


CHAPTER: 1	SECTION: 7	SUBJECT: <b>RECIPIENT RIGHTS</b>
TITLE: <b>RECIPIENT RIGHTS COMPLAINT AND APPEAL PROCESS</b>		
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ISSUED AND APPROVED BY:  EXECUTIVE DIRECTOR		

**I. PURPOSE:**

To outline procedures for the handling of complaints received by the Office of Recipient Rights, the resulting investigations, written complaint investigation reports, and the storage of the complaint reports.

**II. APPLICATION:**

All Community Mental Health of Ottawa County (CMHOC) providers and contract agency providers as specified by contract.

**III. DEFINITIONS:**

**Allegation:** means an assertion of fact made by an individual that has not yet been proved or supported with evidence.

**Appellant:** the consumer, complainant, parent, or guardian who appeals a recipient rights finding or a respondent’s action to an appeals committee.

**Code Protected Rights:** A right that is guaranteed by the Michigan Mental Health Code (Act 258 of 1974), Administrative Rules of the Department of Mental Health, or other applicable law.

**Complainant:** A consumer or any other person who files a complaint indicating that a right has been violated.

**Complaint:** Either an oral or written statement of a code protected right within the jurisdiction of CMHOC. The rights complaint will include all of the following:

1. a statement of the allegations that give rise to the dispute.
2. a statement of the right or rights that may have been violated.
3. the outcome that the complainant is seeking as a resolution to the complaint.

**Disciplinary Action:**

The Michigan Mental Health Code requires: “Abuse or neglect of a recipient by an employee, volunteer, or agent of a provider shall subject the employee, volunteer, or agent of a provider, upon substantiated reports, to an appropriate penalty, including official reprimand, demotion, suspension, reassignment, or dismissal.”

**Intervention:** The method of handling a complaint that does not involve abuse or neglect and that can be resolved informally to the satisfaction of all parties involved.

**Investigation:** A detailed inquiry into and systematic examination of an allegation raised in a rights complaint.

**Mediation:** A private, informal dispute resolution process in which an impartial, neutral individual, in a confidential setting, assists parties in reaching their own settlement of issues in a dispute and has no authoritative decision-making power.

**Not Substantiated:** A determination made by the Recipient Rights Officer that the recipient rights complaint was not a rights violation based on a preponderance of evidence standard.

**Preponderance of Evidence:** Means a standard of proof which is met when, based upon all of the available evidence, it is more likely that a right was violated than not; greater weight of evidence, not as to quantity (number of witnesses), but as to quality (believability and greater weight of important facts).

**Remedial Action:** Action taken to correct a violation from reoccurring and/or remove contributing conditions.

**Respondent:** The service provider that had responsibility at the time of an alleged rights violation for the services with respect to which a rights complaint has been filed.

**Substantiated:** A determination made by the Recipient Rights Officer that the recipient rights complaint was a rights violation based on a preponderance of evidence standard.

#### IV. POLICY:

It is the policy of CMHOC that all Recipient Rights complaints will be handled in a manner consistent with Chapter 7A of the Michigan Mental Health Code.

#### V. PROCEDURE:

##### A. Complaints:

All recipients will receive a summary of their code protected rights at intake, and annually thereafter. A copy of the You Have Rights booklet will be offered to the recipient, parents of minors, and guardians at the annual Individual Plan of Service (IPOS) meeting.

The Office of Recipient Rights, staff, contractual staff, interns, and volunteers will explain recipient rights to all recipients, parents of minors, and guardians in an understandable manner, including documentation of alternative methods utilized. The name of the person providing the explanation will be documented on the electronic medical record.

Recipient rights complaint may be filed by recipients, or anyone on their behalf, and the complaint will be provided to the Office of Recipient Rights in a timely manner.

The Office of Recipient Rights, staff, contractual staff, interns, and volunteers will assure that complaint forms are readily available and will assist consumers, parents of minors, guardians, or other individuals with the complaint process as necessary and/or upon request.

All complaints will be numbered and recorded by the rights office on a complaint log, upon receipt by the Office of Recipient Rights.

Within 5 business days after receipt of a complaint, the Office of Recipient Rights will mail an acknowledgment letter, including a copy of the written complaint, to the complainant, recipient, parent or a minor child and/or guardian.

The acknowledgement letter will include a copy of the written complaint and a determination of whether the Office of Recipient Rights will complete an intervention or investigation.

The Office of Recipient Rights will also notify the complainant, recipient, parent of a minor child and/or guardian within 5 business days if the complaint is not a code protected right or is out of the office's jurisdiction and an investigation or intervention is not warranted.

The Office of Recipient Rights will offer assistance to the recipient or other individual with the complaint process as necessary. However, the Office of Recipient Rights will advise the recipient, or other individual filing a recipient rights complaint, that there are advocacy organizations available to assist in the preparation of the written rights complaint and will offer to make such a referral. In the absence of assistance from an advocacy organization, the Office of Recipient Rights will assist in preparing a written complaint which will contain a statement of allegation, the right that was allegedly violated, and the outcome desired by the complainant.

Any provider making a complaint in good faith with the Office of Recipient Rights is protected by the Michigan Whistleblower's Protection Act (469 P.A. 1980) and will not be discharged, threatened, or otherwise discriminated against for doing so.

Appropriate disciplinary action will be taken if there is evidence of harassment, retaliation, and/or humiliation against anyone who files a recipient rights complaint.

The Office of Recipient Rights shall determine if the complaint involves a right protected by the Michigan Mental Health Code and if not will inform the complainant and/or recipient and will refer the complainant and/or recipient to the appropriate agency.

If the complaint is related to the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, the Office of Recipient Rights will accept such complaints and may assist/refer for further action.

The Office of Recipient Rights shall determine if the alleged rights violation involves abuse, neglect, serious injury, or death of consumer involving an apparent or suspected rights violation and if so will immediately initiate an investigation, and:

1. Assures all mandatory reporting to external agencies and required written reports are completed within specified time frames.
2. Secures a written statement from the complainant and anyone else involved in or with knowledge of the allegation.
3. Informs the Director/Supervisor of the employee named in the alleged rights violation to take steps necessary, such as reassignment of the employee, to prevent contact between the employee and the consumer named in the complaint, or if this is not possible, suspend the employee with or without pay until the investigation is complete.

4. For verbal complaints that involve code-protected rights, but not abuse or neglect, the Office of Recipient Rights has the complainant describe the alleged violation and then puts the complaint in writing.
5. If the complaint involves an allegation regarding the conduct of the Executive Director, the rights investigation will be conducted by a Recipient Rights Officer from another CMH or by the state Office of Recipient Rights. The decision as to who will be asked to conduct the investigation will be made by the CMHOC Board of Directors.

**B. Investigation:**

The Office of Recipient Rights shall determine if the complaint will be investigated or handled as an intervention. All complaints will receive a response within 5 business days. Investigation activities for each rights complaint will be accurately recorded by the Office of Recipient Rights.

**1. Complaints**

- a. The investigation will be initiated in a timely and efficient manner, with initial contact via letter to the complainant within five business days of receipt of complaint. The Office of Recipient Rights shall complete the investigation not later than 90 days after it receives the rights complaint, this is subject to delay pending action of external agencies (i.e. MDHHS, law enforcement, etc.).
- b. Allegations will be investigated with priority assigned to the allegation concerning safety or personal injury.
- c. Investigations will immediately be initiated in cases involving allegations of abuse, neglect, serious injury or when a rights violation is apparent or suspected in the death of a consumer.
- d. Inform the staff of the recipient rights allegation if he/she has not already been informed by the provider/employer.
- e. Interview the complainant and consumer, if appropriate.
- f. Identify all persons who may have information about the allegation.
- g. Interview all persons identified and where appropriate, secure written statements in regard to the recipient rights allegation.
- h. Review all the pertinent records and applicable MDHHS, CMHOC, Board, and contractual provider's policies, and document the necessary information.
- i. Assure the investigation is conducted in a manner consistent with County personnel policies and employee contracts and is not in violation of employee rights.
- j. Make an independent determination, using the preponderance of evidence as its standard of proof, of whether or not the available facts lead to a conclusion that the allegation can be substantiated or not substantiated.
- k. A written status report will be issued every 30 calendar days during the course of the investigation to the complainant, respondent and the responsible mental health agency.

This report will contain:

1. Statement of the allegations.
  2. Statement of the issues involved.
  3. Citations to relevant provisions of Mental Health Code, rules, policies, and guidelines.
  4. Investigative progress to date.
  5. Expected date for completion of the investigation.
1. Upon completion of the investigation, the Office of Recipient Rights shall submit a written investigative report to the respondent and to the responsible mental

health agency. Issuance of the written Investigative Report may be delayed pending completion of investigations that involve external agencies (i.e. DHS, police, etc.).

The Report of Investigative Findings (RIF) will include all of the following:

1. Statement of the allegations.
  2. Citations to relevant provisions of applicable laws, rules, policies, and guidelines.
  3. Statement of the issues involved.
  4. Investigative findings.
  5. Conclusions.
  6. Recommendations, if any.
- m. Distribute a copy of the Investigative Report to the respondent and responsible mental health agency. On substantiated rights violations the respondent's written corrective action plan will meet all of the following requirements for remedial action:
1. Correct or provide remedy for the rights violation.
  2. Is implemented in a timely manner.
  3. Attempt to prevent a reoccurrence of the rights violation.
- n. The corrective action plan/remedial action will be documented and made a part of the record maintained by the Office of Recipient Rights. Other involved investigatory agencies (APS, CPS, Licensing and or law enforcement) shall receive a report as applicable.
- o. The Executive Director/responsible mental health agency will submit a written summary report to the complainant and consumer (if not the same person), guardian, or parent of a minor within 10 business days after the executive director receives a copy of the investigative report from the Office of Recipient Rights.
- p. The Summary Report will contain all of the following:
1. Statement of the allegations.
  2. Citations to relevant provisions of applicable laws, rules, policies, and guidelines.
  3. Statement of the issues involved.
  4. Summary of investigative findings of the Office of Recipient Rights.
  5. Conclusions of the Office of Recipient Rights.
  6. Recommendations, if any, made by the Office of Recipient Rights.
  7. Action taken, or plan of action proposed, by the respondent.
  8. A statement/information describing the appellant's right to appeal, time frames and the grounds for making an appeal, and process for filing an appeal.
  9. If a plan of action is proposed, not completed, the Executive Director will a follow-up letter to the recipient, parent of minor, and/or guardian indicating when the remedial or disciplinary action was completed, a copy of the Summary Report, and appeal rights.
  10. If the letter indicating the plan of action describes an action that differs from the plan, the letter must indicate that an appeal may be made within 45 days of the "action."
- q. Information in the Summary Report will be provided within the constraints of the confidentiality/privileged communications sections (Section 748, 750) of the Michigan Mental Health Code. Therefore, the Office of Recipient Rights will obtain written informed consent from the consumer to reveal results of an investigation, to a complainant when the complainant is not the consumer, parent of a minor, guardian, or provider. If consent cannot be obtained, the

complainant's copy of the Recipient Rights Summary Report should state whether the allegation was substantiated or not substantiated, and contain only non-confidential information.

- r. Information in the summary report will not violate the rights of any employee (i.e. Bullard-Plawecki Employee Right to Know Act, Act No. 397 of the Public Acts of 1978, MCL 423.501 et. seq. etc.), and will be within the constraints of the confidentiality/privileged communications sections of the Michigan Mental Health Code.
- s. CMHOC and all providers of service will ensure that appropriate disciplinary action was taken against those who engaged in abuse or neglect, or retaliation and harassment.
- t. When either a CMH staff or provider personnel failed to report suspected violations of rights, appropriate administrative action will be taken.
- u. The Office of Recipient Rights complied with pertinent CMHOC policies to assure that investigations were conducted in a manner that did not violate employee rights.
- v. The Executive Director will review the submitted corrective action to assure the respondent took appropriate remedial action that meets the following requirements:
  1. Corrects or provides remedy for the rights violation.
  2. Is implemented in a timely manner.
  3. Attempts to prevent recurrence of the rights violation.
- w. The Executive Director will review the submitted corrective action to assure the respondent took appropriate firm and fair disciplinary action for all substantiated abuse and neglect allegations, including failure to report.
- x. A rights investigation may be reopened or reinvestigated by the Office of Recipient Rights if there is new evidence that was not presented at the time of the investigation.

2. Rights Interventions:

All other rights issues, besides abuse and neglect, can be handled as interventions and resolved to the mutual satisfaction of all parties involved. Records will be maintained of all such cases.

- a. Interventions are completed by the Office of Recipient Rights on behalf of a consumer to resolve a complaint alleging a violation of a code protected right when the facts are clear, and the remedy, if applicable, is clear, easily obtainable and does not involve statutorily required disciplinary action.

C. **Appeal Process:**

1. The Board of the CMHSP has designated the Recipient Rights Advisory Committee as the appeals committee. None of the members shall be employed by the community mental health service provider or MDHHS.
2. The appeals committee may request consultation and technical assistance from MDHHS-ORR.
3. A member of an appeals committee who has a personal or professional relationship with an individual involved in an appeal shall abstain from participating in that appeal as a member of the committee.
4. The complainant, consumer, guardian, and parent of a minor in the summary report from the executive director, was advised of the following:
  - a. The written appeal must be filed with the CMHOC Recipient Rights Appeals Committee no later than 45 days after receipt of the summary report.

- b. The complainant, consumer, guardian, or parent of a minor may appeal the outcome of the complaint investigation based on the following grounds:
  1. The investigative findings of the rights office are not consistent with the facts, law, rules, policies, or guidelines.
  2. The action taken or plan of action proposed by the respondent does not provide an adequate remedy.
  3. An investigation was not initiated or completed on a timely basis.
5. The complainant, consumer, guardian, or parent of a minor will be advised by the Office of Recipient Rights that there are advocacy organizations available to assist in preparing the written appeal and offered to make the referral.
6. In the absence of assistance from an advocacy organization, the Office of Recipient Rights will offer to make the referral or to provide assistance in meeting the procedural requirements of the written appeal.
7. Within 5 business days after receipt of the written appeal, members of the Appeals Committee will review the appeal to determine whether it meets the criteria for an appeal (see above #4).
8. If the appeal is denied because the criteria were not met, the complainant, consumer, guardian or parent of a minor will be notified in writing within the 5 business days.
9. If the appeal is accepted, written notice shall be provided to the appellant, consumer, guardian or parent of a minor and a copy of the appeal shall be provided to the respondent and the responsible mental health agency within 5 business days.
10. Within 30 days after receipt of the written appeal, the Appeals Committee will meet and review the facts as stated in all complaint investigation documents.
11. The Appeals Committee will do one of the following in making a decision about the appeal:
  - a. Uphold the findings of the Office of Recipient Rights and the action taken or plan of action proposed by the respondent.
  - b. Return the investigation to the Office of Recipient Rights with a request that it be reopened or reinvestigated.
    - If the investigation is returned to the Office of Recipient Rights by the appeals committee for reinvestigation, the Office of Recipient Rights will complete the reinvestigation within 45 days following the standards established in 330.1778.
    - Upon receipt of the Report of Investigative Findings (RIF), the director will take appropriate remedial action and will submit a written summary report to the complainant, recipient, if different than the complainant, parent or guardian, and the appeals committee within 10 business days.
  - c. Uphold the investigative findings of the Office of Recipient Rights, but recommend that the respondent take additional or different action to remedy the violation.
    - If a request for additional or different action is sent to the director, a response will be sent within 30 days as to the action taken or justification as to why it was not taken. The response will be sent to the complainant, the recipient, if different than the complainant, parent or guardian, and the appeals committee.
  - d. Recommend that the CMHOC Board request an external investigation by another Recipient Rights Officer or by the MDHHS Office of Recipient Rights.

- If the committee notifies the CMHOC Board Chair of a recommendation to seek an external investigation from MDHHS-ORR, the board will send a letter of request to the director of MDHHS-ORR within 5 business days of receipt of the request from the appeals committee. The director of CMHOC will be responsible for issuance of the summary report, which will identify the grounds and advocacy information and direct to MDHHS-ORR Appeals committee for an appeal.
12. The Appeals Committee will document their decision and justification for the decision in writing.
  13. Within 10 business days after reaching a decision, the Appeals Committee will provide copies of its written decision to the respondent, appellant, consumer, guardian, parent of minor, CMHOC's Executive Director, and the Director of Recipient Rights.
  14. The written decision will include information on the appellant's right to appeal to MDHHS (level 2 appeal) within 45 days of receipt of the decision of CMHOC's Recipient Rights Appeals Committee. The appeal shall be based on the record established in the previous appeal, and on the allegation that the investigative findings of the local Office of Recipient Rights are not consistent with the facts or with the law, rules, policies, or guidelines.

**D. Mediation:**

1. If the recipient/parent/guardian has a dispute related to service planning or the services provided by a Community Mental Health Services Program (CMHSP) or a contracted service provider of a CMHSP, the recipient/parent/guardian has the right to mediation under section 1206(a). The recipient/parent/guardian should be directed to contact the Customer Service Representative at the CMHSP.

**E. Storage & Distribution of Recipient Rights Complaint Reports:**

1. All complaint reports will be stamped "CONFIDENTIAL" in red ink by rights staff.
2. One copy of the complaint report with a request for corrective action will go to the Director of the contract agency or, internally, to the Program Director.
3. Persons receiving these reports are responsible for assuring their confidentiality. These reports are to be maintained in a locked storage area or shredded when no longer needed.
4. These reports are only to be shared on a "need to know" basis, consistent with any applicable Ottawa County or contract agency personnel policies and Section 748 of the Mental Health Code.
5. A copy of the report will not be given to any of the staff involved in the allegation.
6. When the complaint report is used in a disciplinary action, the names of all consumers and providers involved in the case must be eliminated to preserve their confidentiality.

**VI. ATTACHMENT:**

None Applicable

**VII. REFERENCE:**

Michigan Mental Health Code, Chapter 7  
MDHHS – ORR Attachment B