

NORTH COUNTRY COMMUNITY MENTAL HEALTH ADMINISTRATIVE MANUAL

CHAPTER: Five – Recipient Rights
PROCEDURE NAME: RECIPIENT RIGHTS SYSTEM
EFFECTIVE DATE: February 1, 2023

PURPOSE

To establish a process for the operation of the recipient rights system at North Country Community Mental Health in compliance with the Michigan Mental Health Code and the Michigan Department of Health and Human Services Administrative Rules in order to protect and promote the rights of individuals who receive services through NCCMH.

APPLICATION

All employees, volunteers, or agents of North Country Community Mental Health and its contracted service providers.

DEFINITIONS

Allegation means an assertion of fact made by an individual that has not yet been proved or supported with evidence.

Appellant means the recipient, complainant, parent, or guardian who appeals a recipient right finding or a respondent's action to an appeals committee.

Complainant means an individual who files a rights complaint.

Disciplinary Action (when abuse or neglect is substantiated) means an appropriate penalty, including official reprimand, demotion, suspension, reassignment, or dismissal.

Intervention means 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 within 30 days, and does not involve statutorily required disciplinary action.

Investigation means a detailed inquiry into, and systematic examination of an allegation raised in a rights complaint

Office of Recipient Rights (ORR) means the office created by the Michigan Mental Health Code which is subordinate only to the Chief Executive Officer and which is responsible for investigating, resolving, and assuring remediation of apparent, suspected, or substantiated rights violations and assuring that mental health services are provided by North Country Community Mental Health in a manner which respects and promotes the rights of recipients as guaranteed by law.

Preponderance of the Evidence means 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; given the greater weight of evidence, not as to quantity (number of witnesses), but as to quality (believability and greater weight of important facts provided).

Recipient means an individual who receives mental health services, either in person or through telemedicine, from a community mental health services program, or a facility, or from a provider that is under contract with the community mental health services program.

Recipient Rights Complaint means a written or oral statement that contains the following information: a statement of the allegations that give rise to the dispute; a statement of the right or

rights that may have been violated; the outcome that the complainant is seeking as a resolution to the complaint.

Remedial Action means action taken after it has been determined through investigation that a right has been violated, that meets all of the following requirements:

1. Corrects or provides a remedy for the rights violations
2. Is implemented in a timely manner
3. Attempts to prevent a recurrence of the rights violation

Respondent means the service provider that had responsibility at the time of an alleged rights violation for the services with respect to which a rights complaint has been filed.

Retaliation or Harassment means the following actions directed towards a complainant, recipient, or staff acting on behalf of a recipient, as a result of their participation in recipient rights activities:

Retaliation: conduct meant to intimidate, threaten, coerce, harm, or discriminate against in response to an actual or perceived harm

Harassment: unwanted, unwelcomed, and uninvited behavior that demeans, threatens or offends the victim and results in a hostile environment.

Timely and Efficient Manner means that an investigation involving an allegation of abuse, neglect, serious injury, or the death of a recipient which involves a suspected rights violation, will be initiated within 24 hours of the receipt of the complaint. For complaints other than those which require immediate investigation, pro-active investigative activities must begin within 10 business days.

STANDARDS

The Chief Executive Officer will:

- Not select, replace, or dismiss the ORR Director without first consulting the Recipient Rights Advisory Committee (RRAC.)
- Select a director of the office of recipient rights who has the education, training, and experience to fulfill the responsibilities of the office. The ORR Director shall have no direct clinical responsibility. At a minimum, they will possess the following qualifications:
 - A Bachelor's degree from an accredited college or university in the human services field, management, public administration, social sciences, or a law degree. Equivalent work experience may be considered in lieu of education requirements.
 - Two years of professional experience in investigation and advocacy within a private or public human services agency (or comparable experience.)
 - Working knowledge of the Mental Health Code and the ability to interpret and apply statutes, rules, policies, and procedures.
 - Knowledge, skills, and abilities as outlined in the related NCCMH job description.
- Ensure that in the absence of the Director of ORR, a Recipient Rights Specialist is available.
- Submit to the NCCMH Board and the department an annual report prepared by the ORR on the current status of recipient rights in the NCCMH system and a review of the operations of the ORR. The report shall be submitted not later than December 30th of each year for the preceding fiscal year. The annual report shall include at a minimum, the following:
 - Summary data by category, including complaints received, the number of reports filed, and the number of reports investigated.
 - The number of substantiated rights violations by category and provider.
 - Training received by the ORR staff.
 - Training provided by the ORR staff.
 - Desired outcomes established for the ORR and progress towards those outcomes.

- Recommendations to the NCCMH Board

The NCCMH Office of Recipient Rights will:

- Provide or coordinate the protection of recipient rights for all directly operated or contracted services.
- Ensure that recipients, parents of minor recipients, and guardians or other legal representatives upon initiation of services and periodically thereafter, or as requested, receive a written summary of recipient rights (MDHHS “Your Rights” booklet.) Rights information will be relayed in an understandable manner. If a recipient is unable to read or understand the materials provided, a reasonable attempt will be made by staff to assist the recipient in understanding the materials. Documentation describing the alternative methods used to explain recipient rights and the name of the person who provided the explanation will be entered into the client’s EHR.
- Assure that recipients, parents of minors, guardians, and others have ready access to complaint forms.
- Ensure that contact information for the ORR, including the name of the ORR Director, is conspicuously posted in all service sites (recipient rights poster.)
- Maintain a record system for all reports of apparent or suspected rights violations received, including a mechanism for logging in all complaints and a mechanism for secure storage of all investigative documents and evidence.
- Ensure that each service site is visited with the frequency necessary for protection of rights but no case less than annually.
- Ensure that all contracted service providers receive and maintain appropriate resource materials, including a copy of the Mental Health Code, MDHHS Administrative Rules, rights information booklets, and copies of North Country CMH recipient rights policies and procedures.
- Ensure that all individuals employed by NCCMH, and its contracted providers receive training related to recipient rights protection before or within 30 days after being employed.
- Review the recipient rights policies and the rights system of each provider of mental health services under contract with NCCMH, that has their own recipient rights system, (e.g., LPH/U licensed private hospital/unit) to ensure that the rights protection system is in compliance with the Mental Health Code (MHC) and is of a uniformly high standard.
- Serve as a consultant to the Chief Executive Officer and to the staff of the NCCMH and service providers in matters related to recipient rights.
- Attend any agency meetings where clarification of rights related issues may prevent a violation of recipient rights.
- Attend the Behavior Treatment Committee as non-voting (ex-officio) member to provide consultation regarding the restriction or limitation of a recipient’s rights
- Ensure that in accordance with the MHC, all reports of apparent or suspected violations of rights within the NCCMH system are investigated and those reports that do not warrant investigation are recorded as required.
- Semiannually provide complaint data consistent with the annual report defined in this procedure, together with a summary of remedial action taken on substantiated complaints by category to the department and to the Recipient Rights Advisory Committee (RRAC.)

The NCCMH Board will:

- Appoint a Recipient Rights Advisory Committee consisting of at least six members. The membership of the committee shall be broadly based to represent the varied perspectives of the six-county service area. At least 1/3 of the membership shall be primary recipients or family members, and of that 1/3 at least 1/2 shall be primary recipients. Members can represent more than one of these categories. None of the members shall be employed by NCCMH or MDHHS. The RRAC shall also serve as the Recipient Rights Appeals Committee.
- Refer any complaint regarding the conduct of the Chief Executive Officer to MDHHS-ORR, or another CMHSP-ORR, for investigation as determined by the Board.

The Recipient Rights Advisory Committee will:

- Receive education and training in recipient rights policies and procedures.
- Meet at least semiannually, or as necessary to carry out its responsibilities both to the CMH ORR and its function as the appeals committee.
- Maintain a list of current members, which shall be available upon request.
- Maintain a list of membership categories (without names), which shall be available upon request.
- Protect the ORR from pressures that could interfere with the impartial, evenhanded, and thorough performance of its functions.
- Recommend candidates for the position of ORR Director and consult with the CEO regarding any proposed dismissal of the ORR Director.
- Serve in an advisory capacity to the CEO and the ORR Director.
- Review and provide comments on the annual ORR report submitted by the CEO to the CMH Board.
- Comply with the Open Meetings Act, keeping and maintaining minutes of RRAC meetings, which shall be available upon request. The appeals committee meeting minutes will be kept separate from the advisory committee minutes and will comply with statutory rules and functions and will meet in closed door sessions.
- Require a quorum to have an official meeting. A quorum shall consist of no less than one half of the members appointed.
- If the position of the chair of the RRAC/Appeals committee becomes vacant, the committee will elect a new chair. The vote shall be by a majority of the committee members present. Any member may nominate any other member including himself/ herself for office.
- Review the funding, resources, and staffing of the recipient rights office.

RECIPIENT RIGHTS TRAINING

- Recipient Rights staff will attend and successfully complete the MDHHS- ORR Basic Skills Training Programs within three months of hire.
- Staff of the Office of Recipient Rights will complete training annually in recipient rights protection and will comply with the continuing education requirements as identified in the MDHHS contract attachment CMHSP 6.3.2.3(A).
- Every three years after the completion of Basic Skills, the recipient rights staff will accrue 36 Continuing Education Unit (CEU's) in the following categories, as defined and approved by MDHHS-ORR:
 - Category I: Operations
 - Category II: Legal Foundations
 - Category III: Leadership
 - Category IV: Augmented Training
- A minimum of twelve CEU's of the 36 required, must be obtained in programs classified as Category I or II.
- Staff must acquire at least three CEU's in the categories listed above, each calendar year.
- The ORR shall provide recipient rights orientation training to all staff members of NCCMH and contracted providers in accordance with MDHHS/ CMHSP Contract Attachment C6.3.2.3B. The sessions will be held often enough to ensure that all new employees are trained in recipient rights within 30 days of hire.
- Recipient Rights training will be accepted from any another CMH's ORR if it was taken within three years prior to application for hire and there is documented proof of attendance.

RETALIATION AND HARASSMENT INVESTIGATIONS

The following grid indicates who will investigate in cases of retaliation or harassment depending on the subject of the complaint and the alleged perpetrator:

Subject:	Alleged Perpetrator:	Action:
Recipient, Complainant, Staff acting on behalf of a recipient	Employee, volunteer, or agent of NCCMH or its contracted provider network	NCCMH ORR will investigate
ORR Staff member	Employee, volunteer, or agent of NCCMH or its contracted provider network	A NCCMH ORR staff member that is not involved in the complaint will investigate
ORR Staff member	NCCMH CEO	Board will refer the complaint to another CMH's ORR or MDHHS-ORR for investigation
Recipient, Complainant, Staff acting on behalf of a recipient	ORR Staff member	CEO will refer the complaint to another CMH's ORR for investigation

COMPLAINT PROCESS (All Categories)

- Rights complaints filed by recipients, or anyone on their behalf will be provided to the ORR promptly. Incidents involving the apparent or suspected abuse or neglect, or the death, serious injury, or unexplained injury of a recipient must be reported to the ORR within 24 hours of the time the incident was discovered.
- When a recipient informs any staff person of their desire to file a complaint, the staff person will assist the individual in the preparing and filing of a written complaint, if needed.
- The ORR will assist recipients or other individuals with the complaint process as necessary.
- The ORR will advise the recipient or other individual that there are advocacy organizations available to assist in preparation of a written rights complaint and offer to make a referral. In the absence of assistance from advocacy organizations, the rights office will assist in preparing a written complaint.
- Each rights complaint received by the ORR will be recorded in the ORR module of North Star (EHR.)
- An acknowledgement of the recording will be sent along with a copy of the complaint, to the complainant within 5 business days.
- The ORR will notify the complainant within 5 business days after receipt of the complaint if it is determined that no investigation of the complaint was warranted (e.g., "No Right Involved" (NRI) or "Out of Jurisdiction" (OJ). If the complaint is outside the jurisdiction of the ORR, the complainant will be informed of any referrals made to other sources or agencies.

INTERVENTION

- The ORR may utilize an "Intervention" in lieu of a full initial investigation if appropriate. The ORR will determine whether a right was violated by using the preponderance of evidence as its standard of proof.
 - Intervention letters must contain the following elements:
 - The date received by the ORR
 - The date of the incident
 - The name of the complainant, unless anonymity has been granted
 - A succinct description of the alleged violation.
 - The category of MHC protected right allegedly violated.
 - The specific action taken by the ORR to resolve the complaint.

- Whether or not the allegation was substantiated.
- If the allegation was substantiated, the remedial action must be specified.
- A notification that the complainant can express dissatisfaction with the intervention and may request a full investigation.

INVESTIGATION (RIF)

- The ORR shall initiate investigations of apparent or suspected rights violations in a timely and efficient manner. Subject to delays involving pending action by external agencies (e.g., APS, LARA, law enforcement), the office shall complete the investigation not later than 90 calendar days after it receives the rights complaint.
- The ORR will conduct investigations in a manner that does not violate employee rights.
- A notice of complaint status report will be sent every 30 calendar days to the complainant, respondent, and NCCMH CEO.
 - Status Reports must contain the following elements:
 - Statement of allegations
 - Citations to relevant provisions of the MHC, rules, policies, and guidelines.
 - Statement of the issues involved
 - Investigative progress to date
 - Expected date of completion of the investigation.
- A record of investigational activities will be accurately recorded in each rights complaint file. Documentation not kept in an electronic format will be locked and safeguarded by the ORR.
- The ORR will determine whether a right was violated by using the preponderance of evidence as its standard of proof.
- Upon completion of the investigation, the ORR will issue a “Report of Investigative Findings” (RIF) to the respondent and NCCMH CEO.
 - The RIF must contain the following elements:
 - Statement of the allegation
 - Citations to relevant provisions of the MHC, rules, policies, and guidelines.
 - Statement of the issues involved
 - Investigative findings
 - Conclusions
 - Recommendations, if any

REMEDIAL ACTION

- Upon receipt of the RIF, the respondent will take appropriate remedial action.
- Appropriate disciplinary action must be taken against those who have engaged in abuse or neglect, or retaliation and harassment.
- Appropriate remedial action will be taken when staff fail to report suspected violations of rights.
- The respondent will provide written documentation of the remedial action(s) taken, which will become part of the investigative record maintained by the ORR.
 - When the remedial action is proposed* but completed after the summary report is sent, the respondent must notify the ORR in writing indicating the date of completion. The ORR will notify the potential appellate via letter that the action is complete.
 - If the plan of action taken is different from the plan of action described in the summary report, the letter will indicate that an appeal regarding the new action may be made within 45 days only on the grounds that the action failed to provide an adequate remedy.

SUMMARY REPORT

- Upon receipt of the investigative report, the NCCMH Chief Executive Officer will submit to the complainant, and the recipient, if different than the complainant, guardian, or parent of a minor, within ten business days, a summary report.
- Information contained in the summary report shall be provided within the constraints the confidentiality and privileged communication of the MHC.
- Information in the summary report may not violate the rights of any employee.
 - The summary report must contain the following elements:
 - Statement of the allegation
 - Citations to relevant provisions of the MHC, rules, policies, and guidelines.
 - Statement of the issues involved
 - Summary of investigative findings
 - Conclusions
 - Recommendations made by the ORR
 - Action taken, or plan of action proposed* by the respondent.
 - Information describing the right to appeal, time frames and grounds for making an appeal, and process for filing an appeal. The notice will indicate that there are advocacy agencies who may be able to assist in the filing of an appeal and offer to make a referral.

APPEAL PROCESS

- The NCCMH Recipient Rights Advisory Committee (RRAC) will serve as the Recipient Rights Appeals Committee.
- The committee may request consultation and technical assistance from MDHHS-ORR.
- A member of the committee who has a personal or professional relationship with an individual involved in the appeal will abstain from participating in that appeal as a member of the committee.
- The committee will maintain a log of all appeals received and the disposition reached.
- A complainant, recipient, guardian, or parent of a minor, may file an appeal no later than 45 calendar days* after receipt of the summary report.
- In the absence of assistance from an advocacy organization, the ORR will assist an individual in meeting the procedural requirements of a written appeal.
- An appeal shall be based on one of the following grounds:
 - That the investigative findings are not consistent with the facts, law, rules, policies, or guidelines.
 - That the action taken, or proposed action, by the respondent does not provide an adequate remedy.
 - That the investigation was not initiated or completed in a timely manner.
- Upon receipt of the written appeal, the ORR shall assist in scheduling a review of the appeal by at least two members of the committee within five business days to determine if the appeal meets the criteria of standing, time frames, and grounds.
 - Once the appeal is reviewed, the appellant will be informed in writing within five business days, whether the appeal has been accepted or denied, the letter will indicate the grounds for any denial.
 - A copy of the determination will also be sent to the respondent, NCCMH, and ORR within five business days.
- If the appeal is accepted, a closed session will be held within thirty calendar days of the receipt of the written appeal.
 - The committee will meet and review the facts as stated in all complaint investigation documents.
 - The committee will not consider allegations that were not part of the original complaint but will inform the appellant of their right to file a new complaint with the ORR.

- **The appeals committee, upon meeting to hear the matter, shall do one of the following** and shall document its decision and justification in writing and provide copies of that decision to the respondent, appellant, recipient if different than the appellant, recipient's guardian (if one has been appointed,) parent of a minor (if applicable,) NCCMH, and the ORR within seven business days after reaching its decision.
 - **Uphold the findings of the ORR and the action plan or the respondent's proposed action plan.**
 - The written decision will inform the appellant that if the appeal was based on the grounds that the findings were not consistent with the facts, law, rules, policies, or guidelines and upheld, they may, within 45 calendar days, file a written Level 2 appeal of this decision with MDHHS-ORR.
 - **Return the investigation to the ORR with the request that it be reopened or reinvestigated in accordance with Sec. 778.**
 - If reinvestigated by the ORR, the amended report of investigation (RIF) will be sent to the CEO within 45 days.
 - With a showing of good cause by the ORR, the committee may extend the investigative time frame to no more than 90 days.
 - Within ten business days of receiving the RIF, the CEO will issue a Summary Report pursuant to Sec. 782 and will send a copy to the committee and ORR.
 - If after reinvestigation, and upon review the committee feels that the results of the reinvestigated are still inadequate, the committee shall inform the appellant of the ability to further appeal to Level 2.
 - If the complaint remains *unsubstantiated* after reinvestigation, the CEO's Summary will include a statement that the appellant may file a Level 2 MDHHS appeal within 45 days, based on the grounds that the findings were not consistent with the facts, law, rules, policies, or guidelines.
 - If the complaint is *substantiated after reinvestigation*, the CEO's Summary will include remedial action or proposed action and a statement that the appellant may file a new NCCMH appeal within 45 days, based on the grounds that the action taken, or plan of action proposed does not provide an adequate remedy.
 - **If the appeal grounds concern the investigative findings, the committee may recommend that the Board requests an external investigation performed by MDHHS-ORR.** The Board may make its request to the MDHHS-ORR Director, in writing, within five business days of receipt of the request from the committee.
 - Within ten business days of receipt of the investigative report (RIF) from MDHHS-ORR, the CEO shall issue a Summary Report pursuant to Sec. 782 and will provide notice that an appeal may be filed with MDHHS-ORR within 45 days per Sec. 784 and will contain the grounds and timelines for appeal.
 - **Uphold the investigative findings of the CMH-Office of Recipient Rights but make recommendations to the respondent regarding additional or different, remedial action to correct the violation.**

The committee shall base its determination regarding the remedial action based on any or all the following:

 - Action taken or proposed did not correct or remedy the rights violation.
 - Action taken or proposed was/will not be taken in a timely manner.
 - Action taken or proposed did not/will not prevent a future recurrence of the violation.

Within thirty calendar days of receipt of the determination of the committee that additional or different action is recommended, the respondent shall provide written notice to the committee that the action has been taken or justification as

to why it was not taken. The written notice shall also be sent to the appellant, recipient if different than appellant, guardian, or parent of a minor if any, NCCMH if different than the respondent, and the ORR.

- If the action taken by the respondent is determined by the committee and/or the appellant to still be inadequate to remedy the violation, the appellant shall be informed of his/her right to file a recipient rights complaint against the CEO for a violation of Sec. 754 and 755.
- **If the appeal concerns the timeliness of the investigation and the committee confirms that the investigation was not initiated or completed in a timely manner, recommend that the CEO address the root cause of the lack of timeliness with the investigating ORR staff.**

REFERENCE: Michigan Mental Health Code, Chapter Seven
MDHHS Administrative Rules
CARF Behavioral Health Standards Manual
MDHHS/ CMHSP Contract Attachment C6.3.2.3A CEU's for Rights Staff
MDHHS/ CMHSP Contract Attachment C63.2.3B RR Training Standards
MDHHS/ CMHSP Contract Attachment C6.3.2.4 Technical Requirements for RR Appeals
MDHHS-ORR Interpretative Memorandum 01

REVIEW: 03/24/08; 08/01/15; 01/23/2023

REVISED: 9/01/03; 8/13/07; 9/18/10; 6/29/16; 6/01/19, 6/21/22

APPROVED BY SIGNATURE:

Brian Babbitt
Chief Executive Officer

01/23/2023
Date

Edward G. Ginop
NCCMH Board Chair

01/23/2023
Date