

COPPER COUNTRY MENTAL HEALTH SERVICES BOARD

POLICY AND PROCEDURE

- DATE: June 28, 2017 Recipient Complaints Appeals.P10
- RESCINDS: June 29, 2016
- CATEGORY: Recipient Rights
- SUBJECT: Recipient Rights Complaints/Appeals
- POLICY: It is the policy of Copper Country Mental Health Services Board that the rights of recipients shall be protected in compliance with the Mental Health Code and the Michigan Department of Health and Human Services (MDHHS) Administrative Rules. In addition, this policy ensures that any recipient of services or person acting on their behalf is protected from reprisal or intimidation in filing a complaint.
- PURPOSE: To ensure that recipients, and anyone else acting on their behalf, shall have unimpeded access to recipient rights protection and that the Recipient Rights Office shall implement the complaint and appeal processes to ensure that recipients and anyone acting on their behalf receives due process, including its essential elements of notice and an opportunity to be heard by a fair and impartial decision-making entity as required by the Mental Health Code and Administrative Rules.
- PROCEDURE:
- I. Each recipient, parent of a minor, or guardian shall receive a copy of Your Rights When Receiving Mental Health Services in Michigan upon initial contact with any department of Copper Country Mental Health Services (CCMHS) and a Recipient Rights Complaint Form.
 - A. An explanation of rights shall be given to each recipient, parent of a minor, or guardian by the Therapist or client services manager.
 - B. The documentation of rights notification shall be placed in the recipient's case record.
 - C. The name, address and telephone number of the designated rights officer shall be on the rights booklet.

- D. Rights booklets will be available in group homes and all other service locations.
 - E. Copies of CCMHS Consumer Rights and Responsibilities will be available in all service locations and will be provided by the client services manager/therapist to each recipient, parent of a minor, or guardian annually during the annual reassessment.
- II. A recipient, or another individual on behalf of a recipient, may file a rights complaint with the rights office alleging a violation of rights protected by the Mental Health Code or Administration Rules.
- A. A rights complaint shall contain all of the following information:
 - 1. A statement of the allegations that give rise to the dispute.
 - 2. A statement of the right or rights that may have been violated.
 - 3. The outcome that the complainant is seeking as a resolution to the complaint.
 - B. Each rights complaint shall be recorded upon receipt by the rights office, and acknowledgment of the recording shall be sent along with a copy of the complaint to the complainant within five business days.
 - C. Within five (5) business days after the rights office receives a complaint, it shall notify the complainant if it determines that no investigation of the rights complaint is warranted.
 - D. The rights office shall assist the recipient or other individual with the complaint process. The rights office shall advise the recipient or other individual that there are advocacy organizations available to assist in preparation of a written rights complaint and shall offer to refer the recipient or other individual to those organizations. In the absence of assistance from an advocacy organization, the rights office shall assist in preparing a written rights complaint. The rights office shall inform the recipient or other individual of the option of mediation provided under the Mental Health Code.
 - E. If a rights complaint has been filed regarding the conduct of the Executive Director, the rights investigation shall be

conducted by the rights office of another community mental health services program or by the state office of recipient rights as decided by the Board.

- F. All rights complaints, filed by recipients or anyone on their behalf, shall be sent or given to the rights officer or rights advisor in a timely manner.

III. The rights office shall initiate investigation of apparent or suspected rights violations in a timely and efficient manner. Subject to delays involving pending action by external agencies, the rights office shall complete the investigation not later than 90 days after it receives the rights complaint. Investigation shall be initiated immediately in cases involving alleged abuse, neglect, serious injury, or death of a recipient involving an apparent or suspected rights violation.

- A. Investigation activities for each rights complaint shall be accurately recorded by the rights office.
- B. The rights office shall determine whether a right was violated by using the preponderance of the evidence as its standard of proof.
- C. The rights office shall issue a written status report every 30 calendar days during the course of the investigation. The report shall be submitted to the complainant, the respondent, and the responsible mental health agency. A status report shall include all of the following:
 - 1. Statement of the allegations.
 - 2. Statement of the issues involved
 - 3. Citations to relevant provisions of this act, rules, policies, and guidelines.
 - 4. Investigative progress to date.
 - 5. Expected date for completion of the investigation.
- D. Upon completion of the investigation, the rights office shall submit a written investigative report to the respondent and to the responsible mental health agency. Issuance of the written investigative report may be delayed pending completion of investigations that involve external agencies, including law enforcement agencies and the Department of Human Services. The report shall include the following:
 - 1. Statement of the allegations.

2. Statement of the issues involved.
3. Citations to relevant provisions of this act, rules, policies, and guidelines.
4. Investigative findings.
5. Conclusions.
6. Recommendations, if any.

E. A rights investigation may be reopened or reinvestigated by the rights office if there is new evidence that was not presented at the time of the investigation.

IV. If it has been determined that a right has been violated, the responsible mental health agency or respondent shall take appropriate remedial action that meets all of the following requirements:

- A. Corrects or provides a remedy for the rights violations.
- B. Is implemented in a timely manner.
- C. Attempts to prevent a recurrence of the rights violation.
- D. Is documented and made part of the record maintained by the rights office.

The responsible mental health agency and each service provider shall ensure that appropriate disciplinary action is taken against those who have engaged in abuse or neglect.

V. The Executive Director shall submit a written summary report to the complainant and recipient, if different than the complainant, and all potential appellants within ten business days after the Executive Director receives a copy of the investigative report.

A. The summary report shall include all of the following:

1. Statement of the allegations.
2. Statement of issues involved.
3. Citations to relevant provisions of this act, rules, policies, and guidelines.
4. Summary of investigative findings

5. Conclusions.
6. Recommendations made by the rights office.
7. Action taken, or plan of action proposed, by the respondent.
8. A statement describing the right to appeal and the grounds for an appeal.

B. Information in the summary report shall not violate:

1. Confidentiality or privileged communications.
2. Rights of any employee (Employee Right to Know Act).

VI. The Recipient Rights Advisory Committee is the CCMHS Board's designated Appeals Committee for recipients' appeals of the summary investigative report. A member of the Appeals Committee 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.

A. The recipient rights office shall assure that training is provided to the Appeals Committee as required by Section 755(2)(a) of the Code. Topics shall include the following:

1. Categories of rights violations.
2. The complaint investigation process.
3. Types and weighing of evidence.
4. Explanation of the preponderance of the evidence standard used by the rights office in determining whether a rights violation has occurred.
5. Statutory definition of "appropriate remedial action".
6. Agency disciplinary guidelines.
7. Agency policy/procedures on the appeal process and functions of the Appeals Committee.

B. Not later than 45 days after receipt of the summary report, an appellant may file a written appeal with the Appeals Committee with jurisdiction over the office of recipient rights that issued the summary report.

1. An appeal shall be based on one of the following grounds/criteria:

- a) The investigative findings of the rights office are not consistent with the facts or with law, 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.
- C. The rights office shall advise the appellant that there are advocacy organizations available to assist in preparing the written appeal and shall offer to refer the appellant to those organizations. In the absence of assistance from an advocacy organization, the rights office shall assist the appellant in meeting the procedural requirements of a written appeal and does not act on behalf of the agency. The rights office shall also inform the appellant of the option of mediation.
- D. Within 5 business days after receipt of the written appeal:
- 1. Members of the Appeals Committee shall review the appeal to determine whether it meets the criteria for appeal.
 - 2. If the appeal is denied because the criteria was not met, the appellant shall be notified in writing.
 - 3. If the appeal is accepted, written notice shall be provided to the appellant and a copy of the appeal shall be provided to the respondent and the responsible mental health agency.
- E. Within 30 calendar days after receipt of a written appeal, the Appeals Committee shall meet in closed session and review the facts as stated in all complaint investigation documents and shall do one of the following:
- 1. Uphold the investigative findings of the rights office and the action taken or plan of action proposed by the respondent.
 - 2. Return the investigation to the rights office and request that it be reopened or reinvestigated.
 - 3. Uphold the investigative findings of the office but recommend that the respondent take additional or different action to remedy the violation.

4. Recommend that the Executive Director take appropriate supervisory action with the investigating rights officer if the committee confirms that the investigation was not initiated or completed in a timely manner.
 5. Recommend that the Board of the community mental health services program request an external investigation by the state office of recipient rights.
- F. The Appeals Committee shall document its decision in writing within ten working days after reaching its decision, and it shall provide copies of the decision to the respondent, appellant, recipient if different than the appellant, the recipient's legal guardian if any, the responsible mental health agency, and the Recipient Rights Office. Documentation shall include justification for the decision.
- G. If the Appeals Committee directs that the recipient rights office re-open or reinvestigate the complaint, the rights office shall submit another investigative report to the Executive Director within 45 calendar days of receipt of the Appeals Committee's written decision, in compliance with section 778(5). The 45-calendar day time frame may be extended at the discretion of the Appeals Committee upon a showing of good cause by the rights office. At no time shall the time frame exceed 90 days.
1. Within 10 business days of receipt of the reinvestigate report, the Executive Director shall issue another Summary Report in compliance with section 782. The Summary Report shall be submitted to the appellant, recipient if different than the appellant, the recipient's legal guardian, if any, the rights office, and the Appeals Committee.
 2. If the findings of the rights office remain unsubstantiated upon reinvestigation, the appellant may file a further appeal to the MDHHS-APPEALS-Level 2 Appeal, if the appellant continues to assert that the investigative findings of the rights office are not consistent with facts or with law, rules, policies or guidelines. The Summary Report shall contain information regarding the appellant's right to further appeal, the time frame for appeal and the ground for appeal. The report shall also inform the appellant of advocacy organizations that may assist in filing the written appeal or offer the assistance of the rights office in the absence from an advocacy organization.

3. If the investigative findings result in the substantiation of a previously unsubstantiated rights violation but the appellant disagrees with the adequacy of the action or plan of action proposed by the respondent, that appellant may file an appeal on that grounds to the Appeals Committee. The Summary Report shall inform the appellant of this right as well as further information as stated in V. A. and VI.B. and C.
- H. If the Appeals Committee upholds the findings of the recipient rights office and directs that the respondent take additional or different action, that direction shall be based on the fact that appropriate remedial action has not been taken in compliance with section 780 of the Code.
1. The Appeals Committee shall base its determination upon any or all of the following:
 - a. Action taken or proposed did not correct or remedy the rights violation.
 - b. Action taken or proposed was/will not be taken in a timely manner.
 - c. Action taken or proposed did not/will not prevent a future recurrence of the violation.
 2. Written notice of this direction for additional or different action to be taken by the respondent shall also be provided to the RMHA if different than the respondent and the rights office.
 3. Within 30 calendar days of receipt of the determination from the Appeals Committee, respondent shall provide written notice to the Appeals 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, the recipient's legal guardian, if any, the RMHA if different than the respondent, and the office.
 4. 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 RMHA, Executive Director for violation of section 754(3)(c) or 755(3)(b) of the Code.

- I. If the Appeals Committee recommends that the board or governing body of the RMHA request an external investigation by MDHHS-Office of Recipient Rights, the Board of Directors may make the request to MDHHS-ORR, in writing, within 5 business days of receipt of the request from the Appeals Committee.
 1. Within 10 business days of receipt of the investigative report from the MDHHS-ORR, the Executive Director shall issue a Summary Report in compliance with section 782. The Summary Report shall be submitted to the appellant, recipient if different than the appellant, the recipient's legal guardian, if any, the rights office and the Appeals Committee.
 2. The complainant, recipient if different than the complainant, and the recipient's legal guardian, if any, shall be informed in the Summary Report issued by the Executive Director of the right to appeal to the MDHHS Appeals Committee. Notice shall include information on the grounds for appeal as stated in section 784(2), the time frame for submission of the appeal, advocacy organizations that may assist with filing the written appeal, and an offer of assistance by the office of recipient rights in the absence of assistance from an advocacy organization.
 3. Not later than 45 calendar days after receipt of the Summary Report, the appellant may file a written appeal to the MDHHS Appeals Committee.
 4. If the Summary Report contains a plan of action, the office of recipient rights is provided written notice and evidence of the completion of the plan. If the Summary Report contains a plan of action, and the completed action is different than the proposed, the Executive Director shall assure that the rights office, the complainant, recipient if different than complainant, his/her legal guardian, if any, shall be provided written notice including specific information as to the action that was taken and the date this it occurred. The complainant, recipient if different than complainant, his/her legal guardian, if any, shall be afforded 45 calendar days after receipt of the notice to appeal the appropriate Appeals Committee on the grounds of inadequate action taken to remedy a rights violation.
- J. The Appeals Committee shall document its decision in writing as stated in VI. F.

1. The Appeals Committee decision shall include a statement of the appellant's right to appeal to MDHHS Appeals-Level 2 Appeal within 45 days from receipt of the decision. The appellant's written appeal with MDHHS-Appeals shall be mailed to:

MDHHS-Appeals
Level 2 ORR Appeal
P.O. Box 30807
Lansing, MI 48909

FAX: (517) 241-7973

2. An appeal to the MDHHS Appeals-Level 2 Appeal must be based on the allegation that the findings of the rights office are inconsistent with facts, rules, policies, or guidelines; and only after the local Appeals Committee has upheld the finding of an investigation, or, upon reinvestigation, the findings of the office remain unsubstantiated.
3. The Office of Recipient Rights shall help the appellant file a written appeal with the MDHHS-Appeals if so desired.

APPLICATION: All Programs

CROSS REFERENCE:

Mental Health Code - Chapter 7, Chapter 7-A

CCMHS Policy - Abuse and Neglect

MDHHS/CMHSP Contract Attachment C6.3.2.4 Amendment 2