

BARRY COUNTY COMMUNITY MENTAL HEALTH AUTHORITY POLICY AND PROCEDURE MANUAL

Policy: Complaint and Appeal Process 7-M		Application: BCCMHA Staff & Providers
Reviewed 9/6/2023	Revised 8/17/2022	First Effective 5/14/1996

I. PURPOSE

This policy is designed to outline procedures for the handling of complaints received by the Office of Recipient Rights (ORR), the resulting investigations, written complaint investigation reports, appeal/dispute resolution and the storage of the complaint reports.

II. DEFINITIONS

Code Protected Rights: A right that is guaranteed by the Michigan Mental Health Code (Act 258 of 1974), Administrative Rule of the Department of Health and Human Services, or other applicable law.

Complainant: A client or any other person who files a complaint indicating that a right has been violated.

Complaint: When a complainant files a recipient rights complaint which is a Code protected right within the jurisdiction of CMH and/or a CMH employee, contract employee, or volunteer has been accused of abusing or neglecting a client.

Intervention: When an allegation refers to an issue that is outside the jurisdiction of the ORR, and therefore is not appropriate for the rights process; or when an allegation refers to a right for which remedial action is easily obtained because the facts and remedies are clear, it is not an allegation of abuse or neglect, or it can be resolved to the complainant’s satisfaction within 30 days.

Preponderance of Evidence: Means 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 (number of witnesses), but as to quality (believability and greater weight of important facts).

Not Substantiated: A determination made by the Recipient Rights Officer (RRO) that the recipient rights complaint was not a violation.

Remedial Action: Appropriate action taken to correct a violation from reoccurring and/or remove contributing conditions.

Substantiated: A determination made by the RRO that the recipient rights complaint was a rights violation.

III. POLICY

To establish and maintain a simple mechanism for recipients and others to report complaints.

To establish and maintain a system for determining whether violations have occurred and ensure a firm and fair disciplinary action that will be utilized in the event of confirmed violations.

There will be appropriate forms for reporting recipient rights violations readily available to recipients, parents of minors, guardians and others who wish to act on their behalf (including staff). These reporting forms include the Recipient Rights Complaint forms, See Attachment A.

IV. PROCEDURE **COMPLAINTS**

The Your Rights booklet, a summary of rights, will be placed in all Orientation Folders given to BCCMHA consumers during the intake process. [MHC 1706]

Recipient Rights information will be explained to all BCCMHA consumers in an understandable manner during the intake process. If alternative methods, such as an interpreter for a different language is needed, documentation of the alternative methods as well as the interpreter's name used will be documented in the clinical record. [MHC 1755(5)(b); AR 7011]

Any individual who thinks a client's rights have been violated shall make a verbal or written complaint to the ORR. The BCCMHA Recipient Rights Office assures that consumers, parents of minors, guardians, and others have ready access to Recipient Rights Complaint Forms. [MHC 1776(1)(5)]

Complaint forms shall be at all service sites. The RRO will be made available to assist in the complaint process, as necessary. [MHC 1776(5)] Each Recipient Rights Complaint is recorded upon receipt in the BCCMHA Recipient Rights Complaint Module of BEHRI (database designed for the tracking of complaints). [MHC 1776(3)]

The ORR will initiate the investigation of apparent or suspected rights violations in a timely and efficient manner. [MHC 1778(1)]

Rights complaints filed by consumers or anyone on their behalf will be provided to BCCMHA ORR in a timely manner. [MHC 1776(1); 1778(1)]

Subject to delays involving pending action by external agencies, (i.e., Department of Health and Human Services, law enforcement), the office shall complete the investigation no later than 90 days after it receives the rights complaint.

Any employee making a complaint in good faith with the ORR is protected by the Michigan Whistleblower's Protection Act (460 PA 1980) and will not be discharged, threatened, or otherwise discriminated against for doing so.

Barry County Community Mental Health Authority (BCCMHA) will endeavor to ensure that complainants, staff of the ORR, and any staff acting on behalf of a client will be protected from harassment or retaliation resulting from recipient rights activities as stated in the Whistleblowers' Protection Act. Complaints and allegations of retaliation and/or harassment will be investigated, and appropriate disciplinary action will be taken. [MHC 1755(3)(a)]

The RRO shall determine if the complaint involves a right protected by the Mental Health Code and if not:

1. Informs the complainant within 5 business days after the complaint is received and refers the complainant to the appropriate agency. [MHC 1776(4)]

If the complaint is related to the Rehabilitation Act of 1973 or the Americans with Disabilities

Act of 1990, the RRO will accept such complaints and may assist/refer for further action. A letter will be sent to the complainant upon receipt by the rights office within 5 business days notifying them of the complaint along with a copy of the complaint received. [MHC 1776(3)]

If a rights complaint is filed regarding the conduct of the Executive Director, the rights investigation would be conducted by the office of another CMH or by the state ORR as decided by the BCCMHA Board of Directors. [MHC 1776(6)]

The RRO shall determine if the alleged rights violation involves abuse or neglect and if so:

1. Immediately initiate investigation in cases involving alleged abuse, neglect, serious injury or death of a recipient when a rights violation was apparent or suspected. [MHC 1887(1)]
2. Secure a written statement from the complainant. If necessary, aid the complainant in writing the complaint.
3. Informs the Program Supervisor or Contracted Provider, in the case of a rights violation by an employee and their name, in order to take steps necessary such as reassignment of the employee to prevent contact between employee and the client named in the complaint, or if this is not possible, suspend the employee with pay until the investigation is complete.

For verbal complaints that involve code-protected rights, but not abuse or neglect, the RRO instructs the complainant to describe the alleged violation in writing and send it in as soon as possible to the ORR. The ORR advises the individual of advocacy organizations available to assist in the preparation of a written rights complaint and offers to make a referral if necessary. [MHC 1776(5)] In the absence of assistance from an advocacy organization, the rights office assists in preparing a written complaint, which contains a statement of the allegation, the right allegedly violated, and the outcome desired by complainant. [MHC 1776(2) (a-e); (5)]

INVESTIGATIONS OF COMPLAINTS

The RRO shall determine if the complaint will be investigated formally or to determine Out of Jurisdiction or No Right Involved.

Upon receiving a complaint, the RRO will send a letter to the complainant along with a copy of the complaint within 5 business days [MHC 1776(3)] stating the complaint has been received and if it will be investigated and investigative activities were accurately recorded for each complaint [MHC 1778(2)]. Whenever there is an acknowledgment letter, there must be a written complaint. The rights office initiated investigation of apparent or suspected rights violations in a timely and efficient manner. [MHC 1778(1)]:

- A.1. Interview the complainant and client, if appropriate.
- A.2. Identify all persons who may have information about the allegation.
- A.3. Interview all persons identified and, where appropriate, secure written statements regarding the recipient rights allegations.
- A.4. Review all the pertinent records, applicable Department of Health and Human Services Board Policies, and document the necessary information.
- A.5. Assure the investigation is conducted in a manner consistent with BCCMHA personnel policies and established contracts and is not in violation of employee rights. [MHC 1755(3)(b)]

- A.6. Make an independent determination of whether the available facts lead to a conclusion that the allegation can be substantiated or unsubstantiated based on the preponderance of evidence standard. [MHC 1778(3)]
- A.7. Investigative report, which includes the statement of allegation, statement of the issues involved, citations to the relevant provisions of the Mental Health Code, rules, policies and guidelines, investigate findings, conclusions, and recommendations, if any. [MHC 1778(5)] The RRO shall issue a Status Report every 30 calendar days during the course of the investigation to the complainant, respondent, and responsible mental health agency if the investigation cannot be completed within 30 days. This shall include allegations, issues, citations to relevant provisions to the Mental Health Code, rules, policies, and guidelines, investigative progress and expected completion date. [MHC 1778(4)] The investigation shall be completed within 90 days unless subject to delay pending completion of investigations that involves external agencies, (i.e., Department of Health and Human Services and/or law enforcement). [MHC 1778(1)] Complainant will be notified in writing of any such delay in the completion of the report.
- A.8. Affix a number to each recipient rights complaint received to include “No Right Involved” and those cases “Out of Jurisdiction”.
- A.9. Log the complaint on the complaint log which includes: ORR Numbers, Date Opened, Complaint Source, Complainants Name, Recipients Name, Recipients Population, Category, Action Taken, Decision, RIF Date, Summary Report Date, and Remedial Action Taken. see Attachment B
- A.10. Distribute a copy of the investigative report to the Community Mental Health, Executive Director, respondent and responsible agency director [MHC 1778(5)], if appropriate, requesting written remedial corrective action within 5-7 days. Other involved investigative agencies (DHHS, Licensing and/or law enforcement) shall receive a report as applicable. Issuance of the written investigative report may be delayed pending completion of investigations that involve external agencies.
- A.11. On substantiated rights violations, the respondent and/or CMH will take appropriate remedial action that meets all of the following requirements:
1. Corrects or provides remedy for the rights violation;
 2. Is implemented in a timely manner;
 3. Attempts to prevent a recurrence of the rights violation [MHC 1780(1)]
 4. The remedial action taken is documented in the summary report and made part of the record maintained by the RRO [MHC 1780(2)]
 5. When either CMH or provider personnel failed to report suspected violations of rights, appropriate administrative action was taken [MHC 1155, 1722(2), AR7035(1)/ RR Standard A28]; and
 6. BCCMHA ensures that appropriate disciplinary action will be taken against an employee for substantiated abuse/neglect [MHC 1722(2) or retaliation and harassment. [MHC1755(3)(a), AR7035(1)].
- A.12. If the Summary Report included a Plan of Action, written notice was issued to the potential appellants upon completion of the plan. [2018 technical requirements] by the Executive Director. If the action taken was different than the plan, the notice included the action that was taken and the date it occurred as well as the right to appeal within 45 days on action only. [MHC 2018 Technical requirements]
- A.13. The Executive Director will send a summary report, within 10 days of ORR report,

to the complainant and client (if different than complainant), guardian or parent of minor child [MHC 1782(1)], including statement of allegations; citations relevant to provisions of applicable laws, rules, policies, and guidelines; statement of issues involved; investigative findings, conclusions, ORR recommendations, and action taken/plan of action proposed by the respondent, and information describing potential appellants rights to appeal, time frames and grounds for making an appeal, and process for filing an appeal. [MHC 1782(1)]. The ORR advised the individual of advocacy organizations available to assist in the preparation of an appeal and offered to make referral. [MHC 1784(2)] In the absence of assistance from an advocacy organization, the ORR will assist the complainant in meeting the procedural requirements of a written appeal. [MHC 1748(3)] This is accomplished through the Summary Report submitted by the Executive Director to the complainant, recipient, (if different than the complainant), guardian or parent of minor.

Records compiled in the course of an investigation, including remedial action taken, shall be retained by the RRO, maintained separate from recipient case records, and shall be subject to confidentiality safeguards of Public Act 258, Section 748 [MHC 1782(2)], Bullard-Plawecki Right to Know Act and all employee confidentiality statutes. Investigations are conducted in a manner that does not violate employee rights. [MHC 1782(2)]

An appeal may be filed no later than 45 days after receipt of the summary report [MHC 1784(1)]. The grounds for appeal are:

1. The investigative findings of the rights office are not consistent with the facts, laws, rules, policies or guidelines
2. service provider does not provide an adequate remedy
3. an investigation was not initiated or completed on a timely basis [MHC 1784(2)]

APPEAL PROCESS/DISPUTE RESOLUTION

The Recipient Rights Advisory Committee has been designated by the BCCMHA Board to act as the Appeals Committee. [MHC 1774(2)]

The Appeals Committee may request consultation and technical assistance from MDHHS-ORR. [MHC 1774(5)]

If the complainant, parent of minor, recipient or guardian disagrees with the findings of the Recipient Rights Summary Report, they may appeal in the following way:

1. Within 45 days of receipt of findings, write the BCCMHA Recipient Rights Appeal Committee to request an appeal, including basis for request.
2. Within 5 business days of receipt of the written appeal, at least two members of the BCCMHA Appeals Committee will review the appeal request to see if it meets criteria. [MHC 1784(4)] If the appeal is denied, the BCCMHA Appeals Committee will notify the complainant within 5 business days in writing. [MHC 1784(4)] Within the 5 business day period, if the appeal is accepted, the BCCMHA Appeals Committee will send written notice to complainant; copy of appeal to respondent [MHC 1784(4)]; and Community Mental Health Service Provider.
3. The appeals committee meeting will be held within 30 days of the receipt of the appeal.

The committee shall review the facts and do one of the following:

- a. Uphold ORR findings and action/plan of action; copies of appeals committee decision included a statement of appellant's right to appeal to Step 2 Appeal and the time frame for appeal (45 days from receipt of decision) [MHC 1778, 2019 Contract technical requirement attachment] and ground for appeal (investigative findings of the rights office are inconsistent with facts, rules, policies or guidelines) when the decision is upheld;
- b. Return to ORR for reopening or reinvestigation; rights advisor sent reinvestigation Report of Investigative Findings to Executive Director within 45 days. Upon receipt of the RIF, the Executive Director 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. [MHC 1780, 1782(1), 1784(5)(b), 2019 Contract technical requirement attachment]. The Executive Director's Summary Report will include a statement of appellant's right to appeal to Step 2 Appeal and the time frame for appeal (45 days from receipt of decision) and ground for appeal (investigative findings of the rights office are inconsistent with facts, rules, policies or guidelines) if the case remained unsubstantiated. [MHC 1784(6), 1786] Executive Director's Summary Report included a statement of appellant's right to appeal to CMHSP Appeals Committee and the time frame for appeal (45 days from receipt of decision) and ground for appeal (action taken or plan of action proposed does not provide an adequate remedy) if the case is substantiated;
- c. Uphold ORR findings but recommend that respondent take different or additional remedial action; written notice of this direction for additional or different action to be taken by the respondent shall also be provided to the Executive Director. A response will be sent within 30 days as to the action taken or the justification as to why it was not taken. The response will be sent to the complainant, recipient, if different than the complainant, parent or guardian, and the appeal committee. [MHC 1784(5)(c)/2019 Contract technical requirement attachment] 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 shall be informed by the Appeals Committee of his/her right to file a recipient rights complaint against the responsible mental health agency; or recommend that Board request an external investigation by DHHS-ORR; or [MHC 1784(5)(a-d)] If the Appeal Committee notifies the CMH Board Chair of a recommendation to seek an external investigation from MDHHS-ORR, the board will send a letter of request to the director of MDHHS-ORR within 5 business days of receipt of the request from the appeals committee. The Executive Director making the request will be responsible for issuing the summary report, which will identify the grounds and advocacy information and MDHHS-ORR Appeal Committee as the committee for any Appeal [MHC 1784(5)(d), 2019 Contract technical requirement attachment]
- d. Recommend that the Executive Director of the CMHSP take appropriate supervisory action with the investigating rights officer/advisor; (the Committee confirms that the investigation was not initiated or completed in a timely manner).

The Appeals Committee report documented its decision and justification of the decision in

writing [MHC 1784(6), MDHHS/CMH contract Attachment C6.3.2.4] and sent within 10 working days from the committee’s decision to: appellant, recipient (if different), recipient’s guardian, CMHSP and the rights office. [MHC 1784(6)]

Copies of the Appeals Committee decision include a statement of appellant’s right to appeal to the Department of Health and Human Services, the time frame for appeal (45 days from receipt of decision) and ground for appeal (investigating findings of the rights office are inconsistent with facts, rules, policies or guidelines).

A member of the appeals committee who has a personal or professional relationship with an individual involved in an appeal will abstain from participating in that appeal as a member of the committee. MHC 1774(6)]

STORAGE AND DISTRIBUTION OF RECIPIENT RIGHTS REPORTS

All complaint reports will be stamped “CONFIDENTIAL” in red ink by the Rights staff.

One copy of the complaint report with a request for corrective action will go to the Director of the contract agency, or internally to the Executive Director.

Persons receiving these reports are responsible for assuring their confidentiality. These reports are to be maintained in a locked storage area.

These reports are only to be shared on a “need to know” basis, consistent with any applicable BCCMHA or contract agency personnel policies and Section 748 of the Mental Health Code.

REFERENCES

- Act 258, Public Acts of 1974, as amended, being MCL 330.1001 through 300.2106
- Rule 330.7001 through 350.7254, Administrative Rules of the Department of Health and Human Services
- Appropriate Department of Health and Human Services Administrative Manual Sections
- 1982 Guidelines for Community Mental Health Recipient Rights System
- 2018 Technical Requirement
- 2019 Contract attachment/technical requirement

ATTACHMENTS

- [Recipient Rights Complaint Form](#)
- [Complaint and Appeal Process attachments.pdf](#)

APPROVED BY

Richard Thiemkey
Executive Director

Date