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Chapter: **RECIPIENT RIGHTS**  
Title: **RECIPIENT RIGHTS PROTECTION STANDARDS**

Prior Approval Date: 7/30/09  
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Approved by: BOARD ACTION

  
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Executive Director

08/29/12  
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Date

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**I. Abstract**

This policy establishes the standards and procedures to assure the protection of the rights of service recipients served by all network providers of the Macomb County Community Mental Health (MCCMH) Board.

**II. Application**

This policy shall apply to all directly-operated and contract network providers of the MCCMH Board.

**III. Policy**

- A. It is the policy of the MCCMH Board that in addition to the rights, benefits, and privileges guaranteed by other provisions of law, the State Constitution of 1963, and the Constitution of the United States, a recipient of Board services shall have the rights guaranteed by Chapter 7 & 7A of the Michigan Mental Health Code (the Code), the Michigan Department of Community Health (MDCH) Administrative Rules and applicable MCO directives/policies/contractual stipulations as promulgated by MDCH and the MCCMH Board.
- B. The protection standards enumerated in this policy shall not be construed to replace or limit any other rights, benefits, or privileges of a recipient of services.
- C. This policy is intended to protect and promote the dignity and respect to which a recipient of services is entitled.

#### **IV. Definitions**

- A. Legal Custody - an order of the court which grants to a parent decision-making authority as to the important decisions affecting the welfare of the child. Parents granted "Joint Legal Custody" agree to cooperate in the sharing of this decision-making authority. OAG, 2004, No. 7,149 (February 20, 2004).

#### **V. Standards**

- A. Protection
1. The MCCMH MCO ORR (Chapter 9) policies and procedures shall ensure the protection of its providers' recipients from, and prevent recurrence of, violations of rights guaranteed by Chapter 7 & 7A of the Michigan Department of Community Health Code.
  2. MCCMH providers who utilize "Temporary Service Personnel", shall assure such individuals adhere to the MCCMH MCO policies and procedures for rights protection which ensure protecting recipients from, and prevent recurrence of, violations of rights guaranteed by Chapter 7 & 7A of the Code.
  3. Provider staff shall receive Recipient Rights training as provided by the Board which must take place within 30 days after being employed or contracted by a provider, with a face to face refresher training every two years thereafter.
  4. Each provider shall comply with all Recipient Rights provisions of the Code and Administrative Rules and will post, in a conspicuous location, a copy of the Board-supplied Summary of Rights as guaranteed by the Code and Administrative Rules.
  5. All providers shall post in a conspicuous location the Board-provided poster which identifies the MCCMH ORR telephone number, address, and the names of the rights advisors/investigators; the Summary of Abuse and Neglect Reporting Requirements poster; the Michigan's Whistleblower's Protection Act and other notifications as required by the MCCMH ORR.
  6. Providers shall assure that all recipients of services, their parents, guardians, natural support persons, and others have ready access to Board-supplied Recipient Rights Complaint forms with the name and address of the MCCMH ORR indicated on the form.

7. Providers shall assure that Consumer Incident, Accident, Illness, Death or Arrest Report(s) (IR's) received by the provider are promptly reviewed (noting appropriate action(s) taken by staff, and action taken to remedy and/or prevent recurrence) and submitted to the MCCMH ORR.
8. All provider personnel (including employees, independent contractors, volunteers, interns or agents) shall monitor the safety and welfare of recipients while they are under service supervision. Provider personnel who become aware of or witness a recipient suffer a physical injury will provide immediate comfort and protection and assure immediate medical treatment for the recipient.
9. Providers shall ensure confidentiality of information regarding recipients in compliance with Code provisions MCL 330.1748, "Confidentiality," and MCL 330.1750, "Privileged Communications," and pertinent MCCMH MCO policies of Chapter 9 pertaining to confidentiality.
10. Provider administration shall ensure that complainants or any staff acting on behalf of a recipient will be protected from harassment or retaliation resulting from recipient rights activities and that appropriate disciplinary action will be taken where there is evidence of harassment or retaliation.
11. Providers shall allow individuals who properly identify themselves as representatives of the Michigan Protection and Advocacy Services access to premises, recipients and services records in compliance with MCL 330.1748, "Confidentiality." Procedural access shall be in keeping with MCCMH MCO and/or contract provider policies.
12. Providers shall assure that the MCCMH ORR has unimpeded access to all of the following;
  - a. All programs and services operated by the providers;
  - b. All staff employed by the providers; and
  - c. All evidence necessary to conduct a thorough investigation or to fulfill its monitoring functions.
13. Providers shall immediately forward and/or verbally report to the MCCMH ORR (ORR of the contract provider if so designated in their contract with the Board) all allegations, apparent or suspected, of Recipient Rights violations. Failure to report allegations of alleged Rights violations is a violation of the Code and Administrative Rules.

14. The MCCMH ORR shall assure immediate (within 24 hours of notification) investigation initiation in cases involving alleged abuse, neglect, or serious injury, or death of a recipient when a rights violation was apparent or suspected; assure notification of allegations cited above to the appropriate program within Michigan Department of Human Services (e.g. Children's Protective Services, the Bureau of Children and Adult Licensing programs) and the appropriate law enforcement agency as required by law.
15. Upon MCCMH ORR finding(s) and/or recommendation(s), provider administration shall ensure that appropriate remedial action (as described in MCL 330.1780, is taken to resolve violations of rights and notify the complainants of substantiated violations in a manner that does not violate employee or contractual rights. Note: Complainant notification of findings/recommendations shall adhere to MCCMH MCO Policy 9-510, "Recipient Rights Investigation."
16. Substantiated violations of recipient abuse or neglect or harassment or retaliation shall subject provider personnel to an appropriate penalty, including official reprimand, demotion, suspension, reassignment, dismissal, or termination of contract.
17. Provider administration shall promulgate progressive policies, procedures, or rules concerning disciplinary actions for violations/noncompliance with recipient rights provisions of the Code, Administrative Rules, and MCCMH MCO Recipient Rights policies/procedures.

**B. Civil Rights of All Recipients**

1. A recipient has the same civil rights, benefits, and privileges as a person not receiving mental health services, including the right to enter into a marriage contract or obtain or oppose a divorce. Provider staff shall not interfere with the recipient's exercise of such rights.
2. A violation of civil rights shall be regarded as a violation of recipient rights.
3. Allegations concerning Section 504 of the Rehabilitation Act 1973, or the Americans with Disabilities Act of 1990 shall be regarded as a potential violation of recipient rights. Such allegations shall be investigated by the MCCMH ORR with appropriate notification to other agencies as required by law.
4. An adult recipient, and a minor where Michigan law allows consent by a minor, shall be presumed to be legally competent. The presumption may be rebutted

only by judicial order or exercised by a court of guardianship powers and only to the extent of the scope and duration of guardianship powers enumerated within such order.

5. Guardianship proceedings shall not be initiated unless a recipient's competence is in doubt. Should a recipient's competence be in doubt, consideration for guardianship shall be noted in the recipient's clinical record. No guardianship petition shall encompass greater scope than is essential and upon recipient demonstration he or she is capable of consent, proceedings to terminate or narrow the scope of guardianship shall be initiated.

#### C. Civil Rights of Residential Recipients

1. An adult recipient shall be permitted, to the maximum extent feasible and in any legal manner, to conduct personal and business affairs and otherwise exercise all rights, benefits, and privileges not divested or limited by judicial order.
2. Recipients shall be allowed to participate in the electoral process, except those recipients who have been legislatively excluded. Provider personnel shall canvass recipients over the age of 18 to ascertain their interest in registering to vote, obtaining absentee ballots, and casting ballots. Canvassing shall allow sufficient time for voter registration; acquisition of absentee ballots; and shall allow recipients sufficient time to leave the premises (as appropriate) to exercise voting privileges.
3. Recipients shall not be prohibited from receiving campaign literature or the placement of political advertisements in his or her personal quarters. Residential administration shall permit campaigning on premises however, the time, duration, and location of these activities may be regulated.
4. Recipients shall not have their personal property or living area searched by care providers unless such a search is authorized in the recipient's Plan of Service or there is reasonable cause to believe that the recipient is in possession of contraband or property that is excluded from the recipient's possession by the written MCCMH MCO or contract provider policies, procedures, or rules.
5. The following conditions shall apply to all searches of a recipient's personal property or living area:
  - a. A search shall occur in the presence of a witness. The recipient shall also be present unless he/she declines. Should the recipient decline to be present during the search, his/her decision shall be documented.

- b. The circumstances surrounding the search shall be documented in the recipient's record: recording the reasons for initiating the search; names of the individuals conducting and witnessing the search; and the results of the search, including a description of the property seized, if any.

#### D. Notification of Rights

1. At the time services are first requested, and annually thereafter, providers shall assure that each applicant for service, or, for a minor recipient, his/her guardian, other legal representative, the parent with legal custody, or both parents if granted joint legal custody, as appropriate, receives a written and oral/sign language summary of his/her lawful rights as guaranteed by Chapter 7 & 7A of the Code in an understandable manner. The written and oral summary provided to the applicant is to be documented (including the individual who provided the information) in the clinical record and a written summary of section 748 of the Code shall be included in clinical record.
2. Special explanation of the written and oral summary shall be given and documented if the recipient is a person who:
  - a. Is illiterate;
  - b. Has a developmental disability;
  - c. Is non-English speaking (the oral explanation shall be provided in a language that the recipient understands and may be delayed until a translator is available);
  - d. Is emotionally distraught (the oral explanation may be delayed until a more clinically suitable time if the recipient is unable to comprehend the explanation at the time of admission);
  - e. Is deaf or hearing-impaired (explanation shall be communicated by means that are understandable to the recipient, e.g., sign language, and may be delayed until a qualified translator is available); or
  - f. Is blind or visually-impaired.
3. If the applicant is a minor, the oral explanation shall be simplified in accordance with the minor's ability to comprehend. The recipient's parent with legal custody or both parents if granted joint legal custody, or the recipient's guardian shall also be given the explanation.

4. Providers shall notify an applicant of his/her right to have a second opinion should his/her initial request for hospitalization or access to Board services is denied. Second opinion requests at directly-operated providers shall follow MCCMH Administrative policy and procedures. Failure to provide this notification is a violation of the Code and the Administrative Rules.
5. Recipients (utilizing Board-approved notification forms and/or procedures) shall be informed of their right to request an appeal for the following:
  - a. Financial Liability Determination;
  - b. Family Support Subsidy Determination;
  - c. Content of a Plan of Service; and,
  - d. Suspensions, Reductions or Termination of current authorized Board services.

Note: Appeal rights for some of the above and appeal or dispute resolution procedures may differ dependent upon the recipient's health care coverage.

6. Providers shall assure that recipients and family members of recipients of service are treated with dignity and respect. Additionally, family members (or other individuals chosen by the recipients to be included in person-centered planning) are also afforded the following:
  - a. Opportunity to provide information to the treating professional(s); and
  - b. Opportunity to request and receive educational information about the nature of disorders, medications and their side effects, available support services, advocacy and support groups, and financial and coping strategies.
7. Providers shall notify/assure recipients of service (parents and/or guardians, as appropriate) of the following:
  - a. That recipients of service may develop (in accordance with Board-approved time lines and format) a Plan of Service which utilizes the person-centered planning process in partnership with the recipient and/or guardian, as appropriate, and does not contain privileged or confidential information;
  - b. Recipients are given their choice of a psychiatrist or mental health professional in accordance with MCCMH MCO Policy 9-640, "Second Opinion," and within the limits of available staff in the service site or program;
  - c. If a recipient is able to secure the services of a mental health professional,

he/she shall be allowed to see the professional at any reasonable time;

- d. Recipients (parents and/or guardian as appropriate) are to be informed orally and in writing of their clinical status and progress at times established by provider policy, and in a manner appropriate to their clinical condition;
  - e. Unless otherwise provided by judicial order, a recipient shall not be subjected to surgery, electroconvulsive therapy or other procedure without adherence to Board-approved policies and the appropriately executed consent form(s);
8. Psychotropic medication(s) shall not be prescribed for a recipient without obtaining a duly executed informed consent which explains to the recipient or parent/guardian, the most common adverse effects that have been associated with the proposed medication(s), specific risks, if any, and which is completed in accordance with MCCMH MCO Policy 9-601, "Informed Consent for Psychotropic Medication"; and,
  9. A complete and current record (in accordance with MCCMH MCO and contract provider policies) is to be maintained for each recipient of services. And, if requested, recipients shall be provided with the procedures(s) necessary for their record access. If, upon access of their record, the recipient (parent and/or guardian) challenges the accuracy, completeness, timeliness, or relevance of factual information in their record, he/she shall be allowed to insert into the record a statement correcting or amending the information at issue. The statement shall become part of the record.

## **VI. Procedures**

- A. None.

## **VII. References / Legal Authority**

- A. Federal Statutes
  1. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794
  2. Americans with Disabilities Act, 42 USC 12101 et seq.
- B. Michigan Mental Health Code
  1. MCL 330.1704
  2. MCL 330.1705
  3. MCL 330.1706
  4. MCL 330.1711
  5. MCL 330.1712
  6. MCL 330.1713
  7. MCL 330.1714
  8. MCL 330.1715



9. MCL 330.1716
  10. MCL 330.1717
  11. MCL 330.1719
  12. MCL 330.1748(8)
  13. MCL 330.1749
  14. MCL 330.1750
  15. MCL 330.1752 )
  16. MCL 330.1755 (1), (2), (3), (5)
- C. 1998 Michigan Department of Community Health, Administrative Rules
1. R 330.7003
  2. R 330.7005
  3. R 330.7012
  4. R 330.7017
  5. R 330.7035(1)
  6. R 330.7051(1)
- D. 2007 Michigan Department of Community Health, Administrative Rules
1. R 330.7009
  2. R 330.7011
  3. R 330.7158
  4. R 330.7199
- E. MDCH Contractual Requirements: Managed Specialty Supports and Services
- F. OAG, 2004, No. 7,149 (February 20, 2004).
- G. MCCMH MCO Policies
1. 2-001, "Person-Centered Practice Planning Guidelines"
  2. 2-006, "Service Provider Appeals"
  3. 5-002, "Cultural and Linguistic Competency"
  4. 9-140, "Recipient Rights Training"
  5. 9-170, "Local Dispute Resolution Process"
  6. 9-180, "Second Opinion"
  7. 9-510, "Recipient Rights Investigation"
  8. 9-600, "Informed Consent for Services"
  9. 9-601, "Informed Consent for Psychotropic Medications"
  10. 9-640, "Choice of Mental Health Professional"
  11. 9-713, "Release of Clinical Records to Michigan Protection & Advocacy Services"

## VIII. Exhibits

- A. None.