

<b>Title:</b>	3.6.01, Recipient Rights		
<b>Subject:</b>	Recipient Rights		
<b>Section:</b>	Clinical		
<b>Related Policies:</b>	3.6.01, Recipient Rights		
<b>Policy:</b> <input type="checkbox"/>	<b>Issued by:</b>	<b>Effective Date:</b>	<b>Applies to:</b> <input checked="" type="checkbox"/> All CMHA-CEI staff <input checked="" type="checkbox"/> Contract Providers <input type="checkbox"/> Other:
<b>Procedure:</b> X	QCSRR Director	03/18/05	
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	N/A	12/21/16	

I. **Purpose:** To establish processes for protecting the rights of recipients.

II. **Procedures:**

A. Categories of recipient rights:

1. Abuse and neglect
2. Admission and discharge
3. Civil rights
4. Communication and visits
5. Confidentiality and privileged communication
6. Forensic issues`
7. Family rights
8. Freedom of movement
9. Personal property
10. Photographs, fingerprints, audiotapes, and one-way glass
11. Rights protection system
12. Suitable services
13. Treatment environment
14. Treatment planning

B. The Chief Executive Officer (CEO) shall appoint and dismiss the Director of Quality Customer Service and Recipient Rights who shall be subordinate only to the CEO. The CEO shall consult with the Recipient Rights Advisory Committee prior to selecting, replacing, and/or dismissing the Director of Quality Customer Service and Recipient Rights.

C. The Board of Directors and the CEO shall protect the Recipient Rights Office from pressures which could interfere with the impartial, even-handed, and thorough performance of its duties. The CEO shall ensure that staff acting on behalf of a consumer, or staff of the RRO are not subject to any form of retaliation or harassment based upon recipient rights activities.

D. The CEO shall submit to the Board of Directors and DCH an annual report prepared by the RRO on the current status of recipient rights in the CMH Network and providers, and a review of the operations of the RRO. The report shall be submitted not later than December 30 of each year for the preceding fiscal year or period specified in contract.

E. The CEO and Director of Quality Customer Services and Recipient Rights shall ensure that training in Recipient Rights policies and procedures is provided to Recipient Rights

Advisory Committee and Appeals Committee members.

F.      The RRO has the authority to directly intervene as necessary to protect recipients' rights in directly operated or contract agencies.

G.      The individual who holds the position of Director of Quality Customer Service and Recipient Rights shall have obtained the education, training and experience necessary to fulfill the responsibilities of this position. The Director of Quality Customer Service and Recipient Rights shall have no direct clinical service responsibilities.

H.      The level of education, training and experience required to fill a position in the Office of Recipient Rights shall be maintained in detail on current job descriptions, and held in the Office of Human Resources.

I.      Staff assigned to the RRO shall receive training at least annually in the protection of the rights of recipients.

J.      Rights Officers shall successfully complete DCH-ORR Basic Skills Training Programs within 3 months of hire.

K.      Rights officers shall complete a Recipient Rights Update every 3 years during their employment.

L.      Rights Officers/Advisors and alternates of service providers allowed/required by contract to establish their own rights system shall complete a Recipient Rights Update training every 3 years during their contract.

M.      In the event of the temporary absence of all recipient rights staff, the CEO/designee shall ensure that rights protection services are available.

N.      Responsibilities of RRO staff:

1.      Director of Quality Customer Service and Recipient Rights
  - a.      Provides or coordinates the protection of recipient rights for all directly operated or contractual services.
  - b.      Serves as a consultant to the CEO and other staff to assure compliance in rights matters. This shall include reviewing and commenting on, as necessary, all policies of CMH and contract providers which impact the rights of recipients.
  - c.      Acts as the Compliance Coordinator in regard to section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), Americans with Disabilities Act of 1990 (P.L. 101-336), and the Michigan Handicapper's Civil Rights Act (PA 121).
  - d.      Has the authority to intervene as necessary to protect the rights of recipients.
  - e.      Provides the Recipient Rights Advisory Committee with a quarterly report regarding recipient rights complaint data.

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- f. Provides, semiannually, summary complaint data consistent with the annual report and a summary of remedial action taken in substantiated complaints by category to DHHS and the Recipient Rights Advisory Committee.
  - g. Prepares an annual report on the current status of recipient rights for the CMH Network and providers, and a review of the operations of the RRO. The annual report shall include, at a minimum, all of the following:
    - i. Summary data by category regarding the rights of recipients receiving services from the CMH Network and providers, including complaints received, the number of reports filed, and the number of reports investigated by provider.
    - ii. The number of substantiated violations by category and provider.
    - iii. The remedial actions taken on substantiated rights violations by category and provider.
    - iv. Training received by staff of the RRO.
    - v. Training provided by the RRO to contract providers.
    - vi. Desired outcomes established for the RRO and progress toward these outcomes.
    - vii. Recommendations to the Board of Directors.
  - h. May conduct or participate in investigations of recipient rights complaints.
  - i. Cooperates with various investigative agents and agencies including, but not limited to, the protective services department and AFC licensing division of the Michigan Department of Human Services Protective Services, Department of Community Health, law enforcement agencies, and CMHA CEI administrative staff.
  - j. Assures the adequacy of investigations of recipient rights complaints.
  - k. Monitors contracts to assure that as a condition of placement, payment or reimbursement, a contract entity affords recipients protection of their rights and that a rights system be implemented in compliance with PA 258 for Mental Health services or PA 368 for Substance Abuse services. Violations shall be reported to the CEO who shall assure that immediate remedial action is taken. Contracts with service providers in the CMH Network shall specify
    - i. That recipients shall be protected from rights violations while receiving services under the contract.
    - ii. That the provider and employees receive recipient rights training.
    - iii. How contract agency rights advisors (if applicable) shall work with the Recipient Rights Office to protect rights .
2. Recipient Rights Specialist
- a. Develops and implements training on recipient rights and the functions of the RRO for employees and volunteers of the CMH Network and providers.

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- b. Intervenes in rights related issues as necessary to prevent rights violations.
  - c. Reviews recipient rights complaints on receipt, to determine if the complaint shall be investigated by the RRO or referred elsewhere for follow-up.
  - d. Investigates recipient rights complaints and determines whether or not a rights violation occurred.
  - e. Prepares a written investigative report for the CEO.
  - f. Provides consultation on recipient rights issues to recipients, staff of CMHA CEI and contract providers, other agencies, families, and advocates.
  - g. Receives training in rights protection annually.
  - h. Cooperates with various investigative agents and agencies including, but not limited to, the protective services department and AFC licensing division of the Michigan Department of Human Services, Department of Community Health, law enforcement agencies, and CMHA CEI administrative staff.
  - i. Participates in regular site visits to monitor the implementation of procedures intended to protect the rights of recipients.
3. Recipient Rights Secretary
- a. Provides administrative secretarial support for staff of the RRO.
  - b. Processes administrative records, organizes and maintains RRO files.
  - c. Prepares reports or memoranda, compiling necessary data and information.
  - d. Coordinates Recipient Rights Advisory Committee agenda and materials, attends and takes minutes of the meetings.
  - e. Coordinates Appeals Committee agenda and materials, attends and takes minutes of the meetings.
  - f. Maintains a tracking mechanism for all rights complaints.
- O. Rights activities/expectations
1. Complainants, staff of the RRO, and any staff of the CMH Network and providers acting on behalf of a recipient will be protected from harassment or retaliation resulting from recipient rights activities. Appropriate disciplinary action will be taken if there is evidence of harassment or retaliation.
  2. All employees, volunteers, service providers, and employees of service providers in the CMH Network shall be responsible for immediately reporting to the Recipient Rights Office of reasonable suspicions of abuse or neglect of recipients. Failure to report a reasonable suspicion of abuse or neglect shall result in appropriate administrative action. Other recipient rights concerns should be directed to the recipient rights office in a timely manner.
  3. Staff of the CMH Network and providers shall notify applicants for mental health services, recipients, parents of minor recipients, empowered guardians, other legal representatives, and others of the rights guaranteed by Chapters 7 and 7A of the Mental Health Code. This notice shall be accomplished by providing an accurate summary of Chapters 7 and 7A to the applicant or

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recipient at the time services are first requested and periodically during the provision of services.

4. Staff shall provide each recipient of Substance Abuse Treatment Services a brochure which summarizes recipient rights. The brochure shall be provided or approved by the Office of Substance Abuse Services.
5. If a recipient is unable to read or understand the materials provided, staff 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.
6. A pamphlet prepared and distributed by DCH, containing information regarding resources available to individuals with serious mental illness and their families, is distributed to each recipient receiving mental health services, and, if applicable, to the recipient's guardian or the parent of a minor recipient.
7. Recipients, parents of minor recipients, empowered guardians, other legal representatives, and others have access to Recipient Rights Complaint forms.
8. The telephone number and address of the RRO and the names of rights officers are conspicuously posted in all service sites.
9. The Contract Administrator will notify the Director of Recipient Rights when a new service contract is signed to ensure that coordination of rights occurs.
10. Each service site, directly operated and contractual, is visited with the frequency necessary for protection of rights; at least annually.
11. All individuals employed by the CMH Network and providers receive training related to recipient rights protection before or within 30 days of being employed. Documentation of this training shall be maintained by the Human Resources department of CMHA CEI or by the service provider, whichever employees the staff person.
12. Staff shall assist individuals in filling out complaint forms when requested.
13. Staff of the RRO shall assist complainants with the complaint process as necessary.
14. Recipient Rights policies and procedures for Substance Abuse Treatment Services shall include those established by the Michigan Department of Community Health Office of Substance Abuse Services and specified in the "Recipient Rights Procedures Manual" published by the Office of Substance Abuse Services, including policies and procedures derived from the "Model Recipient Rights Policy and Procedures."
15. Recipient Rights procedures for Mental Health services shall comply with DCH policies regarding Recipient Rights as specified in the master contractual agreement between the Department of Community Health and the CMH Board.
16. The record system for all reports of apparent or suspected rights violations includes
  - a. A mechanism for logging complaints.
  - b. A mechanism for secure storage of all investigative documents and evidence.
  - c. Indication whether the complaint was investigated by RRO or referred elsewhere.

P. Investigative process

1. Procedures for investigation of complaints regarding substance abuse services shall follow those established by the Michigan Department of Community Health Office of Substance Abuse Services and specified in the "Recipient Rights Procedures Manual" published by the Office of Substance Abuse Services. Complaints and written reports shall be recorded on the appropriate form provided by the Office of Substance Abuse Services.
2. Complaints regarding mental health services shall be accepted in any format including but not limited to: a complaint form, letter, telephone call.
  - a. Complaints shall contain a statement of the allegation, the right allegedly violated, and the outcome desired by the complainant.
  - b. The RRO shall accept anonymous complaints.
  - c. When requested or necessary, the staff of the RRO shall assist recipients and other complainants with the complaint process.
  - d. The RRO shall advise complainants that there are advocacy organizations available to assist in preparation of a written rights complaint, and shall offer to refer the complainant to those organizations. In the absence of assistance from an advocacy organization, the RRO shall offer to assist the complainant in preparing a written complaint.
  - e. The RRO shall inform complainants of the option of mediation, and the circumstances in which it may be utilized:
    - i. At any time after the RRO 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 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.
    - ii. 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 RRO.
    - iii. 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 RRO within 10 days after the end of the mediation process.
    - iv. If the parties engage in mediation, all appeal and response times required under Chapters 7 and 7A of the Mental Health Code 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

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- mediator provides the written documentation to the parties and RRO that mediation was not successful.
- f. Each rights complaint shall be recorded upon receipt by the RRO.
  - g. Each complaint of recipient rights violations shall be reviewed by a Recipient Rights Specialist to determine if it warrants an investigation by the RRO.
    - i. When so determined, the complaint will be assigned to a Recipient Rights Specialist for investigation.
    - ii. When an investigation is not warranted, the complaint shall be referred to other agency personnel for follow-up. Such referrals shall be recorded by the RRO.
  - h. The complainant shall be notified in writing within 5 business days after receipt of the complaint. Notice shall include
    - i. Acknowledgment of receipt of the complaint by the RRO, and a copy of the complaint.
    - ii. Whether the complaint will be investigated by the RRO or referred elsewhere for follow-up.
    - iii. If there is no code-protected right involved or the complaint is outside the jurisdiction of the RRO, the complainant shall be so notified.
3. All reports of apparent or suspected violations of Mental Health Code protected rights shall be investigated in accordance with section 778 of the Mental Health Code.
- a. The RRO shall initiate investigation of apparent or suspected rights violations in a timely and efficient manner. Subject to delays involving pending action by external agencies including law enforcement agencies, Michigan Department of Human Services, and Department of Consumer and Industry Services, the RRO shall complete the investigation not later than 90 days after it receives the rights complaint. Investigation shall be initiated immediately in cases involving alleged abuse, neglect, serious injury, or death of recipient involving an apparent or suspected rights violation.
  - b. Investigation activities for each rights complaint shall be accurately recorded by the RRO.
  - c. The RRO shall determine whether a right was violated by using the preponderance of the evidence as its standard of proof.
  - d. Employees of the CMH Network and providers shall cooperate in recipient rights investigations. Failure to cooperate with an investigation shall require administrative action.
  - e. The RRO shall have unimpeded access to all of the following:
    - i. All programs and services operated by or under contract with the CMH Network and providers.
    - ii. All staff employed by or under contract to the CMH Network and providers.
    - iii. All evidence necessary to conduct a thorough investigation or to fulfill its monitoring function.

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- f. Investigation activities for each rights complaint shall be accurately recorded by the RRO.
4. The RRO shall issue a written status report every 30 calendar days during the course of an investigation to the complainant, respondent and the responsible mental health agency (RMHA). This 30-day status report shall contain all of the following:
  - a. Statement of the allegations.
  - b. Statement of the issues involved.
  - c. Citations to relevant provisions of the Mental Health Code, rules, policies and guidelines.
  - d. Investigative progress to date.
  - e. Expected date for completion.
5. Upon completion of the investigation, the Recipient Rights Office shall submit a written investigative report to the respondent and to the CEO of CMH. Identities of all participants in the investigation will be coded, in order to protect them from potential harassment or retaliation. Issuance of the final written investigative report may be delayed pending completion of investigations that involve external agencies. The written investigative report shall include all of the following:
  - a. Statement of the allegations.
  - b. Statement of the issues involved.
  - c. Citations to relevant provisions of the Mental Health Code, rules, policies and guidelines.
  - d. Investigative findings.
  - e. Conclusions.
  - f. Recommendations, if any.
6. The CEO shall assure that appropriate administrative and/or remedial action is taken in a timely manner to resolve violations of rights.
  - a. Discipline is required in cases of substantiated violations of abuse or neglect.
  - b. Remedial action shall
    - i. Correct or provide a remedy for the rights violations.
    - ii. Be implemented in a timely manner.
    - iii. Attempt to prevent a recurrence of the rights violations.
    - iv. Not violate employee rights.
    - v. Be documented and made part of the record maintained by the rights office.
  - c. Notification of the complainants of substantiated violations in shall be done within the constraints of confidentiality and privileged communication detailed in sections 758 and 750 of the Mental Health Code, and in a manner that does not violate employee rights.
7. The CEO or designee shall submit a written summary report to the complainant and recipient, if different than the complainant, or empowered guardian, or parent of a minor, within 10 business days after the CEO received a copy of the investigative report from the Rights Office.



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- a. This written summary report shall contain all of the following information:
    - i. Statement of the allegations.
    - ii. Statement of the issues involved.
    - iii. Citations to relevant provisions of the Mental Health Code, rules, policies and guidelines.
    - iv. Summary of investigative findings of the Rights Office.
    - v. Conclusions of the Rights Office.
    - vi. Recommendations made by the Rights Office, if any.
    - vii. Action taken, or plan of action proposed by the respondent/CMH.
    - viii. A statement describing the right of the complainant, recipient if different, guardian or parent of a minor to appeal and the grounds for appeal. This description shall include the following information:
      - (a) Not later than 45 days after receipt of the summary report, the complainant may file a written appeal with the Board's appeals committee.
      - (b) The appeal shall be based on 1 of the following grounds:
        - (1) The investigative findings of the office were not consistent with the facts or with law, rules, policies, or guidelines.
        - (2) The action taken or plan of action proposed by the respondent does not provide an adequate remedy.
        - (3) An investigation was not initiated or completed on a timely basis.
      - (c) There are advocacy organizations available to assist the complainant in preparing the written appeal; and an offer to refer the complainant to those organizations. In the absence of assistance from an advocacy organization, the RRO shall assist the complainant in meeting the procedural requirements of a written appeal.
      - (d) The complainant has the option of mediation.
  - b. Information in the summary report shall be provided within the constraints of confidentiality and privileged communications detailed in sections 748 and 750 of the Mental Health Code.
  - c. Information provided in the summary report shall not violate the rights of any employee.
- Q. The Board shall appoint a Recipient Rights Advisory Committee consisting of at least 6 members.
1. Membership of the committee
    - a. Shall be broadly based so as to best represent the varied perspectives of the CMH geographic area.
    - b. At least one third (1/3) of the membership shall be primary consumers or family members.

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- c. Of that 1/3, at least one half (1/2) shall be primary consumers.
2. The committee shall
  - a. Meet at least semiannually or as necessary to carry out its responsibilities.
  - b. Maintain a current list of members' names to be made available to individuals upon request.
  - c. Maintain a current list of categories represented to be made available to individuals upon request.
  - d. Protect the RRO from pressures that could interfere with the impartial, even-handed, and thorough performance of its functions.
  - e. Recommend candidates for director of the RRO to the CEO, and consult with the CEO regarding any proposed dismissal of the director of the RRO.
  - f. Serve in an advisory capacity to the CEO and the director of the RRO.
  - g. Review and provide comments on annual report submitted by the CEO to DHHS.
  - h. Serve as the appeals committee for appeals of recipient rights investigations.
  - i. Review funding of the RRO.
3. Meetings of the Recipient Rights Advisory Committee are subject to the open meetings act (PA 267 of 1976, sections 15.261 to 15.275 of the Michigan Compiled Laws).
4. Minutes shall be maintained and made available to individuals upon request.
- R. The Board shall appoint an Appeals Committee. The Recipient Rights Advisory Committee is designated as the Appeals Committee.

**III. Definitions:**

- A. Allegation: an assertion of fact made by an individual that has not yet been proved or supported with evidence.
- B. Preponderance: "Preponderance means it is more likely that a right was violated than it was not, based upon the greater weight of the evidence not as to quantity (number of witnesses) but as to quality (believability and greater weight of important facts provided)."
- C. Recipient rights complaint: a statement containing one or more allegations that a right may have been violated.
- D. Refuted violation: the determination that there was no infringement of a right.
- E. Substantiated violation: the determination that there was an infringement of a right.

**IV. Monitor and Review:**

This procedure is reviewed annually by the Director of Quality Customer Service and Recipient Rights. This procedure is monitored by accrediting bodies and regulatory agencies as applicable.

**V. References:**

- A. Public Act 258 of 1974, as amended, Michigan's Mental Health Code
- B. Public Act 368 of 1978, Public Health Code, regarding Substance Abuse treatment

services

- C. Department of Health and Human Services Administrative Rules; Parts 2, 4, 5, 6 and 7
- D. Department of Health and Human Services Policy, CMH Recipient Rights Systems (1996)
- E. Rehabilitation Act of 1983, PL 93-112, Section 504
- F. Michigan Handicappers Civil Rights Act, PA 121 of 1990
- G. Americans with Disabilities Act of 1990, PL 101-336
- H. PA 368 of 1978, Administrative Rules for Substance Abuse Services in Michigan
- I. CMHA CEI Policy 3.6.17, Appeals and Grievances
- J. CMHA CEI Procedure 3.61.7, Appeals and Grievances

**VI. Review Log**

<b>Review Date</b>	<b>Reviewed By</b>	<b>Changes (if any)</b>
3/16/04	-	-
3/18/05	-	-
1/31/07	-	-
5/26/10	-	-
2/6/12	-	-
3/10/13	-	-
12/21/16	Recipient Rights Officer and QI Specialist	Update to new format, minor wording changes under II. O. 2.

**VII. Attachments None.**