

Chapter: **RECIPIENT RIGHTS**
Title: **RECIPIENT RIGHTS INVESTIGATION**

Prior Approval Date: 03/23/16
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Proposed by: Dave Pankotai 03/01/2022
Chief Executive Officer Date

Approved by: Albert L. Lorenzo 03/01/2022
County Executive Office Date

I. ABSTRACT

This policy establishes the standards and procedures of Macomb County Community Mental Health (MCCMH), an official agency of the County of Macomb, 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 MCCMH 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 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 Health and Human Services (MDHHS) or other applicable law.
- C. Chief Executive Officer
The MCCMH Chief Executive Officer (CEO) or their 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 CEO 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 the following requirements:
1. Corrects or provides a remedy for the rights violation;
 2. Is implemented in a timely manner; and
 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 or MCCMH staff that had responsibility for services at the time with respect to which an alleged rights violation complaint was filed.

V. **STANDARDS**

A. The MCCMH Chief Executive Officer (CEO) 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 ten (10) business days after the MCCMH CEO receives a copy of the MCCMH ORR Investigative Report. The summary report shall include all 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, MDHHS Administrative Rules, MDHHS Guidelines, and MCCMH MCO Policies;
 - d. Summary of investigation findings and conclusions;
 - e. Recommendations made by the MCCMH ORR;
 - f. Follow-up action taken, or plan of action proposed, by the respondent; and
 - 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:

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- 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 five (5) business days of the complaint's acknowledgment 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 and provide a referral to those organizations if requested.
 - c. If a rights complaint has been filed regarding the conduct of the MCCMH CEO, 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 five (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 ninety (90) days (subject to delays involving pending action by external agencies such as the Department of Health and 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 thirty (30) calendar days during the investigation and submit the report to the complainant, the respondent, and the responsible mental health agency. A status report shall include all the following:

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- a. Statement of the allegation(s);
 - b. Statement of the issues involved;
 - c. Citations to relevant provisions of the Michigan Mental Health Code, MDHHS Administrative Rules, MDHHS 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 CEO 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, MDHHS Administrative Rules, MDHHS 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. Records compiled while 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.
- D. 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 five (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 CEO 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, MDHHS Administrative Rules, MDHHS guidelines, MCCMH MCO policies, and provider policies; and
 - d. Review pertinent recipient records and administrative records.
 5. Decide, based on the preponderance of evidence standard, as to whether each allegation is substantiated or 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 CEO.
 8. Upon the MCCMH CEO's concurrence, the MCCMH CEO shall prepare a written summary report to be submitted to the complainant.

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- B. If remedial, corrective/disciplinary or preventive action is recommended, the MCCMH CEO, 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.
- C. The MCCMH CEO shall determine what, if any, action is required to remedy or prevent violations of recipient rights for directly-operated providers of the MCCMH Board.
- D. For contracted providers, the MCCMH CEO reserves the right to ask for additional action if the provider's course of action is determined to be insufficient.
- E. The CEO shall assign the monitoring of the action/corrective plan to the appropriate Division Director.

VII. REFERENCES/LEGAL AUTHORITY

- A. MCL 330.1748
- B. MCL 330.1782
- C. MDHHS Contractual Requirements: Managed Specialty Supports and Services
- D. MCCMH MCO Policy 9-130, "Recipient Rights Director"
- E. MCCMH MCO Policy 9-321, "Consumer Incident, Accident, Illness, Death or Arrest Report Monitoring"

VIII. EXHIBITS

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



Mark A. Hackel
County Executive

Macomb County Community Mental Health
RECIPIENT RIGHTS COMPLAINT

INSTRUCTIONS:

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 officer/advisor will review the complaint and may conduct an investigation. Keep a copy for your records and send the original to **Office of Recipient Rights – Macomb County CMH, 22550 Hall Rd., Clinton Twp., 48036 or Fax to: (586) 466-4131**. You may contact the Office of Recipient Rights if you need assistance at (586) 469-6528.

Complainant's Name:	Recipient's Name (if different from complainant):
Complainant's Address:	Where did the alleged violation occur?
City and Zip Code:	When did the alleged violation happen? (date and time):
Complainant's Phone Number:	Name of Staff involved:

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

Distribution: ORIGINAL TO ORR

Authority: P.A. 258 of 1974 as amended

COPY to Complainant (with acknowledgement letter)