

LAPEER COUNTY COMMUNITY MENTAL HEALTH**Date Issued 07/19/2010****Date Revised 01/19/12; 02/21/13; 02/01/16, 12/12/17; 11/19/18; 09/16/20; 06/29/21;
11/19/24; 05/20/25**

CHAPTER Recipient Rights	CHAPTER 04	SECTION 001	SUBJECT 15
SECTION Recipient Rights		DESCRIPTION Investigation of Complaints/Appeal Process	
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APPLICATION:

☒ CMH Staff	☒ Board Members	☒ Provider Network	☒ Employment Services Providers
☒ Employment Services Provider Agencies	☒ Independent Contractors	☒ Students	☒ Interns
☒ Volunteers	☒ Persons Served		

POLICY:

Lapeer County Community Mental Health (LCCMH) follows all state and federal regulations ensuring the rights of persons served are safeguarded.

This policy is written to establish policies and procedures for prompt reporting and investigating of alleged violations of rights of persons served and resolution of alleged violations of rights, as enumerated in Act 258 of the Public Acts of 1974, as amended, and the Administrative Rules of the Michigan Department of Health and Human Services (MDHHS) and to ensure appropriate remedial action when such allegations are substantiated.

Rights complaints filed by persons served or anyone on behalf of a person served are sent or given to the designated Recipient Rights Officer (RRO)/Advisor in a timely manner. This policy is applicable to all mental health programs, services, and facilities operated by or under contract with the LCCMH Board.

All agencies, programs, and service providers that have entered into a contractual relationship with LCCMH must, as a condition of that contract, implement and abide by LCCMH's Recipient Rights protection system.

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STANDARDS:

LCCMH AND RESPONDENTS ENSURE:

- A. The Office of Recipient Rights (ORR) has unimpeded access to all programs, services, employees, volunteers, and all evidence that the ORR determines is necessary to conduct a thorough investigation or to fulfill its monitoring function.
- B. Copy of documentation requested by the ORR is provided in a timely manner.
- C. Action is taken to protect the person served during the investigation.
- D. All employees, contract employees, or volunteers of LCCMH services program who may have knowledge pertinent to the investigation must cooperate fully with the ORR and other authorized investigative bodies. Appropriate disciplinary action is taken for any failure to cooperate.
- E. All employees, contract employees, volunteers, persons served, and others who file a rights complaint, cooperate in an investigation, or otherwise engage in rights-related activities are protected from discrimination, harassment, or retaliation in accordance with applicable laws, agency policies, and procedures. Appropriate disciplinary action is taken if this does occur.
- F. Appropriate administrative action is taken for failure to report suspected and/or alleged rights violations.
- G. Region 10 Prepaid Inpatient Health Plan (PIHP) is responsible for arranging mediation per the State of Michigan guidelines. Mediation is not a function of the Recipient Rights Office at LCCMH.
- H. Applicants for and recipients of mental health services and in the case of minors, the applicant's or recipient's parent or guardian, are notified by the providers of those services of the rights guaranteed by chapter 7 of the Michigan Mental Health Code. Notice is accomplished by providing an accurate summary of this chapter and chapter 7a to the applicant or recipient at the time services are first requested and periodically during the time services are provided.
- I. If a recipient is unable to read or understand the materials provided, a provider makes a reasonable attempt to assist the recipient in understanding the materials. A note describing the explanation of the materials and who provided the explanation is entered in the recipient's record.

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PROCEDURES:

REPORTING RIGHTS VIOLATIONS:

- A. All employees, contract employees, or volunteers of LCCMH services program must report if they become aware of any type of alleged, apparent, or suspected rights violations. This report is made within 24 hours to the RRO. If the allegation is of abuse or neglect, the report must be filed immediately.
- B. A person served, or another individual on behalf of a person served, may file a rights complaint with the office alleging a violation of this act.
- C. A rights complaint contains all of the following:
 - 1. Statement of the allegations that give rise to the dispute
 - 2. Statement of the right or rights that may have been violated
 - 3. Outcome that the complainant is seeking as a resolution to the complaint.

RETALITATION OR HARASSMENT:

- A. If a person served is the victim of retaliation or harassment because they filed a complaint and/or was interviewed during the rights investigation process, etc., this does constitute a rights violation and must be investigated by the RRO. Disciplinary action is taken if there is evidence retaliation or harassment has occurred. If staff of the ORR or any staff person engaged in rights related activities is a victim of retaliation or harassment, the RRO forwards the information to the Chief Executive Officer (CEO) who must ensure disciplinary action is taken if there is evidence that retaliation or harassment has occurred. (MCL 330.1755 [3] [a])

COMPLAINT PROCESS:

- A. The ORR will:
 - 1. Ensure persons served, guardians, parents of minors, staff and other interested persons have access to recipient rights complaint forms.

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2. Assist the person served or other individual with the complaint process, as necessary.
3. Receive all verbal and written recipient rights complaints. If the rights complaint is verbal, the ORR utilizes a complaint form to document the information.
4. Advise the person served or other individuals there are advocacy organizations available to assist in the preparation of a written rights complaint and offers to make the referral.
5. In the absence of assistance from an advocacy organization, assist in preparing a written complaint, which contains a statement of the allegation, the right allegedly violated, and the outcome desired by the complainant.
6. Advise the person served who has been physically, sexually, or otherwise abused, of their options to pursue injunctive and other appropriate civil action.
7. Immediately notify the Michigan DHHS, Adult Protective Services, or Children's Protective Services staff and required laws enforcement agencies of complaints of suspected abuse or neglect. If applicable, a complaint is made to Adult Foster Care and Licensing if the person served lives in a residential setting.
8. Advise the CEO and the Program Supervisor of the rights complaint within five business days of the complaint. In cases of abuse or neglect, notification is done immediately.

INVESTIGATIVE PROCESS:

A. The ORR will:

1. Ensure all reports of apparent or suspected violations of rights within LCCMH are investigated in accordance with requirements of Chapter 7A of the Mental Health Code.
2. Initiate investigation of apparent or suspected rights violations in a timely and efficient manner. In addition, ensure an investigation is immediately initiated in cases involving alleged abuse, neglect, serious injury or death of a person served when a Rights violation is apparent or suspected. In cases not warranting an investigation, the ORR conducts an intervention of an apparent

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or suspected Rights violation in compliance with the standards established by DHHS.

3. Refer investigations of all rights complaints filed against the conduct of the CEO to the RRO of another Community Mental Health Services Program or to the State Office of Recipient Rights, as decided by the LCCMH Board.
4. Ensure all investigation activities for each rights complaint is accurately recorded by the RRO.
5. Ensure each rights complaint is accurately recorded upon receipt by the RRO. Assign and affix a file number to each rights complaint by noting the month of the year, the year, and the chronological number of rights complaints received within the month (Example: 012008-01).
6. Ensure an acknowledgment of the receipt and recording of the complaint is sent along with a copy of the written complaint to the complainant within five business days of receipt of the rights complaint.
7. Notify the complainant within five business days after receipt of the complaint if RRO staff determines no investigation of the complaint is warranted and/or if intervention is appropriate. The complainant is informed when an allegation refers to a right for which remedial action is only available outside the jurisdiction of LCCMH, and the complainant is assisted in contacting other appropriate agencies regarding the allegation(s).
8. Issue a written status report every 30 calendar days during the course of an investigation to the complainant, the parent of a minor, guardian of a person served, respondent and the responsible mental health agency. The 30-day status report contains:
 - a. A statement of the allegations
 - b. A statement of issues
 - c. Citations to relevant provisions to the Mental Health Code, rules, policies, and guidelines
 - d. Investigative progress to date
 - e. Expected date of completion

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9. Upon completion of the investigation, submit a written investigative report to the respondent and to the CEO of LCCMH (issuance of the investigative report may be delayed pending completion of investigations that involve external agencies). The written investigative report will contain all of the following:
 - a. A statement of the allegations
 - b. A statement of issues
 - c. Citations to relevant provisions to the Mental Health Code, rules, policies, and guidelines
 - d. Investigative findings
 - e. Conclusions
 - f. Recommendations, if any
10. Upon completion of the investigation, ensure the complainant, or the person served on behalf of whom the complaint was filed (if the complaint was not filed by the person served), is notified of the outcome of the rights complaint in a manner that does not violate employee rights.
11. Subject to delays involving pending action by external agencies MDHHS, Law Enforcement, etc.) complete rights investigations no later than 90 calendar days following receipt of the rights complaint.
12. Utilize the preponderance of the evidence standard as the standard of proof in determining whether a right was violated.
13. Comply with pertinent LCCMH policies to assure investigations are conducted in a manner that does not violate employee rights.

Ensure on substantiated rights violations, the respondent and/or LCCMH took appropriate remedial action meeting all the requirements below. This action will be documented and made part of the record maintained by the ORR.

- a. Corrects or provides a remedy for the rights violation

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- b. Is implemented in a timely manner
 - c. Attempts to prevent a recurrence of the rights violation
14. Substantiated abuse or neglect of a recipient by an employee, volunteer, or agent of a provider subjects the employee, volunteer, or agent of a provider to an appropriate penalty, including official reprimand, demotion, suspension, reassignment, or dismissal.
 15. Remedial action taken on substantiated violations is documented and made part of the record maintained by the ORR.
 16. Ensure LCCMH and respondents take appropriate administrative action when staff fails to report alleged or suspected rights violations.
 17. If through the course of a rights investigation staff, including staff from the ORR, alleges they have been the victim of retaliation or harassment by another staff person, the RRO refers to this allegation in the investigative findings. The notation will also include the allegation has been referred to the Respondent's Director and the Director of Human Resources for further follow through and resolution. In the recommendation section, the RRO includes that the Director submit in writing the results of the investigation and what disciplinary action was taken, if retaliation or harassment was substantiated. This documentation must be submitted in writing to the ORR.
 18. If the allegation of retaliation or harassment comes in a complaint from a staff person, including staff of the ORR, it may be logged as 0001 (outside jurisdiction of the ORR to investigate). The LCCMH CEO submits a letter to the director of the respondent indicating the allegation is to be investigated and, if substantiated, disciplinary action must be taken against the staff person and written documentation of the disciplinary action must be submitted to the ORR. The complaint file would have the complaint, the letter, and the results of the investigation by the respondent including disciplinary action taken if substantiated.
 19. Ensure remedial action taken on substantiated rights violations is documented and made part of the record maintained by the ORR.
 20. Re-open or re-investigate a rights investigation if there is new evidence that was not presented or available at the time of the investigation.

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21. Submit an annual written summary of all complaints to the Recipient Rights Advisory Committee. This summary does not include any confidential information and is used to address trends, track any needs for improvements, and any systemic issues. If the Recipient Rights Advisory Committee makes any recommendations, they will be forwarded to the Quality Council and to the CEO for their review. The annual written summary will be submitted to the Quality Improvement Department for inclusion in the Quality Council Annual Report.

SUMMARY REPORT/PROCESS:

A. The CEO will:

1. Submit a written summary report to the complainant and person served, if different than the complainant, guardian, parent of a minor, a judicially appointed guardian or parent who has legal custody of a minor recipient within 10 business days after receiving a copy of the investigative report from the ORR. The written summary report contains all of the following:
 - a. A statement of the allegations
 - b. A statement of issues involved
 - c. Citations to relevant provisions to the Mental Health Code, rules, policies, and guidelines
 - d. Summary of investigative findings of the ORR
 - e. Conclusions of the ORR
 - f. Recommendations, if any, made by the ORR
 - g. Action taken, or plan of action proposed, by the respondent/agency
 - h. Statement describing the complainant's right to appeal and the grounds for the appeal. This appeal information is also sent to the person served, guardian, or parent of a minor.
2. The CEO may designate the ORR to prepare the Summary Report for review and approval by the CEO.

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3. Ensures that if the Summary Report included a Plan of Action, written notice was issued to the potential appellants upon completion of the plan. If the action taken was different than the plan, the notice included the action taken and the date it occurred as well as the right to appeal on action only. The notice must indicate the appeal may be made within 45 days of the action taken.
4. Ensures information in the summary report was provided within the constraints of the confidentiality/privileged communications sections of the Mental Health Code and the information did not violate the rights of any employee (e.g.: Bullard-Plawecki Employee Right to Know Act, Act No. 397 of the Public Acts of 1978)
5. Ensures firm and disciplinary action and/or other remedial action is taken to resolve rights violations.
6. Ensures appropriate disciplinary action is taken against those who have engaged in abuse or neglect and appropriate administrative action is taken for those who failed to report suspected violations of rights.
7. Ensures all staff and service providers take appropriate disciplinary action against those who have engaged in abuse, neglect, retaliation, or harassment.

THE RECIPIENT RIGHTS ADVISORY COMMITTEE:

- A. LCCMH Board appoints a Recipient Rights Advisory Committee consisting of at least six and no more than 12 members. The membership of the Committee will be broadly based so as to best represent the varied perspectives of LCCMH's geographic area. At least one-third of the membership will be primary persons served or family members; and of that one-third, at least one-half will be primary persons served. The Board ensures an appointed member is not a party to a contract with the LCCMH according to the Mental Health Code 330.1222.
- B. The Recipient Rights Advisory Committee does all of the following:
 1. Serves as the appeals committee for recipient's appeals
 2. Meets monthly

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3. Maintains a current list of member's names to be made available to individuals upon request. (Note in the case of members who are recipients of LCCMH services, identification of them as recipients is not made without their written and informed consent)
 4. Maintains a current list of categories represented to be made available to individuals upon request
 5. Protects the ORR from pressures that could interfere with the impartial, even-handed, and thorough performance of its functions
 6. Recommends candidates for RRO to the CEO, and consults with the CEO regarding any proposed dismissal of the RRO
 7. Serves in an advisory capacity to the CEO and the RRO
 8. Reviews and provides comments on the report submitted by the CEO to the Executive Board
 9. Reviews the funding of the ORR on a yearly basis
- C. Meetings of the Recipient Rights Advisory Committee are subject to the Open Meetings Act, Act No. 267 of the Public Acts of 1976. Minutes are maintained and made available to individuals upon request.

APPEALS COMMITTEE:

- A. The LCCMH Board has designated the Recipient Rights Advisory Committee as the Appeals Committee.
- B. The Appeals Committee will:
 1. Appoint one member to serve as the chair
 2. Receive training about recipient rights, investigations, and appeals
 3. Ensure a member who has a personal or professional relationship with an individual involved in an appeal abstains from participating in that appeal as a member of the committee

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4. Conduct appeals proceedings within the constraints of confidentiality and privileged communication in Section 748 and 750 of the Mental Health Code. Such meetings are NOT subject to the Open Meetings Act.

C. Appeal of a Summary Report:

1. Not later than 45 days after receipt of the Summary Report, the complainant and person served, if different than the complainant, guardian, parent of a minor, a judicially appointed guardian or parent who has legal custody of a minor recipient may file an appeal with the Appeals Committee. If an individual without standing files an appeal, a letter is sent explaining they have no standing to appeal a summary report.
2. An appeal of a summary report must be based on one of the following grounds.
 - a. The findings of the ORR is not consistent with the facts, laws, rules, policies, or guidelines
 - b. The action taken or plan of action proposed by the respondent does not provide an adequate remedy
 - c. An investigation was not initiated or completed on a timely basis
3. The ORR advises the complainant there are advocacy organizations available to assist in preparing the written appeal and offer to make the referral.
4. In the absence of assistance from an advocacy organization, the ORR assists the complainant in meeting the procedural requirements of a written appeal.
5. The Appeals Committee will: (An Appeals Committee appointed under this policy may request consultation and technical assistance from the MDHHS).
 - a. Within five business days of receipt of the request for appeal, members of the appeals committee shall review the request for appeal to determine if the appellant has standing to appeal and if the appeal request meets the timeframe and grounds. This review may be conducted by the full Committee, or by a subcommittee consisting of at least two committee members designated by the full Committee to fulfill this responsibility.

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- b. Maintain a log of all appeals received and the disposition of each to be held in the ORR.
- c. Within five business days of receipt of the appeal, written notice that the appeal has been accepted is provided to the appellant, and a copy of the appeal is provided to the respondent and LCCMH. The appellant is also informed within five business days if the appeal has not been accepted, as it did not meet the criteria set forth in the grounds for appeals. Within seven business days of receipt of the request for appeal, written notice that the appeal has been accepted, or rejected, shall be provided to the appellant and a copy of the appeal shall be provided to the respondent, the Responsible Mental Health Agency (RMHA), and the Rights Office. A notice of rejection shall describe the reason for not accepting the request for appeal.
- d. Within 30 days after receipt of a written appeal, meet in a closed session and review the facts as stated in all complaint investigation documents and do one of the following:
 1. Uphold the investigative findings of the office and the action taken or plan of action proposed by the respondent; OR
 2. Return the investigation to the ORR and request it be reopened or reinvestigated; RRO sends reinvestigation report to the CEO within 45 days. Upon receipt of the Report of Investigative Findings the CEO takes appropriate remedial action and submits a written summary report to, the complainant and person served, if different than the complainant, guardian, parent of a minor, a judicially appointed guardian or parent who has legal custody of a minor recipient, and the appeals committee within 10 business days. Director's Summary included a statement of appellant's right to appeal to Step 2 Appeal within 45 days from receipt of decision. If the case is unsubstantiated, the grounds for appeal would be when the investigative findings of the ORR are inconsistent with facts, rules, policies, or guidelines. If the case is substantiated, the CEO's summary includes a statement of appellant's right to appeal to CMH Appeals Committee within 45 days from receipt of decision on the ground of action taken or plan of action proposed does not provide an adequate remedy.

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3. Uphold the investigative findings of the ORR but recommend the respondent take additional or different action to remedy the violations; written notice of this direction for additional or different action to be taken by the respondent is also provided to the RMHA if different than the respondent and the office. The CEO sends a response within 30 days as to the action or justification why the action was not taken and submits a summary report to the complainant and person served, if different than the complainant, guardian, parent of a minor, a judicially appointed guardian or parent who has legal custody of a minor recipient, and the appeals committee. If the action taken by the respondent is determined by the Appeals Committee and/or the appellant still to be inadequate to remedy the violation, the appellant is informed by the Appeals Committee of their right to file a recipient rights complaint against the RMHA.
4. If the Committee confirms the investigation was not initiated or completed in a timely manner, recommend the CEO take appropriate supervisory action with the investigating RRO/Advisor.
5. Recommend the LCCMH Board request an external investigation by another rights office or the MDHHS Office of Recipient Rights. The Board sends a letter of request to the Director of MDHHS-ORR within five business days of receipt of the request by the Appeals Committee. The CEO is responsible for the issuance of the Summary Report, which identifies the grounds for Appeals and Advocacy information. This includes that any appeals will be forwarded to the MDHHS Appeals Committee.
- e. The Appeals Committee documents its decision and justification in writing. Within 10 working days of reaching their decision, it provides copies of the decision to the respondent, appellant, person served if different than the appellant, guardian, parent of a minor, a judicially appointed guardian or parent who has legal custody of a minor recipient, LCCMH, and the ORR. Copies include a statement of the appellant's right to appeal to MDHHS, the time frame for an appeal (45 days from receipt of decision) and the grounds for appeal (investigative findings of the rights office are inconsistent with facts, rules, policies, or guidelines). Justification for the decision made by the Committee are also included.

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- f. The appeals committee document their decisions and justifications in writing and it is kept in the ORR.
- g. The Committee does not consider additional allegations that were not part of the original complaint. If additional allegations are made, the Committee will inform the appellant of their right to file a complaint with the ORR.

D. Appeal of a LCCMH Appeals Committee Decision:

1. Within 45 days after receiving notice of the decision of the LCCMH Appeals Committee, the appellant may file an appeal with MDHHS. The appeal is based on the record established in the previous appeal and may be based only upon the allegation that the investigative findings of the ORR are not consistent with the facts, or with law, rules, policies, or guidelines.
2. MDHHS gives written notice of receipt of the appeal to the appellant, respondent, local ORR, and the responsible mental health agency. The respondent, local ORR, and the responsible mental health agency ensures MDHHS has access to all necessary documentation and other evidence cited in the complaint.
3. MDHHS reviews the record based on the reason for the appeal and will not consider additional evidence or information that was not available during the local appeal process, although MDHHS may return the matter to LCCMH requesting an additional investigation.
4. Within 30 days after receiving the appeal, MDHHS reviews the appeal and does one of the following:
 - a. Affirms the decision of the local appeal committee
 - b. Returns the matter to LCCMH with instruction for additional investigation and consideration.
5. MDHHS provides copies of its action to the respondent, appellant, person served if different than the appellant, guardian, parent of a minor, a judicially appointed guardian or parent who has legal custody of a minor recipient, LCCMH, and the local ORR.

DEFINITIONS:

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Allegation: an assertion of fact made by an individual that has not yet been proved or supported with evidence.

Appeals Committee: committee to hear appeals of recipient rights matters. This committee consists of seven individuals who may also serve as the Recipient Rights Advisory Committee.

Appellant: complainant or person served, if different than the complainant, guardian, parent of a minor, a judicially appointed guardian or parent who has legal custody of a minor recipient who appeals a recipient rights finding or a respondent's action with a recipient rights summary report to an Appeal Committee.

Chief Executive Officer: individual otherwise known as the executive director, appointed under Section 330.1226 of the Mental Health Code to direct the CMHSP or their designee.

Complainant: individual who files a recipient rights complaint.

Investigation: detailed inquiry into and systematic examination of an allegation raised in a rights complaint.

Office of Recipient Rights (ORR): strives to ensure the protection of recipients' rights in various ways, including training, contract/policy development, service site assessments and complaint resolution.

Open Meetings Act: standard requiring public bodies to conduct business at open meetings. The ACT applies to any local governing body including a board, commission, committee, subcommittee, or authority.

Preponderance of Evidence: standard of proof which is met, when, based upon all available evidence, it is more likely that something is true than untrue; greater weight of evidence, not to quantity (number of witnesses), but as to quality (believability and greater weight of important facts); more than 50 percent.

Person Served: person served of CMH services or from a provider under contract with Lapeer County Community Mental Health.

Recipient Rights Officer (RRO): person who is responsible to protect and promote the constitutional and statutory rights of the persons' served by the public mental health services and empower persons' served to fully exercise these rights.

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Respondent: service provider who had responsibility at the time of an alleged rights violation for the services with respect to which a rights complaint has been filed.

Responsible Mental Health Agency: hospital, center, or community mental health services program that has primary responsibility for the care of the person served or for the delivery of services or supports to that person served.

Formal Rights Complaint: written or oral statement that meets the requirements of Section 776 of the Mental Health Code.

REFERENCES:

Mental Health Code
Mental Health Administrative Rules

LKJ:lr

Supersedes: # 07/10013 dated 07/19/210