BERRIEN MENTAL HEALTH AUTHORITY
PROCEDURE

SUBJECT: Recipient Rights Complaint and Appeal Process	SECTION: 01-02-01 Page 1 of 7
APPLICATIONS: All Programs & Services (including all staff and contract providers) EFFECTIVE DATE: 09/01/99 APPROVED BY: _____ Chief Executive Officer REVISED: 3/02, 11/02, 1/05,4/05, 5/05, 7/05, 11/05, 6/08, 1/13, 6/16, 4/17, 6/17, 3/2021, 8/2021, 10/2021, 7/2022, 2/2023, 8/2023, 11/2023, 8/2025, 2/2026	REQUIRED BY: MHC 706,722,252,755,776-782, 788

POLICY:
Berrien Mental Health Authority will handle, and process complaints received by the Office of Recipient Rights in ways consistent with the requirements of the Mental Health Code. The Office of Recipient Rights (ORR) will utilize the following procedures for the handling of complaints received, the resulting investigations, written complaint investigative reports, appeal/dispute resolution and the storage of the complaint reports.

PURPOSE:
To ensure assistance to individuals that wish to file a rights complaint with timely investigations, feedback, and education of options for mediation and appeal.

STANDARDS:
All completed complaints will be forwarded immediately to the Office of Recipient Rights. In the occurrence that both the Recipient Rights Officer and Recipient Rights Advisor are on simultaneous leaves of absence, the CEO appoints *Summit Point Recipient Rights* to administer rights policies that need immediate response.

DEFINITIONS:
1. **Allegation**: An assertion that has not yet been proved or supported by evidence.

2. **Appellant**: Is an adult recipient (and/or guardian), complainant, or parent/guardian of a minor, who appeals a Recipient Rights Report's timeliness, findings, or a respondent's disciplinary or remedial actions taken, to the appointed appeals committee.

3. **Code-Protected Right**: A right that is guaranteed by the Michigan Mental Health Code, (Act 258 of 1974), Administrative Rule of the Department of Community Health, or other applicable law.

4. **Complainant**: Any person who files a complaint indicating that a right has been violated.

5. **Complaint**: The written or oral allegation that a recipient of Mental Health Services protected rights, have been violated by a CMHSP employee, contract employee, volunteer, or agent of a provider. It *should* also include the outcome being sought as a resolution.

6. **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, neglect, or retaliation 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.

7. **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)

8. **Not Substantiated**: A determination made by the Office of Recipient Rights that the recipient rights complaint was not a violation.

9. **Substantiated**: A determination made by the Recipient Rights Officer that the recipient rights complaint was a rights violation.

10. **Respondent**: The agency/designated personnel responsible to respond to the investigative report and assure remedial and/or disciplinary actions are taken to remedy or prevent future occurrences for issues under investigation.

11. **Remedial Action**: Appropriate action taken to correct a violation from recurring and/or remove contributing conditions.

PROCEDURE:

1. Any person, including but not limited to, the consumer, guardian, parent of a minor, relative, friend of a consumer or an employee who thinks a consumer's rights have been violated may make a verbal or written complaint on behalf of a recipient of mental health services to the Office of Recipient Rights.

2. Complaint forms shall be available at all service sites and in the ORR.

3. Electronic complaint forms are available on the BMHA web page.

4. Complaints shall be forwarded to the ORR immediately upon receipt.

5. The Recipient Rights Office will be available to assist with the filling out of complaint forms as needed.
   a. The ORR will advise the recipient or other individuals that there are advocacy organizations available to assist in preparation of a written rights complaint and offer to make the referral.

b. In the absence of assistance from an advocacy organization, the ORR will assist in preparing a written complaint that contains a statement of the allegation, the right allegedly violated, and the outcome desired by the complainant.
c. The ORR will inform the recipient or other individual of the option of mediation and under what circumstances and when it may be exercised.

6. Each rights complaint received by ORR will be recorded upon its receipt.

7. The Rights Officer or Advisor will accurately record investigative activities of the ORR.

8. The ORR will initiate the investigation of apparent or suspected rights violations in a timely and efficient manner.

9. Investigation will be initiated immediately in cases involving alleged abuse, neglect, serious injury, or death of a recipient when a rights violation is apparent or suspected.

10. If a rights complaint has been filed regarding the conduct of the executive director, the rights investigation will be conducted by the Recipient Rights Office of another CMHSP or by the state office of recipient rights as decided by the board.

11. A letter of acknowledgment for all complaints received and recorded, along with a copy of the complaint, shall be sent to the complainant within 5 business days of receipt, whether it is determined that an investigation is warranted or not.

12. The ORR will use a preponderance of the evidence as its standard of proof in determining whether a right was violated.

13. The rights office will issue a written status report every 30-calendar days during the course of the investigation to the complainant, respondent and the responsible mental health agency.
    a. The 30-day and/or 60-day status report will contain:
        i. Statement of allegations
        ii. Statement of issues involved
        iii. Citations to relevant provisions to the Mental Health Code, rules, policies, and guidelines
        iv. Investigative progress to date
        v. Expected date for completion
    b. Subject to delays involving pending action by external agencies, (i.e. APS, CPS, DHS and/or law enforcement, etc…), the office shall complete the investigation no later than 90 days after it receives the rights complaint.

14. Upon completion of the investigation, the office will submit a written investigative report to the respondent and the executive director of the CMHSP.
    a. The written investigative report will include all of the following:
        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. Investigative findings

v. Conclusions
vi. Recommendations, if any.

b. Issuance of the written investigative report may be delayed, pending completion of investigations that involve external agencies.
c. All investigative activities for each rights complaint will be accurately recorded and maintained by the ORR.

15. A rights investigation may be reopened or reinvestigated by the office if there is new evidence that was not presented at the time of the investigation

16. For substantiated rights violations, the respondent will take firm and fair disciplinary action for any substantiated violations involving abuse, neglect, harassment or retaliation which include appropriate penalties such as official reprimand, demotion, suspension, reassignment or dismissal. Remedial action in accordance with the Respondent Providers disciplinary guidelines will be taken for all other violations which:
    a. Corrects or provides remedy for the rights violation
    b. Is implemented in a timely manner
    c. Attempts to prevent a recurrence of the rights violation.

17. The CMHSP and contracted service providers will ensure that the respondent takes appropriate disciplinary action against those who have specifically engaged in Abuse, neglect, retaliation and harassment. Proof of disciplinary action or a signed Provider Verification of Action will be submitted to the Rights Office and made part of the maintained record.

18. The remedial and disciplinary actions taken on any substantiated rights violations will be documented and made part of the record maintained by the rights office.

19. The Executive Director/CEO will submit a written summary report to the complainant and the recipient, guardian, or parent of a minor, if different than the complainant, within 10 business days after the executive director received a copy of the investigative report from the rights office. A copy of the Summary Report will be maintained in the ORR records. The written summary report shall contain 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. Summary of Investigative findings of the rights office
    e. Conclusions by the rights office
    f. Recommendations made by the rights office
    g. Action taken, or plan of action proposed including a date the action is expected to be completed, by the respondent.
    h. A statement describing the complainant's right to appeal and the grounds for appeal.

20. Information in the summary report shall be provided within the constraints of the confidentiality/privileged communications sections of the mental health code.

21. Information in the summary report will not violate the rights of any employees (ex. Bullard-Plawecki Employee Right to Know Act, Act no. 397 of the Public Acts of 1978, MCL 423.501)

22. If the summary report contains a plan of action including the expected date the action is expected to be completed, the Director must send an amended summary report with a notice to appeal when the action is completed.

23. If the amended summary report indicates the plan of action that differs from the plan, the summary must indicate that an appeal may be made within 45 days on action.

24. The CMHSP will ensure that appropriate administrative action is taken with CMHSP or provider personnel who have failed to report suspected violations of rights.

25. The ORR will comply with pertinent CMHSP policies to assure that investigations are conducted in a manner that will not violate employee rights.

26. Rights complaints filed by recipients or anyone on their behalf will be given to the designated rights officer/advisor in a timely manner.

27. The Board of the CMHSP will do the following:
    a. Designate the RRAC as the appeals committee.

28. A member of the appeals committee who has a personal or professional relationship with an individual in an appeal will abstain from participating in that appeal as a member of the committee.

29. The RRAC acting as the appeals committee has the ability to request consultation and technical assistance from MDHHS-ORR.

30. The complainant, recipient (if different than the complainant), guardian, or parent of a minor, in the summary report from the executive director, will be informed of both of the following:
    a. An appeal may be filed no later than 45 days after the receipt of the summary report.
    b. The grounds for appeal are:
        i. The investigative findings of the rights office are not consistent with the facts, law, rule, policies or guidelines.
        ii. The action taken or plan of action proposed by the respondent does not provide an adequate remedy.
        iii. The investigation was not initiated or completed on a timely basis.

31. Not later than 45 days after receipt of the summary report, the complainant may file a written appeal with the appeals committee with jurisdiction over the office of recipient rights that issued the summary report.

32. The rights office will advise the complainant that there are advocacy organizations available to assist in preparing the written appeal and offer to make the referral.

33. In the absence of assistance from an advocacy organization, the rights office will assist the complainant in meeting the procedural requirements of a written appeal.

34. Within 5 business days after the receipt of a written appeal, at least two members of the Appeals Committee will review the appeal to determine whether it met criteria.

a. If the appeal is denied, the appellant will be notified in writing within a 5-business day period.
b. If the appeal is accepted, the appellant will be notified in writing within a 5-business day period.
c. If the appeal is accepted, a copy of the appeal will be provided to the respondent and the CMHSP within a 5 business day period.

35. Within 30 days after the written appeal is received, the Appeals Committee will meet and review the facts as stated in all complaint investigation documents.

36. The appeals committee will do one of the following in deciding upon an appeal:
    a. Uphold the findings of the rights office and the action taken or plan of action proposed by the respondent.
    b. Return the investigation to the rights office with a request that it be reopened or reinvestigated.
    c. Uphold the investigative findings of the rights office but recommend that the respondent take additional or different action to remedy the violation.
    d. Recommend to the Board of the CMHSP request an external investigation by the MDHHS Office of Recipient Rights.

37. The Appeals Committee will document its decision, and justification for the decision, in writing.

38. Within 10 days after reaching its decision, the Appeals Committee will provide copies of the decision to the respondent, appellant, recipient if different than the appellant, recipient's guardian if one has been appointed, the CMHSP, and the rights office.

39. If the appeals committee upholds the investigative findings of the office of recipient rights and the action taken or plan of action proposed by the respondent, the notice must include level 2 appeal contact information, grounds for appeal, the timeframe for submission and offer assistance in absence of assistance from an advocacy organization.

40. Copies of the Appeals Committee decision will include a statement of the appellant's right to appeal to the MDHHS, the time frame for appeal, (45 days from the receipt of the decision) and ground for appeal (investigative findings of the rights office are inconsistent with facts, rules, policies or guidelines.) The decision will also include a list of advocacy organizations that may assist with filing the written appeal and offer assistance by the office of recipient rights in the absence of assistance from an advocacy organization.
    Send Level II Appeals to:

    Level 2 ORR Appeal
    DHHS-Appeals
    PO Box 30807
    Lansing, MI 48909

    FAX: (517) 241-7973

41. If an investigation is returned to the CMH by an appeals committee for reinvestigation, the office will complete the reinvestigation within 45 days following the standards established in the MDHHS/CMHSP Contract Attachment C.6.3.2.4.

42. If an investigation is returned to the CMH by an appeals committee for reinvestigation, upon receipt of the RIF, the director will take appropriate remedial action and will submit a written summary report to the complainant, recipient, if different than the complainant, parent or guardian, and the appeals committee within 10 business days.

43. If a request for additional or different action is sent to the Director, a response will be sent within 30 days as to the action taken or justification as to why it was not taken. The response will be sent to the complainant, recipient, if different than the complainant, parent or guardian, and the appeals committee.

44. If the appeal concerns the action taken and recommends the respondent provider take additional or different action to remedy the violation, the appeals committee must base its determination based on the definition of remedial action in section 780 of the Michigan Mental Health Code. Written notice of this recommendation for additional or different action must be provided to the BMHA, if different than the respondent and the office of recipient rights.

45. If the appeal committee notifies the CMH Board chair of a recommendation to seek an external investigation from MDHHS-ORR, the board will send a letter of request to the director of MDHHS-ORR within 5 business days of receipt of the request from the appeals committee. The director of the CMH making the request will be responsible for the issuance of the summary report, which will identify the grounds and advocacy information as previously written in this document and MDHHS-ORR Appeal Committee as the committee for any Appeal. Within 10 business days of receipt of the investigative report from MDHHS ORR, the executive director will issue a Summary Report in compliance with the Code. The Summary Report is submitted to the appellant, recipient if different, the recipient's legal guardian if any, the office of recipient rights and the appeals committee. This will include the right to level 2 appeal per section 786 of the Code. (see Level 2 appeal information)

46. If the appeals committee determines the investigation was not initiated or completed in a timely manner per chapter 7A, the CMHSP executive director will address the lack of timeliness with staff completing the investigation.

47. All applicants for mental health services and recipient of mental health services as well as the recipients' parent (if a minor) or guardian if any will be notified by the providers of those services of the rights guaranteed to them in the Code. Notice will be accomplished by providing an accurate summary of these rights to the applicant or recipient at the time services are first requested and annually during the time services are provided. BMHA requires the notification of rights are provided to all recipients during annual treatment planning.

48. If the recipient is unable to read or understand the materials provided, a provider will make reasonable attempts to assist the recipient in understanding the materials. A note describing the explanation of the materials and who provided the explanation will be entered into the recipient's record.

49. In the unlikely event that both Office of Recipient Rights staff are totally unavailable; on simultaneous leaves of absence; nor available by phone, incoming calls and mail will be received by the CEO appointed party – Compliance or Customer Services. All staff will be notified, and Rights related calls redirected, if this situation occurs. If a written complaint is received or any potential

violation of rights is identified; including abuse, neglect or death, the CEO will contact the *Summit Pointe Office of Recipient Rights* RE: back-up Rights protection for consultation and coverage, as appropriate.

50. If the situation appears emergent and contact with our back up is failed, contact any of the South West Michigan Behavioral Health affiliate Rights Offices for technical guidance, consultation and assistance.

FORMS:

Recipient Rights Complaint Form

Provider Verification of Action

Notification of the Right to Appeal

Reviewer: Office of Recipient Rights

Reviewed: 4/07, 2/08, 6/08, 7/09, 3/2010, 4/2011, 5/2012, 2/2014, 7/15, 6/16, 4/17, 6/17, 3/18, 3/19, 4/2020, 3/2021, 8/2021, 10/2021, 7/2022, 2/2023, 8/2023, 11/2023, 8/2024, 8/2025, 2/2026