
Chapter: **RECIPIENT RIGHTS**
Title: **AUTHORIZATIONS AND FUNCTIONS**

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Approved by: BOARD ACTION



Executive Director

08/29/12

Date

I. Abstract

This policy establishes the authority and the responsibilities of the Macomb County Community Mental Health (MCCMH) Office of Recipient Rights (ORR); provides for reporting of alleged violations of the rights of recipients of service, investigation of alleged violations, and reporting of the findings of any investigations conducted; and assures that remedial, corrective/disciplinary, or preventive action is taken when alleged violations of the rights of recipients are substantiated.

II. Application

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

III. Policy

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

- A. A direct mechanism for recipients and others to report alleged violations of the rights of recipients of service including allegations concerning Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990;
- B. A system for investigating alleged violations and for determining whether violations have occurred;

- C. A mechanism for notifying the complainant of the progress and results of the investigatory process which includes notification of appropriate corrective/disciplinary, remedial or preventive action(s) (which do(es) not violate employee rights), and to include any subsequent modifications of policy or procedures undertaken as a result of the investigation of alleged recipient rights violations;
- D. A mechanism for staff consultation and training on recipient rights related issues in the delivery of services and in the protection of the rights of persons receiving services;
- E. Monitoring of ongoing Board and MCCMH program reports and policies to assure appropriate action on substantiated violations and prevention of or correction of conditions which may represent or contribute to potential violations of recipient rights, including, but not limited to the provisions of MCCMH MCO Policy 9-321, "Consumer Incident, Accident, Illness, Death or Arrest Report," licensing reports, policies, certification reports, and Corporation Counsel opinions; and
- F. Protection for complainants, staff of the MCCMH ORR, and any staff acting on behalf of a recipient from harassment or retaliation resulting from recipient rights activities and that appropriate disciplinary action will be taken if there is evidence of harassment or retaliation.
- G. Direct and contract provider employees, independent contractors, volunteers, and interns shall cooperate with MCCMH ORR personnel during an investigation of an alleged rights violation.

IV. Definitions

- A. **Appropriate Action**
That measure which fits the offense, which remedies or prevents a violation, and is consistent with successful measures previously taken in identical or similar cases.
- B. **Complainant**
A 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.
- C. **Code-Protected Rights**
Rights that are guaranteed in the Michigan Mental Health Code, the Michigan Department of Community Health (MDCH) Administrative Rules, or other applicable law.
- D. **Executive Director**
The Executive Director of MCCMH or that person's authorized representative.
- E. **Office of Recipient Rights (ORR)**
The MCCMH Board office, subordinate only to the MCCMH Executive Director, 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. Recipient Rights Director

A person employed by the MCCMH Board who is responsible for the administration, investigation and training functions of the MCCMH ORR. The Recipient Rights Director (subordinate only to the MCCMH Executive Director) coordinates the function of receiving, investigating, and responding to complaints of rights violations, including serious physical injuries, unexpected death, and sexual abuse.

H. 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.

I. Substantiated

A determination by the MCCMH ORR that an alleged violation of a right did, in fact, occur or was, in fact, committed.

J. Not Substantiated

A determination by the MCCMH ORR that an alleged violation of a right was not a violation or was not able to be substantiated.

V. Standards

A. An ORR shall be established within MCCMH Administration. The MCCMH ORR shall be protected from pressures that could interfere with the impartial, even-handed, and thorough performance of its duties. The MCCMH ORR shall have unimpeded access to all of the following:

1. All programs and services operated by or under contract with the MCCMH Board;
2. All employees, independent contractors, volunteers, and interns of the MCCMH Board; and

3. All evidence necessary to conduct a thorough investigation or to fulfill its monitoring function.
- B. Staff of the MCCMH ORR shall receive at least annually, training in recipient rights protection.
 - C. Each contract between the MCCMH Board and a service provider shall ensure the provider and its employees, independent contractors, volunteers, and interns receive recipient rights training and recipients will be protected from rights violations while they are receiving services under the contract.
 - D. The Recipient Rights Director shall be appointed by the MCCMH Executive Director and shall report to the MCCMH Executive Director. The Recipient Rights Director shall not have direct involvement in the treatment of recipients or direct provision of care. The MCCMH Executive Director shall not select, replace, or dismiss the MCCMH Recipient Rights Director without first consulting the Recipient Rights Advisory Committee.
 - E. Recipient Rights staff shall be subject to removal and/or dismissal as MCCMH Rights personnel for documented failure of adherence to employment/professional guidelines, standards, policies as established Macomb County Human Resources Department, the MCCMH Board and Michigan Department of Commerce Bureau of Occupation & Professional Regulation.
 - F. A Recipient Rights Advisory Committee, established by the MCCMH Board, shall oversee the rights protection functions and protect the MCCMH ORR from pressures which could interfere with the performance of its duties.
 - G. The MCCMH ORR shall do all of the following:
 1. Provide or coordinate the protection of recipient rights for all providers;
 2. Maintain a record system for all reports of apparent or suspected rights violations received within the MCCMH system including a mechanism for logging in all complaints and a mechanism for secure storage of all investigative documents and evidence;
 3. Ensure that each provider is visited with the frequency necessary for the protection of rights but in no case less than annually;
 4. Review the recipient rights policies, when applicable, and the rights system of each MCCMH Board provider of services under contract with the Board to ensure that the rights protection system of each provider is in compliance the Michigan Mental Health Code and is of a uniformly high standard;
 5. Serve as consultant to the MCCMH Executive Director and to staff of MCCMH and

its contractors in matters related to recipient rights;

6. Ensure that all reports of apparent or suspected violations of rights within the MCCMH system are investigated in accordance with MCL 330.1778 and that those reports that do not warrant investigation are recorded in accordance with MCL 330.1755 (5)(d).
 7. Provide summary complaint data and an annual report that includes the following:
 - a. Summary data, by category, including complaints received, number of reports filed, number of reports investigated;
 - b. Number of substantiated rights violations by category and provider;
 - c. Remedial action taken on substantiated violations by category and provider;
 - d. Training received by staff of the MCCMH ORR;
 - e. Training provided by the MCCMH ORR to contract providers;
 - f. Desired outcomes established for the MCCMH ORR and progress towards these outcomes; and,
 - g. Recommendations to the MCCMH Board.
- H. The MCCMH ORR shall ensure that:
1. Copies of rights notices and rights summaries are posted in each program for inspection by recipients and by the public.
 2. Each provider shall maintain an adequate supply of rights notices, complaint forms, and other material pertinent to the protection of recipient rights.
 3. Rights information is available to recipients, parents, guardians, staff, and other interested parties, upon request, as appropriate.
 4. All recipients, upon acceptance for service and periodically thereafter, receive a written summary of their rights and verbal explanation of the rights protection system, information on how to contact the MCCMH ORR, and information on how to file a complaint.
 5. Special provisions are made to inform recipients of their rights and the rights protection system under specific circumstances for recipients who are blind or visually-impaired, illiterate, deaf or hearing-impaired, non-English speaking, emotionally distraught, minors, or who have developmental disabilities.

- I. Whenever a violation of recipient rights is alleged, apparent or suspected, the program shall immediately notify the MCCMH ORR.
- J. The MCCMH ORR shall investigate all alleged, apparent or suspected violations of recipient rights.
- K. The MCCMH ORR shall notify each complainant in an alleged recipient rights violation of:
 - 1. The progress and results of the investigation;
 - 2. Any subsequent modifications of policy and/or procedures; and
 - 3. The right to appeal the results of the investigation.
- L. Whenever a particular provider employee, independent contractor, volunteer, or intern is specifically named as a participant in an alleged violation of the rights of a recipient, the individual shall be:
 - 1. Advised of the complaint and that the complaint is under investigation;
 - 2. Informed of the specific nature of the alleged violation; and
 - 3. Afforded the opportunity to provide information concerning the alleged violation.
- M. The MCCMH ORR shall report to the MCCMH Executive Director on the alleged violation and shall make recommendation(s) regarding any necessary remedial, corrective/disciplinary or preventive action based on the results of investigation of an alleged or suspected recipient rights violation.
- N. 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.
- O. The preponderance of evidence standard shall be employed as the standard of proof in deciding disciplinary actions when a recipient rights violation has occurred.
- P. The MCCMH ORR shall monitor, or coordinate with other divisions within MCCMH to monitor, MCCMH Board programs' efforts to assure remedial action for violations and extension of such remedial action to protect all other recipients in similar situations.

- Q. Records compiled in the course of investigating an alleged recipient rights violation shall be retained by the MCCMH ORR, independent of recipient case records, and shall be subject to the confidentiality safeguards of MCL 330.1748.
- R. Proposed policies and procedures of the Board and its providers shall be reviewed, as applicable, with recommendations with regard to the prevention or correction of practices and conditions which may contribute to violations or potential violations of recipient rights.
- T. The MCCMH ORR shall act on behalf of recipients by alerting appropriate program staff to practices or conditions which may cause or result in recipient rights violations.
- U. In addition to the functions identified in this policy, MCCMH ORR will perform assigned tasks pursuant to the provisions of MCCMH MCO policy 8-003 and other MCCMH policies as applicable.

VI. Procedures

- A. See V. above.

VII. References / Legal Authority

- A. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794
- B. Americans with Disabilities Act of 1990, 42 USC 12101 et seq.
- C. MCL 330.1752
- D. MCL 330.1755
- E. MCL 330.1780
- F. MDCH/CMHSP Managed Mental Health Supports and Services Contract FY 12

VIII. Exhibits

- A. None.