

# NORTH COUNTRY COMMUNITY MENTAL HEALTH ADMINISTRATIVE MANUAL

**CHAPTER:** Chapter Five  
**SECTION:**  
**POLICY NAME:** Recipient Rights System  
**SUPERCEDES:**  
**EFFECTIVE DATE:** October 1, 2003

**PURPOSE:** To establish a Community Mental Health Recipient Rights System with policies and procedures for the reporting, investigation, and documentation of apparent violations of recipient rights, and complaints as enumerated in the Michigan Mental Health Code, and to assure that remedial action is taken when those apparent violations have been substantiated.

**APPLICATION:** This policy shall apply to North Country Community Mental Health and any individual, entity, or contractor providing services to North Country Community Mental Health consumers.

**POLICY:**

- A. North Country shall institute and provide an Office of Recipient Rights for community mental health programs subordinate only to the director of North Country Community Mental Health.
- B. To provide a simple mechanism for recipients and others to report any alleged violations of consumer rights, and to assure the prompt reporting, investigation and resolution of such alleged violations.
- C. To provide a system for determining whether, in fact, violations occurred.
- D. To assure that firm, fair, and appropriate action is taken in the event of a substantiated violation of recipient rights.
- E. To ensure that individuals filing complaints of alleged violations are informed of:
  - 1. the process and results of the investigation
  - 2. any remedial action taken as a result of the complaint
  - 3. their opportunity to appeal if dissatisfied with either the complaint determination or remedial action
- F. The CMH office of Recipient Rights will endeavor to safeguard the rights of consumers in a manner, which does not violate employee rights.
- G. To ensure that any complaint, which is out of the jurisdiction of the CMH agency, or contractual provider of services, is referred to an appropriate agency or individual.
- H. To assist consumers of the agency in exercising their recipient rights and civil rights as consumers and citizens.

IV. Standards

- A. The CMH Board and Executive Director shall:
  - 1. The CMH Board shall appoint a Recipient Rights Advisory Committee consisting of at least seven members of which 1/3 are primary consumers or family and at least one half of the third are primary. This RRAC shall also serve as the CMH's appeals committee with respect to recipient rights complaint report appeals.

The committee shall include, at a minimum:

- ◆ Two (2) Board members
- ◆ Two (2) primary consumers of services
- ◆ Two community members

The Recipient Rights Advisory Committee shall do all of the following:

- a. Meet at least semiannually, or as necessary to carry out its responsibilities both to the CMH Office of Recipient Rights and its function as the appeals committee.
  - b. Maintain a list of current members, which shall be available upon request.
  - c. Maintain a list of membership categories (without names), which shall be available upon request.
  - d. Protect the Office of Recipient Rights from pressures that could interfere with the impartial, evenhanded, and thorough performance of its functions.
  - e. Recommend candidates for the position of Rights Officer, and consult with the executive director of the CMH regarding any proposed dismissal of the Rights Officer.
  - f. Serve in an advisory capacity to the executive director and the Rights Officer.
  - g. Review and provide comments on the annual report submitted by the CMH executive director to the CMH Board, as required by PA 290, sec.755 (6).
  - h. Conduct its meetings in accordance with the Open Meetings Act, keeping and maintaining minutes of those meetings, which shall be available upon request.
  - i. Provide recipient rights advisory or complaint appeal functions for local licensed private hospitals should there be a signed agreement to provide such services.
2. Prepare a job description for the CMH Officer of Recipient Rights.
  3. Determine whether the office can be adequately staffed for a single CMH agency, or if the establishment of a cooperative agreement with one or more CMH programs provides a more cost effective alternative.

B. The CMH Recipient Rights Officer shall:

1. Operate a system where rights advisors in direct or contract agencies have limited rights protection duties, including items listed in section (D) below. The CMH Rights Officer assumes direct responsibilities for the conduct of the remaining rights protection duties.
2. Assure that each unit of agency service has appointed a rights advisor who has no direct service responsibilities, is regularly accessible to consumers of that unit of service, and has no other duties in conflict with rights protection activities.
3. Assure that all rights staff receive and maintain appropriate resource materials, including a copy of the Mental Health Code, DCH Administrative Rules, Rights information pamphlets, and copies of the North Country CMH policies on recipient rights.
4. Possess the following qualifications:
  - a. A degree or equivalent in the social sciences or related field that will equip him/her for this role.
  - b. Experience related to community organization, social work, counseling, education or other work dealing with human relations.
  - c. Personal qualities suited to this role and a commitment to the fundamental objective of safeguarding the rights of recipients.

- C. The Rights Officer shall report to the CMH Executive Director concerning substantiated violations of recipient rights. The responsibility for implementation of corrective action shall be delegated by the Executive Director.
- D. Each rights advisor shall assure that all consumers, upon acceptance for service, and all potential consumers, parents, and guardians, receive a written summary of rights. This shall be documented in the case record. Additionally, the rights system shall be verbally explained to the consumer. Special explanations of rights shall be given and documented if the consumer is:
- ◆ Illiterate
  - ◆ Developmentally Disabled
  - ◆ Non-English speaking (in which case the explanation shall be in a language the consumer understands; and may be delayed until a translator is available)
  - ◆ Temporarily unable to comprehend (in which case the rights explanation may be delayed until a more clinically suitable time)
  - ◆ Deaf (explanation shall be communicated by a means that is understandable to the consumer and may be delayed until a translator is available)
  - ◆ Blind
  - ◆ A minor (a simplified explanation in accord with ability to comprehend should be given, documentation of delivery to parent and/or guardian should also be made)

Each rights advisor shall assure that copies of the rights summary are posted in appropriate places on the premises. Each rights advisor shall assure that all consumers, parents, guardians, and others have ready access to rights complaints forms, access to the CMH Rights Officer, a written summary of rights; including the name, address, and phone number of the CMH Rights Officer. This summary shall inform the consumer that information, consultation, and appeal processes are available from DCH.

- E. The CMH Officer of Recipient Rights shall:
1. Visit each unit of service regularly, at least annually.
  2. Be available to consumers and staff to address rights issues.
  3. Investigate all code-protected allegations of violations of rights, with assistance from other staff when deemed necessary
  4. Assure the review of incident reports to determine if they involve possible violations of consumer rights.
  5. Make an independent determination of whether an allegation is substantiated, refuted, or unable to be determined, using the preponderance of evidence as criteria.
  6. Recommend remedial action to the CMH Executive Director or the appropriate agency director when an allegation is substantiated.
  7. Assure that the recommended remedy to a specific complaint includes action applicable to all consumers in a similar situation.
  8. File a Rights Complaint Report on each opened formal complaint with copies sent to the CMH Executive Director and placed in Rights Office file. A summary report will be sent to the complainant and recipient, if different that the complainant, and guardian or parent of a minor recipient.
  9. Inform the complainant when an allegation refers to a right for which remedial action is outside the jurisdiction of the agency.
  10. Attend any agency meetings where clarification of rights related issues may prevent a violation of consumer rights.
  11. Review the audit reports, licensing reports, or other accreditation reviews of all service locations, and all pertinent consumer incident reports, to determine compliance with CMH rights protection standards.
- F. The CMH Rights Officer and Recipient Rights Advisory Committee shall:
1. In consultation, develop and recommend official rights policies to the CMH Board.

2. Establish and define the CMH Rights Protection System.
  3. Maintain policies and procedures which are required by the code.
  4. Take actions as necessary to protect and safeguard the code protected rights of CMH consumers.
  5. At any time after the completion of an investigative report, the parties may agree to mediate the dispute. A mediator shall be jointly selected to facilitate a mutually acceptable settlement. The mediator shall be an individual who has received training in mediation and who is not involved, in any manner, with the dispute or with the provision of services to the consumer.
- G. The Recipient Rights Officer shall:
1. Conduct inservice training for Rights Advisors, the Recipient Rights Advisory/Appeals Committee, and other staff, at least annually or as necessary, to implement policies and procedures for the protection of consumer rights. Rights Advisors will participate and complete a minimum of 8 hours of training in rights prior to assuming their duties and will participate and complete 10 hours of continuing recipient rights training yearly. The RRO will complete a minimum of 20 hours yearly.
  2. Attend periodic meetings of the CMH Rights Advisory Committee as necessary to report on and assist in:
    - ◆ the review of the rights protection system.
    - ◆ the review of persistent and/or unresolved rights issues.
    - ◆ evaluation of the implementation of Board approved rights policies; including staffing, resources, and funding,
    - ◆ recommendations concerning the protection of consumer rights, including status and results of current and/or planned activities of the Office of Recipient Rights.
  3. Submit monthly reports to the CMH Executive Director and regular reports to the Recipient Rights Advisory/Appeals Committee.
- H. Records compiled in the course of investigating an alleged rights violation shall be retained by rights staff, maintained independent of consumer case records, and shall be subject to confidentiality safeguards as noted in Public Act 258, Section 748.
- I. The CMH Board and CMH Executive Director shall adopt and implement all applicable DCH Rights Policies and Procedures.
- J. The CMH Executive Director shall:
1. Meet regularly with the Rights Officer to discuss any substantiated violations, implementation of remedial action, and prevention activities.
  2. Take firm and fair disciplinary action, and appropriate remedial action, when a right has been violated and will insure that any contracted agency has initiated and followed through with disciplinary action.
  3. Accept the preponderance of evidence standard as the standard of proof in deciding employee disciplinary action when a right has been violated.
  4. Assure non-retaliation and protection from harassment to all Rights Staff and any individual involved in the filing of a rights complaint, and assure that appropriate disciplinary action is taken if there is evidence of such harassment or retaliation.
  5. Assure that in the absence of the Recipient Rights Officer, an Agency Rights Advisor will be available.
  6. Assure that the Rights office has unimpeded access to all directly operated or contractual programs and services; to all staff employed by such entities; and to all resources and evidence necessary to conduct a thorough investigation, or fulfill a rights monitoring function.
  7. Assure that all contracts between the agency and other providers of service specify the following: (1) that the contractual provider and staff receive recipient

rights training, (2) that the contractor agrees to follow all North Country rights policies, standards, and procedures, and (3) that the North Country Rights Office shall have unimpeded access to the contractor's site and staff for the purposes of investigation or monitoring.

8. Assure that all employees cooperate in recipient rights investigations.

K. Whenever a violation of consumer rights is alleged or suspected, the CMH Rights Officer shall be notified and a report shall be filed on either a Rights Complaint Form containing a statement of the allegation, the right allegedly violated, and the outcome desired by the complainant or an Incident Report Form, in accordance with the following procedure.

1. When a recipient rights complaint is received, or when a consumer informs any agency staff person or rights advisor of their desire to file a complaint
  - a. Agency staff shall refer that individual to the on-site rights advisor who shall
    - i. Assist the individual in the preparing and filing of a written complaint, if necessary.
    - ii. Advise the individual of the agency rights complaint process.
    - iii. Advise the individual of other advocacy services.
    - iv. Inform the individual of the availability of local mediation options. (consistent with MHC section 788)
  - b. The on-site rights advisor shall forward that written complaint to the CMH-ORR,
2. Upon receipt of a complaint, the agency RRO shall
  - a. Acknowledge receipt of the complaint by mailing a notice within five (5) business days to the complainant with a copy of the complaint.
  - b. Record receipt of the complaint.
  - c. Notify the complainant, within 5 days, if no investigation is warranted.
  - d. Inform the complainant of alternative means of problem resolution, including:
    - i. Meetings with agency staff.
    - ii. Other advocacy alternatives.
  - e. The rights officer shall indicate on the complaint any referral of the complaint to other sources; and note if the matter was resolved to the satisfaction of the complainant.
  - f. Refer any complaint regarding the conduct of the executive director to the state office of recipient rights, or another CMHSB, for investigation as determined by the Chairperson of the Board.
3. The CMH-RRO shall review and/or investigate all complaints within ninety (90) days of receipt, sending a notification of complaint status every 30 days to the complainant, respondent, and responsible agency. All complaints alleging abuse, neglect, serious injury, or death shall receive immediate attention.
  - a. The thirty (30) day status reports shall contain the allegations, issues, a full definition of the code citations, progress of the investigation, and anticipated completion date.
  - b. Any amendments to the complaint, or withdrawals of the complaint shall be noted.
4. Upon completion of the review/investigation, the CMH-RRO shall issue an review/investigative report containing allegations, issues, a full definition of the code citations, findings, conclusions, and recommendations/remedial action based on preponderance of evidence to the Executive Director. The respondent and responsible agency shall receive a copy of this report.
5. The review/investigative report shall contain notification that referral to local, outside, mediation is available upon request. (consistent with MHC sec. 788)

6. Upon receipt of the review/investigative report, and if remedial action or disciplinary action is recommended, the responsible mental health agency and/or contract provider of services shall
    - a. correct and/or remedy the violation
    - b. implement corrective action in a timely manner
    - c. state their attempts to prevent reoccurrence
    - d. provide written documentation of their actions, with such documentation becoming part of the rights office investigative record.
    - e. The RRO shall ensure that the responsible agency and/or provider has followed through with the action and provided written verification of the action taken.
  7. Upon receipt of the review/investigative report, the CMH Executive Director shall respond to the complainant, and the consumer if different than the complainant, guardian or parent in the case of a minor, within ten (10) days, providing them with a summary report containing:
    - a. the allegations, issues, citations, a summary of the findings, conclusions, recommendations, and any action (or plan of action) taken to correct substantiated problems.
    - b. a statement of the individual's appeal rights and grounds for appeal.
    - c. information contained in the summary report shall be within the constraints of MHC 748 and 750, and protect the rights of agency, and contractual, staff pursuant to PA 397 of 1978. The Bullard Plawecki Employee Right to Know Act.
- L. Whenever a particular employee is specifically named as a participant in an alleged violation of consumer rights, the employee shall be advised that the complaint has been filed, is under investigation, the nature of the allegation, and afforded the opportunity to provide information concerning the alleged rights violation.
- M. A complainant, consumer, guardian or parent in the case of a minor may file an appeal regarding a recipient rights complaint report within 45 days of the receipt of the summary report.
1. When such an appeal is received, the CMH Office of Recipient Rights shall:
    - a. Advise the individual of other advocacy agencies who may be able to assist in the filing of an appeal.
    - b. Assist the individual in preparing for the appeal.
    - c. Inform the individual of local mediation options regarding the appeal.
  2. An appeal shall be based on one of the following grounds:
    - a. That the investigative findings are not consistent with the facts or with law, rules, policies, or guidelines.
    - b. That the action taken, or proposed, by the responsible agency does not provide an adequate remedy.
    - c. That the investigation was not initiated or completed in a timely manner.
  3. Upon receipt of the written appeal, the CMH Office of Recipient Rights shall:
    - a. Schedule a review of the appeal by the CMH Rights Complaint Appeals Committee within 5 business days. Minutes will be separate from the RRAC minutes and will comply with statutory role and functions.
    - b. Assure that the appeals committee makes a determination that the appeal meets the criteria listed above.
    - c. Inform the individual, in writing and within 5 business days, whether the appeal has been accepted or denied, and the grounds for any denial.
    - d. Schedule an appeal hearing for any accepted appeal within 30 days; providing, within 5 business days, a copy of the appeal to both the respondent and the responsible agency.

- e. Assure that any member of the committee who has a personal or professional relationship with an individual involved in the appeal abstains from participation in the hearing process.
4. The appeals committee, upon meeting to hear the matter, shall do one of the following:
    - a. Uphold the findings of the CMH-Office of Recipient Rights including the plan for actual or proposed remedial action.
    - b. Request that the CMH-Office of Recipient Rights reopen and reinvestigate the matter adhering to all required investigative reporting requirements.
    - c. Uphold the investigative findings of the CMH-Office of Recipient Rights but make recommendations regarding additional, or different, remedial action to correct the violation.
    - d. If the responsible mental health agency is a CMH services program, or a licensed hospital, recommend that the Board of the CMH request an external investigation by the State Office of Recipient Rights.
  5. The appeals committee shall document its decision in writing and shall provide copies of that decision to the appropriate individual and agency within 10 working days after reaching its decision. This response shall contain language that informs the appellant that they may, within 45 days, file a written appeal of this decision with the Department of Community Health, Office of Legal Affairs, Administrative Tribunal. This appeal to the Administrative Tribunal shall be based on:
    - a. The record established in the previous appeal, and
    - b. On the allegation that the investigative findings of the local Office of Recipient Rights were not consistent with the facts, law, rules, policies, or guidelines.

**REFERENCE:** Michigan Mental Health Code, Chapter Seven  
 DCH Administrative Rules and Amendments  
 JCAHO Comprehensive Accreditation Manual for Managed Behavioral Health Care, Section RI

**REVISED:** September 1, 2003

**APPROVED:** Board Approval on: \_\_\_\_\_

\_\_\_\_\_  
 Director's Signature

\_\_\_\_\_  
 Date