

SHIAWASSEE COUNTY COMMUNITY MENTAL HEALTH AUTHORITY
POLICY AND PROCEDURE MANUAL

Section: Recipient Rights
Policy Number: 2
Subject: **Reporting, Investigating, and Resolving Alleged or Suspected Rights Violations**

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Policy

It shall be the policy of the Shiawassee County Community Mental Health Authority (SCCMHA) that all complaints of alleged or suspected rights violations filed by recipients or on their behalf shall be given to the designated Rights Director/Advisor in a timely manner and shall be promptly investigated and resolved and that information about recipient rights and the process for reporting alleged or suspected violations be adequately disseminated to recipients and employees.

Purpose

To establish policy and standards for the reporting, investigation, and resolution of alleged or suspected rights violation;

To ensure the application of a process for reporting, investigating, and resolving alleged or suspected rights violations which meets established standards of investigation, of protection for those filing complaints and for the rights of employees, and of timeliness for reporting, investigating, and resolving alleged violations; and

To ensure compliance with the Michigan Mental Health Code and the Michigan Department of Health and Human Services, Administrative Rules.

Application

All employees, independent contractors, contract agencies, and the Office of Recipient Rights of the Shiawassee County Community Mental Health Authority.

Definitions

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

Recipient Rights Director: The person selected by the Chief Executive Officer of Shiawassee County Community Mental Health Authority (SCCMHA) in consultation with the

Recipient Rights Advisory Committee to head the SCCMHA Office of Recipient Rights. This officer provides or coordinates rights services for recipients of all services directly operated by or under contract to the Shiawassee County Community Mental Health Authority.

Retaliation means an adverse action against an employee because he or she engaged in the recipient rights investigation process. Examples of adverse actions include: employment actions such as termination, refusal to rehire, and denial of promotion; other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references or increased surveillance; any other action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from pursuing their rights. Adverse actions do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague or negative comments that are justified by an employee's poor work performance or history.

Standards

A. Reporting Complaints

1. Information regarding rights and how to contact the Recipient Rights Director shall be posted at all service sites.
2. Notification of Rights: All recipients shall receive a written statement of their rights at the time services are initiated. At the time services are first requested, a provider shall inform a recipient, his or her guardian or other legal representative or the parent with legal custody of a minor recipient of the recipient's lawful rights in an understandable manner. If a recipient is unable to read or understand the materials provided, a provider shall make a reasonable attempt to assist the recipient in understanding the materials. A note describing the explanation of the materials and who provided the explanation shall be entered in the recipient's record. All recipients shall have access to this statement of rights at any time throughout the course of service. It shall include the statement that information and consultation may be obtained from the Michigan Department of Health and Human Services, Office of Recipient Rights (MDHHS-ORR), including appeal rights. This statement shall include clear information about the way in which a complaint of alleged or suspected violation of rights may be made and the guarantee that anyone filing the complaint shall be protected from harassment and/or intimidation.
3. Anyone can file a complaint alleging suspected rights violation.

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4. It is the responsibility of all employees of the Shiawassee County Community Mental Health Authority to protect the rights of recipients of service. In exercising that responsibility all employees are required to report alleged or suspected violations of a recipient's rights. Substantiated failure to report a suspected violation of a recipient's rights shall result in disciplinary action up to and including termination.
5. Employees filing reports of an alleged or suspected rights violation shall be protected from harassment or retaliation for acting on behalf of a recipient.
6. Complainants, ORR staff, and any employee acting on behalf of a recipient will be protected from harassment or retaliation resulting from recipient rights activities, and appropriate disciplinary action will be taken if there is evidence of harassment or retaliation. Employees are further protected by the Michigan Whistleblowers Protection Act, 1980 PA 469.
 1. Neither Shiawassee County Community Mental Health Authority nor a Contract Agency may terminate, threaten or otherwise discriminate against employees for reporting suspected violations.
 2. All allegations of harassment and/or retaliation will be promptly reported to the SCCMHA ORR.
 3. SCCMHA ORR will investigate any allegations of harassment or retaliation of an employee in response to rights related activities within their jurisdiction. In addition, ORR will forward any non rights related allegations of retaliation and/or harassment to the human resources department for appropriate administrative follow-up and investigation. ORR may provide technical investigative consultation as requested.
 4. ORR will open allegations of harassment or retaliation of a recipient, other complainant, or any employee acting on behalf of a recipient under the category most befitting the particular allegation.
 5. SCCMHA will ensure appropriate disciplinary action is taken if there was evidence of retaliation and harassment
7. Employees at all service sites are responsible for assisting recipients by advising them of the right to file written complaints and by assisting them in filing complaints.
8. Employees are required to cooperate fully in recipient rights investigations.
9. All service sites shall maintain a supply of complaint forms. These forms shall be kept in a location which is readily available to recipients and employees

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and which protects the privacy of complainants.

10. Complaints shall be addressed directly to the Recipient Rights Director and shall be forwarded in sealed envelopes supplied with the complaint form.
11. The Rights Director will notify the recipient of advocacy groups available to assist and the availability of mediation services.
12. In the absence of advocacy groups the Rights Director may assist in preparing a complaint or appeal.
13. In the event the complaint is against the Chief Executive Officer, the SCCMHA Board will request another Community Mental Health Board or the state Office of Recipient Rights to investigate.

B. Investigation

1. The Recipient Rights Director shall maintain a record system for all complaints received. This system shall include a log of all complaints which are assigned a control number by which they are filed and retrieved by recipient name, case number or service site.
2. Copies of all rights reports, together with documentary evidence, are kept in an area secure from tampering, accessible only to the Recipient Rights Director, the Chief Executive Officer, and the clerical support staff assigned to the Office of Recipient Rights.
3. The Recipient Rights Director receives and acknowledges all reports of alleged or suspected rights violations and responds to the complainant within five (5) business days with a copy of the complaint and if there will or will not be an investigation.
4. In responding to a request for recipient rights assistance, the Recipient Rights Director shall take one of the following actions.
 - a. If the request for assistance refers to an issue which is outside the jurisdiction of the Board, and, therefore, not appropriate for the recipient rights process, the Recipient Rights Director shall inform the person bringing the issue that said issue does not concern a code-protected right and that the Board lacks jurisdiction for its handling. The Recipient Rights Director will direct the person to other potential

sources of mediation when such sources are available and applicable. The Recipient Rights Director shall note the disposition on the complaint log.

- b. If the request for assistance refers to a rights issue for which remedial action can be so easily taken that an investigation is unnecessary, within five (5) business days the Recipient Rights Director shall inform the complainant of the remedial action taken and note the disposition on the complaint log. This request may be considered an intervention when the facts are clear, the remedy if applicable is clear, easily obtainable and does not involve statutorily required disciplinary action. Notification that the complaint is being treated as an intervention will be sent to the complainant within five (5) business days of receipt of the complaint. The intervention will be completed within thirty (30) days of receipt of the complaint. If the intervention cannot be completed within thirty (30) days it will be converted to an investigation and will be completed within the statutorily required ninety (90) day time frame.
 - c. If the request for consultation refers to a rights issue which is within the Board's jurisdiction and for which remedial action cannot be easily obtained, the Recipient Rights Director shall take the actions required for a formal investigation.
5. In responding to a complaint, the Recipient Rights Director shall take the following actions:
- a. The Recipient Rights Director shall determine if the complaint concerns a right that is code-protected and thereby subject to the recipient rights process and provide written notification to the complainant within five (5) business days.
 - b. If the Recipient Rights Director determines that the complaint concerns an issue that is not code-protected and thereby not subject to the recipient rights process, the Recipient Rights Director shall inform the complainant that said complaint does not concern a code-protected right and the Board lacks jurisdiction for enforcement. The Recipient Rights Director will direct the complainant to other potential sources of mediation when such sources are available and applicable. The Recipient Rights Director shall note the disposition on the complaint log.

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- c. If the Recipient Rights Director determines that a complaint concerns an issue which is code-protected and thereby subject to the recipient rights process, the Recipient Rights Director shall do the following:
 1. Investigate each separate allegation with priority assigned to allegations concerning safety or personal injury; allegations of abuse or neglect, serious injury or death involving suspected rights violations shall be investigated immediately.
 2. Interview the complainant and service recipient.
 3. Determine what is alleged and if this is different from what was alleged on the complaint report, shall make such note on the report in order to clarify the allegations.
 4. Identify all persons who may have information about the allegation.
 5. Interview all persons so identified and summarize each interview in writing or enter into the record a written statement from the person interviewed.
 6. Review all applicable Michigan Department of Health and Human Services and Shiawassee County Community Mental Health Authority Board policies, the Michigan Mental Health Code, the Department of Community Health Administrative Rules, and pertinent records.
 7. Make an independent determination of whether the available facts lead to preponderance of evidence that the allegation is substantiated or not substantiated.
 8. If substantiated, recommend appropriate remedial action to the Respondent/Chief Executive Officer in writing which is made part of the report.
 9. Complete an investigative report which is submitted to the Chief Executive Officer and the respondent. At any time after the office completes the 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

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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. 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 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 the office within 10 days after the end of the mediation process. If the parties engage in mediation, all appeal and response times required under this chapter 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 office that mediation was not successful.

10. A status report will be sent every thirty (30) days to the complainant and respondent containing the allegation, issues, citations, progress to date, and date expected to be complete.
11. All actions taken in the course of an investigation shall respect the rights of employees as guaranteed by the Bullard Plawewski Act and shall ensure the provision of due process. Any action involving an employee which discloses the name of an employee shall require notification of the disclosure to the employee.
12. The completed report will be submitted to the Chief Executive Officer within ninety (90) days of receipt of complaint and shall contain the allegation, issues, citations, findings, conclusion, and recommendation.

C. Resolution of Complaints

1. On receipt of the Recipient Rights Director's findings and recommendations, the Chief Executive Officer shall review the Recipient Rights Director's investigative report and indicate remedial action taken as part of the record maintained by the Rights Director. Remedial action will meet all the following requirements:

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- a. Corrects or provides remedy for the rights violation.
 - b. Is implemented in a timely manner.
 - c. Attempts to prevent a recurrence of the rights violation.
2. The Respondent/Chief Executive Officer shall take timely action in one or more of the following ways to prevent reoccurrence:
- a. Implement, or ensure that respondent(s) implement, as applicable, remedial action and/or firm and appropriate disciplinary action in accordance with Board personnel policies and procedures and the collective bargaining agreement or, as applicable, Board policies and procedures for contracted staff or volunteers.
 - b. File, or ensure that respondent(s) file, complaints, as applicable, to licensing bodies, law enforcement agencies, or regulatory bodies.
 - c. Distribute an interim policy memorandum changing a current practice, if a policy change is required.
 - d. Apply the Michigan Department of Health and Human Services, Administrative Rule 7254(3) if a capital outlay is required.
3. The Chief Executive Officer or his/her designee shall prepare a final Recipient Rights Summary Report of Investigative Findings for each allegation and respond to the complainant and service recipient, if these are different persons, guardian or parent of a minor, within ten (10) days, to:
- a. Review the Recipient Rights Summary Report of Investigative Findings.
 - b. Inform him/her of any actions taken.
 - c. Inform him/her of the right to appeal the matter to the Appeals Committee.
4. The Summary Report shall include the following:
- a. Statement of allegations.

- b. Statement of issues involved.
 - c. Citations to relevant provisions of the Mental Health Code, rules, and guidelines.
 - d. Summary of investigation findings of the Rights Office.
 - e. Conclusions of the Rights Office.
 - f. Recommendations made by the Rights Office.
 - g. Actions taken, or plan of action proposed to be taken by Shiawassee County Community Mental Health Authority.
 - h. Statement describing the complainant's right to appeal and the grounds for appeal.
5. The Summary Report shall not breach confidentiality or the rights of any employee.
6. The Summary Report shall indicate an appeal must be requested within forty-five (45) days and must show one of the following:
- a. Findings are not consistent with the facts or legal references.
 - b. The action does not provide adequate remedy.
 - c. Investigation was not completed in a timely manner.
7. If the Summary Report included a Plan of Action, written notice was issued to the potential appellants upon completion of the plan. If the action taken was different than the plan, the notice included the action that was taken and the date it occurred as well as the right to appeal on action only. (DHHS/CMH Contract Attachment C6.3.2.4)

D. Appeal Process

1. The Board of Shiawassee County Community Mental Health Authority has designated the Recipient Rights Advisory Committee to act as the Appeals

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Committee.

2. If the complainant, recipient (if different than complainant), guardian or parent of a minor, is unsatisfied with the decision, an appeal may be filed no later than forty-five (45) days after receipt of the summary report. The grounds for appeal are:
 - a. The investigative findings of the Rights Office are not consistent with the facts, law, rules, policies, or guidelines.
 - b. The action taken or plan of action proposed by the respondent/CMHSP does not provide an adequate remedy.
 - c. An investigation was not initiated or completed on a timely basis (MHC 782 [1]) (MHC 784 [2]).
3. If the complainant is unsatisfied with the decision, the decision may be appealed to the Recipient Rights Appeals Committee. Any member of the Recipient Rights Appeals Committee who has a personal or professional relationship with an individual involved in an appeal must excuse him/herself from the appeals process.
4. The Recipient Rights Director shall advise the appellant about advocacy groups available to assist in preparing the written appeal and offer to make the referral. In the absence of assistance from an advocacy organization, the Recipient Rights Office will offer to assist in meeting the procedural requirements of a written appeal.
5. The Recipient Rights Director shall inform the appellant of the option of mediation.
6. A member of the Recipient Rights Appeals Committee shall review the appeal within five (5) business days to determine if the appeal meets or does not meet the criteria for appeal to the complainant, respondent, and the Chief Executive Officer.
7. If the appeal is accepted the Recipient Rights Appeals Committee shall meet within thirty (30) business days of receipt of the appeal and decide one of the following:
 - a. Uphold the findings of the Rights Office and the action taken or plan of

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action proposed by the respondent and/or Shiawassee County Community Mental Health Authority.

- b. Return the investigation to the Rights Office with a request that it be reopened or investigated (Rights Office sends reinvestigation RIF to Director within 45 days (DHHS/CMH Contract Attachment C6.3.2.4)
 - c. Uphold the investigative findings of the Rights Office but recommend that the respondent and/or the Shiawassee County Community Mental Health Authority take additional or different action to remedy the violation. 1 Written notice of this direction for additional or different action to be taken by the respondent shall also be provided to the RMHA if different than the respondent and the office. 2 Respondent shall provide written notice to the Appeals Committee that the action has been taken or justification as to why it was not taken. 3 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 RMHA, (DHHS/CMH Contract Attachment C 6.3.2.4)
 - d. Recommend that the Board of Directors of the Shiawassee County Community Mental Health Authority request an external investigation by the Michigan Department of Health and Human Services, Office of Recipient Rights.
 - e. Recommend that the executive director of the CMHSP take appropriate supervisory action with the investigating rights officer/advisor; (if the Committee confirms that the investigation was not initiated or completed in a timely manner, (DHHS/CMH Contract Attachment C 6.3.2.4)
8. The Recipient Rights Appeals Committee shall identify and excuse any committee member who needs to abstain from reviewing the appeal because of a personal or professional relationship. This action shall be reflected in the minutes.
 9. Within ten (10) days of reviewing the appeal, the Recipient Rights Appeals Committee shall notify and document its decision and justification of the decision to the respondent, appellant, recipient, recipient's guardian, and the Rights Director in writing. (MHC 784[6], Contract Attachment C6.3.2.4)

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10. The Recipient Rights Appeals Committee shall indicate to the appellant at the time of decision of the right to appeal the decision to the Michigan Department of Health and Human Services within forty-five (45) days. The Recipient Rights Appeals Committee will notify the appellant of the grounds for an appeal which are the following: investigative findings of the Rights Office are inconsistent with facts, rules, policies, or guidelines (specified).

11. Director's Summary included a statement of appellant's right to appeal to Step 2 Appeal and the time frame for appeal (45 days from receipt of decision) and ground for appeal (investigative findings of the rights office are inconsistent with facts, rules, policies or guidelines.) if the case remained unsubstantiated (DHHS/CMH Contract Attachment C6.3.2.4)

12. Director's Summary included a statement of appellant's right to appeal to CMHSP Appeals Committee and the time frame for appeal (45 days from receipt of decision) and ground for appeal (action taken or plan of action proposed does not provide an adequate remedy) if the case is substantiated (DHHS/CMH Contract Attachment C6.3.2.4)

Approved by: 
Board Chairperson

9-26-2016
Date


Chief Executive Officer

9/28/16
Date

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