

Chapter: **RECIPIENT RIGHTS**  
Title: **RECIPIENT RIGHTS INVESTIGATIONS**

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Approved by: BOARD ACTION

Approved by: \_\_\_\_\_ Executive Director  
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**I. Abstract**

This policy establishes the standards and procedures of the Macomb County Community Mental Health (MCCMH) Board for reporting, investigating and documenting alleged violations of recipient rights enumerated in the Michigan Mental Health Code for providers of mental health services, and for assuring that remedial, corrective/disciplinary, or preventive action is taken when alleged violations of recipient rights are substantiated.

**II. Application**

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

**III. Policy**

It is the policy of the MCCMH Board that there shall be provided:

- A. A simple mechanism for recipients and others to report allegations of apparent/suspected rights violations;
- B. A system for determining whether, in fact, rights violations have occurred;
- C. Firm and fair corrective/disciplinary action, preventive action, or appropriate remedial action in the event of substantiated rights violations; and
- D. A mechanism whereby persons who file Recipient Rights complaints, MDCH #2500 (Exhibit A), of apparent violations of rights are informed of:
  - 1. The progress and results of the investigation of the complaint;

2. Any subsequent modification of remedial, corrective/disciplinary or other action taken as a result of the complaint investigation; and
3. The right to appeal the action taken to resolve a Recipient Rights complaint.

#### **IV. Definitions**

- A. **Complainant**  
The recipient or any other person who files an allegation that a recipient's right has been violated or who otherwise complains that a recipient's right has been violated.
- B. **Code-Protected Right**  
A right that is guaranteed in the Michigan Mental Health Code or the Administrative Rules of the Michigan Department of Community Health (MDCH) or other applicable law.
- C. **Executive Director**  
The MCCMH Executive Director or that person's authorized representative.
- D. **Not Substantiated**  
A determination by the MCCMH Office of Recipient Rights (ORR) that an alleged violation of a right was not a violation or was not able to be proved by a preponderance of evidence.
- E. **Office of Recipient Rights (ORR)**  
The MCCMH office, subordinate only to the Executive Director of MCCMH, which receives reports of and investigates alleged violations of code-protected rights, acts to resolve disputes relating to alleged violations, acts on behalf of recipients and otherwise endeavors to safeguard code-protected rights.
- F. **Preponderance of Evidence**  
A standard by which the greater weight or convincing nature of evidence indicates that it is more probable something is true than untrue.
- G. **Remedial Action**  
Action taken after it has been determined through investigation that a right has been violated, that meets all of the following requirements:
  1. Corrects or provides a remedy for the rights violations;
  2. Is implemented in a timely manner;
  3. Attempts to prevent a recurrence of the rights violation.

The action shall be documented and made part of the record maintained by MCCMH ORR.
- H. **Substantiated**  
A determination by the MCCMH ORR that an alleged violation of a right did, in fact, occur or was, in fact, committed.

- I. Respondent  
A network provider that had responsibility for services at the time with respect to which an alleged rights violation complaint has been filed.

**V. Standards**

- A. The MCCMH Executive Director shall:
  - 1. Meet regularly with the MCCMH Recipient Rights Director to discuss alleged rights violations, recommended remedial actions, and prevention of rights violations.
  - 2. Take firm and fair corrective/disciplinary and/or appropriate remedial action when a right has been violated.
  - 3. Use the preponderance of evidence standard as the standard of proof in deciding when a violation of rights has occurred and determining fair and appropriate corrective or disciplinary action to be taken.
  - 4. Submit a written summary report to the complainant and recipient, if different than the complainant, within 10 business days after the MCCMH Executive Director receives a copy of the MCCMH ORR Investigative Report. The summary report shall include all of the following:
    - a. A statement of the allegations;
    - b. A statement of the issues involved;
    - c. Citations to relevant provisions of the Michigan Mental Health Code, MDCH Administrative Rules, MDCH Guidelines, and MCCMH MCO Policies;
    - d. Summary of investigation findings, conclusions;
    - e. Recommendations made by the MCCMH ORR; and
    - f. Follow-up action taken, or plan of action proposed, by the respondent.
    - g. A statement which describes the complainant's and recipient's, if different than the complainant, right to appeal and the grounds for an appeal.
- B. The MCCMH ORR shall:
  - 1. Utilize a Recipient Rights complaint format (Exhibit A) which contains the following:
    - a. A statement of the allegations that give rise to the dispute;
    - b. A statement of the right or rights that may have been violated; and

- c. The outcome that the complainant is seeking as a resolution to the complaint.
2. Assist the recipient or other individual with the complaint process.
3. Record all complaints (written or verbal) upon receipt, even if it may later be determined that an investigation is not warranted and determine if it involves a code-protected right. If it is determined that an investigation is warranted the MCCMH ORR shall:
  - a. Notify the complainant within 5 business days of the complaint's acknowledgment, inform him/her of the option of mediation, and return a copy of the complaint to the complainant;
  - b. Assist the recipient or other complainant in the preparation of a written rights complaint, if necessary, which includes advising him/her, in the alternative, that there are advocacy organizations available to assist with the complaint process, provide a referral to those organizations if requested, and inform him/her under what circumstances and when mediation may be exercised;
  - c. If a rights complaint has been filed regarding the conduct of the MCCMH Executive Director, notify the complainant that the rights investigation shall be conducted by the ORR of another Community Mental Health Board or by the State ORR, as determined by the MCCMH Board.
4. If it is determined that an investigation is not warranted, provide notification to the complainant within 5 business days of the complaint's acknowledgment, that the MCCMH ORR has determined that no investigation is warranted, and return a copy of the complaint to the complainant.
5. Initiate investigation of apparent or suspected rights violations in a timely and efficient manner with assistance from other staff when deemed necessary by the MCCMH ORR.
6. Complete the investigation not later than 90 days, subject to delays involving pending action by external agencies (Department of Human Services, law enforcement, etc.), after it receives the rights complaint. Investigations shall be initiated immediately in cases involving alleged abuse, neglect, serious injury, or death of a recipient involving an apparent or suspected rights violation.
7. Accurately record the investigation activities taken on behalf of each rights complaint.
8. Issue a written status report every 30 calendar days during the course of the investigation and submit the report to the complainant, the respondent, and

the responsible mental health agency. A status report shall include all of the following:

- a. Statement of the allegation(s);
  - b. Statement of the issues involved;
  - c. Citations to relevant provisions of the Michigan Mental Health Code, MDCH Administrative Rules, MDCH Guidelines, and MCCMH MCO Policies;
  - d. Investigation activities and progress to date; and
  - e. Expected date for completion of the investigation.
9. Upon completion of the investigation process, submit a written report (the report may be delayed pending completion of investigations that involve external agencies, including law enforcement agencies) to the respondent and to the MCCMH Executive Director which contains the following:
- a. Statement of the allegation(s);
  - b. Statement of the issues involved;
  - c. Citations to relevant provisions of the Michigan Mental Health Code, MDCH Administrative Rules, MDCH Guidelines, and MCCMH MCO Policies;
  - d. Investigative findings;
  - e. Conclusions, based upon the preponderance of evidence standard; and
  - f. Recommendations, if any.
10. As appropriate, open or reinvestigate the complaint if there is new evidence that was not presented at the time of the investigation.
11. Review all Consumer Incident, Accident, Illness, Death or Arrest Reports, (Exhibit A to MCCMH MCO Policy 9-321, "Consumer Incident, Accident, Illness, Death or Arrest Report Monitoring.")

C. The parties may do any of the following:

1. At any time after the MCCMH ORR completes its investigative report, the parties may agree to mediate the dispute. A mediator shall be jointly selected to facilitate a mutually acceptable settlement between the parties. The mediator shall be an individual who has received training in mediation and who is not involved in any manner with the dispute or with the provision of services to the recipient.

2. If the parties agree to mediation and reach agreement through the mediation process, the mediator shall prepare a report summarizing the agreement, which shall be signed by the parties. The signed agreement shall be binding on both parties. Notice that an agreement has been reached shall be sent within 10 days to the MCCMH ORR and the MCCMH Executive Director.
  3. If the parties fail to reach agreement through the mediation process, the mediator shall document that fact in writing and provide a copy of the documentation to the parties, the MCCMH ORR, and the MCCMH Executive Director within 10 days after the end of the mediation process. The parties may return to the formal appeals process.
  4. If the parties engage in mediation, all appeal and response times are suspended during the period of time the mediation process is taking place. The suspension of time periods begins on the day the parties agree to mediate and expires 5 days after the day the mediator provides the written documentation to the parties and the MCCMH ORR that mediation was not successful.
- D. Records compiled in the course of investigating an alleged rights violation shall be retained by the MCCMH ORR, maintained in an administrative file independent of the recipient's clinical records, and subject to the confidentiality safeguards of MCL 330.1748.
- E. MCCMH, in conjunction with the appropriate network provider, shall ensure that appropriate disciplinary action is taken against those who have engaged in substantiated rights violations, including abuse, neglect, and failure to report.

## **VI. Procedures**

- A. Upon receipt of a recipient rights complaint, written or oral, or upon determination that a Consumer Incident, Accident, Illness, Death or Arrest Report represents an alleged violation, the MCCMH ORR shall:
1. Determine if the complaint does or does not concern a code-protected right and is within the jurisdiction of the Board.
  2. Log the receipt of the allegation and assign a complaint number returning a copy of the complaint to the complainant within 5 business days of the decision to investigate or state that the complaint does not warrant an investigation (if an investigation is not warranted and/or not under the Board's

jurisdiction, provide a rationale for not investigating or provide referral assistance as appropriate).

3. Notify the MCCMH Executive Director of all complaints of a serious or significant nature within one (1) working day of receipt of complaint.
  4. If the complaint or allegation does concern a code-protected right and is within the jurisdiction of the MCCMH Board:
    - a. Interview the complainant (and the recipient(s) if different and when necessary);
    - b. Interview persons who may have information regarding the complaint or the situation described in the complaint;
    - c. Review applicable portions of the Michigan Mental Health Code, MDCH Administrative Rules, MDCH guidelines, MCCMH MCO policies, and provider policies; and
    - d. Review pertinent recipient records and administrative records.
  5. Make a determination, based on the preponderance of evidence standard, as to whether each allegation is:
    - a. Substantiated;
    - b. Not substantiated.
  6. Document the remedial action taken on substantiated violations, making the documentation part of the record maintained by the ORR.
  7. Prepare the MCCMH ORR Investigative Report and present it to the MCCMH Executive Director. Upon the MCCMH Executive Director's concurrence, the MCCMH Executive Director shall prepare a written summary report to be submitted to the complainant.
- B. If remedial, corrective/disciplinary or preventive action is recommended, the MCCMH Executive Director, who has reviewed and approved the recommendation for that action, shall discharge such responsibility to the appropriate individual(s) thereby correcting the situation or preventing the reoccurrence of such incident/situation. The MCCMH Executive Director shall determine what, if any, action is required to remedy or prevent violations of recipient rights for directly-operated providers of the MCCMH Board. For contracted providers, the MCCMH Executive Director reserves the right to ask for additional action if the provider's course of action is determined to be insufficient. The Executive Director shall assign the monitoring of the action/corrective plan to the appropriate Division Director.

**VII. References / Legal Authority**

- A. MCL 330.1748, MCL 330.1782, MCL 330.1788
- B. MDCH Contractual Requirements: Managed Specialty Supports and Services
- C. MCCMH MCO Policy 9-130, "Recipient Rights Director"

**VIII. Exhibits**

- A. Recipient Rights Complaint, MDCH #0030 (1/07)

Complaint Number	Category
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Michigan Department of Community Health  
**RECIPIENT RIGHTS COMPLAINT**

<p><b>Instructions:</b> If you believe that one of your rights has been violated you (or someone on your behalf) may use this form to make a complaint. A rights advisor will review the complaint and may conduct an investigation. Keep a copy for your records and send the original to the rights office at the CMH agency or the hospital where you are receiving (or received) services, or to: MDCH – Office of Recipient Rights, Lewis Cass Building, Lansing Michigan 48913.</p>		
Complainant's Name:	Recipient's Name:	
Complainant's Address:	Where did the alleged violation occur?	
Complainant's Phone Number:	When did the alleged violation happen?	
What right was violated?		
Describe what happened:		
What would you like to have happen in order to correct the violation?		
Complainant's Signature	Date:	Name of person assisting complainant
DCH 0030 Replaces DCH-2500 <span style="float: right;">Authority: P.A. 258 of 1974 as amended</span>		
Distribution: ORIGINAL TO ORR COPY to Complainant (with acknowledgement letter)		