



# RECIPIENT RIGHTS NEWS

*“Rights is Everybody’s Business”*

[www.michigan.gov/recipientrights](http://www.michigan.gov/recipientrights)

Produced by the Office of Recipient Rights Education and Training Division



**2016 Rights Conference**  
**September 26–30, 2016**  
**Troy Marriott Hotel**  
**Troy, MI**



The 2016 Rights Conference is definitely headed in the right direction. The steering committee is busy reviewing the many suggestions for conference sessions we received. The conference is back in stride now that we have transitioned from October to September, so the pre-con will be back. Jack Schafer, ex-FBI Agent and previous Rights Conference presenter will conduct a day-long session on “Elicitation Techniques” Jack tell us that elicitation is a subtle way to get people to reveal sensitive information without them realizing that they are doing so. Elicitation is an extremely valuable technique for interviewers who conduct sensitive, non-threatening interviews.

The committee has also confirmed sessions on Cross-Generational Communication and Training Techniques, Common Psychiatric Symptoms and Diagnoses, and Voter Rights for Mental Health Recipients. Be sure to watch for our communications regarding the [MDHHS Director and the Cookie Gant Awards](#). Both the Steering Committee and the Department’s Rights Advisory Committee would love to have a difficult decision to make because there were lots of nominations.

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## Upcoming Training Dates for 2016

**Basic Skills**

- Part 1  
June 7,8,9 , 2016  
Bellaire - Shanty Creek
- Part 2  
June 21, 22,23 , 2016  
Bellaire - Shanty Creek
- Part 1  
August 9,10,11 , 2016  
Mt. Pleasant—Comfort Inn
- Part 2  
August 23, 24,25 , 2016  
Mt. Pleasant—Comfort Inn
- Part 1  
October 26, 27, 28, 2016  
Bay City— DoubleTree
- Part 2  
November 9,10,11 , 2016  
Bay City— DoubleTree

**Building Blocks**

- June 16, 2016  
9:30 a.m. to 3:00 p.m.  
Kalamazoo -  
Four Points Sheraton
- November 17, 2016  
9:30 a.m. to 3:00 p.m.
- Sign up for Building Blocks six months after Basic Skills. It's a great refresher on allegations, citations, and issues.

**Developing Effective Training**

- ~~April 13, 2016~~  
8:30 a.m. to 4:30 p.m.  
Kalamazoo -Four Points Sheraton
- July 14, 2016  
8:30 a.m. to 4:30 p.m.  
Bellaire—Shanty Creek
- September 15, 2016  
8:30 a.m. to 4:30 p.m.  
Mt. Pleasant—Comfort Inn
- December 8, 2016  
8:30 a.m. to 4:30 p.m.  
Bay City—DoubleTree

For more information on these or other ORR trainings visit our web page [www.michigan.gov/recipientrights](http://www.michigan.gov/recipientrights) or call 888-505-7007.

## Advisory\Appeals Training

This year we have made some changes in the way we will schedule Advisory and Appeals Trainings. We have picked several dates and locations across the State to hold these trainings. If you wish to send members of your committees to one of these events please contact the Rights Office at the host site. Currently scheduled locations are as follows:



- April 20 - Alma (Mid-Michigan Hospital)
  - June 13 - Newaygo CMH
  - July 28 - St. Joseph CMH
  - August 19 - Pathways (to be video-conferenced throughout the UP)
  - October 6 - Oakland County CMH
  - October (date TBD) - Shiawassee County CMH
- Other locations will be announced later in the year.

## Dobbrastine to Retire

It is with mixed feelings that MDHHS Office of Recipient Rights says goodbye to Kalamazoo Psychiatric Hospital Rights Advisor, Linda Dobbrastine. Linda has been with the State ORR for over 16 years now and will be retiring as of May 1, 2016 after over 30 years advocating and protecting the rights of people receiving mental health services in Michigan. Linda first joined the rights community as the Rights Officer at Montcalm CMH where she also provided guardianship services to people with disabilities in the area. We were lucky enough to have her join us at Mt. Pleasant Center in 1999 and she moved to KPH in 2008 when Mt. Pleasant closed. Linda has been a valued co-worker and great friend for many years now and we are going to miss her very much. Even more, she will be missed in the world of recipient rights! Her tireless dedication to the pursuit of fairness and justice and her compassion for the people we serve is a rare commodity and she will not be easily replaced. Please help us in wishing Linda good luck and many grand adventures in her retirement or fill her email with best wishes (dobbrastinel@michigan.gov)!!!



## ORR Roundtable

The MDHHS-ORR Roundtable that is generally held the day before the May RROAM meeting will now be automatically approved for Category I Continuing Education Units. The Roundtable is facilitated by the Community Rights Unit. The next Roundtable is scheduled for May 5, 2016 in New Buffalo.

## Changes to ORR CEU Requirements

ORR has revised the Technical Requirement on Continuing Education to eliminate the requirement that Rights staff attend an "advanced" Basic Skills class every 5 years. After much discussion, we feel that the 36 hours of continuing education required every 3 years will serve much the same purpose as was intended in the "advanced" class. Another change mandates that no more than 12 of the 36 hours required in a 3 year period be earned online.



## Does the Mental Health Code or Whistleblowers' Protection Act Provide a Greater Scope of Protection for Rights Staff?

Cynthia Ward, J.D.



Recently, the Michigan Supreme Court ruled that a whistleblower's claim cannot be based on future or planned acts. In other words, the Whistleblowers' Protection Act (WPA) does not protect an employee if the employee only reported or threatened to report future, planned or anticipated unlawful conduct. The case before the Court

involved a domestic violence shelter employee who noticed a discrepancy in funding records and was told that a coworker was going to use funds for an unauthorized purpose. The employee brought her concerns to management's attention and was subsequently fired. The employee sued, an appeal followed, and the Michigan Supreme Court, relying on the plain language of the statute, concluded the WPA provides protection to employees who report a violation or a suspected violation of law— an act or conduct that has actually happened or is ongoing.

Contrast this ruling with the language of the Mental Health Code (MHC) which provides that staff acting on behalf of a recipient will be protected from harassment and retaliation resulting from recipient rights related activities, which we know includes protection of rights and prevention of violations. Because statutory recipient rights related activities include more than only reporting violations, staff who engage in prevention or protection activities to stop violations before they occur should be protected based on the plain language of the Mental Health Code. This distinction is noteworthy. The Court's decision interpreted only the WPA .

## DO YOU KNOW?

Updates to the [ORR Resource Manual](#) can be found on our website

## Quick Takes

The Michigan Department of Health and Human Services (MDHHS) has announced the posting of the new version of the Standard Consent Form (now known as the Behavioral Health Consent Form), which can be found on the Department's website at: [www.michigan.gov/bhconsent2](http://www.michigan.gov/bhconsent2). MDHHS made several revisions to the form and supplemental educational documents. These revisions include:

- ◆ Changing the name of the form from "Consent to Share Health Information" to "Consent to Share Behavioral Health Information for Care Coordination Purposes"
- ◆ Clarifying how the form is affected by HIPAA and updating related questions in the FAQs
- ◆ Removing communicable disease information from the form and updating related questions in the FAQs
- ◆ Adding questions to the FAQs related to (1) the re-disclosure of protected information and (2) the use of cover letters

### NEW POSTERS

We are getting ready to print new "Abuse and Neglect Reporting Requirements" posters. The re-printing was necessitated by the merger of DCH and DHS. These posters will be orange and white. We will send notice when they are available.



### LEGISLATIVE UPDATES

Several bills (HB5184) introduced in the Michigan House and Senate are aimed at revising the language in Michigan's laws addressing persons who are deaf, and blind. The bills would remove references to "deaf and dumb" or "hearing impaired" community to instead refer to the "Deaf, Deaf-Blind, and Hard of Hearing" community. Another bill (HB5645) would revise Michigan's zoning code to allow the exclusion of group homes with more than 6 persons from single family residential zones.

*"The use of service animals is increasingly giving veterans and Michiganders with disabilities better opportunities to live self-determined independent lives," Lt. Gov. Brian Calley said. "While these new laws help highlight the importance of service animals, we should also work to promote awareness of the need for and use of service dogs, as many people simply are unaware they are allowed in nearly every establishment in Michigan."*



### UPDATE ON SERVICE

#### ANIMALS

In addition to the provisions about service dogs (see our last issue) revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

Michigan residents who use service animals will have better access to public spaces, such as restaurants, retail stores and health care facilities after Gov. Rick Snyder signed a bill package in October that modernized state laws and advanced the use of these animals. The bills were spurred in part by recent incidents of people being turned away from businesses because they were accompanied by service animals. P.A. 144 Of 2015 makes it a crime to refuse entry to a person using a service animal or to assault a service animal. P.A. 145 exempts dogs from licensing fees if they are a service animal to someone with a disability or a veteran with a service-related disability. P.A. 146 requires the Michigan Department of Civil Rights to offer voluntary identification for service animals. It also requires the department to receive reports of problems encountered by a person with a disability while using a service animal. P.A. 147 makes it a misdemeanor to falsely represent a service animal, and brings state law more in line with the Americans with Disabilities Act with respect to the definitions of "person with a disability" and "service animal". It also specifically permits veterans to possess a service animal for post-traumatic stress disorder, a traumatic brain injury, or other service-related disability.

# 2016 CMHSP Assessment News

Each CMHSP recipient rights system is assessed annually by the ORR Community Rights Specialists. This is accomplished by a triennial on-site assessment at each CMHSP and an annual review of both semi-annual and annual reports submitted to MDHHS by the CMHSPs. The onsite reviews consists of: An entrance and exit conference; Interviews with the executive director, rights office staff, consumers, CMHSP staff and staff of contract providers, Recipient Rights Advisory and Appeals Committee members, Compliance review of complaint case files, logs, Code-mandated reports and notices, appeals cases; A review of contract language to ascertain clarity as to how rights will be protected during the contract period and training requirements; compliance review of all twenty-two rights-related policies required by the Code; Site visits to a representational sample of CMHSP directly operated and contracted service; and an exit conference. Areas of non-compliance with Code and Rules evidenced by the rights system at the LPH/U are cited in the CMHSP assessment report. Additionally, if a serious deficiency were found, this would also be reported to the Department of Licensing and Regulatory Affairs.

Date	CMHSP	Score	Result
03/08	Saginaw County CMH Authority		
03/22	CMH Authority of CEI Counties		
04/05	Lapeer County CMH Services		
04/13	Pines Behavioral Health Services		
05/17	AuSable Valley CMHA		
06/07	HealthWest (Muskegon)		
06/21	Northern Lakes CMH		
07/12	Hiawatha Behavioral Health		
08/16	North Country CMH		
08/30	CMH and SAS of St. Joseph County		
09/13	network180		
10/11	Genesee Health System		
10/25	Van Buren CMH Authority		
11/15	Shiawassee County CMH Authority		
12/06	Barry County CMHA		

## 2015 RESULTS

- Monroe County CMH Authority **Full Compliance**
- Montcalm Center for Behavioral Health **Full Compliance**
- Woodlands Behavioral Healthcare **Less than Substantial Compliance**
- Allegan County CMH Services **Full Compliance**
- Gratiot County CMH Services **Substantial Compliance**
- St. Clair County MHA **Substantial Compliance**
- Newaygo County CMH Services **Full Compliance**
- Northpointe Behavioral Healthcare Systems **Substantial Compliance**
- West Michigan CMH **Full Compliance**
- Gogebic County CMH Services **Substantial Compliance**
- Northeast Michigan CMH Authority **Full Compliance**
- Huron Behavioral Health Services **Full Compliance**
- Oakland County CMH Authority **Less than Substantial Compliance**
- Macomb County CMH Services **Full Compliance**
- Kalamazoo CMH & SA Services **Substantial Compliance**

## Attachment A Standards - REVISED for 2016

The Attachment A, Standards form has been revised for 2016. The multiplier has been removed to reflect that all the standards uniformly contribute to an effective rights protection system. Each standard will still be scored at 2 points for full compliance, 1 point for partial compliance and 0 points for non-compliance. The minimum score required for substantial compliance with established standards will be 162 out of a possible 170, evidencing a 95% compliance rate.

Section	Points
Section I: CMHSP Responsibilities	26
Section II: ORR Requirements	24
Section III: Semi and Annual Reports	6
Section IV: Policies	10
Section V: Advisory Committee	22
Section VI: Complaint Investigation / Resolution	68
Section VII: Appeal/Dispute Resolution	14
<b>Full Compliance</b>	<b>170</b>

## CMHSP Pre-Assessment Attachment A Worksheet-NEW for 2016

Each rights office will be asked to complete the CMHSP Pre-Assessment Attachment A Worksheet and have it available for review by the Community Rights Specialists at the time of the assessment. The worksheet is a tool for recipient rights staff to identify and describe the evidence they have to establish that the assessment standards have been met. We believe that this new worksheet will be very useful for your agency generally, and the rights office and staff, in particular.

Assessment Tools can be found on the MDHHS-ORR website. Questions should be addressed to either Angie O'Dowd (odowda1@michigan.gov) or Janice Terry (terryj5@michigan.gov)

# MDHHS OFFICE OF RECIPIENT RIGHTS

## Mission Statement

To protect and promote the constitutional and statutory rights of recipients of public mental health services and empower recipients to fully exercise these rights.

## Vision Statement

All recipients of public mental health services are empowered to exercise their rights and are able to fully participate in all facets of their lives.



A collection of questions posed by rights advisors and officers with responses provided by the Office of Recipient Rights. The responses on this site are not meant to provide a legal opinion on any particular issue but are the official interpretation of these issues by the Office of Recipient Rights.

## FOCUS ON HOSPITAL CONCERNS

**Q. Is “pepper gel” considered a weapon as defined under CMS Interpretative guideline 482.13(e)? Answer: Yes.**

CMS Interpretive Guidelines for Hospitals state: “CMS does not consider the use of weapons in the application of restraint or seclusion as a safe, appropriate health care intervention. For the purposes of this regulation, the term “weapon” includes, but is not limited to, pepper spray, mace, nightsticks, tazers, cattle prods, stun guns, and pistols.” The Interpretative Guidelines specifically mention “pepper spray”, which includes the four types of pepper spray products—pepper spray gel, pepper spray foam, pepper spray stream, and pepper spray fogger. All four types of pepper spray would be considered a weapon.

**Q. Can handcuffs be used as a restraint device if the situation is not considered to be a criminal activity and the recipient is not being placed in custody of local law enforcement?**

Answer: No.

Handcuffs are not clinical devices and should not be used as such. CMS Interpretive Guidelines for Hospitals state: Security staff may carry weapons as allowed by hospital policy, and State and Federal law. However, the use of weapons by security staff is considered a law enforcement action, not a health care intervention. CMS does not support the use of weapons by any hospital staff as a means of subduing a patient in order to place that patient in restraint or seclusion. If a weapon is used by security or law enforcement personnel on a person in a hospital (patient, staff, or visitor) to protect people or hospital property from harm, we would expect the situation to be handled as a criminal activity and the perpetrator be placed in the custody of local law enforcement. The use of handcuffs, manacles, shackles, other chain-type restraint devices, or other restrictive devices applied by non-hospital employed or contracted law enforcement officials for custody, detention, and public safety reasons are not governed by this rule. The use of such devices are considered law enforcement restraint devices and would not be considered safe, appropriate health care restraint interventions for use by hospital staff to restrain patients. The law enforcement officers who maintain custody and direct supervision of their prisoner (the hospital’s patient) are responsible for the use, application, and monitoring of these restrictive devices in accordance with Federal and State law. However, the hospital is still responsible for an appropriate patient assessment and the provision of safe, appropriate care to its patient (the law enforcement officer’s prisoner).

**Q. Are security personnel considered hospital staff? If so, is it appropriate that they use handcuffs on mental health patients?**

Answer: The relationship of security personnel to the hospital is determined by the hospital—security personnel may be direct employees or contract employees. For the purposes of chapter 7 and recipient rights, they would be either employees or “agents of the provider.”

Please also see answer to immediately preceding question.

**Q. If “pepper gel” were to be used in the physical management of a mental health recipient, would this non-accidental act, causing pain, be considered Abuse Class II under the Michigan Mental Health Code?**

Answer: The use of pepper spray gel could lead to a violation of the Mental Health Code and Administrative Rules, and could reasonably fall under categories 72222 or 72223.

Other FAQ’s can be viewed on our website at <http://tinyurl.com/ORR-FAQ>