

# **BARRY COUNTY COMMUNITY MENTAL HEALTH AUTHORITY**

## **POLICY AND PROCEDURE MANUAL**

|                                                                         |  |                                         |                              |
|-------------------------------------------------------------------------|--|-----------------------------------------|------------------------------|
| Policy: 7-O Affordable Care Act Grievance,<br>Title II ADA, Section 504 |  | Application: BCCMHA Staff and Providers |                              |
| Approved: _____<br>Richard Thiemkey, MA Executive Director              |  |                                         |                              |
| Reviewed<br>5/6/2026                                                    |  | Revised<br>3/6/2025                     | First Effective<br>2/21/2017 |

### **PURPOSE**

To assure that the appeal and/or grievance process for clients complies with federal and state laws including, but not limited to, Office of Recipient Rights, Social Security Act, Affordable Care Act, and Due Process Clause of the U.S. Constitution. To set forth steps to ensure due process when an individual, while accessing and/or during the provision of services, believes they have been discriminated against based upon race, color, national origin, gender identity, age, or disability. To communicate to all direct and contracted providers, persons served and other stakeholders that individuals with disabilities shall not be excluded from participation or subject to discrimination in any Barry County Community Mental Health Authority (BCCMHA) funded program, service, or activity, and to outline the process for requesting and making accommodations to individuals with disabilities.

### **POLICY**

BCCMHA will promote accessibility, the removal of identified barriers to people with disabilities, and provide services, programs, and activities to individuals with disabilities in the most integrated setting appropriate to meet their needs within the context of the program, service, or activity being administered. Unnecessary segregation of people with disabilities violates the ADA. BCCMHA will not discriminate on the basis of race, color, national origin, sex, age, or disability, and to provide recipients with a procedure to request accommodations and to access the grievance procedure to attempt to resolve any concerns related to Title II ADA, Section 504, and Section 1557.

### **DEFINITIONS**

**Companion:** Family member, Friend, or associate of an individual seeking access to a BCCMHA service, program, or activity, who, along with such individual, is an appropriate person with whom BCCMHA or the provider should communicate (e.g., (a) a person whom the recipient designates to communicate with BCCMHA on their behalf regarding their condition or care; (b) a person legally authorized to make health decisions on behalf of the recipient; or (c) such other person with whom BCCMHA staff would ordinarily and regularly communicate regarding the recipient's medical condition.

**Covered Entity:** An entity that operates a health program or activity, any part of which receives Federal financial assistance; any entity established under Title I of the Affordable Care Act that administers a health program or activity; and the U.S. Department of Health and Human Services

**Discrimination:** Illegal treatment, either intentional or unintentional, of a person or group based on race, color, national origin, language spoken, religion, certain age limitations, genetics, gender identity, marital status, physical or mental disability, or inability to pay for

services. This includes the failure to remedy the effects of past discrimination.

**Federal Financial Assistance:** Any grant, loan, credit, subsidy, contract (other than a procurement contract but including a contract of insurance), or any other arrangement by which the Federal government provides or otherwise makes available assistance in the form of:

1. funds;
2. services of federal personnel; or
3. real and personal property or any interest in or use of such property.

Federal financial assistance, the U.S. Department of Health and Human Services provides or otherwise makes available including payments, subsidies, or other funds extended to a covered entity.

**Limited English Proficiency:** means potential members and members who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English may be LEP and may be eligible to receive language assistance for a particular type of service, benefit, or encounter.

**Major Life Activity:** is a term used in the ADA definition of disability. It refers to activities that an average person can perform with little to no difficulty, such as walking, seeing, speaking, hearing, breathing, learning, performing manual tasks, caring for oneself, and working. These are examples only. Other activities such as sitting, standing, lifting or reading are also major life activities.

**Preponderance of Evidence:** The greater weight of the evidence required to decide in favor of one side or the other. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence. Preponderance of the evidence is required and is contrasted with "beyond a reasonable doubt".

**Qualified Translator/Interpreter:** A person who has been tested and certified by a recognized body to provide an accurate interpretation from English to the oral or written language of the recipient. The interpreter must be familiar with the terminology to be used and be committed to confidentiality.

**Reasonable Accommodation:** Under Title 1, a modification or adjustment to a job, the work environment, or the way things are usually done that enables a qualified individual with a disability to enjoy an equal employment opportunity. A reasonable accommodation cannot fundamentally alter the nature of the program or job.

**Recipient:** definition in list or "broad, inclusive reference to an individual requesting or receiving mental health services delivered and/or managed by the PIHP, including Medicaid Enrollees, and all other recipients of services provided by BCCMHA.

**Section 1557:** Section 1557 is the nondiscrimination provision of the Affordable Care Act that prohibits discrimination on the basis of race, color, national origin, gender identity, age, or disability in certain health programs or activities.

**Section 1557 Coordinator:** Reference to the assignment of the Customer Service Representative and/or the Recipient Rights Officer to coordinate efforts to comply with and carry out responsibilities under Section 1557, including investigation of any grievance

communicated alleging noncompliance with Section 1557 or alleging any action that would be prohibited by Section 1557.

**Taglines:** Short statements written in non-English language that include the availability of language assistance services free of charge.

**Undue Hardship:** With respect to the provision of reasonable accommodation under Title I of the ADA, an undue hardship is defined as being a significant administrative burden, difficulty, or expense incurred by a covered entity, when considered in light of certain factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature and structure of the employer's operation. Where the facility for making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as would the facility's financial and administrative relationship to that organization. Employers do not have to provide accommodation that causes undue hardship.

**Undue Burden:** With respect to complying with title II or III of the ADA, an "undue burden" is a significant difficulty or expense incurred by a covered entity when considered in light of certain factors. These factors include the nature and cost of the action; overall financial resources of the site(s) involved; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements necessary for safe operation, including crime prevention measures; or any other impact of the action on the operation of the site; the geographic separateness, and the administrative or financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and if applicable, the type of operations or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

## **PROCEDURES**

BCCMHA and its contract network providers will remain compliant with current requirements under Title II ADA, Section 504, Section 1557, the Michigan Mental Health Code and other applicable law prohibiting discrimination on the basis of race, color, national origin, sex, age, or disability.

BCCMHA contract network providers are required to implement policies and procedures and take action consistent with their obligations under this policy and applicable law. Contract network providers are independently responsible as places of public accommodation under Title III of the ADA to take appropriate steps and make Reasonable Accommodations for individuals with disabilities. BCCMHA will neither make reasonableness determinations nor make Reasonable Accommodations on a contract network provider's behalf. BCCMHA may, however, review a contract network provides determination or purported modifications/accommodation in order to ensure compliance with this policy, applicable law, and relevant obligations under the Specialty Services Contract.

BCCMHA is committed to making reasonable modifications to policies, procedures, practices, programs, services, activities or facilities at no cost to the individual with a disability when the

changes are necessary to avoid discrimination based on disability, unless modification would fundamentally alter the nature of the program, service or activity, or create an undue hardship.

Reasonable accommodation and modifications are available to employees, applicants, people served and other stakeholders in accordance with the ADA and Section 504.

BCCMHA will provide Notice Requirements: Individuals with disabilities will be directed to request assistance through required signage regarding communication assistance/Auxiliary Aids and Language Assistance Services as outlined in Accessibility and LEP policies. for any language and written translation in prevalent languages).

BCCMHA has adopted an internal grievance procedure providing for prompt and equitable resolution of Civil Rights Grievances.

Title II ADA, Section 504, Section 1557, and their respective implementing regulations may be examined in the office of the **Civil Rights Coordinator**, 500 Barfield Dr., Hastings, MI 49058, (269) 948-8041, TTY 7-1-1 (MI Relay Service), Fax (269) 948-9319, [codavis@bccmha.org](mailto:codavis@bccmha.org), who have been designated to coordinate efforts of Barry County Community Mental Health Authority to comply with Section 1557.

### **Accommodation Request**

BCCMHA will not discriminate based on disability in the admission or access to, or treatment or employment in its programs, services or activities.

BCCMHA is committed to removing identified barriers to people with disabilities and other stakeholders. These barriers may include architectural, environmental, attitudinal, financial, employment, transportation, community integration, and communication.

No individual who meets eligibility requirements for a program or service will be excluded from participating in program activities solely by reason of disability.

As necessary within LEP parameters, BCCMHA customer focused information will be made available in alternative languages and formats such as Braille, large print, audio, or electronic media. Requests can be made to Customer Service for assistance to secure documentation. For more information see policy 11-D Limited English Proficiency.

In accordance with the ADA and Section 504, each entity within BCCMHA provider network with 50 or more employees must outline in a procedure, the process for requesting accommodation / modification.

BCCMHA promotional literature, newspaper articles and other media will focus on reducing stigma about disabilities and will seek to promote opportunities for individuals with disabilities.

BCCMHA will monitor to ensure that services provided, and meetings are in locations that are accessible for persons with mobility impairments.

BCCMHA will make appropriate arrangements to ensure that individuals with disabilities and individuals with limited English proficiency are provided auxiliary aids and services or language assistance services, respectively, if needed to participate in this grievance process. Such

arrangements may include, but are not limited to, providing qualified interpreters, taped cassettes of material for individuals with low vision, or assuring a barrier-free location for the proceedings. The Civil Rights Coordinator will be responsible for such arrangements.

**Accommodation Request Procedure:**

1. Any staff, applicant, person served, or other stakeholder may request reasonable accommodation to overcome a barrier while at BCCMHA due to their disability. An individual is encouraged to resolve concerns about accommodation or modifications by communicating with the relevant parties and proposing an appropriate resolution. Applicants may request accommodation through Civil Rights Coordinator. The Customer Services Representative may be of assistance if accommodation(s) for a customer to fully participate in services cannot be readily made available. Procedures for employee requests can be located in the Employee Handbook.
2. The individual will be encouraged to complete an Accessibility Request Form. The rights of the person to a prompt and equitable resolution of the issue or complaint filed will not be required prior to or impaired by the individual's pursuit of other remedies such as filing of an ADA complaint with the responsible federal department or agency.
3. The Executive Director or designee will provide a written determination describing what accommodations have been approved and explaining the rationale for determining that any particular accommodation was not approved. Upon receiving notice from the Executive Director, the Civil Rights Coordinator will promptly arrange for any approved accommodation.
4. An employee, applicant, person served or other stakeholder has the right to refuse an accommodation. For a person served, it may mean that the individual may not fully participate in the receipt of services. There is no civil rights protection for individuals who do not identify themselves and do not request accommodation as needed.
5. If an individual believes an accommodation is not being adequately or properly implemented, he/she may submit a written request for reconsideration, with suggestions for an appropriate resolution to the person responsible for implementation. If the matter is not resolved, the person served, an appeal may be made to the Executive Director or designee.
6. The rights of a person to a prompt and equitable resolution of the issue or complaint filed with BCCMHA will not be impaired by the individual's pursuit of other remedies at any time such as filing of an ADA/Section 504 complaint with the responsible federal department or agency.

**Civil Rights Grievance:**

Any person who believes someone has been subjected to discrimination on the basis of race, color, national origin, sex, age or disability may file a Civil Rights Grievance.

BCCMHA will not retaliate against anyone who opposes discrimination, files a Civil rights Grievance, or participates in the investigation of a Civil Rights Grievance.

BCCMHA will post notice that it does not discriminate in violation of Title II ADA, Section 504 or Section 1557. Such Notice of Nondiscrimination will be provided as described in the Accessibility and LEP policies and will include information about the applicability of Section 504, Section 1557, and Title II ADA to BCCMHA, as well as information about the Civil Rights

Grievance procedure and contact information about the Civil Rights Coordinator.

Accommodations intended to achieve accessibility will be made free of charge and in a timely manner. If a recipient is dissatisfied with the accommodation made by BCCMHA or its providers, they may contact the Civil Rights Coordinator or Corporate Compliance Officer, or utilize any or all dispute resolutions, grievance and appeal, Recipient Rights process, or hearing process made available for protection of their rights.

**Procedure:**

Grievances must be submitted to Civil Rights Coordinator within 60 days of the date the person filing the grievance becomes aware of the alleged discriminatory action. The complaint must be in writing, containing the name and address of the person filing it. The complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought.

Complaints regarding accessibility will be investigated and resolved through the procedures outlined in the 11-C Appeal and Grievance, Fair Hearing and Second Opinion Policy for Medicaid Grievances and 11-D Local Dispute and Resolution Process policies.

The Civil Rights Coordinator or designee will conduct an investigation of the Civil Rights Grievance. This investigation may be informal, but it will be thorough, giving all interested persons an opportunity to submit evidence relevant to the complaint. The Civil Rights Coordinator will maintain files and records of BCCMHA relating to such grievances. To the extent possible, and in accordance with applicable law, the Civil Rights Coordinator will take appropriate steps to preserve the confidentiality of files and records relating to grievances and will share them only with those who have a need to know.

The Civil Rights Coordinator will issue a written decision on the grievance, based on a preponderance of the evidence, no later than 30 days after its filing, including a notice to the complainant of their right to pursue further administrative or legal remedies.

The person filing the grievance may appeal the decision of the Civil Rights Coordinator by writing to the Executive Director within 15 days of receiving the Civil Rights Coordinator's decision. The Executive Director shall issue a written decision in response to the appeal no later than 30 days after its filing.

The availability and use of this grievance procedure does not prevent a person from pursuing other legal or administrative remedies, including filing a complaint of discrimination on the basis of race, color, national origin, sex (including pregnancy, sexual orientation, and gender identity), age or disability in court or with the US Department of Health and Human Services, Office for Civil Rights. A person can file a complaint of discrimination electronically through the Office for Civil Rights Complaint Portal, which is available at:

<https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf> or by mail or phone at:

U.S. Department of Health and Human Services,  
200 Independence Avenue, SW  
Room 509F, HHH Building  
Washington, DC 20201

Complaint forms are available at: <http://www.hhs.gov/ocr/office/file/index.html>.

Such complaints must be filed within 180 days of the date of the alleged discrimination.

BCCMHA will make appropriate arrangements to ensure that individuals with disabilities with limited English proficiency are provided auxiliary aids and services or language assistance services, respectively, if needed to participate in this grievance process. Such arrangements may include, but are not limited to, providing qualified interpreters, providing voiced records of material for individuals with low vision, or assuring a barrier-free location for the proceedings. (See the Limited English Proficiency Policy). The Civil Rights Coordinator will be responsible for such arrangements.

### **Civil Rights Coordinator Responsibilities:**

1. Maintain an accurate and current list of known resources available to assist individuals with Disabilities, including those with Sensory Impairments or other communication impairing Disabilities, and the means of accessing such resources; of the persons with Disabilities through the use of technologies and resources which maximize opportunities for participation.
2. Coordinate to connect individuals with appropriate resources;
3. Ensure that Notices of Nondiscrimination and Taglines are posted, consistent with the guidelines and requirements described in the Accessibility Policy.
4. Promptly communicate any complaints which are received about physical accessibility to the appropriate administrative staff, including but not limited to the Compliance Officer.
5. Collaborate with the Information with the Chief Clinical Officer to assess electronic and information technology accessibility issues, and to determine when modifications would result in undue financial and administrative burdens or fundamental alteration in the nature of the health program.
6. Promptly communicate any requests for accommodation to the Executive Director or other appropriate staff.
7. Investigate and resolve Civil Rights Grievances.
8. Maintain all records described herein.

### **REFERENCES**

Affordable Care Act – Section 1557 (42 USC § 18116)

Rehabilitation Act

Deaf Persons' Interpretation Act (PA 204 of 1982) Amended by PA 23 and 24 of 2007

CARF

Balance Budget Act of 1997

Americans with Disability Act

Centers for Medicare and Medicaid Services

Office of Civil Rights

29 USC 794 (Section 504 of the Rehabilitation Act of 1973)

42 USC 18116 (Section 1557 of the Patient Protection and Affordable Care Act)

42 USC 12131 – 12134 (Subtitle a of Title II of Americans with Disabilities Act of 1990)

28 CFR Part 35 (Title II ADA implementing regulations); specifically, 28 CFR 35.107

45 CFR Part 92 (Section 1557 implementing regulations); specifically, 45 CFR 92.7 and 92.303 (Appendix C).

45 CFR Part 84 (Section 504 implementing regulations); specifically, 45 CFR 84.7

Deaf Persons' Interpretation Act (PA 204 of 1982) Amended by PA 23 and 24 of 2007

CARF

Balance Budget Act of 1997

Centers for Medicare and Medicaid Services

Office of Civil Rights

Attachments:

BCCMHA Accommodation Request

**Notice of Resolution Discrimination Grievance**