

**THE RIGHTS OF INDIVIDUALS
RECEIVING
MENTAL HEALTH SERVICES**

TABLE OF CONTENTS

Part One: The Legal Basis of Rights	1
Part Two: Confidentiality	4
Part Three: Abuse and Neglect	7
Reporting Abuse and Neglect	10
Part Four: Investigating Rights Allegations	11
Office of Recipient Rights	11
The Investigative Process	12
The Appeal Process	12
Other Investigative Agencies	13
Part Five: Rights and Responsibilities	14
Employee Rights	14
Employee Responsibilities	15
Recipient Responsibilities	15

PART ONE: THE LEGAL BASIS OF RIGHTS

OBJECTIVE

As a result of reading this section you will be able to:

- Understand the rights guaranteed to all United States citizens
- Understand the rights guaranteed to all persons receiving mental health services in Michigan

Persons who receive mental health services have the same rights as you. It is important to understand where rights come from, what they are, and what additional rights are granted to recipients of mental health services in Michigan.

You have heard, and perhaps used, such expressions as: "I know my rights!," "That's against my rights!," or "I have the right to do it!" In our democratic society, rights are extremely important, particularly when we think our own have been violated! A right is defined as:

"That which a person is entitled to have, to do, or to receive from others, within the limits prescribed by law" ¹¹

Therefore, in order to qualify as a "right," something must **be defined by law and have a legal means of protecting it.**

The rights described in this section are some of the ones that are protected by the Constitution of the United States and the Michigan Constitution, or by federal and state laws such as the Michigan Mental Health Code.

The United States Constitution guarantees certain rights to all citizens of this country. Remember, the people you care for still have these rights, even though they are receiving mental health services.

Some of these include:

RELIGIOUS EXPRESSION

- To practice the religion of your choice
- Not to attend any religious service against your wishes
- Not to be discriminated against based upon your religious beliefs

¹¹Black's Law Dictionary

FREEDOM OF SPEECH

- To speak freely, and to write, or express, your views without restrictions
- To make and receive phone calls, in private
- To send and receive mail without censorship
- To send and receive mail without censorship

SEARCH AND SEIZURE

- To own personal property
- To be secure from unreasonable search and seizure of your person, home, your personal papers, and possessions

DUE PROCESS

- To have notice and the opportunity to be heard in court when decisions are made about your life, liberty, or property
- Not to be a witness against yourself in a criminal case
- To petition for redress of governmental actions or decisions

LEGAL PROTECTION

- To have an attorney
- To make a will
- To sue in civil court
- To marry and divorce
- To be presumed competent

DISCRIMINATION

- To not be discriminated against because of race, sex, national origin, or handicap

VOTING

- To have the right to vote

EDUCATION

- To have a free public education

The Michigan Mental Health Code says that persons who receive mental health services in Michigan have some additional rights to assure that they receive treatment suited to their condition in a humane environment. The code also says that, under certain circumstances, some of these additional rights may be limited. The additional rights granted by the code are:

- ✓ The right to be free from abuse or neglect
- ✓ The right to independent evaluations and consultations and to see a private physician or healthcare professional at any reasonable time
- ✓ The right to be treated with dignity, to be treated without discrimination, to have privacy, to practice one's religion, and to get paid for work that is done

- ✓ The right to send and receive mail, have visitors, use the telephone, and get legal advice
- ✓ The right to have information about the person receiving treatment kept confidential
- ✓ The right to have access to information contained in the clinical record ²
- ✓ The right to a hearing, to be represented by an attorney, and to discharge planning that assures that appropriate treatment is provided in the least restrictive setting
- ✓ The right to be treated in a safe, sanitary, and humane environment
- ✓ The right to have access to his or her own funds and to be able to use them as he or she sees fit
- ✓ The right to have personal property safely kept and to have any rules regarding any limitations on using it clearly stated, consistent, and posted in a place where all can see
- ✓ The right not to be forced or coerced to take medication, or to take more medication than desired, and the right to be provided with informed consent regarding medication and possible side effects
- ✓ The right to have a written plan of service developed through a person-centered process. Person-centered planning means a process for planning and supporting the individual receiving services that builds upon the individual's capacity to engage in activities that honor the individual's preferences and choices, and abilities and promote community life. The person-centered planning process involves families, friends, and professionals, as the individual desires or requires.
- ✓ The right not to be required to receive treatment unless the law allows it and a court orders it

²The Mental Health Code requires that, upon request, an adult competent recipient be given access to all information entered in their record after March 29, 1966, *without exception* (MHC §330.1748(4)).

PART TWO: CONFIDENTIALITY

OBJECTIVE

As a result of reading this section you will be able to:

- Define confidentiality and informed consent
- Identify rules you must observe when sharing information about a recipient
- Recognize instances when confidentiality has been violated

Information about a recipient and his or her treatment is confidential. It is important to understand what is meant by confidentiality, to know what the Mental Health Code requires of you, to recognize instances when the confidentiality of a recipient has been violated, and to know what you should do if this happens.

The right to confidentiality is one of the most important rights granted to recipients. Each mental health service provider is required to have policies and procedures that maintain the confidentiality of those receiving services. Each recipient is entitled to confidentiality when seeking the services of a lawyer, a doctor or other mental health services professional. To assure the confidentiality of recipients, all staff must protect written and unwritten information gained while providing mental health services. The Mental Health Code requires that:

- ✓ Every recipient is informed about the law requiring confidentiality.
- ✓ A record is maintained of any information about the recipient that is disclosed. This record must indicate what information was released, to whom it was released and the reason for the release.

Under certain circumstances, the release of information may be delayed or even withheld. However, a competent adult recipient is entitled to receive any and all information contained in his or her record subsequent to March 28, 1996.

- ✓ Some information can be provided to legal and medical personnel who are providing services to the recipient without obtaining a release of information. However, this information is limited to that which relates to the services being provided.
- ✓ There are times when it is appropriate to disclose information about a recipient. Some of these are:
 - .. When the person agrees, and the person who requested the information has a legitimate need for the information
 - .. To mental health, or other public agencies when there is a strong chance that the recipient or others will be seriously hurt if no action is taken

- .. To other agencies such as Social Security or the Family Independence Agency when necessary in order for service providers to receive payment
- .. When required by court order, or to comply with the law
- .. To a prosecuting attorney when necessary to participate in proceedings governed by the Mental Health Code
- .. To the recipient's attorney when the recipient has given consent
- .. To the surviving spouse of a recipient in order to apply for and receive benefits

Confidentiality is a right of every recipient of mental health services. Everyone involved with the delivery of services must work to maintain and protect this right. All information in a person's record and any information about the person discovered while providing services is confidential. Consent of the recipient, or the recipient's guardian, is required before giving out any information.

A recipient cannot simply agree to have information about him or her released. In order for a release of information to be valid it must be given with Informed Consent.³ This means the recipient:

- ✓ Is not pressured in any way to give consent
- ✓ Is able to understand what information he or she is agreeing to release
- ✓ Understands the risks, benefits and consequences of agreeing, or not agreeing, to the release of the information requested.

A person who has a guardian is not legally capable of giving informed consent. In most cases involving children, informed consent must be obtained from their parents.

Generally, decisions about release of confidential information are made by clinical or management staff. However, there are many times when you must make immediate decisions about whether information about a recipient can be released. Don't let anyone pressure you. Even if someone gets upset because you don't give out information they are entitled to, your first responsibility is to the recipient. Each agency has its own rules to ensure employees follow confidentiality guidelines. If you have questions about releasing information, or if someone is authorized to receive information, check with your supervisor. Sometimes you may not be aware that you are violating the confidentiality of recipients.

³All of the following are elements of informed consent: (a) Legal competency, (b) Knowledge, (c) Comprehension. (Rule 7003)

Ask your supervisor who is authorized to release information about a recipient. Know who the persons or agencies are that are authorized to receive information about a particular recipient. It may be different for each recipient. If you are not sure about releasing information, ask your supervisor prior to providing any information about a recipient.

Listed below are some examples of how confidentiality and privacy may be violated unknowingly:

- ✓ Talking about recipients outside of work
- ✓ Referring to recipients by name when discussing work with family or friends
- ✓ Giving information over the phone to persons who say they are relatives
- ✓ Taking photographs or videotapes of recipients without permission
- ✓ Listening in on a recipient's phone calls
- ✓ Discussing information in a recipient's record with staff from another home or with other mental health or service professionals who are not authorized to receive the information
- ✓ Referring to a recipient by name in another recipient's record or on an incident report for another recipient
- ✓ Referring to a recipient by full name when speaking with another recipient's family or teachers.

These examples can occur unintentionally or through carelessness. They may seem to have little consequence. However you must make sure not to get careless, because you may not be aware of the potential consequences.

Protecting confidentiality means that, when you are not at work, you cannot talk to anyone about what happened with a recipient. When at work you cannot discuss any information with those who are not authorized to receive it. It also means that you have a responsibility to make sure that unauthorized persons are not able to identify recipients.

PART THREE: ABUSE AND NEGLECT

- DEFINITIONS
- REPORTING REQUIREMENTS

OBJECTIVE

As a result of reading this section you will be able to:

- Understand what constitutes abuse and neglect
- Understand what to do in order to comply with laws requiring the reporting of abuse and neglect

The abuse or neglect of a recipient is not acceptable and will not be tolerated. It is important to understand what is meant by abuse and neglect, to recognize a situation that is abusive or neglectful, and to know what the law requires you to do when you become aware that a recipient has been abused or neglected.

Abuse and Neglect are defined in the Administrative Rules of the Department of Community Health. These rules supplement the Mental Health Code and have the force of law. The Abuse and Neglect definitions have several classes and are based upon the action taken and the severity of the injury to the recipient.

Abuse, Class I, means:

A non-accidental act or provocation of another to act, by an employee, volunteer, or agent of a provider, that caused or contributed to the death, or sexual abuse of, or serious physical harm to a recipient.

Serious Physical Harm:

Physical damage suffered by a recipient, which a physician or R.N. determines caused, or could have caused the death of a recipient, or caused an impairment of a bodily function, or the permanent disfigurement of a recipient.

Sexual Abuse:

Any sexual contact between a recipient and an employee, contract employee, volunteer, or other person authorized to provide care or supervision to a recipient. Sexual contact is defined as the intentional touching or penetration of a recipient's intimate parts (genitals, buttocks, breasts, groin, inner thigh, or rectum), or the intentional touching of the clothing which covers those intimate parts, if that action can be reasonably seen as being for the purpose of arousal or gratification.

Abuse, Class II, means any of the following:

1. A nonaccidental act or provocation of another to act by an employee, volunteer, or agent of a provider that caused or contributed to nonserious physical harm to a recipient, or
2. The use of unreasonable force on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm, or
3. Any action or provocation of another to act by an employee, volunteer, or agent of a provider that causes or contributes to emotional harm to a recipient, or
4. An action taken on behalf of a recipient by a provider who assumes the recipient is incompetent, despite the fact that a guardian has not been appointed, that results in substantial economic, material, or emotional harm to the recipient.

"Emotional Harm" means impaired psychological functioning, growth or development of a significant nature as determined by a psychiatrist or psychologist.

"Nonserious physical harm" means physical damage suffered by a recipient that a physician or registered nurse determines could not have caused, or contributed to, the death of a recipient, the permanent disfigurement of a recipient, or an impairment of his or her bodily functions.

"Physical management" means a technique used by staff to restrict the movement of a recipient by direct physical contact in order to prevent the recipient from harming himself, herself, or others or from causing substantial property damage.

"Abuse, Class III" means:

The use of language or other means of communication by an employee, volunteer, or agent of a provider to degrade, threaten, or sexually harass a recipient.

"Sexual harassment" means sexual advances to a recipient, requests for sexual favors from a recipient, or other conduct or communication of a sexual nature toward a recipient as defined in title VII of the Civil Rights Act of 1991.

Examples of abuse:

- ✓ Any sexual contact with a recipient. This means:
 - .. Engaging in sexual intercourse with a recipient, even if the recipient says it's ok
 - .. Oral sex of any nature with a recipient, even if the recipient says it's ok
 - .. Touching the intimate parts of a recipient for sexual gratification, even if the touching occurs over the recipients' clothes.

- ✓ Hitting, slapping, biting, poking, or kicking a recipient
- ✓ Use of weapons on a recipient
- ✓ Swearing at, using foul language, racial or ethnic slurs, or other means of communication to degrade, or threaten, the recipient
- ✓ Sexually harassing a recipient
- ✓ Making remarks which could be emotionally harmful to a recipient
- ✓ Causing or prompting others to commit any of the actions listed above

"Neglect, Class I", means either of the following:

Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to serious physical harm to a recipient, or,

The failure to report abuse or neglect of a recipient when the abuse or neglect results in the death of, or serious physical harm, to the recipient.

"Neglect, Class II", means either of the following:

Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to nonserious physical harm or emotional harm to a recipient, or,

The failure to report abuse or neglect of a recipient when the abuse or neglect results in nonserious harm to the recipient.

"Neglect, Class III", means either of the following:

Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service that either placed or could have placed a recipient at risk of physical harm, or,

The failure to report abuse or neglect of a recipient when the abuse or neglect places a recipient at risk of serious or nonserious harm.

Note: No actual harm has to occur to the recipient in Class 3 neglect; it is only required that the recipient be placed in a situation where there is, or could be, a risk of harm.

Examples of neglect:

- ✓ Leaving a recipient, who is not able to care for himself, unattended
- ✓ Not providing the proper medication or the correct dosage of a medication
- ✓ Being aware of an abusive or neglectful situation and not reporting that to the Rights Office and to your supervisor
- ✓ Not addressing, in the treatment plan, a problem behavior which may result in harm to the recipient or to others.

REPORTING ABUSE AND NEGLECT

WHEN YOU SEE OR HEAR ABOUT A RECIPIENT BEING ABUSED OR NEGLECTED, IT IS IMPORTANT THAT YOU TAKE ACTION QUICKLY! Protecting the recipient is your primary responsibility. The failure to report abuse or neglect will result in your being charged with neglect as well.

At the time of shift change, staff leaving should tell you about any injuries that happened on their shift or earlier shifts. They should have documented these as well. During your first hour on duty, check to see that anything reported to you verbally was also recorded in the person's chart. Observe the people in your care for signs or changes in their condition. Look for bruises, bumps, limping, or other obvious signs of pain or illness. This should also be done when a recipient first comes to you or returns from another setting. If you notice anything that is not explained or charted:

- ✓ Immediately report it to the designated supervisor.
- ✓ Immediately take action to protect, comfort, and get any necessary treatment for any injured person in your care.
- ✓ Record the information on an Incident Report. The first staff person who sees an unexplained injury must report it and record it. Include any signs that abuse or neglect might have been involved. Your trainer or Rights Advisor will show you how to correctly complete an Incident Report form.
- ✓ Give the report to a supervisor as soon as possible, but never later than the end of your shift.
- ✓ Report any injuries to oncoming staff.
- ✓ If you suspect that abuse or neglect contributed to the unexplained injury, contact the Rights Office and complete a Recipient Rights Complaint form. A copy of this form is included in your handouts.

PART FOUR: INVESTIGATING RIGHTS ALLEGATIONS

- **OFFICE OF RECIPIENT RIGHTS**
- **THE INVESTIGATIVE PROCESS**
- **APPEALS**
- **OTHER INVESTIGATIVE AGENCIES**

OBJECTIVE

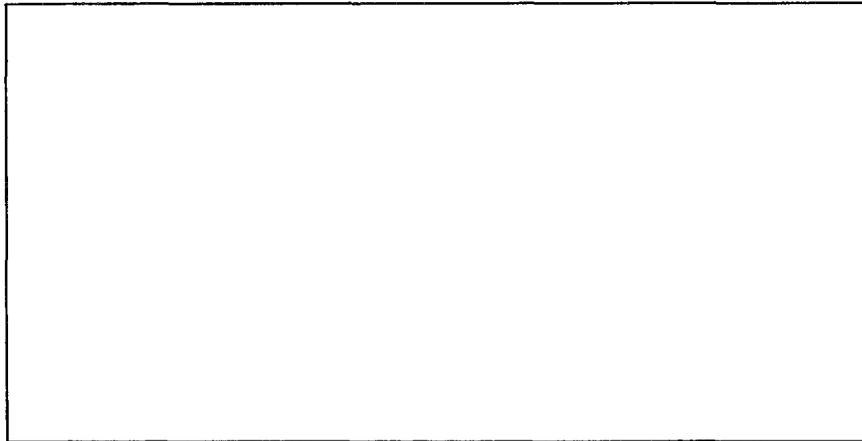
As a result of reading this section you will be able to:

- Understand the role of the Office of Recipient Rights
- Understand the process whereby allegations of rights violations are investigated
- Understand the rights of appeal provided by the Mental Health Code

Anyone can file a complaint on behalf of a recipient. If you become aware that a recipient's rights are being violated, you must report this to the Rights Office.

OFFICE OF RECIPIENT RIGHTS

Most employees do not intentionally abuse, neglect, or violate the rights of recipients. The Office of Recipient Rights protects recipients from the few that do. Each Department of Community Health hospital or center, Community Mental Health Services Program, and licensed private hospital has a Recipient Rights Officer. The Rights Officer from the local Community Mental Health Board reviews all allegations of rights violations and all incident reports involving recipients in their jurisdiction. The Office of Recipient Rights may investigate and can make recommendations about remedial action to the to the service provider and the responsible Community Mental Health Services Program. Rights Officers often serve as advocates for individuals and groups of recipients. You can contact the local Rights Office at:



If the actions of your local officer do not solve the problem, you can contact the Department of Community Health Office of Recipient Rights. Write or call:

Office of Recipient Rights
Michigan Department of Community Health
Lewis Cass Building
Lansing, MI 48913
800-854-9090

THE INVESTIGATIVE PROCESS

When an investigation into an alleged rights violation is started, the Rights Officer will have access to all documentation and any staff necessary to complete the investigation. You are expected to answer questions about work-related matters asked by the Rights Officer, a representative of your provider, the State Police, and Department of Community Health (DCH), Family Independence Agency (FIA), or Consumer and Industry Service (CIS) authorities who are conducting a review or investigation. If you feel you may be involved in some way you have the right:

- To talk to an attorney before giving answers to others, and
- To have an attorney or personal representative present during questioning by the police.

The Mental Health Code requires that an investigation be completed within 90 days from the receipt of the complaint. A "Report of Investigative Findings" will be given to the director of the Community Mental Health agency and to the service provider. It is up to the CMH director to issue a report summarizing the investigation to the complainant and the recipient within 10 days after receiving the Rights Officer's investigative report.

The decision about what happens to a staff person who has committed abuse or neglect, or otherwise violated the rights of a recipient, rests with the employer. Each provider should have policies and procedures for dealing with offenses. These should emphasize the seriousness of improper actions. Since procedures vary among providers, check with your supervisor or look in your policy or personnel manual.

THE APPEAL PROCESS

Upon completion of a recipient rights investigation, the recipient, his or her guardian, the parent of a minor, and, of course, the person who made the complaint, if different from the recipient, have the right to appeal the decision. This appeal can be made for the following reasons:

1. the findings of the investigation are inconsistent with the law, facts, rules, and policies or guidelines;
2. the action, or plan of action, is inadequate; or,
3. the investigation was untimely.

Staff are not eligible to file an appeal unless they were the complainant.

OTHER INVESTIGATIVE AGENCIES

Depending on the circumstances, several other organizations may investigate allegations of abuse or neglect. When there is a question of abuse, the Adult, or Child, Protective Services Divisions of the Michigan Family Independence Agency may be involved. If your home may have violated state standards, or if it may not be suitable for a particular recipient, a Department of Consumer & Industry Services licensing agent may investigate. Finally, if it is believed that a criminal act occurred, the State Police or local law enforcement agency might investigate.

PART FIVE: RIGHTS AND RESPONSIBILITIES

- **EMPLOYEE RIGHTS**
- **EMPLOYEE RESPONSIBILITIES**
- **RECIPIENT RESPONSIBILITIES**

OBJECTIVE

As a result of reading this section you will be able to:

- Understand the rights you have as an employee
- Understand the responsibilities you have as an employee
- Understand the responsibilities of recipients

EMPLOYEE RIGHTS

You have rights that protect you from actions based on incorrect or malicious information. There are laws which protect employees when they report rights violations.

The **Mental Health Code** mandates that complainants, staff of the Office of Recipient Rights, and any staff acting on behalf of a recipient will be protected from harassment or retaliation resulting from recipient rights activities and that appropriate disciplinary action will be taken if there is evidence of harassment or retaliation.⁴

The **Whistleblowers Protection Act** (P. A. 469 OF 1980) protects employees who report rights violations. This law states that it is illegal for employers in Michigan to discharge, threaten, or otherwise discriminate against you regarding compensation, terms, conditions, locations, or privileges of employment because you, or a person acting on your behalf, reports, or is about to report, a violation, or a suspected violation, of federal, state, or local laws, rules, or regulations, to a public body. It is illegal for employers in Michigan to discharge, threaten, or otherwise discriminate against you regarding your compensation, terms, conditions, locations, or privileges of employment because you take part in a public hearing, investigation, inquiry, or court action. This law does not diminish or impair either your rights, or the rights of your employer, under any collective bargaining agreement. The act does not require your employer to compensate you for your participation in a public hearing, investigation, inquiry, or court action. The act does not protect you from disciplinary action if you make a report to a public body that you know is false. **If you believe that your employer has violated this act, you may bring a civil action in a circuit court within 90 days of the alleged violation of this Act.** Persons found in violation of this act may be subject to a civil fine of up to \$500.00. If your employer has violated this act, the court can order your reinstatement, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. The court may also award all, or a portion of, the costs of litigation, including reasonable attorney fees and

⁴Michigan Mental Health Code §330.1755(3)

witness fees to the complainant if the court believes such an award is appropriate.

The Bullard-Plawecki Employee Right To Know Act (P.A. 397 of 1978) requires that you be notified when an employer or former employer divulges a disciplinary report, letter of reprimand, or other disciplinary action to a third party, to a party who is not a part of the employer's organization, or to a party who is not a part of a labor organization representing the employee, without written notice as provided in this section. The written notice to the employee shall be by first-class mail to the employee's last known address, and shall be mailed on or before the day the information is divulged from the personnel record.

EMPLOYEE RESPONSIBILITIES

You have the responsibility to treat recipients with dignity and respect and to protect them from harm.

The code specified additional rights to protect and promote basic human dignity. However, regulations don't necessarily change how people act. You must constantly check and remind yourself to treat people with respect. For example, you must address recipients as they wish to be addressed, give them privacy and freedom of choice. Most disrespect is unintentional; you may slip into poor practices without realizing it. Those who provide services must ensure that the rights of people are respected and protected at all times.

You have direct responsibility for the safety and well-being of the recipients in your care. That means you are responsible for the following:

- ✓ Your own acts, either intentional or accidental.
- ✓ Your failure to act appropriately or quickly.
- ✓ Reporting abusive actions of staff to the supervisor, a Client Service Manager, and the Rights Officer immediately.
- ✓ Reporting unsafe conditions or right violations to the appropriate agency if you are unable to resolve a situation through your supervisor.
- ✓ Intervening to stop abusive actions of staff.

RECIPIENT RESPONSIBILITIES

Recipients also have responsibilities. They may be held legally responsible for breaking the law. For example, recipients may be civilly or criminally liable if they deliberately hurt another resident, an employee or any other person, or if they destroy or steal property. Recipients may keep personal property, but are responsible for taking care of it and for protecting it from theft loss. Recipients also have the responsibility not to interfere with the care or treatment of others.

Thank you for protecting the rights of our recipients!

