

ST. CLAIR COUNTY COMMUNITY MENTAL HEALTH AUTHORITY

ADMINISTRATIVE PROCEDURE

Date Issued **05/23**

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I. APPLICATION:

- ☐ SCCCMHA Board
- ☒ SCCCMHA Providers & Subcontractors
- ☒ Direct-Operated Programs
- ☒ Community Agency Contractors
- ☒ Residential Programs
- ☒ Specialized Foster Care

II. PURPOSE STATEMENT:

St. Clair County Community Mental Health Authority (SCCCMHA) shall ensure the Office of Recipient Rights initiates investigations and completes investigations of apparent or suspected violations of recipients' rights guaranteed by Chapters 7 and 7A of the Michigan Mental Health Code (Public Act 258 of 1974 as amended) in accordance with the procedures delineated herein.

III. DEFINITIONS:

- A. **Abuse:** Means harm experienced by a recipient, sexual contact with a recipient, or sexual penetration of a recipient (as defined by Public Act 328 of 1931, being Section 750.520a) that is committed by or provoked by an employee of SCCCMHA, a volunteer of SCCCMHA, a contract provider of SCCCMHA, or an agent of a provider under contract with SCCCMHA.
- B. **Abuse: Class I:** Means a non-accidental act or provocation of another to act by an employee, volunteer or agent of a provider that caused or contributed to the death, sexual abuse of, or serious physical harm to a recipient.
- C. **Abuse: Class II:** Means any of the following:
 - 1. A non-accidental act or provocation of another to act by an employee, volunteer, or agent of a provider that caused or contributed to non-serious physical harm to a recipient.
 - 2. The use of unreasonable force on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm.
 - 3. Any action or provocation of another to act by an employee, volunteer, or agent of a provider that causes or contributes to emotional harm to a recipient.
 - 4. An action taken on behalf of a recipient by a provider who assumes the recipient is incompetent, despite the fact that a guardian has not been appointed, that results in substantial economic, material, or emotional harm to a recipient.
 - 5. Exploitation of a recipient by an employee, volunteer, or agent of a provider.

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- D. Abuse: Class III: Means the use of language or other means of communication by an employee, volunteer, or agent of a provider to degrade, threaten, or sexually harass a recipient.
- E. Act: Means the Michigan Mental Health Code, Public Act 258 of 1974, as amended, and MDHHS Administrative Rules, Part 7.
- F. Anatomical support: Means body positioning or a physical support ordered by a physical or occupational therapist for the purpose of maintaining or improving a recipient's physical functioning.
- G. Bodily function: Means the usual action of any region or organ of the body.
- H. Dignity: To be treated with esteem, honor, politeness; to be addressed in a manner that is not patronizing or condescending; to be treated as an equal; to be treated the way any individual would like to be treated.
- I. Emotional harm: Means impaired psychological functioning, growth, or development of a significant nature as evidenced by observable physical symptomatology or as determined by a mental health professional.
- J. Exploitation: Means an action by an employee, volunteer, or agent of a provider that involves the misappropriation or misuse of a recipient's property or funds for the benefit of an individual or individuals other than the recipient.
- K. Immediately: Means without delay; instantly.
- L. Investigation: Means a detailed inquiry into and systematic examination of an allegation raised in a recipient rights complaint.
- M. Neglect: Means an act or failure to act committed by an employee of SCCCMHA, a volunteer of SCCCMHA, a contract provider of SCCCMHA, or an agent of a provider under contract with SCCCMHA that denies a recipient the standard of care or treatment to which he or she is entitled under the Michigan Mental Health Code.
- N. Neglect: Class I: Means either of the following:
1. Acts of commission or omission by an employee, volunteer, or agent of a provider that result from non-compliance with a standard of care or treatment required by law and/or rules, policies, guidelines, written directives, procedures, or individual plan of service and causes or contributes to the death, or sexual abuse of, or serious physical harm to a recipient.
 2. The failure to report apparent or suspected Abuse: Class I or Neglect: Class I of a recipient.

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- O. Neglect: Class II: Means either of the following:
1. Acts of commission or omission by an employee, volunteer, or agent of a provider that result from non-compliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to non-serious physical harm or emotional harm to a recipient.
 2. The failure to report apparent or suspected Abuse: Class II or Neglect: Class II of a recipient.
- P. Neglect: Class III: Means either of the following:
1. Acts of commission or omission by an employee, volunteer, or agent of a provider that result from non-compliance with a standard of care or treatment required by law and/or rules, policies, guidelines, written directives, procedures, or individual plan of service that either placed or could have placed a recipient at risk of physical harm or sexual abuse.
 2. The failure to report apparent or suspected Abuse: Class III or Neglect: Class III of a recipient.
- Q. Non-serious physical harm: Means physical damage or what could reasonably be construed as pain suffered by a recipient that a physician or registered nurse determines could not have caused, or contributed to, the death of a recipient, the permanent disfigurement of a recipient, or an impairment of his or her bodily functions.
- R. Office of Recipient Rights (ORR): Means the office created by the Michigan Mental Health Code that is subordinate only to the Community Mental Health Services Program's Chief Executive Officer, and that is responsible for investigating apparent or suspected violations of recipient rights, resolving and assuring remediation of substantiated rights violations, and assuring that mental health services are provided in a manner that respects and promotes the rights of recipients as guaranteed by Chapters 7 and 7A of the Michigan Mental Health Code.
- S. Physical management: Means a technique used by staff as an emergency intervention to restrict the movement of a recipient by direct physical contact to prevent the recipient from harming himself, herself, or others.
- T. Preponderance of Evidence: Means a standard of proof which is met when it is more likely that a right was violated than not, based upon all of the available evidence. The available evidence shall be weighed, not as to the quantity of evidence or to the number of witnesses, but as to the quality of the evidence, and the believability of the witnesses.
- U. Protective device: Means a device or physical barrier to prevent a recipient from causing serious self-injury associated with documented and frequent incidents of the behavior. A protective device as defined here and incorporated in the written individual plan of service shall not be considered a restraint as defined under "Restraint."

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- V. Provider: Means the MDHHS, SCCCMHA, each licensed hospital, each psychiatric unit, and each psychiatric partial hospitalization program licensed under section 137 of the Mental Health Code, to include their employees, volunteers, and contractual agents.
- W. Psychotropic drug: Means any medication administered for the treatment or amelioration of disorders of thought, mood, or behavior.
- X. Recipient: Means an individual who receives mental health services, either in person or through telemedicine, from the Michigan Department of Health and Human Services, a community mental health services program, or a facility or from a provider that is under contract with the Michigan Department of Health and Human Services or a community mental health services program.
- Y. Respect: To show deferential regard for; to be treated with esteem, concern, consideration or appreciation; to protect an individual's privacy; to be sensitive to cultural differences; to allow an individual to make choices.
- Z. Restraint: Means the use of a physical device to restrict an individual's movement. Restraint does not include the use of a device primarily intended to provide anatomical support.
- AA. Serious physical harm: Means physical damage suffered by a recipient that a physician or registered nurse determines caused or could have caused the death of a recipient, caused the impairment of his or her bodily functions, or caused the permanent disfigurement of a recipient.
- BB. Sexual abuse: Means any of the following:
1. Criminal sexual conduct as defined by Public Act 328 of 1931, being sections 750.520b to 750.520e, involving an employee, volunteer, or agent of a provider and a recipient.
 2. Any sexual contact or sexual penetration involving an employee, volunteer, or agent of a department operated hospital or center, a facility licensed by the department under MCL 330.1137, or an adult foster care facility and a recipient.
 3. Any sexual contact or sexual penetration involving an employee, volunteer, or agent of a provider and a recipient for whom the employee, volunteer, or agent provides direct services.
- CC. Sexual contact: Means the intentional touching of the recipient's or employee's intimate parts or the touching of the clothing covering the immediate area of the recipient's or employee's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for any of the following:
1. Revenge.
 2. To inflict humiliation.
 3. Out of anger.
- DD. Sexual harassment: Means sexual advances to a recipient, requests for sexual favors from a recipient, or other conduct or communication of a sexual nature toward a recipient.

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- EE. Sexual penetration: Means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.
- FF. Therapeutic de-escalation: Means an intervention, the implementation of which is incorporated in the individualized written plan of service, wherein the recipient is placed in an area or room, accompanied by staff who shall therapeutically engage the recipient in behavioral de-escalation techniques and debriefing as to the cause and future prevention of the target behavior.
- GG. Time out: Means a voluntary response to the therapeutic suggestion to a recipient to remove himself or herself from a stressful situation in order to prevent a potentially hazardous outcome.
- HH. Treatment by spiritual means: Means a spiritual discipline or school of thought that a recipient wishes to rely on to aid physical or mental recovery.
- II. Unreasonable force: Means physical management or force that is applied by an employee, volunteer, or agent of a provider to a recipient in one or more of the following circumstances:
1. There is no imminent risk of serious or non-serious physical harm to the recipient, staff, or others.
 2. The physical management used is not in compliance with techniques approved by SCCCMHA.
 3. The physical management used is not in compliance with the emergency interventions authorized in the recipient's individual plan of service.
 4. The physical management or force is used when other less restrictive measures were possible but not attempted immediately before the use of physical management or force.

IV. STANDARDS:

- A. Investigations completed by the Office of Recipient Rights will be conducted in a manner that protects the rights of all parties involved. All investigative reports will meet minimum standards as outlined in the Michigan Mental Health Code.
- B. The SCCCMHA Chief Executive Officer and any involved provider shall allow the ORR unimpeded access to premises, staff, recipients, and records as necessary to conduct a thorough and effective investigation.
- C. If a recipient rights complaint is filed regarding the conduct of the Chief Executive Officer, the recipient rights investigation shall be conducted by another Community Mental Health Services Program's Office of Recipient Rights or by the MDHHS-Office of Recipient Rights as determined by the SCCCMHA Board of Directors/designee.
- D. When staff of either SCCCMHA or a contract provider fail to report suspected violations of recipients' rights, appropriate administrative action will be taken by the SCCCMHA Chief Executive Officer or the SCCCMHA Board of Directors.

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- E. A mental health professional, a person employed by or under contract with the MDHHS, a licensed facility, SCCCMHA, or a person employed by a provider under contract with the MDHHS, a licensed facility, or SCCCMHA who has reasonable cause to suspect the criminal abuse of a recipient shall immediately make or cause to be made, by telephone or otherwise, an oral report of the suspected criminal abuse to the law enforcement agency for the county or city in which the criminal abuse is suspected to have occurred or to the state police. Apparent or suspected abuse or neglect of a recipient must also be reported to the Michigan Department of Licensing and Regulatory Affairs, Bureau of Community and Health Systems, if the alleged act occurred in a facility. In addition, apparent or suspected abuse or neglect of a recipient must be reported to Protective Services. For more information about this reporting requirement, see SCCCMHA policy #05-001-0045, Reporting Suspected Abuse or Neglect.
- F. Recipient Rights complaints filed by recipients or anyone on their behalf must be sent to the Office of Recipient Rights in a timely manner.

V. **PROCEDURES:**

Complainant

1. Completes a MDHHS Recipient Rights Complaint form, MDHHS 0030.

Office of Recipient Rights

2. Assists the complainant/recipient with the complaint process. Assures that recipients, parents of minors, guardians, and others have access to Recipient Rights Complaint Forms. Advises the complainant/recipient of advocacy organizations available to assist them in the preparation of a written Recipient Rights Complaint, and refers the complainant to those organizations, if requested. In the absence of assistance from an advocacy organization, the ORR will assist the complainant/recipient in the preparation of a written complaint.
3. Dates and logs each recipient rights complaint. Sends acknowledgment of this recording, along with a summary of the complaint, to the complainant within five business days. Informs the complainant of the next step(s) in the complaint process.
4. Refers complainants to the appropriate organization for resolution of their complaint, if their complaint is determined to be outside the jurisdiction of the ORR due to the fact that the person/provider alleged to have violated a recipient's rights does not work for or contract with SCCCMHA. The referral shall be included in the acknowledgement letter issued to the complainant.
5. Initiates investigations of apparent or suspected recipient rights violations in a timely and efficient manner. Subject to delays involving pending action by external agencies, completes the investigation no later than 90 calendar days after it receives the complaint. Initiates investigations immediately in cases involving alleged abuse, neglect, serious injury, or death.

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6. Assures that all pertinent records are secured and reviewed as soon as practicable in cases where, in the reasonable judgment of the ORR, the integrity of the record may be at risk.

Direct-Operated Staff or Contract Provider

7. Prepares and provides copies of requested documentation to the ORR, as determined by the ORR, without delay.

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8. Develops a formal investigative record that shall consist of:
 - a. An interview with the complainant, when circumstances allow.
 - b. Protection of an employee when serving as a complainant under the Whistleblowers' Protection Act.
 - c. An interview with a/the recipient(s), if other than the complainant, when circumstances allow.
 - d. An interview with each potential witness and others who may provide relevant information.
 - e. An interview with the staff member/volunteer who is alleged to have violated a recipient's rights.
 - f. Written statements from staff members, volunteers, recipients, or other witnesses when such a statement is necessary to support oral interviews, to obtain additional information, or to provide findings relevant to the investigation.
 - g. A review of the case records and incident reports of the recipient(s) involved, when pertinent to the complaint.
 - h. A review of the investigative reports conducted by law enforcement, Michigan Department of Licensing and Regulatory Affairs-Bureau of Community and Health Systems, Protective Services, or other officials and/or providers, when available, which pertain to the allegation under investigation.
 - i. A visit to the service site where the alleged violation took place, when appropriate.
 - j. A review of pertinent statutes, administrative rules, policies, procedures, standards, technical requirements, guidelines, etc.
 - k. A determination as to whether or not a right was violated by applying the preponderance of evidence as the standard of proof.
9. Maintains an accurate record of investigative activities as the investigation progresses.
10. Ensures that allegations are added to an existing complaint or opens a new complaint when it becomes apparent during the investigative process that additional rights may have been/have been violated.
11. Prepares a written status report every 30 calendar days during the course of the investigation. The report shall be submitted to the complainant, the responsible provider agency, and the SCCCMHA Chief Executive Officer. A status report shall include all of the following:
 - a. A statement of the allegation(s).
 - b. A statement of the issues involved.

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- c. All applicable citations relevant to the provisions of the Michigan Mental Health Code, MDHHS Administrative Rules, and any pertinent policies, procedures, standards, technical requirements, guidelines, etc.
 - d. Documentation of the investigative progress to-date.
 - e. The expected date for completion of the investigation.
12. Issues a Report of Investigative Findings to the SCCCMHA Chief Executive Officer and the responsible provider agency (respondent) upon completion of the investigation. Issuance of the written investigative report may be delayed pending completion of investigations that involve external agencies, including law enforcement agencies, Michigan Department of Licensing and Regulatory Affairs, Protective Services, or other agencies. The Report of Investigative Findings shall include all of the following:
- a. A statement of the allegation(s).
 - b. A statement of the issues involved.
 - c. All applicable citations relevant to the provisions of the Michigan Mental Health Code, MDHHS Administrative Rules, and any pertinent policies, procedures, standards, technical requirements, guidelines, etc.
 - d. The investigative findings of the complaint.
 - e. The conclusion of the complaint.
 - f. The recommendations made by the ORR, if any.

Responsible Provider Agency (Respondent)

13. Ensures the Report of Investigative Findings is not shared with non-supervisory staff members, and ensures the Report of Investigative Findings is secured in a confidential manner.
14. Issues appropriate action that meets all of the following requirements:
- a. Corrects or provides a remedy for the substantiated recipient rights violation(s).
 - b. Is implemented in a timely manner.
 - c. Attempts to prevent recurrence of the recipient rights violation(s).
15. Submits their remedial action plan to the ORR to include evidence of the action taken to remedy the recipient rights violation. The remedial action plan must be received by the ORR on or before the due date listed on the Report of Investigative Findings. If the remedial action plan will be completed at a future date, the responsible provider agency must immediately submit notification and evidence to the ORR once the plan of action is completed.

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16. Keeps the Recipient Rights Complaint open until the responsible provider agency submits evidence that the remedial action plan is completed.

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SCCCMHA Chief Executive Officer/designee

17. Notifies the complainant, recipient, and court-appointed guardian, if applicable, in writing, that the investigation has been closed or remains open pending the completion of a remedial action plan. Mails the Summary Report to the complainant, recipient, and court-appointed guardian, if applicable. The Summary Report shall include all of the following:
- A statement of the allegation(s).
 - A statement of the issues involved.
 - All applicable citations relevant to the provisions of the Michigan Mental Health Code, MDHHS Administrative Rules, and any pertinent policies, procedures, standards, technical requirements, guidelines, etc.
 - A summary of the investigative findings determined by the ORR.
 - The conclusion of the complaint.
 - The recommendations made by the ORR, if any.
 - The remedial action taken, or plan of action proposed, by the responsible provider agency.
 - A statement describing the complainant's, recipient's, and court-appointed guardian's rights to appeal the complaint and the grounds for an appeal.
 - Ensures information in the Summary Report is provided within the constraints of sections 748 and 750 of the Michigan Mental Health Code, and does not violate the rights of any employee.

Office of Recipient Rights

18. Re-opens or re-investigates an investigation if there is new evidence that was not presented at the time of the investigation.
19. Informs the complainant, recipient, and court-appointed guardian, if applicable, that no later than 45 days after receipt of the Summary Report under Procedure 17, they may file a written appeal with the SCCCMHA Appeals Committee appointed by the SCCCMHA Board of Directors. Appeals are filed with the SCCCMHA-ORR, as support staff for the SCCCMHA Appeals Committee. For more information about the appeals process, see SCCCMHA policy #05-001-0050, Appeals of Recipient Rights Findings and Dispute Resolution.

VI. REFERENCES AND LEGAL AUTHORITY:

- Michigan Mental Health Code, Public Act 258 of 1974, as amended, sections 330.1772, 330.1776, 330.1778, 330.1780, 330.1782, and 330.1784
- Michigan Department of Health and Human Services (MDHHS) Administrative Rules 330.7001
- Michigan Penal Code, Public Act 328 of 1931, sections 750.520a - 750.520e

VII. EXHIBITS:

- Requirements for Reporting Abuse and Neglect Poster, MDHHS – 0727

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VIII. REVISION HISTORY:

Dates issued: 03/97, 09/97, 01/00, 12/01, 12/03, 12/05, 01/08, 02/10, 05/13, 05/14, 05/15, 05/16, 05/17, 05/18, 05/19, 07/20, 05/21; 05/22.

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES

REQUIREMENTS FOR REPORTING ABUSE AND NEGLECT

	Section 723, Public Act 258 of 1974 as amended (Mental Health Code-Recipient Abuse)	Public Act 238 of 1975 (Child Protection Law)	Public Act 519 of 1982 (Adult Protective Services Law)	Section 723, Public Act 258 of 1974 as amended (Mental Health Code-Criminal Abuse)
WHERE is the report made?	To the OFFICE of RECIPIENT RIGHTS (ORR) at your Hospital or Community Mental Health Services Program (CMHSP) A list of local rights offices can be found at: http://tinyurl.com/orroffices	To the MDHHS Office of Childrens Protective Services (CPS)	To the MDHHS Office of Adult Protective Services (APS)	To the Michigan State Police (MSP) or Local Sheriff or Local Police Department MSP 517-332-2521
WHAT must be reported?	Sexual, Physical, Emotional or Verbal Abuse, Neglect, Serious Injury, Death, Retaliation or Harassment	Sexual, Physical or Mental Abuse, Neglect, Sexual Exploitation	Sexual, Physical or Mental Abuse, Neglect, Maltreatment, Exploitation	Assault (other than patient-patient assault/battery), Criminal Sexual Abuse, Homicide, Vulnerable Adult Abuse, Child Abuse
WHO is required to report?	All employees, contract employees, or volunteers of Michigan Department of Health and Human Services, Community Health Services Programs, Licensed Private Psychiatric Hospitals	Physicians, nurses, coroners, medical examiners, dentists, licensed emergency care personnel, audiologists, psychologists, social workers, school administrators, teachers, counselors, law enforcement officers, and child care providers.	Any person employed by an agency licensed to provide, anyone who is licensed, registered, or certified to provide health care, education, social, or other human services, law enforcement officers and child care providers.	All employees, contract employees of: Michigan Department of Health and Human Services, Community Mental Health Services Programs, Licensed Private Psychiatric Hospitals; All mental health professionals.
WHAT is the CRITERIA for reporting?	You must report if you: Suspect a recipient has been abused or neglected or any allegations of abuse or neglect made by a recipient.	You must report if you: Have reasonable cause to suspect a child has been abused, neglected, or sexually exploited.	You must report if you: Have reasonable cause to suspect or believe an adult has been abused, neglected, exploited or maltreated.	You must report if you: Suspect a recipient or vulnerable adult has been abused or neglected, sexually assaulted, or if you suspect a homicide has occurred. You do not have to report if the incident occurred more than one year before your knowledge of it.
WHEN must the report be made and in what format?	A verbal report must be made immediately. A written report on an incident report form must be made before the end of your shift.	A verbal report must be made immediately. A written report on DHS form 3200 must be made within 72 hours.	A verbal report must be made immediately. A written report at the discretion of the reporting person.	A verbal report must be made immediately. A written report must be made within 72 hours of the oral report
TO WHOM are reports made?	To your immediate supervisor and to the Recipient Rights Office at your agency or hospital	Report to Protective Services Reporting Hotline 855-444-3911	Report to Protective Services Reporting Hotline 855-444-3911	The law enforcement agency for the county or city in which the alleged violation occurred or the State Police. A copy of the written report goes to the chief administrator of the agency responsible for the recipient.
If there is more than one person with knowledge must all of them make a report?	Not necessarily. Reporting should comply with the policies and procedures set up by each agency.	Someone who has knowledge must report or cause a report to be made in the case of a school, hospital or agency, one report is adequate.	Everyone who has knowledge of a violation or an alleged violation must make a report. MDHHS has typically accepted one report from agencies.	Someone who has knowledge must report or cause a report to be made.
Is there a penalty for failure to report? YES	Disciplinary action may be taken and you may be held liable.	You may be held liable. Failure to report is also a criminal misdemeanor.	You may be held liable and have to pay a \$500 fine.	The law states that failure to report or false reporting is a criminal misdemeanor.
Is it necessary to report to more than one agency? YES	Each of these laws requires that the designated agency be contacted, if an allegation is suspected to have occurred, which falls under its specific jurisdiction. There are several references in each law indicating that reporting to one agency does not absolve the reporting person from the responsibility of having to report to other agencies, as statutorily required.			
Are there other agencies to which a report can be made?	The Bureau of Community and Health Systems (LARA) is responsible for investigating abuse and neglect in Nursing Homes, Hospitals and Home Health Care . Call the NURSING HOME ABUSE HOTLINE 1-800-882-6006 The Michigan Attorney General's Office has an Abuse Investigation Unit which may also investigate abuse in Nursing Homes . Call the ATTORNEY GENERAL HEALTH CARE FRAUD HOTLINE 1-800-24-ABUSE/ 1-800-242-2873 The LARA Adult Foster Care (AFC) Division is responsible for investigating abuse or neglect in a licensed foster care home. Call The Bureau of Community and Health Systems COMPLAINT INTAKE UNIT 1-866-856-0126			
YES				

