
Title 1	Northern Lakes CMHA Policies
Part 106	Supports and Services – NLCMHA Provided and Contract
Subpart J	Mental Health Code Protected Recipient Rights
Policy No.	106.1012
Subject	Duty to Warn (RR)

Applicability

Policy applies to all Northern Lakes CMHA activities, operations and sites and to all workforce members except members of the governing body. Policy also applies to any Network Provider and its employees, volunteers, or agents that have elected to adopt and adhere to Northern Lakes CMHA policies and procedures pertaining to Recipient Rights under the terms of its Participating Provider Agreement.

Definitions

330.1100b Michigan Mental Health Code

(14) "Mental health professional" means an individual who is trained and experienced in the area of mental illness or developmental disabilities and who is 1 of the following:

(a) A physician who is licensed to practice medicine or osteopathic medicine and surgery in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(b) A psychologist licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(c) A registered professional nurse licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(d) Until July 1, 2005, a certified social worker registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838. Beginning July 1, 2005, a licensed master's social worker licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(e) A licensed professional counselor licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(f) A marriage and family therapist licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

Reference

Michigan Mental Health Code - 330.1946 Threat of physical violence against third person; duties.

Policy

A mental health professional who determines, in good faith, that a situation meets the Duty to Warn criteria and takes the appropriate steps to warn the identifiable third person is NOT in violation of Sections 748 or 750 of the Michigan Mental Health Code (MHC) or of other confidentiality or patient privilege statutes as when there is a duty to warn - the Duty to Warn section of the MHC acts as an exception to Section 748.

Pursuant to Michigan Mental Health Code (PA 258 of 1974, MCL 330.1946), a mental health professional employed by or under contract with Northern Lakes CMHA or any of its contracted providers has a duty to take action to protect a consumer and to warn others if all of the following occur:

1. A consumer communicates to that mental health professional a threat of physical violence; and
2. The threat is made against a reasonably identifiable third person; and
3. The consumer has the apparent intent to carry out that threat in the foreseeable future; and
4. The consumer has the apparent ability to carry out that threat in the foreseeable future.

Subsequent to an assessment that ALL of the above criteria have been met the mental health professional in order to discharge the duty, must do AT LEAST ONE of the following in a timely manner:

1. Initiate proceedings to hospitalize the consumer under Chapter 4 or 4a of the Mental Health Code.

OR

2. Make a reasonable attempt to communicate the threat to both of the following:
 - a. The third person; and
 - b. The local police department or the county sheriff for the area where the third person resides for the area where the consumer resides, or to the state police.

Additionally, if the mental health professional has reason to believe that the third person is a 17 years of age or younger or is incompetent by other than age, the professional must also communicate the threat to:

1. The Department of Human Services in the county where the third person resides; and
2. That person's custodial parent, non-custodial parent, or guardian as appropriate.

Procedures

REPORTING AND DOCUMENTATION

If a mental health professional believes he/she has a Duty to Warn he/she shall do all of the following:

1. Clearly assess whether there is a Duty to Warn or take other action using the criteria listed in the policy above.
2. If the person has made such threat in the presence of the mental health professional a Preadmission Screening shall be completed, when possible, to determine if the person meets the Mental Health Code criteria for a voluntary or involuntary hospitalization. If there are questions the mental health professional should contact their immediate supervisor, another supervisor, or the consumer's psychiatrist if assigned. The mental health professional shall consult and also contact a Recipient Rights workforce member or the Compliance Officer for consultation when necessary for clarification of policy and statute.
3. If the determination is that the person meets Mental Health Code criteria for either a voluntary or involuntary hospitalization this shall be arranged following NLCMHA policy and practice and consistent with Chapters 4 and 4A of the Michigan Mental Health Code. Document the content of specific threat, assessment of intent, and consumer's ability to carry out expressed intent in your clinical documentation. Consistent with state law if the person making the threat is hospitalized, you do not have to warn the person being threatened or law enforcement of the threat.
4. If the person is determined, as a result of the Preadmission Screening, to not meet the Chapter 4 or 4A criteria for an involuntary or voluntary admission, or the clinician is unable to complete a Preadmission Screening, but the determination is that there is a Duty to Warn the mental health professional must communicate the threat to the identifiable threatened third person (including the name of the person who made the threat, what the person said and confirming that police are also being notified) and the appropriate law enforcement agency.

Law enforcement shall be provided the following information when available:

- Date
 - Person/Recipient Communicating the Threat – Name, and, when known, street address, city, state, zip code, phone, date of birth, gender, and other known information.
 - Reasonably Identifiable Third Person (Subject of the threat) – Name, street address, city, state, zip code, phone number, gender, and other known information.
 - Specific Violence Threatened (words used)
 - Intent and Ability
5. All mental health professionals shall record the person's communication of physical violence against a third person by crisis note and complete and submit an Incident Report consistent with agency policy. Appropriate records of disclosure, when taking action to warn third parties or agencies, shall be completed. These records of disclosure shall state to whom the information was released and the reason release is made.

Documentation in the record shall include the following, and all information provided law enforcement:

- Reasons for not hospitalizing
 - Attempts to communicate the threat to third person
 - Communication to law enforcement (dates, times, names)
 - If a minor – Communication to MDHHS (dates, times, names) and communication to custodial parent or legal guardian.
6. If the person is not physically present when this threat is made the mental health professional shall follow Northern Lakes CMHA policy and practice to attempt to arrange a preadmission screening to determine if involuntary or voluntary hospitalization is required. Based on the results of the preadmission screening, the mental health professional shall follow steps 3 or 4 above. If there are questions the mental health professional should contact their immediate supervisor, another supervisor, or the consumer's psychiatrist if assigned. The mental health professional shall also contact a Recipient Rights workforce member or the Compliance Officer for consultation when necessary for clarification of policy and statute.
 7. When a duty to warn is completed, the preference is to first contact law enforcement and then the person threatened. In a situation where there is a long standing feud between two parties, first report the threat to law enforcement and ask them to warn the threatened party.
 8. In addition to a progress note, an Incident Report shall be completed consistent with agency policy. The mental health professional completing the Duty to Warn shall provide the Office of Recipient Rights and the Compliance Officer a copy of the Incident Report prior to the end of the next business day.

If the Northern Lakes CMHA clinician is not a "mental health professional" under Section 330.1100b of the Michigan Mental Health Code.

1. If there is a question that there may be a Duty to Warn or take other action using the criteria listed in the policy above, the clinician shall immediately contact their immediate supervisor, another supervisor, or the consumer's psychiatrist if assigned. The clinician shall also contact a Recipient Rights staff member or the Compliance Officer for consultation when necessary for clarification of policy and statute.
2. This consultation shall determine if the clinician must call and report to law enforcement under section 748(7)(c) and if law enforcement should be contacted to assist in the facilitation of a Preadmission Screening unless the presenting information is clear that the Duty to Warn criteria are not met typically a report shall be made consistent with section 748 (7)(c).
3. In all cases where the determination is that a Preadmission Screening must be completed, the clinician shall contact the preadmission screening unit requesting a preadmission screening be completed and if law enforcement has been contacted to facilitate this assessment. The preadmission screening unit staff shall follow Northern Lakes CMHA policy and practice to ensure this assessment is completed whether the person making the threat is in a Northern Lakes CMHA office or in another community location. The clinician shall document the reasons for this referral,

including the content of specific threat, assessment of intent, person's ability to carry out expressed intent, all other actions taken and shall complete and submit an Incident Report.

4. The preadmission screening staff shall complete the Duty to Warn if after assessment the person making the threat is not hospitalized.

If the clinician is a contract provider.

1. The provider, whether a mental health professional or not, shall contact NLCMHA for consultation and shall follow her/his organizational policies addressing this type situation. If the provider believes this is an immediate emergency he/she shall contact law enforcement to request intervention.

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