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| WCHO PIHP POLICY for the COMMUNITY MENTAL HEALTH PARTNERSHIP OF SOUTHEASTERN MICHIGAN | | <i>Policy and Procedure</i> <i>Office of Recipient Rights</i> | |
| Department: Recipient Rights Author: Shane Ray | | Local Policy Number (if used) | |
| Revision Date 2/12/10 | Approval Date 5/18/10 | Implementation Date 5/18/10 | |
| Archive Information | | | |
| Date: | | | |
| Reason: | | | |

I. PURPOSE

The purpose of this policy is to establish guidelines regarding the development and function of an Office of Recipient Rights.

II. POLICY

It is the policy of the Community Mental Health Partnership of Southeastern Michigan (CMHPSM) that an Office of Recipient Rights shall be established and maintained to protect the rights of recipients in compliance with the Mental Health Code and Department of Community Health (DCH) Administrative Rules. The Office shall respond to any query or complaint submitted by or on behalf of recipients of the CMHPSM Programs and contract agencies.

III. APPLICATION

All recipients while under the care of any WCHO or Comprehensive Specialty Service Network (CSSN) staff, students, volunteers, and/or contractual agencies within the Community Mental Health Partnership of Southeastern Michigan.

IV. DEFINITIONS

Appeals Committee – A committee appointed by the Community Mental Health (CMH) board to hear appeals of recipient rights investigations. The governing board of a licensed private psychiatric hospital/unit (LPH/U) shall designate the CMH Appeals Committee to hear appeals brought by or on behalf of a recipient of that CMH.

Appellant – The recipient, complainant, or parent or guardian who appeals a recipient rights finding or a respondent’s action to an appeals committee.

Complainant – An individual who files a rights complaint.

Department – For the purpose of this policy, Department shall refer to the Michigan Department of Community Health, Office of Recipient Rights.

Legal Representative – A legal representative is defined as any of the following:

1. A court-appointed guardian,
2. A parent with legal custody of a minor recipient,
3. In the case of a deceased recipient, the executor of the estate or court appointed personal representative,

4. A patient advocate under a durable power of attorney or other advanced directive.

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.

Office – For the purpose of this policy, Office shall refer to the local CMH Office of Recipient Rights as established under section 755 of the Mental Health Code.

Office of Recipient Rights – An office of the local CMH that is responsible for investigating, resolving and assuring remediation of apparent or suspected rights violations and assuring that mental health services are provided in a manner which respects and promotes the rights of recipients as guaranteed by Chapter 7 and 7A of the Mental Health Code, P.A. 258, as amended.

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

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.

V. STANDARDS

- A. The Office will report to the local Community Mental Health (CMH) Director for coordination of work and access to resources, and to the local Recipient Rights Advisory Committee for oversight. Quarterly meetings will be held with the Recipient Rights Advisory Committee to review reports of rights activities. As needed, other meetings with the Recipient Rights Advisory Committee will be held to discuss issues or concerns which affect the rights of recipients of service.
- B. Funding for the Office shall be reviewed by the Recipient Rights Advisory Committee and shall be included in the annual operating budget approved by the local CMH Board. The Director of the Office shall have the education, training and experience to fulfill the responsibilities of the Office. Qualifications and training for the Rights Officer position shall be specified in a formal job description. The employee holding this position will be entitled to the rights and privileges afforded all exempt employees, except in the areas of employment and termination. Employment and termination of the Recipient Rights Officer will be subject to review by the Recipient Rights Advisory Committee. In the absence of a Rights Officer, rights services shall be provided by a person designated by the local CMH Director and/or the Recipient Rights Director.
- C. The Office shall be accessible at all times. Individuals who access the Office shall be ensured due process and protection from harassment or retaliation as a result of contact with or participation with the Office.
- D. All employees, students, volunteers and contractors are required to:

- (1) Immediately (by the next business day) verbally report to the Office all apparent or suspected violations of recipient rights, even if they did not witness it directly, do not have proof or believe it may be a rumor or “hearsay.” Failure to report suspected violations of rights shall require that appropriate administrative action be taken, up to and including firm and fair disciplinary action.
 - (2) Assist to ensure rights complaints filed by recipients or anyone on their behalf are submitted to the Office in a timely manner.
- E. The Office shall be protected from pressures that could interfere with the impartial, even-handed, and thorough performance of its duties. The Office shall have unimpeded access to all programs and staff employed or under contract to the CMHPSM and to any evidence necessary to conduct a thorough investigation or fulfill its monitoring function. The Office shall ensure that appropriate remedial action is taken to resolve violations of rights and that complainants are notified without violating the rights of the employee.
- F. Recipient Rights Officers shall not have direct service responsibilities, and shall receive annual training in recipient rights protection as guaranteed by the Mental Health Code and DCH Administrative Rules. Recipient Rights Officers, Rights Advisors, and alternate Rights Officers will attend training as required by the Department within 90 days of hire, as well as any additional ongoing/update training as required by the Department. Any providers under contract with the CMHPSM that are allowed/required to establish their own rights system will also attend all initial and ongoing/update trainings as required by the Department. The Office will participate in the development and review of all policies pertinent to the rights of recipients and serve as a consultant to the Local Director in matters related to recipient rights.
- G. The Office shall conduct an independent review of all treatment plans presented to the Behavior Treatment Committee.
- H. The Office ensures that all recipients and their legal representatives are given a summary of recipient rights, as well as information regarding how to contact a Recipient Rights Officer.
- I. The Office, together with Customer Services, shall:
 - (1) Ensure that available resources include interpretation services; that written information is available in prevalent languages; and that such services will be free of charge to the recipient/applicant.
 - (2) Notify recipients of, and ensure that written information is available in, alternative formats and in an appropriate manner that considers special needs.
 - (3) Ensure recipients are given an explanation of how to access these services or information.
 - (4) Address needs or barriers related to cultural sensitivity, reasonable accommodation for persons with physical disabilities, hearing and/or vision impairments, limited-English proficiency, and alternative forms of communication.

- J. The Office shall ensure that complaint forms are accessible to recipients, staff and others who wish to act on behalf of a recipient, when requested.
- K. Each rights complaint shall be accurately recorded upon receipt by the Office, and acknowledgment of the recording shall be sent along with a copy of the complaint to the complainant within 5 business days. Within 5 business days after the Office receives a complaint, it shall notify the complainant if it determines that no investigation of the rights complaint is warranted. The Office shall ensure that all complaints and investigative evidence are accurately recorded and securely stored.
- L. When a rights complaint is received, the Office shall offer to assist the complainant with the complaint process. The Office shall advise the complainant that there are advocacy organizations available to assist in preparation of a written rights complaint and shall offer to refer the complainant to those organizations. The complainant shall be advised that mediation is an option at any time after the completion of the Investigative Report if both parties agree.
- M. The Office shall coordinate with Customer Services to ensure that during the course of daily operations, Customer Services is informed of potential grievances and the Office is informed of potential rights violations. When providing consultation to Customer Services or when triaging a call, the Office shall make the final determination whether (a) a rights complaint involves a grievance, and (b) a grievance involves a code-protected right. When the Office determines that a rights complaint involves a grievance, the complaint shall be referred to the Customer Services Department and documented on the Grievance/Appeal Referral Log. When the Office determines that a grievance also involves a legally protected right, procedures for a rights complaint shall be followed by the Office.
- N. If a rights complaint is made regarding the conduct of the local CMH Director, the investigation shall be conducted by another CMH Board's Office of Recipient Rights, or by the Department, as decided by the local CMH Board.
- O. Rights investigations shall be initiated immediately in cases involving abuse, neglect, serious injury, or death of a recipient involving an apparent or suspected rights violation. All other apparent or suspected violations shall be investigated in a timely and efficient manner. All investigations shall be completed within 90 days of receiving the complaint, with written status reports to the complainant, respondent and responsible mental health agency every 30 days during the course of the investigation. Issuance of the written Investigative Report may be delayed pending completion of investigations that involve external agencies, including law enforcement agencies and the Department of Human Services.
- P. The Office shall recommend that the respondent take disciplinary action against those who have engaged in abuse or neglect. The CMH and each service provider shall ensure that appropriate disciplinary action is taken against those who engage in abuse or neglect.
- Q. All rights investigations shall be documented in written form using a Report of Investigative Findings format. The preponderance of evidence standard of proof shall be used to determine whether a right was violated. Investigations shall be conducted in a manner that will not violate employee rights, e.g., Bullard-Plawecki Employee Right to

Know Act. Upon completion of the investigation, the Report of Investigative Findings shall be submitted to the local CMH Director, the respondent(s) and to the responsible supervisor/designee with recommendations, if any, and if applicable, a Remedial Action Verification form to be returned to the Office specifying the remedial actions taken or planned.

- R. After completion of the investigation and receipt of the Remedial Action Verification form, if applicable, the Office shall forward their findings to the local CMH Director. Within 10 work days of issuance of the Report of Investigative Findings, the Director shall submit a written Summary Report to the complainant, the recipient, if different than the complainant, parent of a minor recipient and guardian as applicable. Information in the Summary Report shall be provided within the constraints of the confidentiality/privileged communications sections of the Mental Health Code, and shall not violate the rights of any employee.
- S. A complainant/recipient/minor's parent/guardian shall be advised that an appeal of an investigative finding may be made in writing to the local Recipient Rights Advisory Committee, which has been designated by the Board to act as an Appeals Committee, in care of the local CMH Director, within 45 days after receipt of the Summary Report. They shall further be advised that there are advocacy agencies available to assist with filing an appeal, and that the Office can assist in making a referral. In the absence of assistance from an advocacy organization, the Office is available to assist in meeting the procedural requirements of a written appeal. They shall also be advised of the grounds for an appeal (as indicated in S.1 below) and that mediation is an option if both parties agree.
- T. Within five (5) work days of receipt of the written appeal by the Appeals Committee, the committee:
 - (1) Shall review the grounds for the appeal to determine whether it meets one of the following criteria:
 - i. The investigative findings of the rights office are not consistent with the facts, law, rules, policies or guidelines.
 - ii. The action taken or plan of action proposed by the respondent does not provide an adequate remedy.
 - iii. An investigation was not initiated or completed on a timely basis.
 - (2) Shall provide written notice to the appellant that the appeal has either been accepted or denied based on the criteria set forth above. A copy of the appeal shall also be provided to the respondent, local Director and the Office.
- U. Within 30 days after receipt of a written appeal, the Appeals Committee shall meet in closed session and review the facts as stated in the complaint investigative documents. Any member of the Appeals Committee who has a personal or professional relationship with an individual involved in the appeal shall abstain from participating in that appeal as a member of the Committee. The Committee shall not consider additional allegations that were not part of the original complaint but shall inform appellant of his/her right to file an additional complaint with the Office.
- V. At the meeting, the Appeals Committee shall do one do one of the following:

- (1) Uphold the investigative findings of the Office and the action taken or plan of action proposed by the respondent.
 - (2) Return the investigation to the Office and request that it be reopened or reinvestigated.
 - (3) Uphold the investigative findings, but recommend that the respondent take additional or different action to remedy the violation.
 - (4) Recommend that the local CMH Board request an external investigation by the Department.
- W. The Appeals Committee shall document its decision in writing and within 10 days provide copies of the decision to the respondent, appellant, recipient, minor's parent, and guardian if applicable, as well as to the local CMH Director and the Office. Documentation shall include justification for the decision made by the Committee. The Committee's decision shall include a statement of the appellant's right to appeal to the Department within 45 days from receipt of the decision, when the original grounds for the appeal were that the investigative findings of the Office were inconsistent with the facts, or with law, rules, policies, or guidelines. An appeal to the Department may be taken only when the original grounds for appeal were that the investigative findings of the Office were inconsistent with the facts, law, rules, policies or guidelines and only after a decision on the original appeal has been made by the local Appeals Committee.
- X. If the Appeals Committee upholds the findings of the ORR but directs that the respondent take additional or different action, that direction shall be based on the fact that appropriate remedial action has not been taken in compliance with section 780 of the Code. The Appeals Committee shall base its determination upon any or all of the following:
- (1) Action taken or proposed did not correct or remedy the rights violation.
 - (2) Action taken or proposed was/will not be taken in a timely manner.
 - (3) Action taken or proposed did not/will not prevent a future recurrence of the violation.
- Y. If the action taken by the respondent is determined by the Appeals Committee and/or the appellant still to be inadequate to remedy the violation, the appellant shall be informed by the Appeals Committee of his/her right to file a recipient rights complaint against the local CMH Director.
- Z. If an appeal request is made to the Department, the Office shall ensure that the Department has access to all requested documentation. The Department will not consider additional evidence or information that was not available during the initial appeal, although it may return the matter to the local CMH Board, requesting an additional investigation.
- AA. If the parties are in agreement, a mediator shall be jointly selected to facilitate a mutually acceptable settlement of the complaint. 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. While the parties are engaged in mediation, all appeal and response times are suspended while the mediation process is taking place. The suspension of time periods begin on the day the parties agree to mediate and expire five days after the day the mediator provides written documentation to the parties and to the

Office that mediation was not successful. If agreement is reached 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 to the Office. 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 both parties and to the Office ten days after the end of the mediation period.

- BB. The Office shall ensure that all service sites are visited at the frequency necessary to assess right protection, but at least annually.
- CC. On a quarterly basis, the Office shall provide summary complaint data, together with a summary of remedial actions taken on substantiated complaints by category, to the local Recipient Rights Advisory Committee. This data shall also be forwarded to the Department semiannually.
- DD. The local CMH Director shall submit to the local CMH Board and to the Department an annual report prepared by the Office on the current status of recipient rights protection and a review of the operations of the office. The report shall be submitted to the Department not later than December 30 of each year for the preceding fiscal year, and shall include, at a minimum, all of the following:
 - (1) Summary data by category including complaints received, number of reports filed, and number of reports investigated by provider.
 - (2) Number of substantiated rights violations by category and provider.
 - (3) Remedial actions taken by category and provider.
 - (4) Training received by the Office.
 - (5) Training provided by the Office to contract providers.
 - (6) Desired outcomes established for the Office and progress toward these outcomes.
 - (7) Recommendations made to the local CMH Board.

VI. EXHIBITS

- A. Recipient Rights Complaint form

VII. REFERENCES

| Reference: | Check if applies: | Standard Numbers: |
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| Michigan Mental Health Code Act 258 of 1974 | X | 330.1722, 330.1757, 330.1774, 330.1776, 330.1778, 330.1780, 330.1782, 330.1784, 330.1786, 330.1788 |
| Bullard-Plawecki Right to Know Act, Public Act 397 of 1978 | X | |
| Michigan Whistleblowers' Protection Act P.A. of 1980 | X | |
| MDCH Revised Plan for Procurement of Medicaid Specialty Prepaid Health Plans | X | 3.1.1.1 |

VIII. PROCEDURES

A. Complaint Resolution

| WHO | DOES WHAT |
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| Individual makes inquiry or complaint with the Office. | <ol style="list-style-type: none"> 1) Request is referred in a timely manner to the following (in order): <ol style="list-style-type: none"> a) Office of Recipient Rights b) Alternate Recipient Rights staff c) Director d) Director's designee |
| Rights Officer/Designee | <ol style="list-style-type: none"> 1) Determines if the person who is making the call is safe. If hazards to safety exist or are suspected, makes arrangements to ensure individual will be protected. 2) Assesses and initiates the appropriate response, e.g., formal investigation, intervention, or consultation. Ensures that all complaints are accurately recorded. 3) Within 5 work days notifies complainant that complaint has been received and will either be investigated or reason why an investigation is not warranted. Encloses a copy of the complaint. 4) Offers to assist the complainant with the complaint process. 5) Advises the complainant that there are advocacy organizations available to assist in preparation of a written rights complaint, and offers to refer the complainant to those organizations. 6) Informs complainant that mediation is an option at any time after the completion of the Investigative Report if both parties agree. 7) In the absence of assistance from an advocacy organization, assists in preparing a written complaint containing a statement of the allegation, the right allegedly violated and the outcome desired by the complainant. |

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| | <p>8) Conducts independent investigation of the complaint.</p> <p>9) If investigation is not completed within each 30 calendar day interval after receiving the complaint, submits a written Status Report to the complainant and respondent including:</p> <ul style="list-style-type: none"> a) Statement of the allegation(s) b) Statement of issues involved c) Citations of relevant provisions of the Mental Health Code, rules, policies and guidelines d) Investigative progress to date e) Expected date for completion of the investigation. <p>10) Completes the Report of Investigative Findings, including:</p> <ul style="list-style-type: none"> a) Statement of the allegation(s) b) Statement of issues involved c) Citations of relevant provisions of the Mental Health Code, rules, policies and guidelines d) Investigative findings e) Conclusions f) Recommendations, if any <p>11) Forwards report and recommendations, if applicable, to the respondent and responsible Program Administrator. Requests completion and return of Remedial Action Verification form by date specified to ensure that action has been taken or is planned.</p> <p>12) Reviews Remedial Action Verification form to determine if remedial actions taken or proposed are appropriate and:</p> <ul style="list-style-type: none"> a) Correct or provide a remedy for the rights violation(s) b) Are implemented in a timely manner c) Attempt to prevent a recurrence of the rights violation(s). <p>13) Files the Remedial Action Verification form in the Investigative File.</p> <p>14) Submits a copy of the Report of Investigative Findings and remedial action taken or proposed the CMH</p> |
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| | Director along with names and addresses of the complainant, recipient, parent of a minor or guardian, as applicable. |
| CMH Director | <ol style="list-style-type: none"> 1) Within ten (10) work days after issuance of the Report of Investigative Findings, submits a Summary Report to the complainant, recipient, parent of a minor and guardian, as applicable, with a copy also to the Office. The Summary Report shall include: <ol style="list-style-type: none"> a) Statement of the allegation(s) b) Statement of issues involved c) Citations of relevant provisions of the Mental Health Code, rules, policies and guidelines d) Investigative findings e) Conclusions f) Recommendations, if any g) Action taken or planned by the respondent, including specific disciplinary action taken. 2) Advises complainant, recipient, parent of minor and guardian, as applicable, of: <ol style="list-style-type: none"> a) Right to appeal. b) Timeline for appeal (no later than 45 days after receipt of the Summary Report). c) Grounds for an appeal as follows: <ol style="list-style-type: none"> i) Investigative findings of the rights office are not consistent with the facts, law, rules, policies, or guidelines. ii) Action taken or plan of action proposed by the respondent does not provide an adequate remedy. iii) Investigation was not initiated or completed on a timely basis. d) Advocacy organizations available to assist with an appeal, and availability of the Office to assist. e) Mediation as an option if both parties agree. |

B. Appeals

| WHO | DOES WHAT |
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| Recipient Rights Appeals Committee | 1) Within 5 work |

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| | <p>days of receiving the appeal:</p> <ul style="list-style-type: none"> a) Reviews the appeal to determine if it meets the required criteria. b) If the appeal is denied, notifies appellant in writing, and provides a copy to the respondent, Local Director and the Office. c) If the appeal is accepted, notifies appellant in writing, and provides a copy of the appeal to the respondent, Local Director and the Office. <p>2) Within 30 days of receipt of a written appeal, meets to make a decision on the appeal and does one of the following:</p> <ul style="list-style-type: none"> a) Upholds the findings of the Office and the action taken or plan of action proposed by respondent. b) Returns the investigation to the Office, requesting that it be reopened or reinvestigated. c) Upholds the investigative findings of the Office but recommends that the respondent take additional or different action to remedy the violation. d) Recommends that the Board request an external investigation by the Department. <p>3) Documents its decision in writing and within 10 days after reaching its decision, provides copies of the decision to:</p> <ul style="list-style-type: none"> a) Appellant b) Respondent c) Recipient, parent of minor or legal guardian d) CMH Director e) The Office. <p>4) Includes a statement of appellant’s right to appeal to the Department within 45 days of receipt of decision, only on the grounds that the investigative findings were inconsistent with facts, rules, policies or guidelines.</p> |
| Appellant | 1) Accepts decision or files appeal with the |

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| | Department within 45 days. |
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C. Mediation

| WHO | DOES WHAT |
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| Appellant and Respondent | <ol style="list-style-type: none"> 1) If both parties agree, utilize mediation to reach a mutually acceptable settlement regarding the investigative outcome. 2) Jointly selects an impartial party with training in mediation. |
| Mediator | <ol style="list-style-type: none"> 1) Meets with complainant and respondent to resolve disagreement. 2) Prepares report summarizing agreement. 3) Signs agreement that becomes binding on both parties. 4) Notifies the Office of agreement. |
| Appellant | <ol style="list-style-type: none"> 1) If parties fail to reach agreement, this is documented and copies are sent to both parties and to local Office of Recipient Rights within ten (10) days after the end of mediation process. 2) Proceeds with other available options if desired. |

