

**DHS-Pub-269, The
Michigan Model
Vulnerable Adult
Protocol (MI-MVP)**

Public Act 175 of 2012 (Social Welfare Act, MCL 400.11b(9)) required DHS, Michigan State Police, the Michigan Attorney General, Michigan Office of Services to the Aging, and a long-term care representative to develop a model protocol for investigating vulnerable adult abuse, neglect and exploitation.

MI-MVP was introduced on June 16, 2013 and is intended to assist local communities in protecting, investigating and serving older and vulnerable adults through increased collaboration. MI-MVP is a model for local communities to adapt, as needed, based on their local resources and needs.

Note: A copy of MI-MVP can be located on the DHS public website at http://michigan.gov/dhs/0,4562,7-124-7119_50647---,00.html .

**MDHHS/Behavioral
Health and
Developmental
Disability(MDHHS/
BHDD)**

BHDD has responsibility for MDHHS/BHDD operated facilities.

MDHHS/BHDD operated facilities have their own process for who handles referrals/complaints.

Operated Facilities

Local office APS workers do **not** investigate referrals of abuse, neglect, or exploitation of adult residents of MDHHS/BHDD operated facilities. MDHHS/BHDD Office of Recipient Rights (ORR) will conduct investigations in these facilities. See ASM 258, for a list of these facilities. This is subject to the exceptions listed below.

Referrals from staff in MDHHS/BHDD state operated facilities must be received by the Centralized Intake for Abuse and Neglect hotline (CI) because of mandatory reporting requirements and should be handled in the following manner:

- Determine if the incident has been reported internally within MDHHS/BHDD by contacting the appropriate MDHHS/BHDD recipient rights advisor. If it has, document receipt of the report on ASCAP and take no further action. If it has not been reported internally, document receipt of the report on ASCAP and notify the appropriate MDHHS/BHDD recipient rights advisor immediately.
- MDHHS/BHDD employees may make referrals to MDHHS and wish to remain anonymous. Such confidential referrals from MDHHS/BHDD staff must be documented on ASCAP. The appropriate MDHHS/BHDD recipient rights advisor is to be notified immediately by MDHHS. The referral source (RS) information may be shared as ORR officers in MDHHS/BHDD operated facilities are MDHHS employees.

Note: ORR officers must protect the identity of the RS pursuant to MCL 400.11c (1) (2) and MDHHS APS policy. ORR must not share that information without a written release from the RS or court order and must redact all identifying RS information from their report(s).

- Referrals of abuse, neglect, or exploitation in these MDHHS/BHDD facilities from a source other than a MDHHS/BHDD employee must be documented on ASCAP and forwarded immediately to the appropriate MDHHS/BHDD recipient rights advisor.

Exception: MDHHS APS staff **are** responsible for investigating APS referrals of adult residents of these MDHHS/BHDD facilities when the incident occurred:

- Prior to admission to the facility.
- While the resident was on a leave of absence from the facility.
- While the resident was off the facility premises in the custody of another person or organization.

Local MDHHS office staff must immediately notify the appropriate MDHHS/BHDD recipient rights advisor when commencing an investigation in any of these situations. A copy of the written report on substantiated incidents in these investigations must be

forwarded to the appropriate MDHHS/BHDD recipient rights advisor.

Licensing and Regulatory Affairs (LARA)

APS is precluded from investigating suspected abuse, neglect or other incidents covered by the law in facilities licensed by LARA when that department has investigative and enforcement responsibility for such incidents under the Public Health Code. Those licensed health care facilities are the following:

- County medical care facilities.
- Freestanding surgical outpatient facilities.
- Hospitals.
- Nursing homes.

LARA has sole responsibility for investigating incidents of alleged abuse, neglect, or exploitation of patients and residents in the above facilities insofar as these incidents allege violations of LARA enforced rules and statutes.

Note: MDHHS local office staff are responsible for investigation of referrals involving adult patients and residents of LARA licensed facilities listed above if:

- The alleged violation took place **outside** the facility in the community, **or**
- Occurred inside the facility and the alleged perpetrator **is not** a facility employee, staff person or resident.

MDHHS Referrals to LARA

The following are procedures for MDHHS CI supervisors and local office APS staff to use in making referrals to LARA:

- All allegations of abuse, neglect or exploitation of a patient or resident, must be recorded on ASCAP.
- MDHHS Staff must advise the complainant to make an **oral report** immediately by telephone to the appropriate LARA complaint unit (800-882-6006) including the following information:
 - Name of the patient or resident.

- Facility name and address.
 - Details of alleged incident.
 - Date and time of alleged incident.
 - Name(s) of available witness (es) if known.
 - Name(s) of perpetrator(s) if known.
- MDHHS staff must, as soon as possible, submit the same information to LARA by telephone or in written form to ensure the complaint is reported for a timely investigation by LARA.

To file a complaint against a state licensed or federally certified health facility, including nursing home, hospital, home health agency, hospice, surgery center, dialysis center and other providers, see the information below:

Department of Licensing and Regulatory Affairs
Bureau of Community and Health Systems - Health Facility
Complaints
P.O. Box 30664
Lansing, MI 48909

Phone: 517-241-4712
Fax: 517-241-2635
Email: BCHS-Complaints@michigan.gov

Toll-free Complaint Hotline: 1-800-882-6006

**LARA Bureau of
Community and
Health Systems
(BCHS)**

APS has responsibility to investigate referrals of abuse, neglect or exploitation involving residents of adult foster care (AFC) homes and homes for the aged (HFA). BCHS has responsibility to investigate any allegations of rule violations within BCHS licensed facilities. The local office must immediately make a report to the AFC/HFA licensing consultant providing them with the name of the facility, name of the resident(s) involved, nature of the allegations and any other information available that will assist in the licensing consultant's investigation.

Note: APS **may not** share referral source information with the BCHS licensing consultant as they are not MDHHS employees.

Reports or complaints to BCHS are to be made to:

Licensing and Regulatory Affairs
Bureau of Community and Health Systems
610 W. Ottawa St. -Central Office
P.O. Box 30664
Lansing, MI 48909
1-866-856-0126

When an investigation pertains to an adult residing in an AFC or HFA facility licensed by BCHS, the local office must provide the AFC/HFA licensee with the substance of the abuse or neglect allegations as soon as practical after the beginning of the investigation. Document the information provided to the licensee in the ASCAP case record. However, this information is to be provided only after the worker determines that the resident will not suffer any harm because of the report. The licensee will have the opportunity to respond to the allegations, and the response must be included in the record. (1982 P.A. 519 Sec 11b(1)).

The APS investigation must be conducted independent of the licensing investigation but coordinated with the BCHS AFC/HFA licensing consultant to the extent this is practical. Information may be shared as necessary to assist in the licensing investigation. APS must investigate any allegations of abuse, neglect or exploitation while BCHS must investigate any rule violations. The worker must send a copy of the investigation report to the AFC/HFA licensing consultant, redacting any identifying information regarding the referral source. (See SRM 131, Confidentiality)

Note: BCHS licensing consultants must also provide the APS worker with a copy of their investigation report to include in the APS case file.

Contracted Community Mental Health AFC Homes

Referrals involving BCHS licensed AFC homes which receive funding for services from community mental health services programs should be handled in the following manner:

Local office APS workers are responsible for investigating allegations of abuse, neglect, or exploitation of adult residents in these facilities. The APS worker must coordinate the investigation with the appropriate CMH recipient rights officer or rights advisor if

one is available, and the AFC licensing consultant assigned to investigate the complaint.

Note: RS information **cannot** be provided to recipient rights officers and rights advisors who work under community mental health service providers (CMHSP) as they **are not** MDHHS employees.

The following lists investigative responsibilities for each agency:

- APS is responsible for investigating allegations of abuse, neglect or exploitation and ensuring resident safety.
- BCBS is responsible for investigating licensing rule violations. ORR is responsible for investigating rights violations.
- Law enforcement may also be conducting an investigation related to possible criminal activity in conjunction with the above.

Local offices must have signed agreements with their respective CMH boards and AFC licensing to cover roles and responsibilities for handling APS investigations in mental health settings. Procedures in the agreement must be followed for:

- Reporting.
- Investigating.
- Sharing of information.

A copy of the protocol for joint operating agreements and the model agreement are in ASM 256.

Access to CMH Recipient Information

Attorney General Opinion 6700 of 1991 states:

“A Michigan Department of Human Services Adult Protective Services worker may, in the course of carrying out an APS investigation, obtain access to Community Mental Health recipient information regardless of the source of a report of information concerning suspected abuse, neglect, exploitation or endangerment that led to the investigation.”

**Attorney General
Medicaid Fraud
Control Unit
Referrals**

The Medicaid Fraud Control Unit (MFCU) in the Department of Attorney General is required to investigate allegations of abuse or neglect of patients/residents of facilities which accept Medicaid payments or provide services funded under Title XIX of the Social Security Act. Where appropriate, they can act upon such complaints and prosecute offenders under the criminal laws of the state.

Local offices **are required** to make referrals to the MFCU in the office of the Michigan Attorney General regarding referrals that include the following:

- Referrals which allege suspected abuse, neglect, or exploitation of an adult who is a patient/resident of a nursing home, home for the aged, or adult foster care home, when the facility/home is receiving Medicaid funds or providing services funded under Title XIX of the Social Security Act, **and**
- Which allege actions taken or neglected so as to cause a reasonable person to believe **physical or mental harm** could be inflicted on an adult patient/resident or misuse of an adult patient's/resident's funds or property may occur.

All such referrals must be documented on ASCAP and referred immediately to the MFCU in one of the following manners:

- Department of Attorney General
Medicaid Fraud Control Unit
Health Care Fraud Division
P.O. Box 30218
Lansing, MI 48909
- Online at www.michigan.gov/ag
- Fax 517-241-1029
Attn: Supervisor, Patient Abuse Team - APS Referral
- Hotline at 1-800-242-2873

The referral must include:

- Name of the adult.

- Name and address of the facility in which the adult is a patient and/or resident.
- Date and time of the incident (if known).
- Name of the assailant or perpetrator (if known or if any).
- Names of any witnesses and/or individuals (if any) who may have knowledge of the abuse, neglect, or exploitation.
- Any other useful information.

Note: The report must state whether a referral was also made to a local law enforcement agency.

In making such a referral to the MFCU **local APS workers may not include the name of the complainant.**

Substance Abuse Treatment Agency Referrals

Substance abuse treatment agencies who sign a qualified service organization agreement (QSA) with MDHHS will make APS referrals to CI, when appropriate. Referrals will not be for treatment of substance abuse, they will be for providing APS services to adults who have been abused, neglected, exploited or endangered **and** are vulnerable.

Refer to the Confidentiality section of ASM 205 for application of confidentiality rules.

Local offices will receive copies of signed QSA's for substance abuse treatment agencies in the county.

COORDINATION WITH LAW ENFORCEMENT AGENCIES

APS workers must involve law enforcement agencies immediately in referrals involving actual criminal activity or any criminal activity it believes to be occurring, for example spouse abuse/domestic violence, other physical abuse, financial exploitation, intentional neglect, etc. The following steps must be taken in these situations:

- APS workers must first confer with their supervisor and law enforcement agency to determine if the referral is appropriate.
- If APS services are still needed, APS must coordinate investigative efforts with law enforcement, as appropriate.
- If APS services are not needed, ASCAP documentation must reflect why there was no follow-up on the referral beyond initial inquiries and notification to a law enforcement agency.

Local offices must cooperate with law enforcement agencies conducting criminal investigations and must make records or client information available as provided in SRM 131.

Note: APS may provide law enforcement with a copy of the APS report but must first redact all referral source information.

Upon request by the local department of health and human services, local law enforcement officers shall cooperate with the local office in an investigation of suspected abuse, neglect, or exploitation.

**Common
situations Where
APS may involve
law enforcement.**

Domestic Violence

If the adult victim in a domestic violence situation is also vulnerable the APS worker must offer appropriate supportive or protective services.

Incapacitated Persons

The **Mental Health Code, MCL 330.1276**, provides for law enforcement intervention on behalf of incapacitated persons. It states in part that an individual who appears to be incapacitated in a public place shall be taken by the police to an approved service program or to an emergency medical service.

Note: APS workers may be responsible for bringing complaints of this nature to the attention of the appropriate law enforcement agency.

Mentally Ill And Dangerous Persons

The **Mental Health Code, MCL 330.1438**, permits a law enforcement officer to take a mentally ill person into protective custody and deliver him/her to a hospital that can provide mental health services if:

- The officer has observed that the person's behavior is personally dangerous or a threat to others, **or**
- An application for hospitalization and physician's certificate has been presented to the officer (MCL 330.1424). An application for hospitalization can be made by any person over age 18 and must allege specific facts that show the individual's behavior is an endangerment to that individual or others and that the person is in need of mental health treatment. The application must be filed with the hospital within 10 days after its execution).

This section applies only for persons with a mental illness and **does not** apply to persons who have only a developmental disability.

Without an application for hospitalization and a physician's certificate, the law enforcement officer may contact the community mental health emergency service unit which must then provide intervention services. If the individual refuses these services, the law enforcement officer shall then immediately transport the individual to a hospital. The community mental health office should be contacted for assistance in all these situations and for other procedures for admission to a mental health facility.

Entrance

With a Search Warrant:

In attempting to conduct a personal visit with an adult in the adult's dwelling, if admission to the dwelling is denied, the local county office may seek to obtain a search warrant.

The need for a search warrant must be discussed with the APS worker's immediate supervisor or such other staff as the county director prescribes. To obtain a search warrant an affidavit must be made under oath to a magistrate. Local office personnel must discuss the need for a search warrant with the county prosecuting attorney's office and follow procedures recommended by the prosecutor. The worker must present as many facts as possible to the prosecuting attorney, such as:

- Name, address, age, other identifying information about the client.
- Nature of the alleged harm and vulnerability, be specific.
- Exactly who is denying entrance, dates, and reasons if known,
- Summary of the investigation to date.
- Cite MCL 400.11b (4) as legal basis for the department to seek a search warrant.

The local MDHHS director may seek a search warrant by personally filing an affidavit; see ASM 262, Affidavit for Search Warrant, with the district court. **This must only be done when the prosecuting attorney fails to provide timely assistance.**

Upon the magistrate's finding of reasonable or probable cause, a search warrant will be directed to the sheriff or other law enforcement officer. The APS worker must accompany the law enforcement officer to the residence and conduct the interview under the protection of the law enforcement officer. Upon completion of the interview, findings must immediately be shared with the supervisor.

Without a Search Warrant:

A law enforcement officer may enter a dwelling without a warrant if the officer has reasonable grounds to believe a crime is being committed or if an individual's health is believed to be in danger and exigent circumstances exist, i.e., if time were taken to obtain a warrant, the situation would change so that a warrant would no longer be necessary, such as, the client is in danger of dying. In these situations there is a clear and present danger that cannot wait for a warrant to be issued.

If a law enforcement officer refuses to enter a dwelling without a search warrant and the APS worker feels that entrance is necessary to conduct an interview or check on the welfare of the adult, consideration should be given to consultation with the prosecuting attorney and/or magistrate to determine if a search warrant can be issued or if anything further can be done by the APS worker.

Local offices must work with local law enforcement agencies in clarifying roles and reaching agreements to facilitate both situations above.

Coordination with the Prosecutor's Office

Local offices must cooperate with the county prosecutor's office in criminal investigations and make the results of any APS investigation and all other client related information available to assist in such investigations.

The local prosecuting attorney's office may provide consultation on cases involving legal issues including but not limited to:

- Advice on filing a guardian/conservator petition.
- Sufficiency of evidence.
- Involvement of law enforcement.

The prosecuting attorney's office may conduct all phases of court proceedings from the preliminary hearing to the final disposition.

INTERFERING WITH INVESTIGATIONS

It is a misdemeanor for a caregiver or other person with authority over a vulnerable adult to intentionally interfere with or obstruct an APS or adult foster care/home for the aged licensing investigation per MCL 750.145p of The Michigan Penal Code.

Upon request by the MDHHS county department, local law enforcement officers must cooperate with in an investigation of suspected abuse, neglect or exploitation.

When there is interference with an investigation, APS workers may gain access to the adult by coordinating with local law enforcement and the prosecuting attorney.

When there is interference with an investigation involving an adult resident of an AFC/HFA facility, local offices must coordinate with BCHS.

LEGAL BASE

- Social Welfare Act, MCL 400.11b(9); 400.11b(1).
- Mental Health Code, MCL 330.1276; 330.1438; 330.1424.
- Search Warrants, MCL 780.651-780.659.