

# SHIAWASSEE COUNTY COMMUNITY MENTAL HEALTH AUTHORITY

## POLICY AND PROCEDURE MANUAL

Section: Recipient Rights

Policy Number: 1

Subject: **Recipient Rights System**

Effective Date: 10/27/97

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### **Policy**

It is the policy of the Shiawassee County Community Mental Health Authority (SCCMHA) that it protect the rights of recipients in compliance with the Michigan Mental Health Code and the Michigan Department of Community Health Administrative Rules, and promote and protect the dignity and respect to which a recipient is entitled.

It is the policy of SCCMHA to establish measures to prevent and correct a possible violation of civil rights related to the service provision. A violation of civil rights shall be regarded as a violation of recipient rights and shall be subject to remedies established for recipient rights violations

### **Purpose**

To establish policy and standards for the structure and operation of the Recipient Rights System of the SCCMHA and the protection of rights of recipients of the agency, and

To recognize and respect each recipient in the provision of care in accordance with fundamental human, civil, constitutional, and statutory rights.

### **Application**

This policy applies to all employees, independent contractors, contract agencies, volunteers, and the Board of Directors of the SCCMHA.

### **Definitions**

Complaint: An allegation either verbal, written, or otherwise communicated by a recipient or anyone acting on the behalf of a recipient that a violation of a right guaranteed to the recipient has occurred.

Intervention: To act on behalf of a recipient to resolve a complaint alleging a violation of a code protected right when the facts are clear and the remedy, if applicable, is clear, easily obtainable and does not involve statutorily required disciplinary action.

Preponderance of the Evidence: A standard of proof which is met when, based upon all the available evidence, it is more likely that a right was violated than not; greater weight of

evidence, not as to quantity, but as to quality, i.e. believability and greater weight of important facts.

Recipient Rights Officer: The person selected by the Chief Executive Officer (CEO) of SCCMHA in consultation with the Recipient Rights Advisory Committee to head the SCCMHA Office of Recipient Rights. This officer provides or coordinates rights services for recipients of all services directly operated by or under contract to the SCCMHA.

## **Standards**

It is understood that protection of the rights of recipients is a process and a philosophy which must permeate all aspects of the SCCMHA operations. This process and philosophy is based on a framework which recognizes the interdependence of care delivery and organizational ethical issues and includes mechanisms to support ethical decision-making. These mechanisms are designed to 1) respect the rights of the recipient to treatment or services within the organization's capability, mission, and applicable law and regulations; 2) address the involvement of the recipient in all aspects of care and service; 3) allow the recipient to express spiritual beliefs and cultural practices which do not harm others or interfere with the planned course of patient services; and 4) provide for consideration of other needs of the recipient/family.

The preferred approach to rights protection is proactive and preventive in nature. Rights protection activities are inextricably linked to quality assurance and continuous quality improvement processes.

### **A. Board Responsibilities**

1. The SCCMHA shall have written policies and procedures concerning the rights of recipients, protection of those rights and for the operation of the local rights protection system including:
  - a. A mechanism for prompt reporting and investigating suspected violations of rights;
  - b. A grievance procedure for complaints concerning Section 504, Rehabilitation Act of 1973 P.L. 93-112; and grievances related to the Americans with Disabilities Act of 1990;
  - c. Policies and procedures which provide for non-retaliation and protection from harassment of complainants and rights staff. Rule 7037 (1); MCLA 15.361 et seq., the Whistleblowers Protection Act;

- d. Policies and procedures required by the Michigan Mental Health Code, Chapter Seven and Seven A, and Michigan Department of Community Health Administrative Rules, Part Seven; and
  - e. Policies and procedures to ensure that the Office of Recipient Rights shall be protected from pressures which could interfere with impartial, even handed, objective, and thorough performance of its duties. Such policies and procedures address funding, hiring, and dismissal of the Recipient Rights Officer.
  - f. Work rules requiring employee cooperation in recipient rights investigations.
2. The SCCMHA shall assure that contracts and agreements for the provision of mental health services shall specify that the provider is in compliance with the Mental Health Code and that the rights of recipients shall be protected when they are receiving the services specified in the contract or agreement and have written policies in place.
  3. The organization's policies and procedures for the operation of the local rights system shall specify how rights services shall be provided, including circumstances in which the Recipient Rights Officer may be absent.
  4. The organization's policies and procedures shall require that clients be informed in writing that information and consultation may be obtained regarding their rights, including appeal rights, as a recipient of community mental health services.
  5. The SCCMHA Board of Directors shall appoint a Recipient Rights Advisory Committee of at least six (6) members who shall be selected from a group of candidates which may include but is not limited to board members and staff, government officials, attorneys, mental health professionals, mental health service recipients, family members, and advocacy groups. At least 1/3 of the membership shall be primary recipients or family members and 1/2 of these shall be primary recipients.
  6. The SCCMHA shall ensure that the job description for the Recipient Rights Officer and Rights Advisor includes his/her qualifications and responsibilities. The job description for the Recipient Rights Officer shall be developed by the CEO. The SCCMHA shall ensure that the Rights Officer and Rights Advisor will attend DCH-ORR Basic Skills I & II and Developing Effective Rights Training within three (3) months of hire.

7. The SCCMHA shall ensure that the job description for the Recipient Rights Officer and the Recipient Rights Advisor specify that the officer be subordinate only to the CEO and shall have no direct service responsibilities.
8. The SCCMHA shall consider the recommendation of the Recipient Rights Advisory Committee prior to appointing a Recipient Rights Officer.
9. The SCCMHA shall ensure that consultation from the Recipient Rights Advisory Committee be obtained prior to the termination of the Recipient Rights Officer.

**B. Recipient Rights Advisory Committee Responsibilities**

1. The Recipient Rights Advisory Committee shall hold open public meetings with reasonable notice at least quarterly or with the frequency necessary to carry out the responsibilities required by Michigan Department of Community Health Administrative Rules.
2. A current list of committee member's names and the interests they represent shall be maintained by the SCCMHA.
3. The Recipient Rights Advisory Committee shall serve in an advisory capacity to the Rights Officer and recommend candidates with the education, training, and experience necessary to head the local Office of Recipient Rights of the SCCMHA.
4. The Recipient Rights Advisory Committee shall at least annually review the local rights protection system including funding of the office and recommend improvements, when necessary, to the CEO.
5. The Recipient Rights Advisory Committee shall assure the preparation of an annual report on the rights protection system of the organization for presentation to the SCCMHA Board of Directors and submission to the Department of Community Health.
6. The Recipient Rights Advisory Committee shall protect the Recipient Rights Officer from pressures which could interfere with the impartial, even-handed and thorough performance of her/his duties.
7. The Recipient Rights Advisory Committee is designated to act as the

Recipient Rights Appeals Committee.

C. Chief Executive Officer (CEO) Responsibilities

1. The CEO shall ensure that rights staff have specific training on the rights of recipients as guaranteed by the Michigan Mental Health Code and Michigan Department of Community Health Administrative Rules. Training for the Rights Officer and Rights Advisor shall occur annually.
2. The CEO shall take appropriate disciplinary action to ensure protection for complainants and rights staff if there is evidence of harassment concerning an alleged violation of rights or a rights complaint.
3. The CEO or his/her designee shall take appropriate administrative action to resolve or prevent violations of rights. Such actions shall be noted in reports to complainants when an alleged violation of rights is substantiated. Actions shall be noted in a manner which does not violate employee rights.
4. The CEO shall arrange a meeting of the Recipient Rights Appeals Committee to hear all appeals of complainants who are not satisfied with the outcome of the investigation of their alleged rights violation and/or the administrative action taken. Requests for such appeals shall be made in writing to the Appeals Committee within forty-five (45) days of receipt of the Summary Report. The appeal shall be completed and a written response to the complainant shall be completed within ten (10) days of the committee reaching the decisions.
5. The CEO shall ensure that the Office of Recipient Rights will have unimpeded access to all programs and staff employed by or under contract to the SCCMHA.
6. The CEO shall ensure that all staff have Recipient Rights training within thirty (30) days of employment.

D. Recipient Rights Officer Responsibilities

1. The Recipient Rights Officer shall provide or coordinate rights activities and functions for all services operated by or under contract with the SCCMHA consistent with the master contract with the Michigan Department of Community Health and contracts with providers.
2. The Recipient Rights Officer shall ensure that information regarding rights is

available in all service locations. This shall include information regarding how to contact the Recipient Rights Officer and the availability of the Department of Community Health Office of Recipient Rights regarding rights and/or appeals.

3. The Recipient Rights Officer shall ensure that recipients, parents of minors, guardians, and others have ready access to recipient rights summaries and complaint forms at the time services are initiated and periodically thereafter.
4. The Recipient Rights Officer shall ensure that all SCCMHA service locations are visited by rights staff at least annually or with the frequency necessary for protection of rights guaranteed by the Michigan Mental Health Code and Department of Community Health Administrative Rules. The frequency of these visits and methods for determining compliance with rights requirements shall be specified in the organization's policies and procedures for the operation of the rights system.
5. The Recipient Rights Officer shall serve as a consultant to the CEO and staff in rights matters and participates in developing and reviewing policies impacting on the rights of recipients.
6. The Recipient Rights Officer shall ensure that all reports of suspected or apparent violations of rights and rights complaints within the Board's service system are investigated in a timely manner and according to the requirements of the Michigan Mental Health Code Chapter 7A, and completed within 90 days.
7. The Recipient Rights Officer shall ensure that investigations are conducted in a manner which does not violate employee rights.
8. The Recipient Rights Officer shall use the "preponderance of the evidence" as the standard of proof in determining if a right has been violated.
9. The Recipient Rights Officer shall maintain a records system of training received/given and for all complaints received within the rights system of the SCCMHA.
10. The Recipient Rights Officer shall inform complainants of their appeal rights and the process for the appeal. The Recipient Rights Officer shall notify the complainant of advocacy organizations available to assist in preparing the appeal or the Recipient Rights Officer's availability to make the referral to an advocacy group. In the absence of an advocacy organization, the Recipient

Rights Officer shall inform the complainant of the Recipient Rights Officer's availability in assisting the complainant in meeting the procedural requirements of a written appeal.

11. The Recipient Rights Officer shall receive and acknowledge all reports and may investigate suspected or apparent violations of rights.
12. The Recipient Rights Officer may act on behalf of recipients to obtain a remedy for any substantiated violations.
13. The Recipient Rights Officer shall otherwise endeavor to safeguard the rights guaranteed by the Michigan Mental Health Code.
14. The Recipient Rights Officer shall attend meetings which have an impact on the rights of recipients.
15. The Recipient Rights Officer will assure rights training is available to all staff within thirty (30) days of employment.
16. The Recipient Rights Officer shall have training and education to fulfill the responsibilities of the office and shall be credentialed for this position. Requirements for education, training, and experience shall be specified in the job description and competencies for the position.
17. The Recipient Rights Officer shall receive annual training about Recipient Rights, the Recipient Rights System and in carrying out the responsibilities of the Recipient Rights Officer.
18. The Recipient Rights Officer shall review all contracts annually and any new contracts approved during the fiscal year prior to their submission to the provider to ensure that the terms of the contract comply with requirements of the Michigan Mental Health Code and agency policies as they pertain to the rights of recipients. Confirmation of this review shall be submitted in writing to the staff person responsible for administering the contract with any recommended changes noted.

E. Appeals Procedure

1. In the event that a complainant is not satisfied with the findings of an investigation of an alleged rights violation and should the complainant remain unsatisfied with the decision, the complainant may appeal the decision in writing to the Recipient Rights Appeals Committee.

2. The Recipient Rights Appeals Committee shall review the appeal and notify the complainant within five (5) business days whether the appeal is denied or accepted.
3. The Recipient Rights Appeals Committee shall conduct an appropriate review of the facts within thirty (30) business days of receipt of the appeal.
4. Written notification of the decision of the Recipient Rights Appeals Committee shall be provided to the complainant within a maximum of ten (10) days of the committee reaching its decision.
5. Any party may seek alternate resolution through exercise of legal remedy or mediation.
6. The confidentiality provisions of the Michigan Mental Health Code in Sec. 330.748 shall be strictly adhered to in every step of the review process.
7. Every effort should be made to resolve disputes at the lowest administrative level possible. The language contained herein with regard to a formal appeals process should not be construed to prohibit the use of mediation at the local level, if the use of same is agreed to by both parties.

F. Compliance

1. The SCCMHA shall have written policies and procedures for the operation of the rights system on file with the Department of Community Health Office of Recipient Rights.
2. The SCCMHA shall develop and approve written policies concerning the rights of recipients, as required by the Michigan Mental Health Code and the Department of Community Health Administrative Rules of each directly operated and contract service.
3. The CEO shall submit to the Department of Community Health Office of Recipient Rights for review and comment copies of the organization's policies and procedures and revisions of policies and procedures, concerning the rights of recipients as specified in the Michigan Mental Health Code and Department of Mental Community Administrative Rules listed in Exhibit A.
4. The CEO shall provide the Director of the Department of Community Health

and Recipient Rights Committee with a semi-annual report which includes a review of the operation of the Office of Recipient Rights and an assessment of rights protection throughout the organization's services system on April 30 and December 30 for each year. This report shall include:

- a. Aggregate data regarding all reports of alleged violations of rights including the number received, investigated, and resolved.
  - b. Number of substantiated violations of rights by category and provider.
  - c. Source of complaint.
  - d. Remedial actions taken by type of action.
  - e. Copies of minutes of the Recipient Rights Advisory Committee.
  - f. Names of the members of the committee. In the case of members of the CMH Recipient Rights Committee who are recipients, identification of them as recipients shall not be made without their written and informed consent.
  - g. A summary of training received and provided.
  - i. Recommendations regarding the office to the CMH Board.
  - j. Other significant rights activities.
- G. Availability of Recipient Rights Services: In the event of a temporary absence of the Recipient Rights Officer, the Recipient Rights Advisor of the agency shall assume the functions of the Recipient Rights Officer under the condition that the person holding the position of Recipient Rights Advisor is credentialed to perform said functions. In the event that no staff person is so credentialed, the agency will contract with another community mental health agency for ancillary Recipient Rights services.

### **References and Legal Authority**

- A. Michigan Mental Health Code, Public Act 258 of 1974, as amended.
- B. Department of Community Health Administrative Rules.



