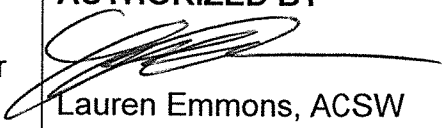


**LAPEER COUNTY COMMUNITY MENTAL HEALTH**

**Date Issued 07/19/2010**

**Date Revised 01/19/12; 02/21/13; 02/01/16, 12/12/17; 11/19/18; 09/16/20; 06/29/21**

<b>CHAPTER</b> Recipient Rights	<b>CHAPTER</b> 04	<b>SECTION</b> 001	<b>SUBJECT</b> 15
<b>SECTION</b> Recipient Rights		<b>DESCRIPTION</b> Investigation of Complaints/Appeal Process	
<b>WRITTEN BY</b> Lisa K. Jolly, B.S. Recipient Rights Officer	<b>REVISED BY</b> Lisa K. Jolly, B.S. Recipient Rights Officer	<b>AUTHORIZED BY</b>  Lauren Emmons, ACSW CEO	

**APPLICATION:**

<input checked="" type="checkbox"/> CMH Staff	<input checked="" type="checkbox"/> Board Members	<input checked="" type="checkbox"/> Provider Network	<input checked="" type="checkbox"/> Employment Services Providers
<input checked="" type="checkbox"/> Employment Services Provider Agencies	<input checked="" type="checkbox"/> Independent Contractors	<input checked="" type="checkbox"/> Students	<input checked="" type="checkbox"/> Interns
<input checked="" type="checkbox"/> Volunteers	<input checked="" type="checkbox"/> Persons Served		

**POLICY:**

The rights of all persons served by Lapeer County Community Mental Health (LCCMH) will be safeguarded.

This policy is written to establish policies and procedures for prompt reporting and investigating of alleged violations of rights of persons served and resolution of alleged violations of rights, as enumerated in Act 258 of the Public Acts of 1974, as amended, and the Administrative Rules of the Department of Health and Human Services and to ensure appropriate remedial action when such allegations are substantiated.

It is the policy of the LCCMH that rights complaints filed by persons served or anyone on behalf of a person served are sent or given to the designated rights officer / advisor in a timely manner. This policy will be applicable to all mental health programs, services, and facilities operated by or under contract with the Lapeer County Community Mental Health Services Board.

All agencies, programs, and service providers that have entered into a contractual relationship with the LCCMH must, as a condition of that contract, implement and abide by the Agency's Recipient Rights protection system.

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**STANDARDS:**

CMH and respondents will ensure that:

- A. The Office of Recipient Rights (ORR) has unimpeded access to all programs, services, employees, volunteers, and all evidence that the ORR determines is necessary to conduct a thorough investigation or to fulfill its monitoring function.
- B. Copy of documentation that is requested by the ORR is provided in a timely manner.
- C. Action is taken to protect the person served during the investigation.
- D. All employees, contract employees, or volunteers of CMH Services Program who may have knowledge pertinent to the investigation must cooperate fully with the ORR and other authorized investigative bodies. Appropriate disciplinary action will be taken for any failure to cooperate.
- E. All employees, contract employees, volunteers, persons served, and others who file a rights complaint, cooperate in an investigation, or otherwise engage in rights-related activities are protected from discrimination, harassment, or retaliation in accordance with applicable laws, agency policies and procedures. Appropriate disciplinary action is taken if this does occur.
- F. Appropriate administrative action is taken for failure to report suspected and / or alleged rights violations.
- G. Region 10 PIHP is responsible for arranging mediation per the State of Michigan guidelines. Mediation is not a function of the Recipient Rights Office at LCCMH.
- H. All persons served will receive a summary of their rights. This information will be provided in an understandable manner. The name of the person who provided the explanation will be documented in the clinical record as well as alternate methods that were utilized to explain the rights of the person served.

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**PROCEDURES:**

**REPORTING RIGHTS VIOLATIONS:**

- A. All employees, contract employees, or volunteers of Lapeer County Community Mental Health Services Program must report if he or she becomes aware of any type of alleged, apparent, or suspected rights violations. This report should be made within 24 hours to the Recipient Rights Officer. If the allegation is of abuse or neglect, the report must be filed immediately.
- B. A person served, or another individual on behalf of a person served, may file a rights complaint with the office alleging a violation of this act.
- C. A rights complaint will contain all of the following: (a) a statement of the allegations that give rise to the dispute; (b) a statement of the right or rights that may have been violated; (c) the outcome that the complainant is seeking as a resolution to the complaint.
- D. Retaliation or Harassment: If a person served is the victim of retaliation or harassment because he or she filed a complaint and/or was interviewed during the rights investigation process, etc., this does constitute a rights violation and must be investigated by the rights office. Disciplinary action is to be taken if there is evidence that retaliation or harassment has occurred. If a staff of the rights office or any staff person engaged in rights related activities is a victim of retaliation or harassment the Rights Officer will forward that information to the CEO who must ensure that disciplinary action is taken if there is evidence that retaliation or harassment has occurred. (MCL 330.1755 [3] [a])

**COMPLAINT PROCESS:**

- A. The Office of Recipient Rights (ORR) will:
  - 1. Ensure that persons served, guardians, parents of minors, staff and other interested persons have access to recipient rights complaint forms.
  - 2. Assist the person served or other individual with the complaint process as necessary.
  - 3. Receive all verbal and written recipient rights complaints. If the rights complaint is verbal, the ORR should utilize a complaint form to document the information.

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4. Advise the person served or other individuals that there are advocacy organizations available to assist in the preparation of a written rights complaint and offer to make the referral.
5. In the absence of assistance from an advocacy organization, assist in preparing a written complaint, which contains a statement of the allegation, the right allegedly violated, and the outcome desired by the complainant.
6. Advise the person served who has been physically, sexually, or otherwise abused, of their options to pursue injunctive and other appropriate civil action.
7. Notify immediately the Michigan Department of Health and Human Services, Adult Protective Services or Children's Protective Services staff and required laws enforcement agencies of complaints of suspected abuse or neglect. If applicable a complaint should be made to Adult Foster Care and Licensing if the person served lives in a residential setting.
8. Advise the Chief Executive Officer (CEO) and the Program Supervisor of the rights complaint within five (5) business days of the rights complaint. In cases of abuse or neglect, notification should be done immediately.

#### INVESTIGATIVE PROCESS:

##### A. The Office of Recipient Rights will:

1. Ensure that all reports of apparent or suspected violations of rights within LCCMH are investigated in accordance with requirements of Chapter 7A of the Mental Health Code.
2. Initiate investigation of apparent or suspected rights violations in a timely and efficient manner. In addition, ensure that an investigation is immediately initiated in cases involving alleged abuse, neglect, serious injury or death of a person served when a Rights violation is apparent or suspected. In cases not warranting an investigation, the Rights Office conducts an intervention of an apparent or suspected Rights violation in compliance with the standards established by DHHS.
3. Refer investigations of all rights complaints filed against the conduct of the CEO to the Recipient Rights Officer of another Community Mental Health Services Program or to the State Office of Recipient Rights, as decided by the LCCMHSB.

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4. Ensure all investigation activities for each rights complaint is accurately recorded by the Recipient Rights Officer (RRO).
5. Ensure that each rights complaint is accurately recorded upon receipt by the rights office. Assign and affix a file number to each rights complaint by noting the month of the year, the year, and the chronological number of rights complaints received within the month (Example: 012008-01).
6. Ensure that an acknowledgment of the receipt and recording of the complaint is sent along with a copy of the written complaint to the complainant within five (5) business days of receipt of the rights complaint.
7. Notify the complainant within five (5) business days after receipt of the complaint if RRO staff determines that no investigation of the complaint is warranted and / or if intervention is appropriate. The complainant will be informed when an allegation refers to a right for which remedial action is only available outside the jurisdiction of LCCMH, and the complainant will be assisted in contacting other appropriate agencies regarding the allegation(s).
8. Issue a written status report every 30 calendar days during the course of an investigation to the complainant, the parent of a minor, guardian of a person served, respondent and the responsible mental health agency. The 30-day status report will contain: (a) statement of the allegations; (b) statement of issues; (c) citations to relevant provisions to the Mental Health Code, rules, policies and guidelines; (d) investigative progress to date; and (e) expected date of completion.
9. Upon completion of the investigation, submit a written investigative report to the respondent and to the CEO of LCCMH (issuance of the investigative report may be delayed pending completion of investigations that involve external agencies). The written investigative report will contain all of the following: (a) statement of the allegations; (b) statement of issues; (c) citations to relevant provisions to the Mental Health Code, rules, policies and guidelines; (d) investigative findings; (e) conclusions; and (f) recommendations, if any.
10. Upon completion of the investigation, ensure the complainant, or the person served on behalf of whom the complaint was filed (if the complaint was not filed by the person served), is notified of the outcome of the rights complaint in a manner that does not violate employee rights.

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11. Subject to delays involving pending action by external agencies (MDHHS, Law Enforcement, etc.) complete rights investigations no later than 90 calendar days following receipt of the rights complaint.
12. Utilize the preponderance of the evidence standard as the standard of proof in determining whether a right was violated.
13. Comply with pertinent LCCMH policies to assure that investigations are conducted in a manner that does not violate employee rights.
14. Ensure on substantiated rights violations, the respondent and / or LCCMH took appropriate remedial action that met all the following requirements: (a) corrects or provides a remedy for the rights violation; (b) is implemented in a timely manner; and (c) attempts to prevent a recurrence of the rights violation. This action will be documented and made part of the record maintained by the rights office.
15. Ensure that the CMH and respondents took appropriate disciplinary action against those who have engaged in abuse or neglect.
16. Ensure that CMH and respondents take appropriate administrative action when staff fails to report alleged or suspected rights violations.
17. If through the course of a rights investigation a staff including staff from the rights office alleges that he or she has been the victim of retaliation or harassment by another staff person, the Rights Officer will refer to this allegation in the investigative findings. The notation should also include that the allegation has been referred to the Respondent's Director and the Director of Human Resources for further follow through and resolution. In the recommendation section, the Rights Officer will include that the Director submit in writing the results of the investigation and what disciplinary action was taken, if retaliation or harassment was substantiated. This documentation must be submitted in writing to the Rights Office.
18. If the allegation of retaliation or harassment comes in a complaint from a staff person, including a staff of the rights office, it may be logged as 0001 (outside jurisdiction of the rights office to investigate). The CMH Chief Executive Officer will submit a letter to the director of the respondent indicating the allegation that is to be investigated and, if substantiated, disciplinary action must be taken against the staff person, written documentation of the disciplinary action must be submitted to the Rights Office. The complaint file would have the

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complaint, the letter and the results of the investigation by the respondent including disciplinary action taken if substantiated.

19. Ensure that remedial action taken on substantiated rights violations is documented and made part of the record maintained by the Rights Office.
20. Re-open or re-investigate a rights investigation if there is new evidence that was not presented or available at the time of the investigation.
21. Submit an annual written summary of all complaints to the Recipient Rights Advisory Committee. This summary will not include any confidential information and will be used to address trends, track any needs for improvements and any systemic issues. If the Recipient Rights Advisory Committee makes any recommendations, they will be forwarded to the Quality Management Council and to the Chief Executive Officer for their review. The annual written summary will be submitted to the Quality Improvement Department for inclusion in the Quality Council Annual Report.

#### SUMMARY REPORT / PROCESS:

##### A. The Chief Executive Officer will:

1. Submit a written summary report to the complainant and person served, if different than the complainant, within ten business days after receiving a copy of the investigative report from the Recipient Rights Office. The written summary report will contain all of the following: (a) statement of the allegations; (b) statement of issues involved; (c) citations to relevant provisions to the Mental Health Code, rules, policies and guidelines; (d) summary of investigative findings of the Rights Office; (e) conclusions of the Rights Office; (f) recommendations, if any, made by the Rights Office; (g) action taken, or plan of action proposed, by the respondent / agency; (h) statement describing the complainant's right to appeal and the grounds for the appeal. This appeal information will also be sent to the person served, guardian, or parent of a minor.
2. The CEO may designate the ORR to prepare the Summary Report for review and approval by the CEO.
3. Ensures that if the Summary Report included a Plan of Action, written notice was issued to the potential appellants upon completion of the plan. If the action taken was different than the plan, the notice included the action that was taken and the

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date it occurred as well as the right to appeal on action only. The notice must indicate that the appeal may be made within 45 days of the action taken.

4. Ensures that information in the summary report was provided within the constraints of the confidentiality / privileged communications sections of the Mental Health Code and the information did not violate the rights of any employee (e.g.: Bullard-Plawecki Employee Right to Know Act, Act No. 397 of the Public Acts of 1978)
5. Ensures that firm and disciplinary action and / or other remedial action is taken to resolve rights violations.
6. Ensures appropriate disciplinary action is taken against those who have engaged in abuse or neglect and appropriate administrative action is taken for those who failed to report suspected violations of rights.
7. Ensures that all staff and service providers takes appropriate disciplinary action against those who have engaged in abuse or neglect or retaliation or harassment.

#### THE RECIPIENT RIGHTS ADVISORY COMMITTEE:

- A. LCCMH Board will appoint a Recipient Rights Advisory Committee consisting of at least six and no more than twelve members. The membership of the Committee will be broadly based so as to best represent the varied perspectives of CMH's geographic area. At least one-third of the membership will be primary persons served or family members; and of that one-third, at least one-half will be primary persons served. The Board will ensure that an appointed member is not a party to a contract with the Lapeer County Community Mental Health according to the Mental Health Code 330.1222.
- B. The Recipient Rights Advisory Committee will do all of the following:
  1. Serve as the appeals committee for recipient's appeals;
  2. Meet monthly;
  3. Maintain a current list of member's names to be made available to individuals upon request. (Note in the case of members who are recipients of CMH



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services, identification of them as recipients will not be made without their written and informed consent);

4. Maintain a current list of categories represented to be made available to individuals upon request;
  5. Protect the office of recipient rights from pressures that could interfere with the impartial, even-handed and thorough performance of its functions;
  6. Recommend candidates for Recipient Rights Officer to the CEO, and consult with the CEO regarding any proposed dismissal of the Recipient Rights Officer;
  7. Serve in an advisory capacity to the CEO and the Recipient Rights Officer;
  8. Review and provide comments on the report submitted by the CEO to the Executive Board;
  9. Review the funding of the Recipient Rights Office on a yearly basis.
- C. Meetings of the Recipient Rights Advisory Committee are subject to the Open Meetings Act, Act No. 267 of the Public Acts of 1976. Minutes will be maintained and made available to individuals upon request.

#### APPEALS COMMITTEE:

- A. The CMH Board has designated the Recipient Rights Advisory Committee as the Appeals Committee.
- B. The Appeals Committee will:
  1. Appoint one member to serve as the chair;
  2. Receive training about recipient rights, investigations, and appeals;
  3. Ensure that a member who has a personal or professional relationship with an individual involved in an appeal abstains from participating in that appeal as a member of the committee;

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4. Conduct appeals proceedings within the constraints of confidentiality and privileged communication in Section 748 and 750 of the Mental Health Code. Such meetings are NOT subject to the Open Meetings Act.

C. Appeal of a Summary Report:

1. Not later than 45 days after receipt of the Summary Report, the complainant, person served (if different than the complainant), parent of a minor person served or guardian may file an appeal with the Appeals Committee. If an individual without standing files an appeal, a letter will be sent explaining that they have no standing to appeal a summary report.
2. An appeal of a summary report must be based on one of the following grounds.
  - a. The findings of the ORR is not consistent with the facts, laws, rules, policies, or guidelines;
  - b. The action taken or plan of action proposed by the respondent does not provide an adequate remedy;
  - c. An investigation was not initiated or completed on a timely basis.
3. The Recipient 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.
4. 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.
5. The Appeals Committee will: (An Appeals Committee appointed under this policy may request consultation and technical assistance from the Michigan Department of Health and Human Services (MDHHS).
  - a. Review the appeal within five business days after receipt of the written appeal to determine whether it meets the criteria set forth above. (# 2 a, b, c)
  - b. The Committee will maintain a log of all appeals received and the disposition of each to be held in the ORR.

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- c. Within five business days of receipt of the appeal, written notice that the appeal has been accepted will be provided to the appellant, and a copy of the appeal will be provided to the respondent and the CMH. The appellant will also be informed within five business days if the appeal has not been accepted, as it did not meet the criteria set forth in the grounds for appeals.
- d. Within 30 days after receipt of a written appeal, meet in a closed session and review the facts as stated in all complaint investigation documents and do one of the following:
  1. Uphold the investigative findings of the ORR and request the action taken or plan of action proposed by the respondent; Copies of Appeals Committee decision included a statement of appellant's right to appeal to Step 2 Appeal within 45 days from receipt of decision. The grounds for appeal are that the investigative findings of the Rights Office are inconsistent with the facts, rules, policies, or guidelines.
  2. Return the investigation to the ORR and request that it be reopened or reinvestigated; Rights Officer sends reinvestigation report to the CEO within 45 days. Upon receipt of the Report of Investigative Findings the CEO 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. Director's Summary included a statement of appellant's right to appeal to Step 2 Appeal within 45 days from receipt of decision. If the case is unsubstantiated the grounds for appeal would be when the investigative findings of the rights office are inconsistent with facts, rules, policies or guidelines. If the case is substantiated, the CEO's summary includes a statement of appellant's right to appeal to CMHSP Appeals Committee within 45 days from receipt of decision on the ground of action taken or plan of action proposed does not provide an adequate remedy.
  3. Uphold the investigative findings of the ORR but recommend that the respondent take additional or different action to remedy the violations; written notice of this direction for additional or different action to be taken by the respondent will also be provided to the Responsible Mental Health Agency (RMHA) if different than the

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respondent and the office. The CEO will send a response within 30 days as to the action or justification why the action was not taken and will submit a summary report to the complainant, recipient if different than then the complainant, the parent or guardian, and the appeals committee. If the action taken by the respondent is determined by the Appeals Committee and/or the appellant still to be inadequate to remedy the violation, the appellant will be informed by the Appeals Committee of his/her right to file a recipient rights complaint against the RMHA.

4. If the Committee confirms that the investigation was not initiated or completed in a timely manner, recommend that the CEO take appropriate supervisory action with the investigating Rights Officer / Advisor.
  5. Recommend that the CMH Board request an external investigation by another rights office or the Michigan Department of Health and Human Services, Office of Recipient Rights. The Board will send a letter of request to the Director of MDHHS-ORR within 5 business days of receipt of the request by the Appeals Committee. The CEO of the CMH making the request will be responsible for the issuance of the Summary Report, which will identify the grounds for Appeals and Advocacy information. This will include that any appeals will be forwarded to the MDHHS Appeals Committee.
- e. The Appeals Committee will document its decision and justification in writing. Within ten working days of reaching their decision, it will provide copies of the decision to the respondent, appellant, person served if different than the appellant, the guardian of the person served if a guardian has been appointed, CMH and the ORR. Copies will include a statement of the appellant's right to appeal to the Department, the time frame for an appeal (45 days from receipt of decision) and the grounds for appeal (investigative findings of the rights office are inconsistent with facts, rules, policies, or guidelines). Justification for the decision made by the Committee will also be included.
  - f. The appeals committee will always document their decisions and justification in writing and will be kept in the Rights Office
  - g. The Committee will not consider additional allegations that were not part of the original complaint. If additional allegations are made, the

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Committee will inform the appellant of his / her right to file a complaint with the ORR.

D. Appeal of a CMH Appeals Committee Decision:

1. Within 45 days after receiving notice of the decision of the CMH Appeals Committee, the appellant may file an appeal with the Department of Health and Human Services. The appeal will be based on the record established in the previous appeal, and may be based only upon the allegation that the investigative findings of the ORR are not consistent with the facts, or with law, rules, policies, or guidelines.
2. The Department will give written notice of receipt of the appeal to the appellant, respondent, local ORR, and the responsible mental health agency. The respondent, local ORR and the responsible mental health agency will ensure that the Department has access to all necessary documentation and other evidence cited in the complaint.
3. The Department will review the record based on the reason for the appeal and will not consider additional evidence or information that was not available during the local appeal process, although the Department may return the matter to CMH requesting an additional investigation.
4. Within 30 days after receiving the appeal, the Department will review the appeal and do one of the following:
  - a. Affirm the decision of the local appeal committee;
  - b. Return the matter to the CMH with instruction for additional investigation and consideration.
5. The Department will provide copies of its action to the respondent, appellant, person served if different than the appellant, the guardian of the person served if a guardian has been appointed, CMH, and the local ORR.

**DEFINITIONS:**

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

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Appeals Committee: A committee to hear appeals of recipient rights matters. This committee consists of seven individuals who may also serve as the Recipient Rights Advisory Committee.

Appellant: The person served, complainant, parent of a minor child, or guardian who appeals a recipient rights finding or a respondent's action with a recipient rights summary report to an Appeal Committee.

Chief Executive Officer: The individual otherwise known as the executive director, appointed under Section 330.1226 of the Mental Health Code to direct the CMHSP or his or her designee.

Complainant: The individual who files a recipient rights complaint.

Investigation: Means a detailed inquiry into and systematic examination of an allegation raised in a rights complaint.

Office of Recipient Rights: (ORR) strives to ensure the protection of recipients' rights in various ways, including training, contract/policy development, service site assessments and complaint resolution.

Preponderance of Evidence: A standard of proof which is met, when, based upon all available evidence, it is more likely that something is true than untrue; greater weight of evidence, not to quantity (number of witnesses), but as to quality (believability and greater weight of important facts); more than 50 percent.

Person Served: A person served of CMH services or from a provider under contract with Lapeer County Community Mental Health.

Recipient Rights Officer (RRO): A person who is responsible to protect and promote the constitutional and statutory rights of the persons' served by the public mental health services and empower person's served to fully exercise these rights.

Respondent: 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.

Responsible Mental Health Agency: means the hospital, center, or community mental health services program that has primary responsibility for the care of the person served or for the delivery of services or supports to that person served.

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Rights Complaint: A written or oral statement that meets the requirements of Section 776 of the Mental Health Code.

**REFERENCES:**

Mental Health Code  
Mental Health Administrative Rules

LKJ:mgr

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This policy supersedes  
# 07/10013 dated 07/19/210.  
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