

SHIAWASSEE COUNTY COMMUNITY MENTAL HEALTH AUTHORITY

POLICY AND PROCEDURE MANUAL

Section: Recipient Rights

Policy Number: 2

Subject: **Reporting, Investigating, and Resolving
Alleged or Suspected Rights Violations**

Effective Date: 10/27/97

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Policy

It shall be the policy of the Shiawassee County Community Mental Health Authority (SCCMHA) that all complaints of alleged or suspected rights violations filed by recipients or on their behalf shall be given to the designated Rights Officer/Advisor in a timely manner and shall be promptly investigated and resolved and that information about recipient rights and the process for reporting alleged or suspected violations be adequately disseminated to recipients and employees.

Purpose

To establish policy and standards for the reporting, investigation, and resolution of alleged or suspected rights violation;

To ensure the application of a process for reporting, investigating, and resolving alleged or suspected rights violations which meets established standards of investigation, of protection for those filing complaints and for the rights of employees, and of timeliness for reporting, investigating, and resolving alleged violations; and

To ensure compliance with the Michigan Mental Health Code and the Michigan Department of Community Health Administrative Rules.

Application

All employees, independent contractors, contract agencies, and the Officer of Recipient Rights of the Shiawassee County Community Mental Health Authority.

Definitions

Preponderance of the 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, but as to quality, i.e. believability and greater weight of important facts.

Recipient Rights Officer: The person selected by the Chief Executive Officer of Shiawassee County Community Mental Health Authority (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 Shiawassee County Community Mental Health Authority.

Standards

A. Reporting Complaints

1. Information regarding rights and how to contact the Recipient Rights Officer shall be posted at all service sites.
2. Notification of Rights: All recipients shall receive a written statement of their rights at the time services are initiated. At the time services are first requested, a provider shall inform a recipient, his or her guardian or other legal representative or the parent with legal custody of a minor recipient of the recipient's lawful rights in an understandable manner. If a recipient is unable to read or understand the materials provided, a provider 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. All recipients shall have access to this statement of rights at anytime throughout the course of service. It shall include the statement that information and consultation may be obtained from the Department of Community Health Office of Recipient Rights (DCH-ORR), including appeal rights. This statement shall include clear information about the way in which a complaint of alleged or suspected violation of rights may be made and the guarantee that anyone filing the complaint shall be protected from harassment and/or intimidation.
3. Anyone can file a complaint alleging the suspected rights violation.
4. It is the responsibility of all employees of the Shiawassee County Community Mental Health Authority to protect the rights of recipients of service. In exercising that responsibility all employees are required to report alleged or suspected violations of a recipient's rights. Substantiated failure to report a suspected violation of a recipient's rights shall result in disciplinary action up to and including termination.
5. Employees filing reports of an alleged or suspected rights violation shall be protected from harassment or retaliation for acting on behalf of a recipient.

6. Employees at all service sites are responsible for assisting recipients by advising them of the right to file written complaints and by assisting them in filing complaints.
7. Employees are required to cooperate fully in recipient rights investigations.
8. All service sites shall maintain a supply of complaint forms. These forms shall be kept in a location which is readily available to recipients and employees and which protects the privacy of complainants.
9. Complaints shall be addressed directly to the Recipient Rights Officer and shall be forwarded in sealed envelopes supplied with the complaint form.
10. The Rights Officer will notify the recipient of advocacy groups available to assist and the availability of mediation services.
11. In the absence of advocacy groups the Rights Officer may assist in preparing a complaint or appeal.
12. In the event the complaint is against the Chief Executive Officer, the SCCMHA Board will request another Community Mental Health Board or the state Office of Recipient Rights to investigate.

B. Investigation

1. The Recipient Rights Officer shall maintain a record system for all complaints received. This system shall include a log of all complaints which are assigned a control number by which they are filed and retrieved by recipient name, case number or service site.
2. Copies of all rights reports, together with documentary evidence, are kept in an area secure from tampering, accessible only to the Recipient Rights Officer, the Chief Executive Officer, and the clerical support staff assigned to the Office of Recipient Rights.
3. The Recipient Rights Officer receives and acknowledges all reports of alleged or suspected rights violations and responds to the complainant within five (5) business days with a copy of the complaint and if there will or will not be an investigation.
4. In responding to a request for recipient rights assistance, the Recipient

Rights Officer shall take one of the following actions.

- a. If the request for assistance refers to an issue which is outside the jurisdiction of the Board, and, therefore, not appropriate for the recipient rights process, the Recipient Rights Officer shall inform the person bringing the issue that said issue does not concern a code-protected right and that the Board lacks jurisdiction for its handling. The Recipient Rights Officer will direct the person to other potential sources of remediation when such sources are available and applicable. The Recipient Rights Officer shall note the disposition on the complaint log.
 - b. If the request for assistance refers to a rights issue for which remedial action can be so easily taken that an investigation is unnecessary, within five (5) business days the Recipient Rights Officer shall inform the complainant of the remedial action taken and note the disposition on the complaint log. This request may be considered an intervention when the facts are clear, the remedy if applicable is clear, easily obtainable and does not involve statutorily required disciplinary action. Notification that the complaint is being treated as an intervention will be sent to the complainant within five (5) business days of receipt of the complaint.
 - c. If the request for consultation refers to a rights issue which is within the Board's jurisdiction and for which remedial action cannot be easily obtained, the Recipient Rights Officer shall take the actions required for a formal investigation.
5. In responding to a complaint, the Recipient Rights Officer shall take the following actions:
- a. The Recipient Rights Officer shall determine if the complaint concerns a right that is code-protected and thereby subject to the recipient rights process and provide written notification to the complainant within five (5) business days.
 - b. If the Recipient Rights Officer determines that the complaint concerns an issue that is not code-protected and thereby not subject to the recipient rights process, the Recipient Rights Officer shall inform the complainant that said complaint does not concern a code-protected right and the Board lacks jurisdiction for enforcement. The Recipient

Rights Officer will direct the complainant to other potential sources of remediation when such sources are available and applicable. The Recipient Rights Officer shall note the disposition on the complaint log.

- c. If the Recipient Rights Officer determines that a complaint concerns an issue which is code-protected and thereby subject to the recipient rights process, the Recipient Rights Officer shall do the following:
 1. Investigate each separate allegation with priority assigned to allegations concerning safety or personal injury; allegations of abuse or neglect, serious injury or death involving suspected rights violations shall be investigated immediately.
 2. Interview the complainant and service recipient.
 3. Determine what is alleged and if this is different from what was alleged on the complaint report, shall make such note on the report in order to clarify the allegations.
 4. Identify all persons who may have information about the allegation.
 5. Interview all persons so identified and summarize each interview in writing or enter into the record a written statement from the person interviewed.
 6. Review all applicable Department of Community Health and Shiawassee County Community Mental Health Authority Board policies, the Michigan Mental Health Code, the Department of Community Health Administrative Rules, and pertinent records.
 7. Make an independent determination of whether the available facts lead to preponderance of evidence that the allegation is substantiated or not substantiated.
 8. If substantiated, recommend remedial action to the Respondent/Chief Executive Officer in writing which is made part of the report.

9. Complete an investigative report which is submitted to the Chief Executive Officer and the respondent.
10. A status report will be sent every thirty (30) days to the complainant and respondent containing the allegation, issues, citations, progress to date, and date expected to be complete.
11. All actions taken in the course of an investigation shall respect the rights of employees as guaranteed by the Bullard Plawewski Act and shall ensure the provision of due process. Any action involving an employee which discloses the name of an employee shall require notification of the disclosure to the employee.
12. The completed report will be submitted to the Chief Executive Officer within ninety (90) days of receipt of complaint and shall contain the allegation, issues, citations, findings, conclusion, and recommendation.

C. Resolution of Complaints

1. On receipt of the Recipient Rights Officer's findings and recommendations, the Chief Executive Officer shall review the Recipient Rights Officer's investigative report and indicate remedial action taken as part of the record maintained by the Rights Officer. Remedial action will meet all the following requirements:
 - 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.
2. The Respondent/Chief Executive Officer shall take timely action in one or more of the following ways to prevent reoccurrence:
 - a. Implement, or ensure that respondent(s) implement, as applicable, remedial action and/or firm and appropriate disciplinary action in accordance with Board personnel policies and procedures and the collective bargaining agreement or, as applicable, Board policies and

- procedures for contracted staff or volunteers.
- b. File, or ensure that respondent(s) file, complaints, as applicable, to licensing bodies, law enforcement agencies, or regulatory bodies.
 - c. Distribute an interim policy memorandum changing a current practice, if a policy change is required.
 - d. Apply the Department of Community Health Administrative Rule 7254(3) if a capital outlay is required.
3. The Chief Executive Officer or his/her designee shall prepare a final Recipient Rights Summary Report of Investigative Findings for each allegation and respond to the complainant and service recipient, if these are different persons, guardian or parent of a minor, within ten (10) days, to:
- a. Review the Recipient Rights Summary Report of Investigative Findings.
 - b. Inform him/her of any actions taken.
 - c. Inform him/her of the right to appeal the matter to the Appeals Committee.
4. The Summary Report shall include the following:
- a. Statement of allegations.
 - b. Statement of issues involved.
 - c. Citations to relevant provisions of the Mental Health Code, rules, and guidelines.
 - d. Summary of investigation findings of the Rights Office.
 - e. Conclusions of the Rights Office.
 - f. Recommendations made by the Rights Office.
 - g. Actions taken, or plan of action proposed to be taken by Shiawassee County Community Mental Health Authority.

4. The Recipient Rights Officer shall advise the appellant about advocacy groups available to assist in preparing the written appeal and offer to make the referral. In the absence of assistance from an advocacy organization, the Recipient Rights Office will offer to assist in meeting the procedural requirements of a written appeal.
5. The Recipient Rights Officer shall inform the appellant of the option of mediation.
6. A member of the Recipient Rights Appeals Committee shall review the appeal within five (5) business days to determine if the appeal meets or does not meet the criteria for appeal to the complainant, respondent, and the Chief Executive Officer.
7. If the appeal is accepted the Recipient Rights Appeals Committee shall meet within thirty (30) business days of receipt of the appeal and decide one of the following:
 - a. Uphold the findings of the Rights Office and the action taken or plan of action proposed by the respondent and/or Shiawassee County Community Mental Health Authority.
 - b. Return the investigation to the Rights Office with a request that it be reopened or investigated.
 - c. Uphold the investigative findings of the Rights Office but recommend that the respondent and/or the Shiawassee County Community Mental Health Authority take additional or different action to remedy the violation.
 - d. Recommend that the Board of Directors of the Shiawassee County Community Mental Health Authority request an external investigation by the Department of Community Health Office of Recipient Rights.
8. The Recipient Rights Appeals Committee shall identify and excuse any committee member who needs to abstain from reviewing the appeal because of a personal or professional relationship. This action shall be reflected in the minutes.
9. Within ten (10) days of reviewing the appeal, the Recipient Rights Appeals

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Committee shall notify the respondent, appellant, recipient, recipient's guardian, and the Rights Officer in writing.

10. The Recipient Rights Appeals Committee shall indicate to the appellant at the time of decision of the right to appeal the decision to the Department of Community Health within forty-five (45) days. The Recipient Rights Appeals Committee will notify the appellant of the grounds for an appeal which are the following: investigative findings of the Rights Office are inconsistent with facts, rules, policies, or guidelines (specified).

Approved by: *Jerry Walden*
Board Chairperson

 2/20/09
Date

 Scott Gilman
Chief Executive Officer

 2/20/09
Date

