

R495. Human Services, Administration.

R495-876. Provider Code of Conduct.

R495-876-1. Authority and Purpose.

This rule is authorized by Section 62A-1-111. The department adopts this rule to:

- (1) protect its clients from abuse, neglect, mistreatment, and exploitation; and
- (2) clarify the expectation of conduct for department providers and their employees and volunteers who interact with department clients.

R495-876-2. General Definitions.

- (1) "Abuse" includes abuse as defined in Sections 62A-3-301, 62A-4a-101, 78A-6-105, 80-1-102, and R512-80-2.
- (2) "Client" means anyone who receives services from the department or a department contracted provider or as defined in Section 62A-2-101.
- (3) "Critical incident" means the same as defined in Rule R501-1.
- (4) "Department" means the Department of Human Services or any of its divisions, offices or agencies. Effective July 1, 2022, "department" will mean the Department of Health and Human Services.
- (5) "Mistreatment" means emotional or physical mistreatment:
 - (a) as defined in Rule R501-1; and
 - (b) physical mistreatment includes:
 - (i) misuse of work, exercise restraint, or seclusion as a means of coercion, punishment, or retaliation against a client, or for the convenience of the licensee, or when inconsistent with the client's treatment or service plan, health or abilities;
 - (ii) compelling a client to remain in an uncomfortable position or repeating physical movements to coerce, punish, or retaliate against a client, or for the convenience of the licensee; and
 - (iii) physical punishment.
- (6) "Exploitation" includes:
 - (a) using a client's property without the client's consent or using a client's property in a way that is contrary to the client's best interests, such as expending a client's funds for the benefit of another;
 - (b) making unjust or improper use of clients or their resources;
 - (c) accepting gifts in exchange for preferential treatment of a client or in exchange for services that the provider is already obliged to provide to the client;
 - (d) using the labor of a client for personal gain; and
 - (e) using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent non-monetary compensation, except where such use is consistent with standard therapeutic practices and is authorized by department policy or the provider's contract with the department.
- (7) "Fraud" means a false or deceptive statement, act, or omission that causes, or attempts to cause, property or financial damages, or is made for personal or licensee gain. Fraud includes the offenses identified as fraud in Title 76, Chapter 6, Offenses Against Property.
- (8) "Harm" means physical or emotional pain, damage, or injury.
- (9) "Neglect" means abandonment or the failure to provide necessary care, including nutrition, education, clothing, shelter, sleep, bedding, supervision, health care, hygiene, treatment, and protection from harm.
- (10) "Penalty" means the department's denying, placing conditions on, suspending, or revoking a human services license due to non-compliance with statute or administrative rule. Penalty may include penalties outlined in Section 62A-2-112 or defined in Rule R501-1.
- (11) "Provider" means any individual or business entity that contracts or subcontracts with the department to provide services to clients. The term "provider" includes licensed or certified individuals who provide services to clients under the supervision or direction of a provider. The term "provider" also refers to the provider's employees, volunteers, subcontractors, and others who act on the provider's behalf or under the provider's control or supervision. Provider also means "human services program" as defined in Section 62A-2-101.
- (12) "Restraint" means physically restricting a person's freedom of movement, physical activity, or normal access to their body and includes chemical and mechanical restraint. An escort used to lead, guide, or direct a client is not a restraint.
- (13) "Seclusion" means the same as defined in Section 62A-2-101 and Title R501.
- (14) "Staff" means direct care employees, support employees, managers, directors, supervisors, administrators, agents, volunteers, owners, and contractors.
- (15) "Written agency policy" means written policy established by the provider. If a written agency policy contains provisions that are more lenient than this rule, those provisions must be approved in writing by the executive director of the department and the Office of Licensing.

R495-876-3. Provider's Compliance with Conduct Requirements Imposed by Law, Contract or Other Policies.

In addition to complying with R495-876, Provider Code of Conduct, the provider shall comply with each applicable federal, state, and local law, and each policy required by the department or by other state and federal agencies that regulate or oversee the provider's programs. If a department, state or federal entity requires a policy that is more specific or restrictive than this rule, the more specific or restrictive policy shall supersede.

R495-876-4. Providers' Duty to Help Protect Clients.

(1) If any provider becomes aware that any client has been subjected to any abuse, neglect, exploitation or mistreatment, the provider's first duty is to protect the client's health and safety.

(2) Each provider shall report any abuse or neglect of a child to the Child Protective Services intake office of the Division of Child and Family Services.

(3) Each provider shall report any abuse or neglect of disabled or elder adults to the Adult Protective Services intake office of the Division of Aging and Adult Services.

(4) Each provider shall make each reports and documentation about abuse, neglect, exploitation, and mistreatment available to appropriate department personnel and law enforcement upon request.

(5) Each provider shall cooperate fully in any investigation conducted by the department, law enforcement or other regulatory or monitoring agencies.

(6) Each provider shall document and report each critical incident to the Office of Licensing and the client's case worker or support coordinator.

(7) If a client dies while receiving services from the provider, the provider shall notify the supervising department division or office immediately and shall cooperate with any investigation into the client's death.

R495-876-5. Provider Code of Conduct.

(1) Providers and provider staff:

(a) shall accurately represent services, policies and procedures to clients, guardians, prospective clients, and the public;

(b) shall create, maintain, and comply with a written policy that addresses the appropriate treatment of clients and ensures that clients rights are not violated;

(c) may not abuse, neglect, harm, exploit, mistreat, or act in a way that compromises the health and safety of clients through acts or omissions, by encouraging others to act, or by failing to deter others from acting;

(d) may not use or permit the use of corporal punishment and shall only utilize restraint as described in Rules R501-1; except that providers serving clients under the Division of Services for People with Disabilities shall also comply with the rules on restraint as described in Rule R539-4;

(e) shall maintain the health and safety of clients in each program service and activity;

(f) shall not commit fraud;

(g) shall provide the licensee's records related to any services or supplies billed to each insurer upon request by the insurer or the department;

(h) shall require that any provider or staff member who is aware of or suspects abuse, neglect, mistreatment, fraud, or exploitation shall ensure that a report is made to the applicable investigative agencies as outlined in Rule R501-1 and in compliance with mandatory reporting laws, including Sections 62A-4a-403 and 62A-3-305;

(i) may not use alcoholic beverages or controlled substances, without medical prescription, while on the job, or being under the influence while on the job;

(j) may not use aversive procedures prior to the review and approval of the provider human rights committee or the Human Rights Committee as defined in Section R539-3-4 for individuals with disabilities;

(k) shall provide services and supervision that is commensurate with the skills, abilities, behaviors, and needs of each client;

(l) shall ensure that a report is made to the Office of Licensing or to the applicable department agency for any violation, or suspected violation, of this rule; and

(m) shall prominently display in each facility a poster notifying employees of their responsibilities to report violations of R495-876, Provider Code of Conduct.

(2) Each staff will be given a copy of R495-876, Provider Code of Conduct prior to beginning employment. Each staff must sign off on reading, understanding and agreeing to follow R495-876, Provider Code of Conduct prior to working with clients.

R495-876-6. Client Rights.

(1) Clients have the right to:

(a) be treated with dignity;

(b) be free from potential harm or acts of violence;

(c) be free from discrimination;

(d) be free from abuse, neglect, mistreatment, exploitation, and fraud;

(e) privacy of current and closed records;

(f) communicate and visit with family, attorney, clergy, physician, counselor, or case manager, unless therapeutically contraindicated or court restricted; and

(g) be informed of agency policies and procedures that affect client or guardian's ability to make informed decisions regarding client care, to include:

(i) program expectations, requirements, mandatory or voluntary aspects of the program;

(ii) consequences for non-compliance;

(iii) reasons for involuntary termination from the program and criteria for re-admission;

(iv) program service fees and billing; and

(v) safety and characteristics of the physical environment where services will be provided.

(2) Clients shall be informed of each right listed in Section R495-876-6. Each provider shall maintain in the client file record a copy of the client's rights, signed by each client or client's guardian.

(3) Each provider shall prominently display in each facility a poster that notifies clients of their rights.

(4) Each provider staff shall be trained annually on this rule. Each provider shall ensure that each staff personnel file contains documentation of training completion which shall be individually signed and dated by the trainer and staff member.

R495-876-7. Sanctions for Non-compliance.

If a provider or its staff fails to comply with this rule, the department may impose an appropriate sanction such as probation, suspension, disbarment from state contracts, and termination of license or certification. The department may also, as applicable, report the provider's misconduct to licensing authorities, law enforcement, and the provider's clients or legal guardian.

KEY: social services, provider conduct*

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Authorizing, and Implemented or Interpreted Law: 62A-1-110; 62A-1-111