

THE LEGAL BASIS OF RIGHTS

OBJECTIVES:

As a result of reading this section you will be able to:

- Understand the rights guaranteed to all United States citizens
- Understand the rights guaranteed to all persons receiving mental health services in Michigan

Key Points:

- Persons who receive mental health services have the same rights as you. It is important to understand where rights come from, what they are, and what additional rights are granted to recipients of mental health services in Michigan.

You have heard, and perhaps used, such expressions as: “I know my rights!,” “That’s against my rights!,” or “I have the right to do that!” In our democratic society, rights are extremely important, particularly when we think ours have been violated! A right is defined as:

“That which a person is entitled to have, to do, or to receive from others, within the limits prescribed by law”¹

Therefore, in order to qualify as a “right,” something must be defined by law, and have a legal means of protecting it.

The “rights” described in this module are some that are protected by the Constitution of the United States, the Michigan Constitution, or by Federal and State laws such as the American with Disabilities Act or the Michigan Mental Health Code. Remember, the people you care for still have these rights, even though they are receiving mental health services. Some of these include:

-The Right to Religious Expression

- To practice the religion of one’s choice
- Not to attend any religious services against one’s wishes
- Not to be discriminated against based upon one’s religious beliefs

-The Right to Freedom of Speech

- To speak freely and to write, or express, one’s views without restrictions
- To make and receive phone calls, in private
- To send and receive mail without censorship

-The right not to be discriminated against because of race, sex, national origin, or disability

-The right to vote

-The right to have a free public education

The **Michigan Mental Health Code** says that persons who receive mental health services in Michigan have some additional rights to assure that they receive mental health services suited to their condition in a humane environment in the least restrictive setting. The “Code” also says that, under certain circumstances, some of these additional rights may be limited.

The additional rights granted by the Code are:

- The right to be free from abuse or neglect
- The right to independent evaluations and consultations, and to see a private physician or healthcare professional at any reasonable time
- The right to be treated with dignity, to be treated without discrimination, to have privacy, to practice one’s religion, and to get paid for work that is done
- The right to send and receive mail; have visitors, use the telephone, and get legal advice

¹ Black’s Law Dictionary

- The right to have information about the person receiving treatment kept confidential
- The right to have access to information contained in the clinical record²
- The right to a hearing, to be represented by an attorney, and to discharge planning that assures appropriate mental health services are provided in the least restrictive setting
- The right to be treated in a safe, sanitary, and humane environment
- The right to access his or her own funds, and to be able to use them as they see fit
- The right to have personal property safely kept and to have any rules regarding any limitations on using it clearly stated, consistent, and posted in a place where all can see
- The right not to be forced or coerced to take medication, or take more medication than desired, and the right to be provided with informed consent regarding medication and possible side effects
- The right to exercise his or her civil rights, which includes:
 - To conduct business affairs to maximum extent possible,
 - To be presumed competent unless a guardian has been appointed,
 - To not be subject to illegal search and seizure, and
 - To participate in an election.
- The freedom of movement of a recipient shall not be restricted more than necessary to provide mental health services, to prevent injury to himself, herself or others, or to prevent substantial property damage
- The right to have a written plan of service developed through a person-centered planning process. Person-centered planning means a process for planning and supporting the individual receiving services that builds upon the individual’s capacity to engage in activities that promote community life and that honors the individual preferences, choices, and abilities. The person-centered planning process involves families, friends, and professionals, as the individual desires or requires
- The right to refuse treatment unless the law requires it and a court orders it

As indicated above, the Mental Health Code says that some of the rights it grants to recipients can’t be limited. The “unlimitable” rights are:

- Freedom from abuse and neglect
- Treatment suited to condition
- Dignity and respect
- Safe, sanitary, humane treatment environment
- IPOS developed using a person-centered planning process
- Contact with attorneys regarding legal matters

The Code also provides that some rights it gives can be modified under certain circumstances. These are:

- Communication by mail, phone, visits
- Personal property
- Money
- Freedom of movement
- Confidentiality/privilege

² The Mental Health Code requires that, upon request, a competent adult recipient (meaning the recipient has no guardian) be given information entered in their record after March 29, 1996, without exception (MHC 330.1748 (4)).

- Consent to treatment

and they can only be modified through the use of **restrictions or limitations**.

Restrictions are made for all the recipients in a particular setting and are determined by policy. For example, there may be a restriction on the hours that a phone call can be made or what personal items a recipient can have in the home. **Restrictions must be clearly posted where everyone can see them.**

Limitations are placed on an individual and can only be made through the person-centered planning process, and reviewed and approved by the Behavior Support Committee. In the recipient's record you should find:

- A description of the behavior and the limitation
- A time limit on the limitation
- An indication that previous measures to stop the behavior were unsuccessful
- An indication that the limitation is the least restrictive or intrusive action possible
- Measures to reduce or eliminate the behavior (this is the action you will take when the behavior occurs)

ABUSE AND NEGLECT

OBJECTIVES:

As a result of reading this section you will be able to:

- Understand what constitutes abuse and neglect
- Understand what to do in order to comply with laws requiring of abuse and neglect

Key Points:

- Physical management may only be used as an emergency intervention in order to prevent a recipient from harming himself, herself, or others
- Physical management shall not be included as a component in a behavior support plan
- Prone immobilization of a recipient for the purpose of behavior control is prohibited, unless implementation of physical management techniques, other than prone immobilization, is medically contraindicated and documented in the recipient's record
- Time out, defined as VOLUNTARY response to a therapeutic suggestion to a recipient to remove himself or herself from a stressful situation to another area to regain control
- Seclusion and restraints are prohibited

The definitions of Abuse and Neglect are found in the Administrative Rules. These rules supplement the Mental Health Code and have the force of law. The Abuse and Neglect definitions have several classes and are based upon the action taken and the severity of the injury to the recipient. It is your responsibility to know the definitions and to make sure that none of the recipients in your care is ever abused or neglected.

The abuse or neglect of a recipient will not be tolerated! It is important to understand what is meant by abuse and neglect, to recognize a situation that is abusive or neglectful, and to know what the law requires you to do when you become aware that a recipient has been abused or neglected.

TYPES OF ABUSE

Class I Abuse:

- A non-accidental act or provocation of another to act which caused or contributed to the death, or sexual abuse of, or serious physical harm to a recipient

“Sexual abuse” means any of the following:

- (i) Criminal sexual conduct as defined by section 520b to 520e of 1931 PA 318, being MCL 750.520b to MCL 750.520e involving an employee, volunteer, or agent of a provider and a recipient
- (ii) Any sexual contact or sexual penetration involving an employee, volunteer, or agent of a department operated hospital or center, a facility licensed by the department under section 137 of the act or an adult foster care facility and a recipient
- (iii) Any sexual contact or sexual penetration between and involving an employee, volunteer, or agent of a provider and a recipient for whom the employee, volunteer, or agent provides direct services.

“Sexual contact” means the intentional touching of the recipient’s or employee’s intimate part or the touching of the clothing covering the immediate area of the recipient’s or employee’s intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for any of the following:

- (i) Revenge
- (ii) To inflict humiliation
- (iii) Out of anger

“Sexual penetration” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, or any part of a person’s body, or of any object into the genital or anal openings of another person’s body, but emission of semen is not required.

“Serious physical harm” means physical damage suffered by a recipient that a physician or registered nurse determines caused or could have caused death of a recipient, caused the impairment of his or her bodily functions, or caused the permanent disfigurement of a recipient.

Further definitions of abuse may also be found in the **Adult Protective Services Act**³

Class II Abuse:

- A non-accidental act or provocation of another to act that caused or contributed to non-serious physical harm to a recipient, or an act that could cause a recipient to suffer pain.

“Non-serious physical harm” means physical damage or what could reasonably be construed as pain suffered by a recipient that a physician or registered nurse determines could have caused, or contributed to, the death of a recipient, the permanent disfigurement of a recipient, or an impairment of his or her bodily functions.

- A non-accidental act or provocation of another to act that caused or contributed to emotional harm to a recipient.

“Emotional Harm” means: impaired psychological functioning, growth, or development of a significant nature as evidence by observable physical symptomatology or as determined by a mental health professional.

- An action taken on behalf of a recipient by a provider who assumes the recipient is incompetent, even though a guardian has not been appointed, that results in substantial economic, material, or emotional harm to the recipient.

- Exploitation of a recipient by an employee, volunteer, or agent of a provider.

“Exploitation” means an action by an employee, volunteer, or agent of a provider that involves the misappropriation or misuse of a recipient’s property or funds for the benefit of an individual or individuals other than the recipient.

- The use of unreasonable force on a recipient with or without apparent harm.

“Unreasonable force” means: physical management or force that is applied by an employee, volunteer, or agent of a provider to a recipient in one or more of the following circumstances:

- (i) There is no imminent risk of serious or non-serious physical harm to the recipient, staff, or others.
- (ii) The physical management used is not in compliance with techniques approved by the provider and the responsible mental health agency.
- (iii) The physical management used is not in compliance with the emergency interventions authorized in the recipient’s individual plan of service.
- (iv) The physical management or force is used when other less restrictive measures were possible but not attempted immediately before the use of physical management or force.

³ Public Act 519 of 1982

“Physical management” means a technique used by staff as an emergency intervention to restrict the movement of a recipient by direct physical contact in order to prevent the recipient from harming himself, herself, or others.

Class III Abuse:

- Use of language or other means of communication to degrade, threaten, or sexually harass a recipient.

“Degrade” means to cause somebody a humiliating loss of status or reputation or cause somebody a humiliating loss of self-esteem; make worthless; to cause a person to feel that they or other people are worthless and do not have the respect or good opinion of others. (syn) degrade, debase, demean, humble, humiliate. These verbs mean to deprive of self-esteem or self-worth; to shame or disgrace. Degrading behavior shall be further defined as any language or epithets that insult the person's heritage, mental status, race, sexual orientation, gender, intelligence, etc.

“Threaten” means to tell someone that you will hurt them or cause problems if they do not do what you want.

“Sexual harassment” means sexual advances to a recipient, requests for sexual favors from a recipient, or other conduct or communication of a sexual nature toward a recipient.

Examples of abuse:

- Any sexual contact with recipient. This means:
 - Engaging in sexual intercourse with a recipient, even if the recipient says it’s ok
 - Oral sex of any nature with a recipient, even if the recipient says it’s ok
 - Touching the intimate parts of a recipient for sexual gratification, even if the touching occurs over the recipient’s clothes
- Hitting, slapping, biting, poking, or kicking a recipient or taking any other action which would cause pain to a recipient
- Use of weapons on a recipient
- Swearing at, using foul language, racial or ethnic slurs, or using other means of communication to degrade or threaten a recipient
- Sexually harassing a recipient
- Using the recipient’s “bridge card” to purchase something for yourself
- Making remarks which could be emotionally harmful to a recipient
- Using a recipient’s funds for your own purposes, for use in the home in general, or for other recipients
- Encouraging or prompting others (staff or recipients) to commit any actions that could be described as abusive

Types of Neglect

Neglect Class I means either of the following:

- (i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written

directives, procedures, or individual plan of service and cause or contributes to the death, or sexual abuse of, or serious physical harm to recipient.

(ii) The failure to report apparent or suspected abuse Class I or neglect Class I of a recipient.

Neglect Class II means either of the following:

(i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to non-serious physical harm or emotional harm to a recipient.

(ii) The failure to report apparent or suspected abuse Class II or neglect Class II of a recipient.

Neglect Class III means either of the following:

(i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service that either placed or could have placed a recipient at risk of physical harm or sexual abuse.

(ii) The failure to report apparent or suspected abuse Class III or neglect Class III of a recipient.

No actual harm has to occur to a recipient for Class III Neglect to be substantiated. It is only required that the recipient be placed at *risk* of harm.

Further definitions of neglect may be found in the **Adult Protective Services Act**

Examples of Neglect:

- Leaving a recipient, who is not able to care for himself, unattended
- Not providing the proper medication, the correct dosage of a medication, or leaving the medication cabinet unlocked
- Be aware of, or suspecting, that an abusive or neglectful situation is occurring and not reporting it to the Rights Office and to your supervisor
- Not addressing a problem behavior in the treatment plan (i.e. self-abusive behavior) which may result in harm to the recipient or to others
- Not reporting an action by another staff which you suspect or know is abusive or neglectful

REPORTING ABUSE AND NEGLECT

When you see or hear about a recipient being abused or neglected, it is important that you take action quickly. Protecting the recipient is your primary responsibility. **AND... your failure to report abuse and neglect could result in you being charged with neglect also!** At the time of shift change, staff leaving should tell you about any injuries that happened on their shift or earlier shifts. They should have documented these as well. During your first hour on duty, check to see that anything reported to you verbally was also recorded in the person's chart. Observe the people in your care for signs or changes in their condition. Look for bruises, bumps, limping,

or other obvious signs of pain or illness. This should also be done when the recipient first comes to you or returns from another setting. If you notice anything that is not explained or charted:

- Immediately report it to the designated supervisor;
- Immediately take action to protect, comfort, and get any necessary treatment for any injured person in your care;
- Record the information on an Incident Report. The first staff person who sees an unexplained injury must report it and record it. Include any signs that abuse or neglect might have been involved. Your trainer or Rights Advisor will show you how to correctly complete an Incident Report form;
- Give the report to a supervisor as soon as possible, but never later than the end of your shift;
- Report any injuries to oncoming staff.

In addition to all the reporting requirements above, the Michigan Department of Health & Human Services, Bureau of Children and Adult Licensing is responsible for investigating alleged adult foster care administration rule and/or statutory violations – including abuse and neglect – in adult foster care homes. You may also file a complaint with this bureau and can do this in any of the following ways:

- Fill Out the On-line Complaint Form at: <http://www.michigan.gov/afchfa>
- Mail the Complaint to: Michigan Department of Health & Human Services, Bureau of Children and Adult Licensing, Complaint Intake Unit 7109 W. Saginaw, 2nd Floor, PO Box 30650, Lansing, MI 48909-8150
- FAX the Complaint to (517) 241-1680 or
- Call the Complaint Intake Unit toll free at 1 (866) 856-0126

NORTHEAST MICHIGAN COMMUNITY MENTAL HEALTH AUTHORITY
POLICY & PROCEDURE MANUAL

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PERSONNEL

(Manual Section)

RECIPIENT RIGHTS:

ABUSE AND NEGLECT

(Subject)

Approval of Policy:

Dated:

Original Inception Date:

January 12, 1995

Last Revision of Policy Approved:

May 8, 2009

•1 POLICY:

Any employee, volunteer, or agent of a provider of the Agency who abuses and/or neglects a consumer in any way shall be subject to immediate discipline. Complaints from a consumer or informant regarding an employee, volunteer, or agent of a provider of the Agency shall be thoroughly investigated by the Recipient Rights staff and if substantiated, immediate discipline (up to possible dismissal) shall occur.

All employees, volunteers, or agents of a provider of the Agency are responsible for safeguarding the rights of consumers; this includes protecting all consumers from abuse or neglect and the reporting of abuse and neglect. Any staff member who has knowledge of recipient abuse or neglect shall insure that it is immediately reported to the Office of Recipient Rights and other appropriate entities as required by law and in accordance with the Michigan Mental Health Code. This includes any and all incidents that the staff or volunteer has either witnessed or received report of, that constitute or may constitute abuse or neglect as defined in this policy, whether or not the staff believes the allegation to be true. Failure to report abuse and neglect shall subject the employee to disciplinary action, up to and including termination. Refer to Exhibit A for further explanation of mandatory reporting.

•2 APPLICATION:

All staff

NORTHEAST MICHIGAN COMMUNITY MENTAL HEALTH AUTHORITY
POLICY & PROCEDURE MANUAL

Administrative Approval of Procedure:

Dated:

November 7, 2008

•6 PROCEDURE:

Mandatory Reporting of Abuse or Neglect

•6•1 APPLICATION:

All staff

•6•2 OUTLINE / NARRATIVE:

The procedure is directed to the fundamental principle that no consumer shall be abused or neglected by an employee, volunteer, or agent of a provider.

1. In the event that an employee, volunteer, or agent of a provider has reasonable cause to suspect that a consumer has been abused and/or neglected that individual must *immediately* report the incident to the Recipient Rights Officer. Failure to report immediately may result in disciplinary action.
2. That same individual then must take immediate action to protect, comfort, and get any necessary treatment for any injured person in their care.
3. In the case of suspected sexual abuse, care must be taken to protect the clothing of the consumer and the consumer should not be bathed/showered until after being examined by a physician (clothing and the examination's findings are considered part of the evidence).
4. After immediate care has been provided to the consumer and the supervisor has been notified, an incident report (IR) is then to be completed. Include any signs that abuse or neglect may have been involved. Give the report to the supervisor as soon as possible, but never later than the end of the shift on which the incident occurred. The supervisor shall verbally notify the Recipient Rights Officer when injuries are involved and shall route the IR immediately,
5. For criminal abuse incidents, the supervisor is to contact the Clinical Services Director and Supports Coordinator.
6. The Supports Coordinator will then assure that the Director, Recipient Rights Officer, Guardian, and appropriate police department are notified of the alleged incident.
7. The Supports Coordinator will then complete the Report on Recipient Abuse form and forward one copy to the police, one to the Recipient Rights Officer, and place one copy in the consumer's record.

8. The Recipient Rights Officer will then assure that Protective Services and the Foster Care Licensing Consultant are notified first by phone then, within the agreed upon time frame, in writing.
9. An investigation will be conducted by the Recipient Rights staff according to Personnel policy 3800, Recipient Rights System.
10. A copy of this policy and procedure shall be given to all new employees, volunteers, and providers and reviewed with them during their first day of employment for the purpose of making sure that everyone who has responsibility to our consumers has a full understanding of all its provisions. The Recipient Rights staff will insure that this policy and procedure is called to the attention of all employees, volunteers, and providers at least annually.

•6.3 CLARIFICATIONS:

•6.4 CROSS-/REFERENCES:

Mental Health Code Sections 330.1722(2), 330.1723(2)
Administrative Rules 7001 (a-c), (g-I), 7035
Michigan Penal Code, Act 328 of Public Acts of 1931
Public Acts 519, 1982; 238, 1982; 218, 1979

•6.5 FORMS AND EXHIBITS:

[Exhibit A -- Mandatory Reporting Guidelines for Abuse and Neglect](#)
[Exhibit B -- Report on Recipient Abuse](#)

SUMMARY OF ABUSE AND NEGLECT REPORTING REQUIREMENTS

	Section 722, Public Act 258 of 1974 (Mental Health Code-Recipient Abuse) Office of Recipient Rights NEMCMH RIGHTS 989-358-7847 www.mi.gov/recipientrights	Public Act 238 of 1975 (Child Protection Law) CHILDRENS PROTECTIVE SERVICES REPORTING HOTLINE 1-855-444-3911	Public Act 519 of 1982 (Adult Protective Services Act) APS PROTECTIVE SERVICES REPORTING HOTLINE 1-855-444-3911	Section 723, Public Act 258 of 1974 (Mental Health Code - Criminal Abuse) Police MSP 517-332-2521
WHERE is the report made?	The Office of Recipient Rights Michigan Department of Health & Human Services (MDHHS) Community Mental Health Service Programs Licensed Private Psychiatric Hospitals/Units	Child Protective Services Michigan Department of Health & Human Services (MDHHS)	Adult Protective Services Michigan Department of Health & Human Services (MDHHS)	State Police Local Police County Sheriff
WHAT must be reported?	Sexual, Physical, Emotional or Verbal Abuse, Neglect, Serious Injury, Death, Retaliation or Harassment	Sexual, Physical or Mental Abuse, Neglect, Sexual Exploitation	Sexual, Physical or Mental Abuse, Neglect, Maltreatment, Exploitation	Assault (other than patient-patient assault), Criminal Sexual Abuse, Homicide, Vulnerable Adult Abuse, Child Abuse
WHO is required to report?	All employees, contract employees, or volunteers of: Michigan Department of Community Health; Community Mental Health Services Programs; licensed private psychiatric hospitals or units.	Physicians, nurses, coroners, medical examiners, dentists, licensed emergency care personnel, audiologists, psychologists, social workers, school administrators, teachers, counselors, law enforcement officers, and child care providers.	Any person employed by an agency licensed to provide, anyone who is licensed, registered, or certified to provide health care, education, social, or other human services; law enforcement officers and child care providers.	All employees, contract employees of: Michigan Department of Community Health; Community Mental Health Services Programs; licensed private psychiatric hospitals or unit; all mental health professionals.
WHAT is the criteria for reporting?	You must report if you: Suspect a recipient has been abused or neglected or any allegations of abuse or neglect made by a recipient.	You must report if you: Have reasonable cause to suspect a child has been abused, neglected, or sexually exploited.	You must report if you: Have reasonable cause to suspect or believe an adult has been abused, neglected, exploited or maltreated.	You must report if you: Suspect a recipient or vulnerable adult has been abused or neglected, sexually assaulted, or if you suspect a homicide has occurred. You do not have to report if the incident occurred more than one year before your knowledge of it.
WHEN must the report be made and in what format?	A verbal report must be made immediately. A written report on an Incident Report form must be made before the end of your shift.	A verbal report must be made immediately. A written report on DHS form 3200 must be made within 72 hours.	A verbal report must be made immediately. A written report at the discretion of the reporting person.	A verbal report must be made immediately. A written report must be made within 72 hours of oral report (330.1723).
To WHOM are reports made?	To your immediate supervisor and to the Recipient Rights Office.	Report to Protective Services Reporting Hotline 855-444-3911	Report to Protective Services Reporting Hotline 855-444-3911	The law enforcement agency for the county or city in which the alleged violation occurred or the State Police. A copy of the written report goes to the chief administrator of the agency responsible for the recipient.
If there is more than one person with knowledge must all of them make a report?	Not necessarily. Reporting should comply with the policies and procedures set up by each agency.	Someone who has knowledge must report or cause a report to be made. In the case of a school, hospital, or agency, one report is adequate.	Everyone who has knowledge of a violation or an alleged violation must make a report. MDHHS has typically accepted one report from agencies.	Someone who has knowledge must report or cause a report to be made.
Is there a penalty for failure to report? YES	Disciplinary action may be taken and you may be held civilly liable.	You may be held civilly liable. Failure to report is also a criminal misdemeanor.	You may be held civilly liable and have to pay a \$500 fine.	The law states that failure to report or false reporting is a criminal misdemeanor.
Is it necessary to report to more than one agency? YES	Each of these laws requires that the designated agency be contacted, if an allegation suspected to have occurred, falls under its specific jurisdiction. There are several references in each law indicating that reporting to one agency does not absolve the reporting person from the responsibility to report to other agencies as statutorily required.			
Are there other agencies to which reports can be made? YES	The Bureau of Health Systems (LARA) is responsible for investigating abuse and neglect in nursing homes, hospitals, and home health care . Call the NURSING HOME ABUSE HOTLINE at 1-800-882-6006. The Michigan Attorney General's Office has an Abuse Investigation Unit which may also investigate abuse in nursing homes. ATTORNEY GENERAL 24 Hr Health Care Fraud Hotline 1-800-24-ABUSE / 1-800-242-2873. The LARA AFC/HRQA Licensing Division is responsible for investigating abuse or neglect in a licensed foster care home. Call the Bureau of Community and Health Systems (LARA) Complaint Intake Unit 1-866-856-0126.			

DCH-0727 Rev. 6/2016
NEMCMH Rev. 01/2017 (RH)

Ruth M. Hewett, Recipient Rights Officer
989-358-7847 Phone 989-358-7849 Fax



RECIPIENT RIGHTS COMPLAINT

COMPLAINT NUMBER	CATEGORY
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<p>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 THE PINK COPY FOR YOUR RECORDS AND SEND THE OTHER COPIES TO THE RIGHTS OFFICE AT YOUR CMH SERVICES PROGRAM, HOSPITAL, OR TO:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> NORTHEAST MICHIGAN CMH 400 JOHNSON STREET ALPENA, MI 49707 ATTN: RUTH HEWETT, RRO </td> <td style="width: 50%; border: none;"> MICHIGAN DEPARTMENT OF COMMUNITY HEALTH OFFICE OF RECIPIENT RIGHTS LEWIS CASS BUILDING LANSING, MI 48913 </td> </tr> </table>			NORTHEAST MICHIGAN CMH 400 JOHNSON STREET ALPENA, MI 49707 ATTN: RUTH HEWETT, RRO	MICHIGAN DEPARTMENT OF COMMUNITY HEALTH OFFICE OF RECIPIENT RIGHTS LEWIS CASS BUILDING LANSING, MI 48913
NORTHEAST MICHIGAN CMH 400 JOHNSON STREET ALPENA, MI 49707 ATTN: RUTH HEWETT, RRO	MICHIGAN DEPARTMENT OF COMMUNITY HEALTH OFFICE OF RECIPIENT RIGHTS LEWIS CASS BUILDING LANSING, MI 48913			
COMPLAINANT'S NAME	RECIPIENT'S NAME (If different from complainant)			
WHERE DID THE ALLEGED VIOLATION HAPPEN?	PHONE NUMBER			
COMPLAINANT'S ADDRESS	WHEN DID IT HAPPEN? (Date and time)			
WHAT RIGHT WAS VIOLATED?				
DESCRIBE WHAT HAPPENED				
WHAT DO YOU WANT TO HAVE HAPPEN IN ORDER TO CORRECT THE PROBLEM?				
COMPLAINANT'S SIGNATURE	DATE	NAME OF PERSON ASSISTING COMPLAINANT		

DCH-0030 2/97 REPLACES DCH-2500
 DISTRIBUTION: WHITE – ORR CANARY – Provider PINK – Complainant

AUTHORITY: P.A. 258 OF 1975
 AS AMENDED BY P.A. 290 OF 1995

NORTHEAST MICHIGAN COMMUNITY MENTAL HEALTH AUTHORITY
POLICY & PROCEDURE MANUAL

[../Index.doc](#)

PERSONNEL
(Manual Section)

**RECIPIENT RIGHTS:
INCIDENT REPORTS**
(Subject)

Approval of Policy

Dated:

Original Inception Date:

January 11, 1996

Last Revision of Policy Approved:

March 7, 2008

•1 POLICY:

It is the policy of the Agency that staff document any unusual, out-of-the-ordinary events that occur in a program. Incident reports ensure this and are used for the following purposes:

1. to monitor that treatment is suited to the needs of the recipient;
2. patterns of behavior that require intervention are detected early;
3. agency-wide or program-specific problems, like safety issues, are dealt with;
4. needed staff training is developed.

Incident reports are legal documents and may not be destroyed. They are administrative documents that are confidential. They are not subject to court subpoena and are not public documents as defined by Section 300.1748(9) of the Mental Health Code (Revised). They are prepared and used for the purposes of peer and supervisory review and quality control.

•2 APPLICATION:

All employees, all recipients, all providers – licensed or unlicensed.

•3 DEFINITIONS:

INCIDENT: An occurrence that disrupts or adversely affects the course of treatment or care of an individual. Examples include:

1. Serious injury of recipients and incidents which could have caused serious injury; which includes serious unexplained injuries and serious injuries resulting from the application of physical management.
2. Non-serious injury which appears to involve abuse or neglect of a recipient.
3. Suspected abuse or neglect of a recipient.
4. Repeated behaviors which are not addressed in a plan of service.

5. Sexual abuse, which means contact or sexual penetration between a recipient and an employee; a recipient and another person, when that other person is providing authorized care and/or supervision to that recipient; and a recipient and another recipient when one does not consent.
6. Incidents involving sexual misconduct.
7. First-time occurrences, such as seizures, fire-setting behavior, etc.
8. Medication errors and medication refusals.
9. Every use of physical intervention not covered in a behavior program.
10. Any significant event in the community involving a recipient.
11. A traffic accident involving recipients.
12. A recipient leaving the home without permission or notice.
13. Recipient-to-employee injury.
14. The death of a recipient.
15. Any accident or illness that requires hospitalization (including emergency room treatment).
16. Incidents of displays of serious hostility.
17. Incidents that involve hospitalization.
18. Attempts at self-inflicted harm or harm to others.
19. Instances of destruction of property.
20. Incidents that involve the arrest or conviction of a resident (as required pursuant to the provisions of section 1403 of Act 322 Public Acts of 1988).

LICENSED: A home that has been issued a license to operate as an adult foster care home.

•4 CROSS-/REFERENCES:

•5 FORMS AND EXHIBITS:

INCIDENT / ACCIDENT REPORT
 Michigan Department of Licensing and Regulatory Affairs
 Adult Foster Care and Camp Licensing Division

Date Received: _____
Date Reviewed: _____ Initials: _____
Action: <input type="checkbox"/> No Follow-Up Needed
<input type="checkbox"/> Phone Call Follow-Up
<input type="checkbox"/> SI Opened

Name of Facility/Home	License Number	Name of Person Directly Involved	<input type="checkbox"/> Resident
			<input type="checkbox"/> Employee
			<input type="checkbox"/> Visitor
Facility Address	Address		
Facility Phone	City/State/Zip Code		
Licensee Name	Phone	Case Number (if applicable)	

OTHER PERSON(S) INVOLVED/WITNESSES:

Name	<input type="checkbox"/> Resident	Name	<input type="checkbox"/> Resident
	<input type="checkbox"/> Employee		<input type="checkbox"/> Employee
	<input type="checkbox"/> Visitor		<input type="checkbox"/> Visitor
Name	<input type="checkbox"/> Resident	Name	<input type="checkbox"/> Resident
	<input type="checkbox"/> Employee		<input type="checkbox"/> Employee
	<input type="checkbox"/> Visitor		<input type="checkbox"/> Visitor

FACTS OF THE INCIDENT (ATTACH ADDITIONAL PAGES AS NEEDED):

Date of Incident	Time <input type="checkbox"/> AM <input type="checkbox"/> PM	Name of Employee Assigned to Resident (if Applicable)	Location of Incident (Kitchen, Yard, etc.):
Explain What Happened / Describe Injury (if any):			
Action taken by Staff / Treatment Given (Attach separate sheet if necessary):			
Corrective Measures Taken to Remedy and/or Prevent Recurrence (Attach separate sheet if necessary):			
Name of Treating Physician / Health Care / Medical Facility / Hospital	Phone Number	Date Care Given	Time <input type="checkbox"/> AM <input type="checkbox"/> PM
Physician's Diagnosis of Injury, Illness or Cause of Death, if known			

PERSON(S) NOTIFIED:

AFC Licensing	Notification Date/Time Written Notice / Date:	Adult Protective Services (if applicable)	Notification Date/Time
Physician or RN (if applicable)	Notification Date/Time	Office of Recipient Rights {if applicable}	Notification Date/Time
Responsible Agency	Notification Date/Time Written Notice / Date:	Law Enforcement Agency {if applicable}	Notification Date/Time
Designated Representative/Legal Guardian	Notification Date/Time Written Notice / Date	Other {please specify}	Notification Date/Time

SIGNATURE(S):

Signature of Person Completing Report	Print Name and Title	Date
Signature of Licensee/Administrator	Print Name and Title	Date

BCAL-4607 (Rev. 7-15) Previous edition (4-15) may be used. **COPY DISTRIBUTION:** Resident Record, Licensing Consultant, Responsible agency (if required by rule) and Designated representative.

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH INCIDENT REPORT		RECIPIENT NAME
REPORT DATE	TIME	CASE NO.
AGENCY NAME		AGE/BIRTHDATE
WORK AND LIVING UNIT NAME		SEX
PRINT OR USE ADDRESSOGRAPH PLATE		

WHEN DID YOU DISCOVER INCIDENT (Date & Time) <input type="checkbox"/> AM <input type="checkbox"/> PM	WHEN DID IT HAPPEN (Date & Time) <input type="checkbox"/> AM <input type="checkbox"/> PM	WHERE DID INCIDENT HAPPEN (Building, Location) <input type="checkbox"/> AM <input type="checkbox"/> PM
RECIPIENT(S) INVOLVED		OTHER RECIPIENT(S) PRESENT
EMPLOYEE(S) INVOLVED AND/OR PRESENT		
EXPLAIN WHAT HAPPENED		
ACTION TAKEN BY STAFF		
PHYSICAL INJURY APPARENT? <input type="checkbox"/> YES <input type="checkbox"/> NO	REPORTING PERSON'S SIGNATURE & TITLE	DATE

IF INJURY, DESCRIPTION OF INJURY BY PHYSICIAN OR R.N.			
DESCRIPTION OF TREATMENT OR CARE GIVEN			
DATE & TIME CARE GIVEN <input type="checkbox"/> AM <input type="checkbox"/> PM	EXTENT OF INJURY AT THIS TIME <input type="checkbox"/> SERIOUS <input type="checkbox"/> NON-SERIOUS	PHYSICIAN'S OR R.N. SIGNATURE	DATE
IF SERIOUS INJURY: DATE & TIME DIRECTOR OR DESIGNEE NOTIFIED <input type="checkbox"/> AM <input type="checkbox"/> PM	IF SERIOUS INJURY: DATE & TIME RIGHTS ADVISOR NOTIFIED <input type="checkbox"/> AM <input type="checkbox"/> PM	PHYSICIAN'S OR R.N. SIGNATURE	DATE

DESIGNATED SUPERVISOR (State program or administrative action to remedy and/or prevent reoccurrence of incident, including disciplinary action)	
NAME OF EMPLOYEE ASSIGNED TO RECIPIENT AT TIME OF INCIDENT	DESIGNATED SUPERVISOR'S SIGNATURE

WITHIN 24 HOURS, DISTRIBUTE: WHITE COPY -- Director (Return to recipient Records)
 YELLOW -- Rights Advisor DCH-044 5/9
 PINK -- Agency Replaced DMH-2550

CONFIDENTIALITY

OBJECTIVES:

As a result of reading this section you will be able to:

- Define confidentiality and informed consent
- Identify rules you must observe when sharing information about a recipient
- Recognize instances when confidentiality has been violated

Key Points:

- Information shall not be disclosed unless it is germane to the authorized purpose
- For recipients with a guardian and those under age 18, information can be withheld if a physician determines it would be detrimental

The right to confidentiality is one of the most important rights granted to recipients. Each mental health service provider is required to have policies and procedures which provide for maintaining the confidentiality of those receiving services. Each recipient is entitled to confidentiality when seeking the services of a lawyer, a doctor, or other mental health services professional. In order to assure the confidentiality of recipients, all staff must protect written and unwritten information gained while providing mental health services.

The Mental Health Code requires that:

- Every recipient is informed about the law requiring confidentiality
- A record is maintained of any information about the recipient that is disclosed. This record must indicate what information was released, to whom it was released, and the reason for the release
- Under certain circumstances, the release of information may be delayed, or even withheld. However, a competent adult recipient is entitled to receive any and all information contained in his or her record subsequent to March 28, 1996.

Some information can be provided to legal and medical personnel who provide services to the recipient, without obtaining a release of information. However, this information is limited to that which relates to the services being provided.

There are times when it is appropriate to disclose information about a recipient. Some of these are:

- When the person agrees, by signing a release of information and the person who requested the information has a legitimate need for the information
- To mental health, or other public agencies, where there is a strong chance that the recipient or others will be seriously hurt if no action is taken. The agency director is consulted before any information is given
- To other agencies such as Social Security or the Department of Health and Human Services when necessary in order for service providers to receive payment
- When required by court order, or to comply with the law
- To a prosecuting attorney when necessary to participate in proceedings governed by the Mental Health Code, for example, a civil commitment proceeding
- To the recipient's attorney when the recipient has given written consent
- To the surviving spouse of a recipient in order to apply for and receive benefits, but only if the surviving spouse has been appointed personal representative of the estate by the court

Confidentiality is a right of every recipient of mental health services. **Everyone involved with the delivery of services must work to maintain and protect this right.** All information in a person's record, and any information about the person discovered while providing services, is

confidential. Written consent of the recipient, or the recipient's guardian, is required before giving out any information.

A recipient cannot simply agree to have confidential information released. In order for a release of information to be valid, it must be given with **Informed Consent**⁴. This means the recipient:

- Has the legal capacity to give consent
- Is not pressured in any way to give consent
- Is able to understand what information he/she is agreeing to release
- Understands the risks, benefits and consequences of agreeing, or not agreeing, to the release of the information requested

A person who has a guardian is not legally capable of giving informed consent. In most cases involving children, informed consent must be obtained from their parents. Generally, decisions about release of confidential information are made by clinical or management staff. However, there are many times when you must make immediate decisions regarding the release of a recipient's confidential information. **Don't let anyone pressure you.** Even if someone gets upset because you don't give out information they were entitled to, your first responsibility is to the recipient. Each agency has its own rules to ensure employees follow confidentiality guidelines. Sometimes, you may not be aware that you are violating the confidentiality of recipients. If you have questions about releasing information, or whether someone is authorized to receive information, check with your supervisor.

The following items are considered confidential:

- Recipient's name and any personal identifiers
- Whether or not a person is receiving services
- All information in the record
- Photographs/videotapes/audio-recordings
- Any information learned while providing service

This information cannot be released unless there is a signed release of information.

Protecting confidentiality means that, when you are not at work, you cannot talk to anyone about what happened with a recipient. When at work, you cannot discuss any information with those who are not authorized to receive it. It also means that you have a responsibility to make sure that unauthorized persons are not able to identify recipient.

Telephone inquiries requesting information about a recipient should be responded to with providing a general statement that staff will take the information and if the individual is a recipient, staff will pass it on to the treating professional. If the individual is not a recipient, the

⁴ All of the following elements of informed consent: (a) legal competency (b) knowledge (c) comprehension (d) voluntariness (Administrative Rule 330.7003)

information will be shredded. If you are in doubt as to what to do, refer the caller to your supervisor or to the rights office.

Agency protocol regarding providing information to the police should be responded to with a polite response that per the Mental Health Code, staff cannot provide any information without a signed release of information or a judge-signed court order. If staff requested police assistance, staff may provide the justifying information as to why law enforcement was called. For example, a recipient has left the adult foster care home and cannot be located. Identification may be given to assist the police in their search. For additional information, refer to the Agency's policy on confidentiality.

Michigan Protection and Advocacy (MPAS) may have access to recipients' records of all of the following:

- A recipient, if the recipient, the recipient's guardian with authority to consent, or a minor recipient's parent with legal and physical custody of the recipient has consented to the access.
- A recipient, including a recipient who has died or whose location is unknown, if all of the following apply:
 - Because of mental or physical condition, the recipient is unable to consent to the access.
 - The recipient does not have a guardian or other legal representative, or the recipient's guardian is the state.
 - The protection and advocacy system has received a complaint on behalf of the recipient or has probable cause to believe based on monitoring or other evidence that the recipient has been subject to abuse or neglect.
- A recipient who has a guardian or other legal representative if all of the following apply:
 - A complaint has been received by the protection and advocacy system or there is probable cause to believe the health or safety of the recipient is in serious and immediate jeopardy.
 - Upon receipt of the name and address of the recipient's legal representative, the protection and advocacy system has contacted the representative and offered assistance in resolving the situation.
 - The representative has failed or refused to act on behalf of the recipient.

Listed here are some examples of how you may unknowingly violate confidentiality:

- Talking about recipients outside of work
- Referring to recipients by name when discussing work with family or friends
- Giving information over the phone to persons who say they are relatives
- Taking photographs or videotapes of recipients without permission
- Listening in on a recipient's phone calls

- Discussing information in a recipient's record with staff from another home or with other mental health or service professionals who are not authorized to receive the information
- Referring to a recipient by name in another recipient's record or on an incident report for another recipient

OTHER RIGHTS GUARANTEED BY THE MICHIGAN MENTAL HEALTH CODE

OBJECTIVES:

As a result of reading this section you will have a working knowledge of these rights:

- Individual Written Plan of Service
- Safe, Sanitary, Humane, Treatment Environment
- Fingerprinting & Photographing
- Adult Foster Care Licensing Rules
- Communications and Visits
- Entertainment Materials, Information and News
- Statement Correcting or Amending Record

Individual Written Plan of Service (IPOS)

- The responsible mental health agency for each recipient shall ensure that a person-centered planning process is used to develop a written individual plan of service in partnership with the recipient
- A preliminary plan shall be developed within 7 days of the commencement of service
- The individual plan of services shall consist of a treatment plan, a support plan, or both
- A treatment plan shall establish meaningful and measureable goals with the recipient
- The individual plan of service shall address, as either desired or required by the recipient, the recipient's need for food, shelter, clothing, health care, employment opportunities, legal services, transportation, and recreation
- The plan shall be kept current and shall be modified when indicated
- If a recipient is not satisfied with his or her individual plan of services, the recipient, the person authorized by the recipient to make decisions regarding the individual plan of services, the guardian of the recipient, or the parent of a minor recipient may make a request for review to the designed individual in charge of implementing the plan. The review shall be completed within 30 days and shall be carried out in a manner approved by the appropriate governing body.
- An individual chosen or required by the recipient may be excluded from participation in the planning process only if inclusion of that individual would constitute a substantial risk of physical or emotional harm to the recipient or substantial disruption of the planning process

Safe, Sanitary, Humane, Treatment Environment

- Mental Health Code requires safe, sanitary, humane treatment environment
- Adult Foster Care Licensing Rules, some of these are as follows:
 - Three regular, nutritional meals a day, no more than 14 hours between the evening and morning meals
 - All resident occupied rooms of the home will be heated between 68 to 72 degrees F during non-sleeping hours
 - Only positive-latching, non-locking against – egress door latches may be used
 - Hot and cold running water that is under pressure shall be maintained between 105 to 120 degree F at the faucet
 - Provide for resident health, hygiene and personal grooming including assistance and training in personal grooming practices, including bathing, tooth brushing, shampooing, hair grooming, shaving, and care of nails
 - Provider must supply toilet articles, toothbrush and dentifrice, opportunity to shower or bathe at least once every 2 days, regular services of barber or beautician and the opportunity to shave daily (males)

Fingerprinting & Photographing

- Prior written consent from the recipient, the recipient's guardian or a parent with a legal and physical custody of a minor recipient must be obtained before photographs are taken
- Procedures shall only be utilized in order to provide services (including research) to identify a recipient or for education and training purposes
- Photographs include still pictures, motion pictures and videotapes
- Photographs may be taken for purely personal or social purposes and must be treated as the recipient's personal property
- Fingerprints, photographs, and audio-recordings and any copies of these are to be made part of the recipient record
- Fingerprints, photographs, and audio-recordings and any copies of these are to be destroyed or returned to the recipient when no longer essential or upon discharge
- If fingerprints, photographs, or audio-recordings are done and sent out to others to help determine the name of the recipient, the individual receiving the items must be informed that return is required for inclusion in the recipient record
- This Agency does not fingerprint recipients

Communications and Visits

- Residents are allowed to use mail and telephone services
- These communications must not be censored; staff should not open mail for residents without authorization
- If necessary, funds must be provided (in reasonable amounts) for postage, stationary, telephone
- If the rules are to be established regarding telephone calls and visits, these must be reasonable and must be posted in conspicuous areas for residents, guardian, visitors, and others to see
- Limitations can be made on these rights for individuals, but only allowed in the individual plan of service (IPOS) following review and approval by the Behavior Support Committee and the special consent of the resident or his/her legal representative
- Communication by mail, telephone and the ability to have visitors shall not be limited if the communication is between a resident and his/her attorney or a court, or between a resident and any other individual when the communication involves legal matters or may be the subject of legal inquiry

Entertainment Materials, Information and News

- Provider must never prevent a resident from exercising this right for reasons of, or similar to, censorship

- Provider must establish written policies and procedures that provide for all of the following:
 - Any general program restrictions on access to material for reading, listening, or viewing
 - Determining a resident's interest in, and provide for, a daily newspaper
 - Assure material not prohibited by law may be read or viewed by a minor unless there is an objection by the minor's guardian
 - Permit attempts by the staff person in charge of the minor's IPOS to persuade a parent or guardian of a minor to withdraw objections to material desired by the minor
 - Provider may require that materials acquired by the resident that are of sexual or violent nature be read or viewed in the privacy of the resident's rooms

Statement Correcting or Amending Information

- A recipient, guardian, or parent of a minor recipient, after having gained access to treatment records, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the recipient's record. The recipient, guardian, or parent of a minor recipient shall be allowed to insert into the record a statement correcting or amending the information at issue. The statement shall become part of the record.

SUITABLE SERVICES

OBJECTIVES:

As a result of reading this section you will have a working knowledge of these rights:

- Family Planning
- Mental Health Service Suited to Condition
- Choice of Physician/MHP
- Notice of Clinical Status
- Services of Mental Health Professional
- Psychotropic Drug Treatment

-Family Planning

- It shall be the policy of the Agency not to force individuals receiving services to be sexually sterilized, nor to interfere with an individual's right to be sexually sterilized if they so desire, nor to use sexual sterilization as a prior condition for release or discharge of an individual.
- The Individual Plan of Service, developed through the Person-Centered Planning process, may address family planning issues as appropriate.
- Mental health services are not contingent upon receiving family planning services. Individuals receiving services, guardians, and parents of minor children who receive services requesting information regarding sterilization, contraception, or abortion information will be referred to the health department and/or their family physician for education and information on family planning and health.
- Written notice of the right to availability of family planning and health information services shall be provided to individuals receiving services, their guardians, and parents of a minor child at intake via the "Your Rights" booklet.

-Mental Health Service Suited to Condition

- A recipient shall be given a choice of physician or other mental health professional in accordance with the policies of the community mental health services program, licensed hospital, or service provider under contract with the community mental health services program, or licensed hospital providing services and within the limits of available staff in the community mental health services program, licensed hospital, or service provider under contract with the community mental health services program, or licensed hospital.

-Choice of Physician/MHP

- A consumer of service is given a choice of physician or mental health professional within the limits of available staff, and when deemed clinically appropriate. The procedure to request a change is to submit a written request to the MHP's supervisor specifying the reason(s) for the change.

-Notice of Clinical Status

- A recipient shall be informed orally and in writing of his or her clinical status and progress at reasonable intervals established in the individual plan of services in a manner appropriate to his or her clinical condition. A recipient may access information in the clinical record via the Patient Portal at any time.

-Services of Mental Health Professional

- A recipient shall be allowed to see a mental health professional at any time.

-Psychotropic Drug Treatment

- Before initiating a course of psychotropic drug treatment for a recipient, the prescriber or a licensed health professional acting under the delegated authority of the prescriber shall do both of the following:
 - a. Explain the specific risks and the most common adverse effects that have been associated with that drug.
 - b. Provide the individual with a written summary of the most common adverse effects associated with that drug.

INVESTIGATING RIGHTS ALLEGATIONS

OBJECTIVES:

As a result of reading this section you will be able to:

- Understand the role of the Office of Recipient Rights
- Understand the process whereby allegations of right violations are investigated
- Understand the rights of appeal provided by the Mental Health Code

Key Points:

- If you become aware that a recipient's rights may have been violated, **YOU MUST REPORT** this information to the Rights Office. Anyone can file a complaint on behalf of a recipient.
- The decision about what happens to a staff person who has committed abuse or neglect, or otherwise violated the rights of a recipient, rests with the employer.
- The standard of preponderance of evidence is necessary in order to substantiate a violation of a recipient right. Preponderance of evidence means 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; given the greater weight of evidence, not as to quantity (number of witnesses), but as to quality (believability and greater weight of important facts provided).

THE OFFICE OF RECIPIENT RIGHTS

Most employees do not intentionally abuse, neglect, or violate the rights of recipients. The Office of Recipient Rights protects recipients from the few that do. Each Department of Health and Human Services hospital or center, Community Mental Health Services Program, and licensed private hospital has a Recipients Rights Officer. The Rights Officer from the local Community Mental Health Board reviews all allegations of rights violations and all incident reports involving recipients in their jurisdiction. The Office may investigate, and can make recommendations about remedial action to the service provider and the responsible Community Mental Health Service Program. Rights Officers often serve as advocates for individuals and groups of recipients. You can contact the local Rights Office at:

(989) 358-7847 Ruth Hewett

Roles of the Rights Office

- Prevention – ORR provides consultation on rights related matters to staff and recipients. If you have a rights question, call us!
- Training – We provide numerous types of recipient rights training to staff, recipients, guardians, and others.
- Monitoring – ORR visits each service site at least annually in order to ensure the site is protecting the rights of the recipients receiving services there.
- Complaint Resolution – ORR receives, reviews, and investigates complaints of alleged rights violations. Complaints are received from a wide variety of sources.

THE INVESTIGATIVE PROCESS

When an investigation into alleged rights violations is started, the Rights Officer will have access to all documentation, and any staff, necessary to complete the investigation. You are expected to answer questions about work-related matters asked by the Rights Officer, a representative of your provider, the State Police, Department of Health and Human Services (DHHS) authorities who are conducting a review investigation.

The Mental Health Code requires that an investigation be completed within 90 day from the receipt of a complaint. A “Report of Investigative Findings” will be given to the Director of the Community Mental Health agency and to the service provider. It is up to the CMH Director to issue a report summarizing the investigation to the complainant and the recipient within 10 business days after receiving the Rights Officer’s investigative report.

Each provider should have policies and procedures for dealing with offenses. These should emphasize the seriousness of improper actions. Since procedures vary among providers, check with your supervisor or look in your policy or personnel manual.

THE APPEAL PROCESS

Upon completion of a recipient right investigation and the issuance of a summary report, the recipient, a legal representative of a recipient, and, of course, the person who made the complaint, (if that is someone other than the recipient) all have the right to appeal the decision.

This appeal can be made for the following reasons:

1. The findings of the investigation are inconsistent with the law, facts, rules, policies, or guidelines
2. The action, or plan of action, is inadequate
3. The investigation was untimely

Unless they were the complainant, staff are not eligible to file an appeal even if they were the subject of the investigation.

If the action of your local Rights Office does not solve the problem, you can contact the Michigan Department of Health and Human Services Office of Recipient Rights. If you wish to do so, write or call:

Office of Recipient Rights
Michigan Department of Health and Human Services
Lewis Cass Building
Lansing, MI 48913
(800) 854-9090

OTHER INVESTIGATIVE AGENCIES

Depending on the circumstances, several other organizations may investigate allegations of abuse or neglect. When there is a question of abuse, the Adult, or Child, Protective Services Divisions of the Michigan Department of Health and Human Services may be involved. If your home may have violated state standards, or if it may not be suitable for a particular recipient, a Michigan Department of Health and Human Services licensing consultant may investigate. Finally, if it is believed that a criminal act has occurred, the State Police or local law enforcement agency may become involved.

Recipient Rights Advisory Committee

The recipient rights advisory committee shall do all of the following:

1. Meet at least semiannually or as necessary to carry out its responsibilities.
2. Maintain a current list of members' names to be made available to individuals upon request.
3. Maintain a current list of categories represented to be made available to individuals upon request.

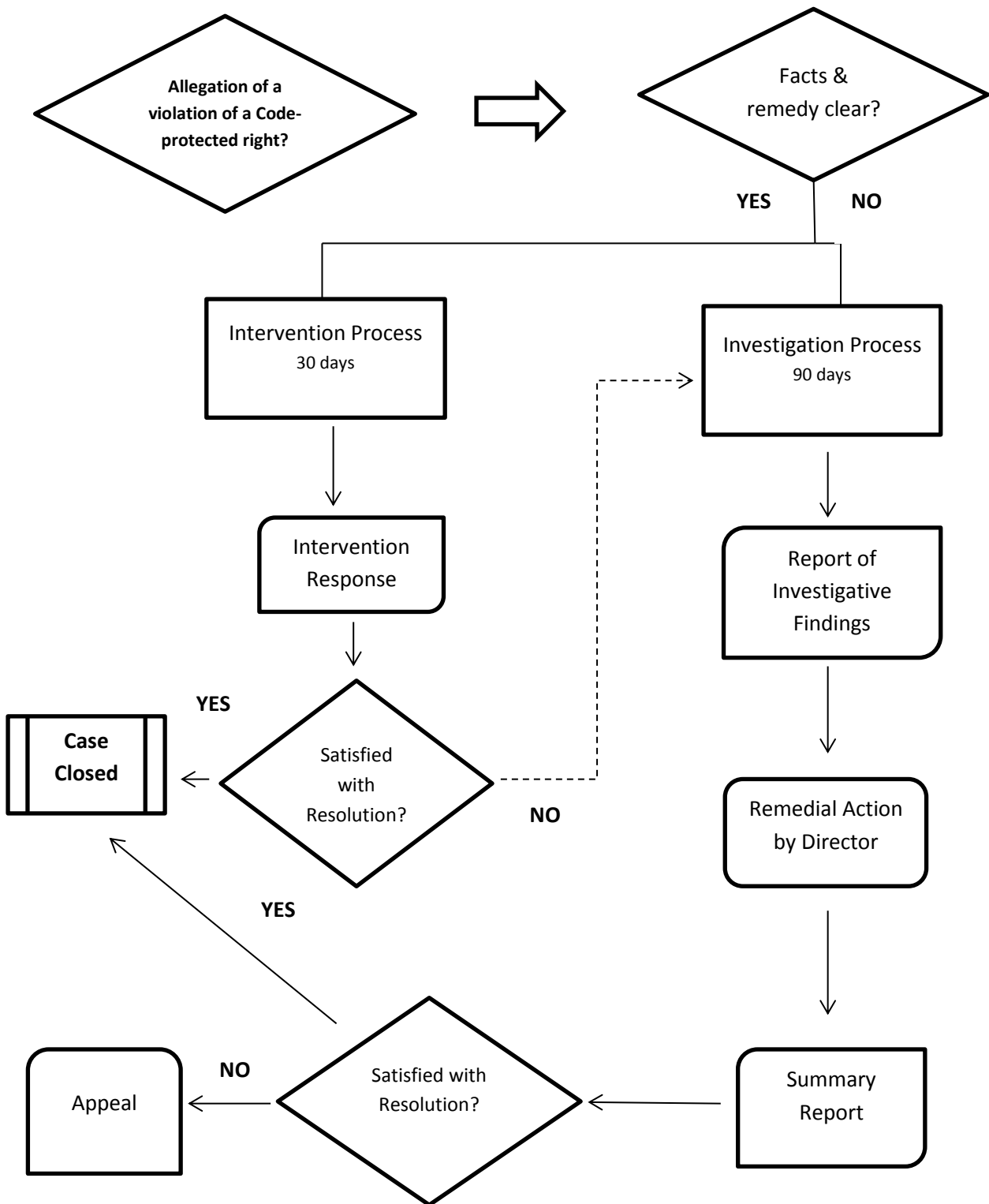
4. Protect the office of recipient rights from pressures that could interfere with the impartial, even-handed, and thorough performance of its functions.
5. Recommend candidates for the position of rights officer to the agency director, and consult with the agency director regarding any proposed dismissal of the rights officer.
6. Serve in an advisory capacity to the agency director and recipient rights officer.
7. Review and provide comments on the annual rights report.
8. Serve as the appeals committee for a recipient's appeal.

Notification of Rights

Rights are presented and communicated to the recipients through the following methods:

- Limited English Proficiency (LEP) poster located in lobby of NeMCMHA
- Right to language interpretation, which is provided at no cost, for those consumers who do not speak English
- A video entitled “Your Rights” is available for viewing on a monitor in the NeMCMHA lobby
- A booklet will be provided entitled “Your Rights When Receiving Mental Health Services in Michigan,” available in English, Hebrew, and Spanish, written at the 4th grade reading level.
- Cassettes are provided entitled “Your Rights When Receiving Mental Health Services in Michigan,” in English and Spanish (4th grade level)
- Booklet entitled “Community Mental Health Guide to Services” is provided in English (4th grade level)
- If the condition of the individual upon intake is such that explanation is not feasible, then notification will be provided via mail
- Rights are reviewed annually for individuals who are in the program for longer than one (1) year. Staff will read the “Your Rights” booklet to individuals served in CMH licensed homes who are unable to read and who have guardians. Consents (DD) and Request for Services are valid for one (1) year, then renewed. All rights information is presented again. The plan of service documents the receipt of rights information
- Rights are available at all times for review and clarification. A summary of rights guaranteed by the Mental Health Code and Administrative Rules is available in all service site locations, rights language is included in contracts, and recipient rights site review forms document compliance

The Recipient Rights Investigation Process



RIGHTS AND RESPONSIBILITIES

OBJECTIVES:

As a result of reading this section you will be able to:

- Understand the rights you have as an employee
- Understand the responsibilities you have as an employee
- Understand the responsibilities of recipients

Key Points:

- You have the rights which protect you from actions based on incorrect or malicious information. There are laws which protect employees when they report rights violations.

EMPLOYEE RIGHTS

The **Mental Health Code** mandates the complainants, staff of the Office of Recipient Rights, and any staff acting on behalf of a recipient will be protected from harassment or retaliation resulting from recipient rights activities and that appropriate disciplinary action will be taken if there is evidence of these activities.

The **Whistleblowers Protection Act** (P.A. 469 of 1980) protects employees who report rights violations. This law states that it is illegal for employers in Michigan to discharge, threaten, or otherwise discriminate against you regarding compensation, terms, conditions, locations, or privileges of employment because you, or a person acting on your behalf, reports, or is about to report, a violation, or a suspected violation, of Federal, State, or local laws, rules, or regulations, to a public body. It is illegal for employers in Michigan to discharge, threaten, or otherwise discriminate against you regarding your compensation, terms, conditions, locations, or privileges of employment because you take part in a public hearing, investigation, inquiry, or court action. This law does not diminish or impair either your rights, or the rights of your employer, under any collective bargaining agreement. The Act does not require your employer to compensate you for your participation in a public hearing, investigation, inquiry, or court action. The Act does not protect you from disciplinary action if you make a report to a public body that you know is false. **If you believe that your employer has violated this Act you may bring a civil action in a circuit court within 90 days of the alleged violation of this Act.** Persons found in violation of this act may be subject to a civil fine of up \$500.00. If your employer has violated this Act, the court can order your reinstatement, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. The court may also award all, or a portion of, the cost of litigation, including reasonable attorney fees and witness fees to the complainant if the court believes such an award is appropriate.

The **Bullard-Plawecki Employee Right to Know Act** (P.A. 397 of 1978) requires that you be provided written notice when your employer, or former employer, divulges a disciplinary report, letter of reprimand, or other disciplinary action given to you to someone outside your agency (unless they are representing you). This notice must be sent by first-class mail to the employee's last known address, and must be mailed on or before the day the information is divulged. **This act provides you notice only; you cannot stop the agency from divulging the information.**

EMPLOYEE RESPONSIBILITIES

The additional rights specified by the Code are intended to protect and promote the basic human dignity of recipients. You have the responsibility to treat recipients with dignity and respect and to protect them from harm. Here are the dictionary definitions of dignity and respect:

Dignity: to be treated with esteem, honor, politeness; to be addressed in a manner that is not patronizing, condescending or demeaning; to be treated as an equal; to be treated the way any individual would like to be treated.

Respect: to show deferential regard for; to be treated with esteem, concern, consideration, or appreciation; to protect the individual's privacy; to be sensitive to cultural differences; to allow an individual to make choices.

Here are some examples of how you can promote the dignity and respect of recipients:

- Calling a person by his or her preferred name
- Knocking on a closed door before entering
- Using positive language
- Encouraging the person to make choices instead of making assumptions about what he or she wants
- Taking the person's opinion seriously, including the person in conversations, allowing the person to do things independently or to try new things

However, regulations don't necessarily change how people act. You must constantly remind yourself to treat people with respect. For example, you must address recipients as they wish to be addressed, give them privacy and freedom of choice. Most disrespect is unintentional – you may slip into poor practices without realizing it.

As a service provider you must ensure that the rights of people are respected and protected at all times. That means you are responsible for the following:

- Your own acts, either intentional or accidental
- Your failure to act appropriately or quickly
- Reporting abusive actions of staff to the supervisor and the Rights Officer immediately
- Reporting unsafe conditions to the Rights Officer if you are unable to resolve a situation through your supervisor
- Reporting rights violations to the Rights Officer
- Intervening to stop abusive actions of other staff

RECIPIENT RESPONSIBILITIES

Recipients also have responsibilities. They may be held legally responsible for breaking the law. For example, recipients may be civilly or criminally liable if they deliberately hurt another resident, an employee or any other person, or if they destroy or steal property. Recipients may keep personal property, but are responsible for taking care of it and for protecting it from theft or loss. Recipients also have the responsibility not to interfere with the care or treatment of others.

FAMILY RIGHTS

Families of mental health recipients have some rights specified in the Mental Health Code:

- Family members of recipient shall be treated with dignity and respect

- Family members shall be given an opportunity to provide information to the treating professionals
- Family members of recipients shall be provided an opportunity to request and receive educational information about the nature of disorders, medications and their side effects, available support services, advocacy and support groups, financial assistance and coping strategies
- Receiving information from or providing information to family members shall be carried out within the confidentiality constraints of Section 748 of the Mental Health Code.

The Office of Recipient Rights thanks you for helping to protect the rights of our recipients!

Revised 1-29-19