

Title	Northern Lakes CMH Policies
Part 105	Recipient Rights Protection System
Subpart A	Recipient Rights Protection System
Policy No.	105.106
Subject	Complaint, Investigation, and Appeal

Applicability

Policy applies to all Northern Lakes CMHA activities, operations and sites and to all employees except members of the governing body. Policy also applies to any Network Provider and its employees, volunteers, or agents that has elected to adopt and adhere to Northern Lakes CMHA policies and procedures pertaining to Recipient Rights under the terms of its Participating Provider Agreement.

Policy

Northern Lakes CMHA shall provide a uniformly fair, objective, and timely dispute resolution process for recipients and others acting on their behalf that protects the rights guaranteed by Chapter 7 and 7a of the Michigan Mental Health Code (PA 258 of 1974)

STANDARDS:

1. Chapter 7a of the Mental Health Code establishes the right of public mental health service recipients, or any individual acting on their behalf, to file an oral or written complaint alleging a violation of rights.
2. Employees, contract employees, and volunteers of Northern Lakes CMHA or of a contracted provider are required to assist recipients, their legal representatives, or other individuals acting on the behalf of a recipient in understanding the rights guaranteed by the Mental Health Code, and in accessing the Recipient Rights system. Specifically, as outlined in Policy 105.105, Duty to Report, if a recipient or other person acting on the recipient's behalf communicates information that constitutes an apparent or suspected violation of rights, the employee, contract employee or volunteer shall assist the individual in either filing a Recipient Rights complaint, or in contacting the Office of Recipient Rights, thereafter immediately forwarding the complaint to the Office of Recipient Rights. Additionally, upon witnessing or otherwise receiving a report of an apparent or suspected rights violation, an employee, contract employee, or volunteer shall immediately make an oral and written report to the Office of Recipient Rights.
3. Employees of the Office of Recipient Rights shall offer assistance to all individuals reporting violations in filing a complaint or in contacting advocacy organizations who may be of assistance. If the individual does not wish to file a complaint and if the report constitutes an apparent or suspected violation of rights, employees of the Office of Recipient Rights will act as complainant.

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4. Upon receipt of a complaint, the Office of Recipient Rights will follow the complaint procedures listed herein. Individuals making complaints that are outside the jurisdiction of the Office of Recipient Rights or that do not involve a right protected by the Michigan Mental Health Code shall be provided referral information to complaint mechanisms available through internal agency procedures or other agencies, and/or to advocacy groups who may be of assistance. The Office of Recipient Rights may advocate on behalf of the recipient in response to those complaints.

The Office of Recipient Rights shall refer to the Grievance and Appeals Coordinator all grievances and appeals made under the Michigan Department of Health and Human Services (MDHHS)/Community Mental Health Services Provider (CMHSP) and the MDHHS/Prepaid Inpatient Health Plan (PIHP) Master Contract, Grievance and Appeal Technical Requirement pursuant to the Code Of Federal Regulations (42 CFR 434.32, 42 CFR 431.200-431.246, AND 42 CFR 440.230).

Similarly, the Grievances and Appeals Coordinator shall refer all grievances that constitute allegations of rights.

5. The Office of Recipient Rights shall ensure that all reports of apparent or suspected violations of rights within the Northern Lakes CMHA system are investigated or resolved through intervention in a fair, impartial, and timely manner in accordance with Section 778 of the Michigan Mental Health Code, and in a manner that does not violate the confidentiality of any recipient and does not violate the rights of any employee. Employees, contract employees, and volunteers shall cooperate and provide unimpeded access to the Office of Recipient Rights in accordance with Policy 105.103, Core Rights System Requirements.
6. Providers shall take appropriate remedial action in accordance with Section 780 of the Mental Health Code in the event a violation is established.
7. Chapter 7a of the Mental Health Code assures that an appeal can be filed regarding the findings, remedial action, or timeliness of a Recipient Rights Complaint investigation. Northern Lakes CMHA shall provide an appeals process that affords all recipients and those acting on their behalf fair, substantive, and timely due process (MDHHS Recipient Rights Appeal Processes Technical Advisory).

Procedures

RIGHTS COMPLAINT PROCESS

- I. Rights complaint; filing; contents; recording; acknowledgment; notice; assistance; conduct of investigation.
 1. A recipient, or another individual on behalf of a recipient, may file a rights complaint with the office alleging a violation of rights guaranteed by the Michigan Mental Health Code or rules promulgated under that act.
 2. A rights complaint shall contain all of the following information:
 - a. A statement of the allegations that give rise to the dispute.

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- 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.
3. Each rights complaint shall be recorded upon receipt by the office, and acknowledgment of the recording shall be sent along with a copy of the complaint to the complainant within 5 business days. The Office of Recipient Rights will provide information for referrals of complaints, grievances, and appeals that are outside the jurisdiction of the office.
4. Within 5 business days after the office receives a complaint, the Office of Recipient Rights shall notify the complainant if it determines that no investigation of the rights complaint is warranted.
5. The office shall assist the recipient or other individual with the complaint process. The 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 office shall assist in preparing a written rights complaint. The office shall inform the recipient or other individual of the option of mediation under The Michigan Mental Health Code Section 786.
6. If a rights complaint has been filed regarding the conduct of the Chief Executive Officer, the rights investigation shall be conducted by the office of another community mental health services program or by the state office of recipient rights, as decided by the Board of Directors.

II. Intervention

1. Except with respect to allegations of abuse, neglect, or retaliation or harassment in the rights protection system, the Office of Recipient Rights may conduct an intervention on behalf of the recipient when an allegation of a rights violation is alleged. This shall occur only when the facts pertaining to the allegation are clear, when a determination can clearly be made as to whether the allegation is substantiated or not substantiated, and, in the event of substantiated allegations, when a clear remedy can be found and when disciplinary action is not required by statute. The intervention must be completed within 30 days of receipt of the complaint.
2. An intervention shall consist of an inquiry into the allegation made in the complaint, application of relevant citations of law, rule, policy or procedure, and a review of findings. The intervention shall establish a simple issue question that can be answered such that a clear decision can be made as to whether a right was violated using the standard of a preponderance of the evidence. If a violation is established through the intervention process the Recipient Rights Office shall obtain documentation of remedial actions taken by the respondent.
3. Not later than 30 days after receipt of the complaint an Intervention Response letter shall be sent to the complainant, and if applicable his or guardian or the parent of a minor recipient with legal custody, with a brief summary of all the elements of the intervention as described in Section (2) above.
4. The Intervention response letter shall advise the complainant and his/her guardian or parent of a minor recipient with legal custody of his/her right to request formal investigation within 30 days pursuant to Section 778 of the Michigan Mental Health Code, as described below.

III. Investigation; initiation; recording; standard of proof; written status report; written investigative report; new evidence.

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1. The 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 as described in subsection (5), the 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.
2. Investigation activities for each rights complaint shall be accurately recorded by the office.
3. The office shall determine whether a right was violated by using the preponderance of the evidence as its standard of proof.
4. The 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:
 - a. Statement of the allegations.
 - b. Statement of the issues involved.
 - c. Citations to relevant provisions of the Mental Health Code, other law, rules, policies, procedures, and guidelines.
 - d. Investigative progress to date.
 - e. Expected date for completion of the investigation.
5. Upon completion of the investigation, the office shall submit a written investigative report to the respondent and to the responsible mental health agency. The report shall include all of the following:
 - a. Statement of the allegations.
 - b. Statement of the issues involved.
 - c. Citations to relevant provisions of this act, rules, policies, and guidelines.
 - d. Investigative findings.
 - e. Conclusions.
 - f. Recommendations, if any.
6. Issuance of the written investigative report may be delayed pending completion of investigations that involve external agencies, including law enforcement agencies, the Department of Health and Human Services (Adult Protective Services, Child Protective Services, or the Office of Child and Adult Licensing, or others.)
7. A rights investigation may be reopened or reinvestigated by the office if there is new evidence that was not presented at the time of the investigation.

IV. Remedial action.

1. If it has been determined through investigation that a right has been violated, the 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.
2. The action shall be documented and made part of the record maintained by the office.
3. Appropriate disciplinary action, as defined by this policy will be taken in the event of a substantiated violation of abuse, neglect or retaliation and harassment for participation in rights activities.

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V. Summary report.

1. The Chief Executive Officer shall submit a written summary report to the complainant and recipient, if different than the complainant, and, if applicable, to the recipient's legal guardian within 10 business days after the Chief Executive Officer receives a copy of the investigative report under Section 778(5).
2. The summary report shall include all of the following:
 - a. Statement of the allegations.
 - b. Statement of issues involved.
 - c. Citations to relevant provisions of this act, rules, policies, and guidelines.
 - d. Summary of investigative findings.
 - e. Conclusions.
 - f. Recommendations made by the office.
 - g. Action taken, or plan of action proposed, by the respondent.
 - h. A statement describing the right of the complainant, recipient if different, guardian, or parent of a minor to appeal. This notice shall include information on the grounds for appeal as stated in Section 784(2) of the Mental Health Code as outlined in the I(2)(a) below, 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. Information in the summary report shall be provided within the constraints of Sections 748 and 750 of the Michigan Mental Health Code, and shall not violate the rights of any employee.
4. If the Summary Report contains a plan of action to be completed in the future, the Chief Executive Officer shall assure that the complainant, recipient if different than the complainant, his/her legal guardian, if any, and the office are provided written notice of the completion of the plan. The notice shall include specific information as to the action that was taken and the date that it occurred. The complainant, recipient if different than the complainant and his/her legal guardian, if any, shall be afforded 45 days from the date of the mailing of the notice to appeal to the appropriate Appeals Committee on the grounds of inadequate action taken to remedy a rights violation.

APPEAL PROCESS

I. Summary report; appeal.

1. Not later than 45 days after receipt of the summary report under Section 782 of the Michigan Mental Health Code, the complainant, the recipient if different, guardian or parent of a minor may file a written appeal with the Appeals Committee with jurisdiction over the Office of Recipient Rights that issued the summary report.
2. An appeal under subsection (1) shall be based on 1 of the following grounds:
 - a. The investigative findings of the 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 and adequate remedy.
 - c. An investigation was not initiated or completed on a timely basis.
3. The office shall advise the complainant that there are advocacy organizations available to assist the complainant in preparing the written appeal and shall offer to

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- refer the complainant to those organizations. In the absence of assistance from an advocacy organization, the office shall assist the complainant in meeting the procedural requirements of a written appeal.
4. Within 3 business days of receipt of the appeal, consultation with two members of the Recipient Rights Advisory Committee shall review the appeal to determine if it meets the criteria stated above. The Committee shall maintain a log of all appeals received and the disposition of each.
 5. Within 5 business days after receipt of the written appeal, If the appeal is denied because the criteria in subsection (2) were not met, the complainant shall be notified in writing. If the appeal is accepted, written notice shall be provided to the complainant and a copy of the appeal shall be provided to the respondent and the Chief Executive Officer.
 6. Within 30 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. Any member of the Appeals Committee who has a personal or professional relationship with an individual involved in the appeal shall abstain from participating in that appeal as a member of the Committee.
 7. The Committee shall not consider additional allegations that were not part of the original complaint at issue on appeal but shall inform appellant of his/her right to file the complaint with the office. The Appeals Committee, at its discretion, may request additional supporting documentation from any party involved in the appeal. The Appeals Committee may also, at its discretion, request the personal appearance of any party involved in the appeal or any witnesses who may provide supporting evidence. The Appeals Committee may also, at its discretion request additional consultation and technical assistance from the Department pursuant to Section 774(5).
 8. At the Appeal Hearing the Committee shall go into closed session and do one of the following:
 - a. Uphold the investigative findings of the office and the action taken or plan of action proposed by the respondent.
 - b. Return the investigation to the office and request that it be reopened or reinvestigated.
 - c. Uphold the investigative findings of the office but recommend that the respondent take additional or different action to remedy the violation.
 - d. If the responsible mental health agency is a community mental health services program or a licensed hospital, recommend that the board of the community mental health services program or the governing board of the licensed hospital request an external investigation by the MDHHS Office of Recipient Rights. The corresponding board will send a letter of request to the director of MDHHS-ORR within 5-business days of receipt of request from the Appeals Committee. The director of the CMH making the request will be responsible for the issuance of the summary report, which will identify the grounds and advocacy information as outlined in Section V of the "Rights Complaint Process" and items 1-3 of Section I; "Appeals Process" contained within this policy. This information shall also identify the MDHHS-ORR Appeal Committee as the committee body overseeing the appeal of the external investigation.
 9. The Appeals Committee shall document its decision in writing. Within 10 working days after reaching its decision, it shall provide copies of the decision to the respondent, appellant, recipient if different than the appellant, the recipient's guardian if a guardian has been appointed, the responsible mental health agency,

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- and the office. Documentation shall include justification for the decision made by the Committee.
10. If the Appeals Committee directs that the office reopen or reinvestigate the complaint, the office shall submit another investigative report in compliance with Section 778(5) within 45 days of receipt of the written decision of the Committee. The 45 day time frame may be extended at the discretion of the Appeals Committee upon a showing of good cause by the office. At no time shall the time frame exceed 90 days. Within 10 business days of receipt of the investigative report, the Chief Executive Officer of the CMHSP or the director of the Licensed Psychiatric Hospital/Unit (LPH/U) 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 office and the Appeals Committee.
 11. If the investigative findings of the office remain the same as those appealed, the appellant may file a further appeal to the MDHHS. The Summary Report shall contain information regarding the appellant's right to further appeal to the MDHHS, the time frame for the 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 office in the absence of assistance from an advocacy organization.
 12. 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, appellant may file an appeal on such grounds to the Appeals Committee. The Summary Report shall inform the appellant of this right as well as further information as stated in 1. above.
 13. If the Appeals Committee upholds the findings of the 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. 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.
 14. Written notice of this direction for additional or different action to be taken by the respondent shall also be provided to the Responsible Mental Health Agency (RMHA) if different than the respondent and the office.
 15. Within 30 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. 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 Chief Executive Officer of the CMHSP or the director of an LPH/U for violation of Section 754(3)(c) or 755 (3)(b) of the Code.

II. Notice of decision; appeal.

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1. Within 45 days after receiving written notice of the decision of an Appeals Committee under Section 784(5) of the Michigan Mental Health Code, the appellant may file a written appeal with the department.
2. The appeal shall be based on the record established in the previous appeal, and on the allegation that the investigative findings of the local Office of Recipient Rights are not consistent with the facts or with law, rules, policies, or guidelines. Within 45 days after receiving written notice of the decision of the Appeals Committee under Section II.H. or the Summary Report in I.I., the appellant may file a written appeal with MDHHS. The written appeal shall be mailed to:

Level 2 ORR Appeals
MDHHS – Appeals
PO Box 30807
Lansing, MI 48909
Fax: 517-241-7973

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