

BERRIEN MENTAL HEALTH AUTHORITY
-- PROCEDURE --

<p>SUBJECT: Recipient Rights Structure</p>	<p>SECTION: 01-01-01</p> <p>Page 1 of 6</p>
<p>APPLICATION: All Direct Operated & Contractual Programs</p> <hr/> <p>EFFECTIVE DATE: 9/23/98</p> <p>APPROVED BY: _____ Chief Executive Officer</p> <p>REVISED: 10/99, 3/02, 6/03, 3/05, 5/05, 7/05, 3/08, 6/08, 7/09, 5/15, 7/2021, 2/2023, 8/2023</p>	<p>REQUIRED BY:</p> <p>Code 330.1755 Code 330.1757 MDHHS Master Contract/Amendment</p>

POLICY:

It is the policy of Berrien Mental Health Authority (BMHA) to safeguard the rights of recipients receiving mental health services in accordance with applicable state and federal laws, rules and guidelines.

PURPOSE:

To define the responsibility associated with various staff positions and the Recipient Rights Advisory Committee.

STANDARDS:

- A. The structure and assignment of responsibilities shall be in compliance with the requirements specified in Chapter 7 of the Mental Health Code.
- B. The structure and assignment of responsibilities shall be in compliance with the requirements specified in the master contract between the Berrien Mental Health Authority and the Michigan Department of Health & Human Services.

DEFINITIONS:

- A. Code Protected Right - A right that is guaranteed in either the Michigan Mental Health Code (PA 258 of 1974); is specified in a contract between the Berrien Mental Health Authority and the Department of Health & Human Services; or by other applicable law.
- B. Complainant - Any person who makes an allegation that a right has been violated.
- C. Corrective Action - Action taken by a provider to correct a violation of a right.
- D. Executive Director – BMHA Executive Director; AKA Chief Executive Officer (CEO). The position located at the top of the organizational chart; the individual that the Office of Recipient Rights directly reports to.
- E. Intervention - When an allegation refers to a code protected right for which the facts are undisputable and the remedy, if applicable, is clear, easily obtainable, it is not an allegation of abuse or neglect, it can be resolved to the complainant’s satisfaction within 30 days and may not be used for anything that needs statutorily required disciplinary action.

The BMHA – Riverwood Center Office of Recipient Rights has determined that they will not utilize the intervention process, but instead will investigate all allegations submitted within their jurisdiction.

- F. Preponderance of Evidence - A standard of proof, which is met when, based upon all of the available evidence, it is more likely that a right was violated than not; greater weight of evidence, not as to quantity (number of witnesses), but as to quality (believability and greater weight of important facts).
- G. Recipient - A person who receives mental health services from a program or facility operated by or under contract with a community mental health program. Recipients of crisis intervention services become “recipients” whenever treatment begins, or confidentiality of information is a factor. People who receive purely educational or information services are not recipients.
- H. Recipient Rights Advisory Committee (RRAC) - An advisory committee appointed by the BMHA Board to recommend policies and procedures to safeguard recipient rights as defined in PA 258, Chapter 7, Section 757.
- I. Recipient Rights Officer - The BMHA employee or agent who is assigned to assume responsibility for safeguarding the rights of recipients by the Chief Executive Officer.
- J. Rights Advisor - A BMHA employee or agent designated as such by the Chief Executive Officer (CEO) who shall work in conjunction with the Recipient Rights Officer.
- K. Substantiated - A determination by the Recipient Rights Officer/Advisor that an alleged violation of a right was proven to be a violation by a preponderance of the evidence.
- L. Not Substantiated - A determination by the Recipient Rights Officer/Advisor that an alleged violation of a right was either not a violation or, was not able to be substantiated or refuted.

PROCEDURE:

- A. The Board shall appoint the Recipient Rights Advisory Committee with the following responsibilities:
 - 1) Recommend candidates for the Recipient Rights Officer (RRO) position to the Chief Executive Officer (CEO) when a vacancy occurs and consult with the CEO regarding any proposed dismissal of the Recipient Rights Officer.
 - 2) Meet at least semi-annually or as necessary to carry out its responsibilities.
 - 3) Review the funding for the Recipient Rights Office annually.
 - 4) Protect the Rights Office from pressure that could interfere with the impartial, even-handed, and thorough performance of its functions.
 - 5) Serve in an advisory capacity to the CEO and RRO.
 - 6) Serve as the Appeals Committee for a recipient’s appeal under Section 784 of the Mental Health Code.
 - 7) Assure that a current list of members’ names is maintained and available to individuals upon request.
 - 8) Assure that a current list of categories represented by Committee members is maintained and available to individuals upon request.
 - 9) Review and provide comments on the annual report submitted by the CEO to the Berrien Mental Health Authority under Section 755 of the Mental Health Code.
 - 10) Receive training and education in recipient rights policies and procedures.
 - 11) Ensure that the committee has at least 6 members, 1/3 of which are primary or secondary consumers, and at least 1/2 of the consumers are primary consumers.
 - 12) Conducts its meetings in compliance with the open meetings act.
- B. The Chief Executive Officer (CEO) shall:

- 1) Within six (6) months of the effective date of employment, Executive Directors hired by a CMHSP shall be required to attend a Recipient Rights training focused on the role of the Executive Director relative to the Recipient Rights protection and investigation system, as developed and offered; or any other MDHHS ORR required trainings.
- 2) Provide adequate funding to assure provision of recipient rights protection to consumers served by employees and contract entities.
- 3) Assure adequate terms are included in all relevant contracts with agencies and individuals, which afford recipients' protection of their rights.
- 4) Assure that all staff follow Personnel Rules and abide by the Whistle Blowers Act to protect recipient rights staff and other staff who act as rights complainants from any type of retaliation and/or harassment.
- 5) Ensure adequate recipient rights coverage. In the absence of both the Recipient Rights Officer and Advisor, the CEO shall appoint a designee with non-clinical responsibilities to receive and initiate investigation of alleged recipient rights violations in consultation with the rights staff.
- 6) Establish and implement procedures that safeguard the rights of recipients of mental health services in a manner that does not violate employee rights.
- 7) Ensure required records and reports are created and maintained.
- 8) Appoint one employee of the Authority to be the Recipient Rights Officer for BMHA and its provider network or contract for such services. This employee/contractor will have the experience to perform the job. They will have the education, training, and experience in recipient rights to fulfill the responsibilities of the position and will meet the minimum criteria outlined in the job description.
- 9) Designate an individual(s) to be the Rights Advisor(s) for BMHA and its provider network.
- 10) Meet with the Recipient Rights Officer to discuss substantiated allegations, recommended remedial actions, prevention of rights violations, and other systems issues.
- 11) Submit to the Board and DHHS an annual report prepared by the Office of Recipient Rights on the current status of recipient rights within BMHA and its provider network system and a review of the operations of the Office of Recipient Rights.
- 12) Ensure appropriate corrective action is taken when a right has been violated.
- 13) Ensure that appropriate remedial action, including disciplinary action, will be taken in cases of substantiated abuse or neglect.
- 14) Ensure the preponderance of evidence standard is used as the standard of proof in deciding employee disciplinary actions when a right has been violated.
- 15) Ensure staff and agents cooperate in the pursuit of appropriate criminal charges against those who have engaged in abuse.
- 16) Support and assist the Recipient Rights Officer in planning and carrying out inservice training for all appropriate staff on recipient rights issues and their responsibility to report alleged violations of recipient's rights.
- 17) Ensure countywide uniformity in recipient rights procedures even when duties are delegated to other staff or contract providers.
- 18) Ensure that the rights protection procedure is explained to each recipient. Rights summaries may be mailed to parents or guardians who reside outside the County. The rights explanation includes the name and location of the person designated to receive and investigate the recipient rights complaints, a brief description of this function, and directions on how to contact the person. When first accepted for service, each recipient (parent or guardian) shall sign a document indicating that the rights summary was received, and the rights protection procedure was understood. This document will be placed in each recipient's case record.
- 19) Establish a procedure to ensure that special explanation of the rights summary shall be given if the recipient is:
 - a) illiterate (a note of explanation given and by whom shall be entered into the recipient's record);

- b) developmentally disabled (a note of explanation given and by whom shall be entered in the recipient's record);
 - c) non-English speaking (the verbal explanation shall be made in the language that the recipient understands and may be delayed for a reasonable period until a translator is available, but no later than two weeks from intake). Such delay and the reasons for it shall be entered into the record;
 - d) emotionally upset (the verbal explanation may be delayed until a more clinically suitable time if the recipient is unable to comprehend the explanation at the time of admission; but no later than 2 weeks from the date the face sheet is opened). Such delay and the reason for it shall be entered into the record;
 - e) hearing impaired or has other perceptual deficiencies (the explanation shall be communicated by a means that is understandable to the recipient and may be delayed for a reasonable period until a qualified translator is available, but no later than 2 weeks from the date the face sheet is opened).
- 20) Assure that copies of the appropriate rights summaries are posted in appropriate places on the premises of all service locations.
 - 21) Assure that all recipients of service, parents, guardians, friends and others have access to Recipient Rights Complaint forms.
 - 22) Assure that recipients (parents or guardians) are informed in writing that further information and consultation about recipient rights can be obtained from the Southwest Michigan Behavioral Health (Medicaid eligible individuals only) and/or the Department of Health & Human Services Office of Recipient Rights.
 - 23) Ensure that staff members and/or recipients involved in reporting a complaint are protected from harassment or retaliation and that appropriate disciplinary action will be taken if there is evidence that either has occurred.
 - 24) Ensure that employee confidentiality is protected as required by the Bullard-Plawecki Employee Right to Know Act and that the information in the summary report does not violate this Act's right to employee confidentiality.
 - 25) Ensure that appropriate disciplinary and administrative action occurs when it comes to the attention of the Rights Office that a staff member or a contract provider fails to report a rights violation.

C. The Rights Officer shall:

- 1) Not be involved in direct service responsibilities or treatment.
- 2) Be directly responsible to the CEO.
- 3) Have a personal commitment to safeguarding recipient rights.
- 4) Be regularly accessible to recipients and staff of BMHA and its provider network.
- 5) Maintain an impartial attitude and credibility with recipients, concerned relatives and staff.
- 6) Have no other responsibilities in conflict with Recipient Rights activities.
- 7) Become familiar with the Mental Health Code (especially Chapter 7), requirements of contracts with DHHS and BMHA procedures.
- 8) Develop and provide inservice training about recipient rights.
- 9) Participate in development and review of procedures pertinent to recipient rights.
- 10) Monitor the performance of the Agency Rights Advisor(s).
- 11) Investigate all allegations of rights violations, with assistance from other staff when necessary.
 - a) the investigation of death, serious injury, abuse and neglect will be initiated immediately after receiving the complaint, and will be a formal process;
 - b) allegations referring to a rights violation for which remedial action is available only outside the jurisdiction of the Agency shall be referred to the appropriate agency by the Recipient Rights Office or, with assistance, by the complainant.
- 12) Inform staff members when a recipient rights complaint has been filed against them.
- 13) Use the preponderance of evidence standard to make an independent determination of whether each allegation is substantiated or not substantiated.

- 14) Recommend corrective action to the CEO of the Board, or of a contract agency if the individual is an employee of a contract agency, when an allegation is substantiated.
- 15) Obtain written informed consent from the recipient to reveal the results of an investigation to a complainant when the complainant is not the recipient, nor the recipient's guardian, nor the parent of a minor recipient. If such consent cannot be obtained, the complainant's copy of the Recipient Rights Progress Report should state only whether the allegation was substantiated or not substantiated and contain only non-confidential information.
- 16) Assure that the recommended remedy for a specific complaint includes action, when applicable, for all recipients in a similar situation.
- 17) Assist the recipient who has been physically, sexually or otherwise abused in finding legal assistance to pursue injunctive and other appropriate civil relief. The Recipient Rights Officer will notify police of any/all allegations of assault, greater than simple assault between clients, with reasonable cause to suspect by the Recipient Rights Officer to have taken place.
- 18) Ensure that persons who file complaints are informed of:
 - a) the progress and results of the investigation into the complaint in a manner that does not violate employee rights;
 - b) any subsequent modification or reversal of disciplinary or other action taken as a result of the complaint;
 - c) the opportunity to appeal if dissatisfied with action taken as a result of the complaint.
- 19) Compile and maintain records of alleged rights violations and actions.
- 20) Keep a log of formal complaints.
- 21) Review all contracts with contract agencies to ensure compliance with Recipient Rights policies and procedures. Recommend changes needed in such contracts to the CEO.
- 22) Assist the complainant in filing an appeal if the complainant is dissatisfied with action taken by the CEO, or with the findings of the investigation.
- 23) Ensure that appropriate disciplinary actions are taken when abuse or neglect are substantiated.
 - a) If there is a substantiated Class I, II or III abuse or neglect, the employee must receive disciplinary action. Depending on the severity of the violation and/or prior progressive discipline, the action could include suspension and may be grounds for immediate termination.
 - b) Disciplinary and remedial actions for other rights violations will be commensurate with the severity of the violation and the employment history of the staff person.
- 24) Communicate, coordinate joint activities with, and provide liaison to SWMBH and DHHS offices of Recipient Rights to ensure that local interpretations of the Mental Health Code, contracts between BMHA and DHHS, and DHHS policies, procedures and standards (as these relate to recipient rights) are compatible with DHHS efforts to develop a unified state-wide system of the provision of mental health care.
- 25) Attend all training recommended/required by the DHHS ORR and Recipient Rights Officers Association of Michigan (RROAM) and assure that the Rights Advisor also attends training.
- 26) Provide public information on matters concerning the recipient rights program.
- 27) Receive and investigate complaints concerning Section 504, Rehabilitation Act of 1973 and Americans with Disabilities Act of 1990.
- 28) Ensure that all BMHA sites and contracted service sites, where BMHA has responsibility to provide recipient rights services, are visited by Recipient Rights staff on a minimum of an annual basis. Compliance with rights requirements will be monitored and the results documented in writing.
- 29) Perform the duties assigned to the Recipient Rights Officer relative to reporting on recipient deaths per procedure #01-06-02.
- 30) Receive and successfully complete training in MDHHS ORR "Basic Skills Training Programs" as well as, any other training required by the state, within the first three (3) months/90 days of hire.
- 31) Every three (3) year period subsequent to completion of Basic Skills, during their employment, the Rights Officer/Advisor and any alternate(s) must receive advanced rights training, minimally

the amount specified by the MDHHS ORR; and any other MDHHS required trainings. Continuing education requirements for Rights staff are specified in the Master Contract/Attachments.

- D. The Rights Advisor(s) shall:
- 1) Report directly to the Recipient Rights Officer in recipient rights matters.
 - 2) Participate in training activities sponsored by MDHHS and RROAM.
 - 3) Report to the Recipient Rights Officer oral and written complaints of all alleged violations.
 - 4) Assist in the investigation of recipient rights complaints.
 - 5) Provide inservice training as requested by the Recipient Rights Officer.
 - 6) Monitor incident reports as requested by the Recipient Rights Officer.
 - 7) Have no other responsibilities in conflict with Recipient Rights activities.
 - 8) Receive and successfully complete training in MDHHS ORR “Basic Skills Training Programs” as well as, any other training required by the state, within the first three (3) months/90 days of hire.
 - 9) Every three (3) year period subsequent to completion of Basic Skills, during their employment, the Rights Officer/Advisor and any alternate(s) must receive advanced rights training, minimally the amount specified by the MDHHS ORR; and any other MDHHS required trainings. Continuing education requirements for Rights staff are specified in the Master Contract/Attachments.
- E. Records compiled in the course of investigating an alleged rights violation shall be retained by recipient rights staff, maintained independent of the consumer’s case record, or an employee’s personnel record, and shall be subject to confidentiality safeguards of Public Act 258, Section 748.
- F. If a recipient complaint is substantiated and an employee is subject to disciplinary action, the employee shall receive disciplinary action in accordance with the Authority’s personnel policies. Agencies that are a part of the Authority’s provider network shall follow their personnel policies.

FORMS:

N/A

Reviewer: Office of Recipient Rights

Reviewed: 4/07, 3/08, 6/08, 7/09, 3/10, 4/11, 5/12, 5/13, 3/14, 5/15, 6/16, 4/17, 3/18, 3/19, 4/2020, 7/2021, 7/2022, 2/2023, 8/2023, 8/2024, 8/2025