Amendment No. 1 to the Agreement Between
Michigan Department of Health & Human Services
And
CMHSP: _____________________________
For
Managed Mental Health Supports and Services

1. Period of Agreement: This agreement shall commence on October 1, 2018 and continue through September 30, 2019.


3. Program Budget and Agreement Amount: Payment to the CMHSP will be paid based on the total funding available for managed mental health supports and services as identified in the annual Legislative Appropriation for community mental health services programs for the period of October 1, 2018 through September 30, 2019. The estimated value of this is contingent upon and subject to enactment of legislative appropriations and availability of funds.

4. Amendment Purpose: This amendment is for changes to the following:
   - Contract attachment C4.5.1 PASARR Agreement
   - Contract attachment C6.3.2.2 Family Support Subsidy
   - Contract attachment C6.3.2.3A TR for CE Requirements for RR Staff
   - Contract attachment C6.3.2.3B TR RR Training Standards Requirements
   - Contract attachment C6.3.2.4 Recipient Rights Appeal Process

5. Original Agreement Conditions: It is understood and agreed that all other conditions of the original agreement remain the same.

6. Special Certification
   The individual or officer signing this amendment certifies by his or her signature that he or she is authorized to sign this amendment on behalf of the responsible governing board, official or contractor.

Signature Section

For the Michigan Department of Health and Human Services

________________________________________  _____________________________
Christine H. Sanches, Director                Date
Bureau of Grants and Purchasing

For the CONTRACTOR:

________________________________________  _____________________________
Name (print)                                  Title (print)

________________________________________  _____________________________
Signature                                   Date
PASARR AGREEMENT

I. PURPOSE

The CMHSP will complete PRE-ADMISSION SCREENINGS and ANNUAL RESIDENT REVIEWS (hereinafter referred to as PASARR) for individuals who are located in the CMHSP's MH/DD service area presenting for nursing facility admission, or who are currently a resident of a nursing facility located in said service area, as required by the Omnibus Budget Reconciliation Act (hereinafter referred to as OBRA) of 1987. The method of costing, billing and payment for these services is described below. This Agreement replaces any previous contract or amendment related to pre-admission screenings and annual resident review.

II. REQUIREMENTS

A. Evaluations and assessments as described herein shall be prepared and submitted in accordance with the following documents:

1. Medicaid Provider Manual Nursing Facility Chapter in the Nursing Facility Coverages Section, regardless of payer source.


3. The CMHSP must ensure that all new employees and contracted workers, who administer PASARR, are trained at least one time on the policies and procedures with respect to the OBRA/PASARR process through Improving MI Practices website at: www.improvingmipractices.org.

The DEPARTMENT will notify the CMHSP of any changes in these documents due to federal rules and state requirements. The CMHSP will have implemented such changes within sixty (60) days of the DEPARTMENT's notification to the CMHSP unless otherwise provided by federal regulations.

PRE-ADMISSION SCREENING

B. The CMHSP will provide evaluations and assessments for all individuals located in the CMHSP's service area who are presented for admission to a nursing facility regardless of the location of the admitting facility and for whom a Level I Pre-admission Screening procedure (DCH Form 3877) has identified the possible presence of a mental illness or a developmental disability. This evaluation and assessment will be completed and an appropriate determination made prior to admission of the individual to a nursing facility. This evaluation and assessment will be completed utilizing criteria specified in
Paragraph A. above by OBRA electronic application or paper system requirements.

C. The CMHSP agrees that Pre-admission Screenings will be completed and required documentation submitted to the DEPARTMENT within four (4) working days of referral of the individual to the CMHSP by whatever agent performing the Level I identifies.

ANNUAL RESIDENT REVIEW

D. The CMHSP will provide Annual Resident Reviews to all nursing facility residents who are located in the CMHSP’s service area and who have been identified through the Pre-admission Screening or Annual Resident Review process as having either a mental illness or developmental disability or who have otherwise been identified to the CMHSP by submission of DCH Form 3877. This evaluation and assessment must be completed utilizing criteria specified in Paragraph A. above.

E. The CMHSP agrees that Annual Resident Reviews will be completed and required documentation submitted to the DEPARTMENT within fourteen (14) calendar days of receipt by the CMHSP of an appropriately completed DCH Form 3877 from the nursing facility(ies). In the case of Annual Resident Reviews of persons who have been admitted to a nursing facility without a Pre-admission screening as an exempted hospital discharge, the CMHSP will complete a review and submit required documentation to the DEPARTMENT within fourteen (14) calendar days of referral. In either situation, if a CMHSP is unable to comply with this requirement in a particular case, the CMHSP will notify the DEPARTMENT.

III. RECORDS, BILLINGS, AND REIMBURSEMENT

A. The CMHSP will maintain all documentation and records concerning services provided, client treatment recommendations and treatment plans, and verification of compliance with standards for subsequent audit, and actual cost documentation for a period of seven (7) years and assure that all such documentations will be accessible for audit by appropriate DEPARTMENT staff and other authorized agencies.

B. The CMHSP will submit monthly billings to the DEPARTMENT for services provided based on an actual cost basis as defined in "Revised Billing Procedures for OBRA Pre-Admission Screening, and Annual Resident Review for Nursing Facility Clients" DCH memorandum, William J. Allen, October 2, 1996, which is included to this agreement. Only one (1) bill will be considered for payment per month, and should be submitted for payment to the DEPARTMENT within forty-five (45) days after the end of the month in which the service was provided, except for the September bill which shall be submitted within fifteen (15) days after the end of the month. In the event that the CMHSP realizes costs incurred after a billing has been submitted, the CMHSP may submit a revised billing. In any event, all
bills for services provided under this Agreement must be received by the
DEPARTMENT within fifteen (15) days following the end of the fiscal year. Submitted bills will also include the number of evaluations completed during the month being billed by completing the "Detail of Services Billed" form. The PASARR forms located in the MDHHS OBRA Operations Manual must be utilized by the CMHSP for reporting and billing.

The CMHSP will submit a "Certificate of Indirect Costs" for indicating the indirect rate being used for indirect costs billed to the department. The form, attached, should be filled out annually.

C. Payments earned by the CMHSP for these services will be included as earned revenue from the DEPARTMENT on the revenue and expenditure reports required by this contract. PASARR expenditures will be specifically identified as part of the "Other Services" section of the final FSR. Separation by MI and DD is not required. All payments made under this Agreement are subject to the requirements under the Single Audit Act of 1984. The CFDA number for the federally funded portion of payments made to the CMHSP under this Agreement is 93.778.

IV. DEPARTMENT RESPONSIBILITIES

A. The DEPARTMENT agrees that for bills received pertaining to this Agreement and which are correctly and completely submitted on a timely basis as specified in Paragraph III.B. above, payments will be made within forty-five (45) days of receipt of bills for approved services. All payments will be made at 100% of the CMHSP's charge as submitted.

B. Preparing claims for federal financial participation and submitting these claims to the Medical Services Administration will be the responsibility of the DEPARTMENT. The CMHSP will provide the DEPARTMENT with such documentation as may be required to support claims for federal financial participation.

C. The DEPARTMENT will hold the CMHSP financially harmless where the CMHSP has followed procedures as outlined in Federal Office of Management and Budget 2 CFR Part 200, Subpart E – Cost Principles, and has documentation as to the services performed. The Federal Office of Management and Budget, 2 CFR Part 200, Subpart E – Cost Principles, is included in the MDHHS Technical Manual. The CMHSP will be responsible where procedures related to these identified evaluations are not followed or where documentation is lacking.

V. TERMINATION

The Agreement may be terminated by either party within sixty (60) days notice. Said notice shall be made in writing and sent by certified mail. Termination will take effect sixty (60)
days from receipt of said notice.

DETAIL OF SERVICES BILLED
Nursing Facility Evaluations

CMH Board Name: _____________________________ Month/Year: _______________________

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<tr>
<th>Name of Resident</th>
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*Indicate PAS or ARR

SUMMARY BILLING FOR PRE-ADMISSION SCREENING and ANNUAL RESIDENT REVIEWS (PASARR)
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CMH BOARD __________________________________ TELEPHONE NUMBER: ______________________
PERSON COMPLETING FORM: ______________________________________________________________
MONTH ENDING: ___________________________________ DATE SUBMITTED: ___________________
NUMBER of Reviews: DD_________ MI_________ TOTAL_________________

I. DIRECT COSTS                                                                                         TOTAL

A. Direct labor (excluding overtime, shift or holiday premiums and fringe benefits) $_____________
B. Other Labor (overtimes, shift or holiday premiums and fringe benefits). $_____________
C. Other Direct Costs (contractual services, supplies/materials, travel, equipment, telephone, office space, etc.) $_____________
D. Subtotal Direct Costs: $_____________

II. INDIRECT COSTS

Computation Method:
1. Approved Cost Allocation Plan: (Plan must be reviewed and approved by MDHHS before using indirect rate based on actual costs)
   Direct Costs (I.D) above $_____________x Indirect Rate $_____________

III. TOTAL COSTS                                             (Direct and Indirect Costs) $_____________

IV. FEDERAL REIMBURSEMENT
   (Total Costs .III Above) Total Costs $_____________ x .75 = $_____________

CMHSP CERTIFICATION

The CMHSP has reported all costs at actual and in conformance with Federal OMB 2 CFR Part 200, Subpart E – Cost Principles. The CMHSP acknowledges that all costs are subject to audit for federal reimbursement purposes and assumes full responsibility and proper documentation.

________________________________________________________ ________________________________
COMMUNITY MENTAL HEALTH SERVICES PROGRAMS     DATE
DIRECTOR

I authorize the Total Costs (III above) to be paid to the Community Mental Health Services Board or Authority.

________________________________________________________ ________________________________
MDHHS Authorized Staff                                                                           DATE

CERTIFICATE OF INDIRECT COSTS

This is to certify that the indirect cost rate proposal has been reviewed and is submitted herewith
the knowledge and belief:

1. All costs included in this proposal, dated________________________, to establish billing or final indirect costs rates for fiscal year________________________, are allowable in accordance with the requirements of the Federal Award to which they apply and OMB 2 CFR Part 200, Subpart E – Cost Principles. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

2. All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or casual relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate. If the department finds that the indirect rate was not determined correctly, the CMH agrees to pay the department any difference of all payments made.

I declare that the foregoing is true and correct.

Community Mental Health Agency:

Name:___________________________________________

Signature:_________________________________________

Title:____________________________________________

Date:__________________________________________
Amendment #1

STATE OF MICHIGAN

JOHN ENGLER, Governor

DEPARTMENT OF COMMUNITY HEALTH
LEWIS CASS BUILDING
LANSING, MICHIGAN 48913
JAMES K. HAVEMAN, JR., Director

October 2, 1996

TO: Executive Directors
Community Mental Health Services Programs

FROM: William J. Allen, Chief Executive Officer
Behavioral Health

SUBJECT: Revised Billing Procedures for OBRA Pre-Admission Screening, Initial and Annual Resident Reviews for Nursing Home Clients

Billings for PASARR screenings are governed by the federal A-87 circular. This document defines direct and indirect costs. In the past A-87 has allowed indirect cost to be based on 10% of direct labor costs or on a percentage approved by the federal government through the submission of a cost allocation plan. Recent changes to the A-87 process allow the state agency to approve a percentage based on a cost allocation model. The Department is in the process of developing a methodology for such cost allocation which is expected to be completed this fall. In the interim, CMHSPs may use one of the following three methodologies for calculating indirect costs under the PASARR contract:

1. An accepted and approved AIS/MR cost report.

2. The indirect rate from a cost allocation plan developed by Griffiths & Associates that has been approved by the department.

3. The past policy of using 10 percent of the direct salaries and wages as an indirect rate.

When the standardized model for cost allocation has been adopted, the method using the 10 percent and AIS will no longer be acceptable.

Reasonable compliance with procurement procedures is also required for securing contracted services, including documentation of any sole service contracts in accordance with federal requirements. Attachments include the following items:

1. OBRA procedure for billing
2. OMB Circular A-87
3. 45 CFR 74, subpart P
4. Appendix G - Attachment O of OMB Circular A-102
5. Instructions and billing form for completing billings

Any questions concerning these cost accounting requirements should be addressed by the Department of Community Health, Revenue Enhancement Division, Richard Miles or Richard Foster.

WJA:SOH:eed
Attachments

c. David Veresput
   David Viele
   Richard Miles
FAMILY SUPPORT SUBSIDY PROGRAM
FSS GUIDELINES FOR DETERMINING ELIGIBILITY OF APPLICANTS

Revised: May, 2018

I. SUMMARY/BACKGROUND

The Michigan Department of Health and Human Services Family Support Subsidy (FSS) program is a program that provides financial support to families who care for their child with severe disabilities in the family home. This financial support may help prevent or delay out-of-home placement. In other situations, the program may provide the funds necessary to allow the child to return home from an out-of-home placement.

Michigan’s Mental Health Code and Administrative Rules establish the parameters and process for determining eligibility of applicants to the FSS program.

II. VALUES AND PRINCIPLES

Supporting families is a high priority of Michigan’s public mental health system, as evidenced by the FSS program. Michigan’s public policy is that children with developmental disabilities, like all children, need loving and enduring family relationships. For over two decades, the Michigan Department of Health and Human Services’ policy has been that children should be supported to live with their families and if out-of-home placement becomes necessary, it should be temporary and time limited with a goal of family reunification or, for some children, adoption.

Providing financial support to families that include a child with severe disabilities may enable families to stay together, allows them flexibility in purchasing special services at the local level, and saves taxpayer money by avoiding or reducing the need for more costly out-of-home placements. With this subsidy, families are empowered to make decisions and purchases based upon the special needs of their child.

III. FAMILY SUPPORT SUBSIDY GUIDELINES

Pursuant to Section 157(2) of the Mental Health Code, “The department shall create application forms and shall make the forms available to community mental health services programs for determining the eligibility of applicants…”

A. Determining the eligibility of applicants includes:

1) Helping families understand the requirements of the program
2) Providing assistance in completing the application
3) Application processing to determine eligibility
4) Requesting technical assistance from MDHHS as appropriate
5) Liaison between families and MDHHS
6) Outreach to schools, medical offices, clinics, hospitals, etc.
7) Participating in the FSS program annual survey
8) Arranging a hearing, at the family’s written request, if the community mental health agency denies or terminates a family support subsidy
9) Participating in efforts to recapture monies received by families after the child/family’s change in eligibility.

B. Applicants to this program must complete MDHHS-1181, FSS application. The community mental health services program (CMHSP) FSS coordinator may assist the applicant and provide direction.

C. The child’s date of birth must be verified. A copy of the child’s legal birth certificate is preferable.

D. The name(s) and address as written on the application is the way it will appear on the subsidy warrant (check). Please make sure that all information is legible and accurate. If two names are listed on the application, both names will be used as dual payees on the warrant.

E. The educational eligibility category must be documented annually by certification from the Michigan local public or intermediate school district the child attends (or would attend if he/she were in the public school system). Certification can be in the form of the child’s Multidisciplinary Evaluation Team (MET) report, Individual Educational Program Team (IEPT) report or by a letter or memorandum on school letterhead. Suggested checklist language has been developed for this purpose and schools wishing to utilize it may contact the local CMHSP.

1) If the child’s educational eligibility category is cognitive impairment, eligibility can be determined by the school psychologist or other qualified school representative who can verify, in writing, that the child’s latest intellectual assessment shows development at a rate of 4.5 or more standard deviations below the mean.

2) If the child’s educational eligibility category is autism spectrum disorder, the school must verify the child’s special education programming. Eligible programming for children with autism spectrum disorder is limited to the following: program for students with severe cognitive impairment (R340.1738), program for students with severe multiple impairments (R340.1748), or programs for students with autism spectrum disorder (R340.1758).

a) Please note that special education rule number 340.1758 describes two alternatives for educating children with ASD. Rule number 340.1758(1)(a)
describes the traditional classroom for children with ASD, taught by a teacher of students with ASD. Rule number 340.1758(1)(b) describes a special education program, tailored to an individual student’s needs, that assures the provision of educational programming for students with ASD. A 340.1758(1)(b) program can be carried out in many different school settings including the general education classroom or resource room. If a child’s IEP states the special education rule number associated with a particular classroom setting and the programming includes components of 340.1758(1)(b), FSS educational eligibility could be determined if school authorities are able to assert, in writing, that the child’s educational program also meets the requirements of 340.1758(1)(b).

F. A copy of the family’s most recently filed Michigan income tax form documents the family’s taxable income. To be eligible for this program, the taxable income must be $60,000 or less.

1) Other documentation is acceptable only if the family did not file a Michigan income tax form - having recently moved here from another state or country or having too little income to require filing. Other documentation that is acceptable if a state form is not filed includes (in descending order): a family’s most recently filed federal income tax form, Supplemental Security Income statement, Michigan Department of Human Services statement, W-2 form, recent check stub or a handwritten, signed note attesting to no taxable income. A Medicaid card is not an acceptable proof of income.

G. For new applicants only: If the family’s most recently filed Michigan income tax form shows a taxable income of more than $60,000, but the family’s financial worth has decreased since filing (layoff, death, divorce, etc.), documentation of projected income can be used to determine eligibility. When projected income is used to determine eligibility, the following year’s tax form must reflect a taxable income of $60,000 or less. If it is above $60,000, the family must pay back the total amount of subsidy dollars received.

H. The parent or legal guardian completing the application must verify that the child is living with him/her or temporarily with a relative.

I. A parent or legal guardian must sign the form attesting to the truth of all information provided.

J. The CMHSP FSS coordinator’s signature on the bottom of the application confirms that all back up documentation proving eligibility is on file at the CMHSP and that the CMHSP is verifying that the family is entitled to receive FSS payments. If the CMHSP FSS coordinator receives information that would cause a
family to no longer be eligible to receive FSS payments, they must notify without delay, the statewide FSS coordinator by submitting via fax or other HIPAA compliant method, a MDHHS-1181, change of status, noting the change in the family’s eligibility. Failure to do so by the CMHSP may result in the CMHSP reimbursing MDHHS for any payments issued to families who are ineligible to receive them.

K. The completed MDHHS-1181 application form is sent to:

Family Support Subsidy Program  
Michigan Department of Health and Human Services  
235 S. Grand Avenue, Suite 1310, Grand Tower Building  
Lansing, MI 48933  
FAX: 517-241-5777

L. The FSS statewide coordinator reviews the applications, verifies that eligibility is appropriately determined and enters the data into the program’s check processing system. This data is transmitted to the Michigan Department of Treasury on a monthly basis. Near the 20th of each month, the Michigan Department of Treasury processes, prints and releases payments to eligible families.

IV. DENIAL OF FAMILY SUPPORT SUBSIDY

A. Pursuant to Section 159(3) of the Code, “if an application for a family support subsidy is denied or a family support subsidy is terminated by a community mental health services program, the parent or legal guardian of the affected eligible minor may demand, in writing, a hearing by the community mental health services program. The hearing shall be conducted in the same manner as provided for contested case hearings under Chapter 4 of the Administrative Procedures Act of 1969, Act No. 306 of the Public Acts of 1969, being Sections 24.271 to 24.287 of the Michigan Compiled Laws."

B. Pursuant to the Administrative Rules: Copies of blank application forms, parent report forms, the forms for changed family circumstances, and appeal forms shall be available from the community mental health services program. (R330.1616 Availability of forms) (Note: It is acceptable to ask families to write a letter to the CMHSP requesting an appeals hearing, in lieu of a standardized form.)

C. A community mental health services program shall review an application and promptly approve or deny the application and shall provide written notice to the applicant and to the Michigan Department of Health and Human Services (MDHHS) Family Support Subsidy (FSS) office of its action and of the opportunity to administratively appeal the decision if the decision is to deny the application. If the denial is due to the insufficiency of the information on the application form
or the required attachments, the CMHSP shall identify the insufficiency. (Rule R330.1641 Application review) The notice to the MDHHS FSS office must be a change in status on the MDHHS-1181 form noting the change in eligibility and must be submission by fax or other HIPAA compliant method within 10 working days.

D. If an application is denied or the subsidy terminated, a parent or legal guardian may file an appeal. The appeal shall be in writing and be presented to the community mental health service program within two months of the notice of denial or termination. (R330.1643 Appeal)

E. If an appeals hearing is held at the CMHSP and the presiding officer upholds the family’s appeal in violation of Mental Health Code language, MDHHS shall require that the CMHSP reimburse MDHHS the disputed amount.

F. Families wishing to appeal the decision of the CMHSP hearings officer may do so through circuit court in their county of residence.

G. If a CMHSP approves an application in violation of Mental Health Code language or without full documentation proving eligibility, MDHHS shall require that the CMHSP reimburse MDHHS the disputed amount.

V. LEGAL REFERENCES

Mental Health Code Act, 258 Ml. 330.1156-330.1161
Technical Requirement
Continuing Education Requirements for Recipient Rights Staff

I. Background/Regulatory Overview

The purpose of this Technical Requirement is to establish processes for meeting the educational mandates for Recipient Rights Officers/Advisors set forth in the following sections of the Michigan Mental Health Code and MDHHS/CMHSP Managed Mental Health Supports and Services Contract.

330.1754 State office of recipient rights; establishment by department; selection of director; powers and authority of state office of recipient rights.
(2) The department shall ensure all of the following: (f) Technical assistance and training in recipient rights protection are available to all community mental health services programs and other mental health service providers subject to this act.

330.1755 Office of recipient rights; establishment by community mental health services program and hospital.
(2) Each community mental health services program and each licensed hospital shall ensure all of the following: (e) Staff of the office of recipient rights receive training each year in recipient rights protection.

MDHHS/CMHSP Managed Mental Health Supports and Services Contract:
The Community Mental Health Services Program (CMHSP) shall assure that, within the first three months (90 days) of employment, the Recipient Rights Office Director, and all Rights Office staff (excluding clerical staff) shall attend and successfully complete the Basic Skills Training programs offered by the Department's Office of Recipient Rights. In addition, within every three (3) year period subsequent to their completion of Basic Skills, the Recipient Rights Office Director and all Rights Office staff (excluding clerical staff) must comply with the requirements specified in Attachment C6.3.2.3A “Continuing Education Requirements for Recipient Rights Staff”.

II. Definitions

A. Continuing Education Unit:
One Continuing Education Unit (CEU) is defined as one clock hour (60 minutes) of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction. The primary purpose of the CEU is to provide a permanent record of the educational accomplishments of an individual who has completed one or more significant educational experiences.

B. Category I Credits: Operations
This category includes programs that support and enhance the fundamental scope of responsibilities and effective work of recipient rights staff. These may be directly related to prevention, complaint resolution, and monitoring and education that support the fundamental scope of a Rights Office’s operations. Examples include:
Rights Office Operations Techniques
Enhancing Investigative Skills
Inpatient Rights
Out-of-catchment rights protection
Writing effective rights-related contract language
Conducting effective site visits
How to protect rights in a dual rights protection system

C. Category II Credits: Legal Foundations
This category includes programs that enhance the understanding and application of the Mental Health Code, Administrative Rules, Disability and Human Rights Laws, HIPAA and the MHC, Federal Laws and regulations and any other laws addressing the legal rights of a mental health recipient.

D. Category III Credits: Leadership
This category includes programs that support and enhance the leadership abilities of rights staff. Examples include:
- Community Mental Health Services Program (CMHSP) issues
- How to establish a rights presence in an organization
- Understanding rights data and how to use it to trigger systemic organizational changes
- What goes on in a Failure Mode Event Analysis (FMEA)/Adverse Event Review
- Working with key individuals in your organization—Customer Services, Contracts Unit, and how it can enhance rights

E. Category IV Credits: Augmented Training
This category includes training sessions that contain information that would help rights staff have a better understand the people they serve, their disabilities, their families, or training indirectly related to rights but affecting rights. These may include trainings in mental health conditions and disabilities, treatment and support modalities, recovery, and self-determination as long as these topics can be ascertained to have a component that relates to assisting the attendee in the protection of rights. Examples include:
- Understanding MI/SUD Co-occurring disorders
- How to communicate with people with disabilities
- Ethics
- Consumers from different cultures
- Diversity Issues

F. CMHSP: Community Mental Health Services Program

G. Continuing Education Committee: A committee appointed by from the Director of the Director of the MDHHS-ORR Education, Training, and Compliance Unit. This committee shall consist of rights staff and management from MDHHS-ORR, CMHSP’s, and LPH/U’s and shall have at least one representative who is a Licensed Master’s Social Worker (LMSW). This committee shall review applications and assign an appropriate category to each approved application. Committee members shall be appointed for a three-year term and may be re-appointed at the discretion of the Director of ORR.
H. Department: Michigan Department of Health and Human Services (MDHHS)

I. LPH Licensed Private Hospital

III. Standards

A. Basic Requirements

All staff of the Department, a community mental health services program (CMHSP), or a licensed private Hospital (LPH), employed for the purpose of providing recipient rights services shall, within the first 90 days of employment, attend, and successfully complete, the Basic Skills Training curriculum as determined by the Michigan Department of Health and Human Services Office of Recipient Rights. The Basic Skills curriculum shall consist of the following classes:

Basic Skills – Part 1
The first part of the mandatory training, this course is designed to provide participants with the knowledge of the laws required to carry out the mandates of the Mental Health Code and the activities necessary to operate an ORR office in compliance with applicable laws, rules, and standards.

Basic Skills – Part 2
The second part of the mandatory training, this course is designed to provide participants with the skills related to investigation, report writing and processing, that are needed to carry out the requirements of the Michigan Mental Health Code.

B. Continuing Education Requirements

1. All staff employed or contracted to provide recipient rights services shall receive education and training oriented toward maintenance, improvement or enhancement of the skills required to effectively perform the functions as rights staff.
2. A minimum of 36 contact hours of education or training shall be required over a three (3) year period subsequent to the completion of the Basic Skills requirements, and in every three (3) year period thereafter.
3. The 36 contact hours obtained must be in rights-related activities and must fall within one or more of the categories identified in the definitions above. At least 3 credits must be earned each calendar year.
4. A minimum of 12 contact hours must be obtained in programs classified as Category I or II.
5. No more than 12 credits in a 3 year period may be earned through the use of online learning resources.
6. CEU’s may be received by attending programs or conferences developed by the Department, other rights-related organizations, organizations that have applied to the Office of Recipient Rights Education, Training and Compliance Unit for approval of their programs or through online training.
7. Rights staff may request approval for other educational programs by utilizing the established approval process described within this document.
8. Recipient rights staff should retain documentation of meeting the CEU requirements for a
period of four (4) years from the date of attendance. It is suggested that the following information be kept on file:
   a. The title of the course or program and any identification number assigned to it by the MDHHS ORR Education, Training, and Compliance Unit.
   b. The number of CEU hours completed.
   c. The provider’s name.
   d. Verification of attendance by the provider.
   e. The date and location of the course.

9. Reviews will be conducted by the MDHHS Office of Recipient Rights-staff at each assessment of a recipient rights program to determine if all rights staff have met both the basic and continuing education requirements.

10. CMHSPs who contract with Licensed Private Hospitals/Units shall mandate compliance with the standards in this Technical Requirement by the Recipient Rights Office staff of those entities.

C. Procedures for Training approval

1. Training that is automatically approved for CEU credits:
   a) MDHHS ORR training excluding Basic Skills
   b) All sessions at the MDHHS-ORR Annual Conference, including the Pre-Conference session
   c) Training provided by, or sponsored by, MDHHS Office of Recipient Rights

2. Training that may be approved for CEU credits, if meeting the criteria above and with the submission of the necessary documents by the applicant:
   a) ROAM sponsored training
   b) CMH/LPH/U sponsored training
   c) Training provided by other agencies, entities, professionals, accreditation bodies, risk management, corporation counsel/lawyer, etc.
   d) Training provided to the Rights Officer/Advisor for their profession’s licensure.
   e) Other training in the community at large, including on-line training, if requirements as detailed above are met.

3. CEU Documentation and Notification
   a) Application
      To apply for CEU credits for a training, complete the MDHHS ORR Continuing Education Course Summary (Exhibit A) form and send by email, mail or FAX, within 30 calendar days of the event to:

MDHHS ORR Education, Training, and Compliance Unit
18471 Haggerty Road
Northville, MI 48168
b) Verification of attendance.
   Attendance can be verified through provision of a Certificate of Attendance, copies
   of a training record, copy of an attendance/sign in sheet, a copy of the training
   agenda or outline with a self-attestation statement that the applicant did attend the
   training. Verification of attendance shall be kept on file with the applicant and be
   readily available for review by MDHHS-ORR, if requested.

c) Notification
   Applicants will receive notification of approval determination for CEU credits no later
   than 30 business days following receipt of the required documents. Approved
   courses, credit and category information will be posted on the ORR website.

d) Application Review, Approval and Appeal
   Applications from organizations outside the Department, or applications from
   individuals who have attended, or plan to attend, training programs shall be reviewed
   and approved or rejected by the Continuing Education Committee. If an application
   is rejected by the Continuing Education Committee it may be appealed to the director
   of the Office of Recipient Rights. The decision of the Director of ORR is the final
   MDHHS position on the application.
Exhibit A: APPLICATION FOR RECIPIENT RIGHTS CEU CREDIT

OFFICE OF RECIPIENT RIGHTS
APPLICATION FOR RECIPIENT RIGHTS CEU CREDIT

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| Requested Category | Category I Operations | Category II Legal Foundations | Category III Leadership | Category IV Augmented |
|---|---|---|---|
| Describe how the content relates to Rights? |  |  |  |  |

Please attach a detailed agenda.
Technical Requirement
Recipient Rights Training Standards Requirements for CMH and Provider Staff

Rationale
The purpose of this Technical Requirement is to establish consistent content for the training of new staff in the CMHSPs and their provider agencies. Establishment of these criteria is required in order to provide a standardized knowledge base to all staff that assures the rights of recipients are applied in a consistent manner across the state. This consistency should also enable various CMH agencies to accept the training of similar agencies and, thus, decrease cost of training by eliminating the need for redundant retraining.

Authority
330.1753 Recipient rights system; review by department.
The department shall review the recipient rights system of each community mental health services program in accordance with standards established under section 232a, to ensure a uniformly high standard of recipient rights protection throughout the state. For purposes of certification review, the department shall have access to all information pertaining to the rights protections system of the community mental health services program.

330.1754 State office of recipient rights; establishment by department; selection of director; powers and authority of state office of recipient rights.
(2) The department shall ensure all of the following: (f) Technical assistance and training in recipient rights protection are available to all community mental health services programs and other mental health service providers subject to this act.

330.1755 Office of recipient rights; establishment by community mental health services program and hospital.
(5) Each office of recipient rights established under this section shall do all of the following: (f) Ensure that all individuals employed by the community mental health services program, contract agency, or licensed hospital receive training related to recipient rights protection before or within 30 days after being employed.

Definitions
Content Requirements:
The content requirements are a set of skills necessary for an understanding of the rights of mental health recipients. These requirements reflect foundational knowledge that professionals and paraprofessionals engaging in the provision of services to public mental health recipients, as well as ancillary bodies such as committees and board members, must have in order to provide services in accordance with Chapter 7 of the Michigan Mental Health Code.

Recipient:
An individual who receives mental health services from the department, a community mental health services program, or a facility or from a provider that is under contract with the department or a community mental health services program.

Resident:
An individual who receives services in either a state operated facility, a licensed psychiatric hospital or unit or an adult foster care facility.
STANDARDS:
1. Training for newly hired agency and provider staff shall encompass the entirety of the core learning areas identified in Exhibit A.

2. If provided or required, annual rights training may focus on any or all of the learning areas.

3. Agencies may require documentation of competency in these areas through testing.

Exhibit A – Areas to be covered in Training

This chart represents the topics that minimally must be covered for the specific groups listed.

<table>
<thead>
<tr>
<th>Areas to be covered in Training</th>
<th>Board or Directors</th>
<th>Administration</th>
<th>Direct Care Staff - Specialized Residential</th>
<th>Direct Care Staff - Residential</th>
<th>Outpatient Clinic - All Staff</th>
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THE RECIPIENT RIGHTS SYSTEM

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<tr>
<th>Areas to be covered in Training</th>
<th>Board or Directors</th>
<th>Administration</th>
<th>Direct Care Staff - Specialized Residential</th>
<th>Direct Care Staff - Residential</th>
<th>Outpatient Clinic - All Staff</th>
<th>Volunteers</th>
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Exhibit B – Training Standards for New Hire Training

**Code Citation and Title**

<table>
<thead>
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<tbody>
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<td>MHC 330.1722 ABUSE AND NEGLECT</td>
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**Code Language**

*A recipient of mental health services shall not be subjected to abuse or neglect.*

**CONTENT REQUIREMENTS**

- **“Abuse” means:**
  - An act (or provocation of another to act) by an employee, volunteer or agent of the provider that causes or contributes to a recipient’s death, sexual abuse, serious or non-serious physical harm or emotional harm.
  - The use of unreasonable force on a recipient with or without apparent harm;
  - An action taken on behalf of a recipient by a provider, who assumes the recipient is incompetent, which results in substantial economic, material, or emotional harm to the recipient;
  - An action by an employee, volunteer, or agent of a provider that involves the misappropriation or misuse of a recipient’s property or funds for the benefit of an individual or individuals other than the recipient
  - 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.

- **Agents of the Provider:** people who work for agencies that contract with the Department, a CMHSP or PIHP, or an LPH

- **"Bodily function" means the usual action of any region or organ of the body.**

- **“Degrade” means**
  - (a) Treat humiliatingly: to cause somebody a humiliating loss of status or reputation or cause somebody a humiliating loss of self-esteem; make worthless; to cause a person to feel that they or other people are worthless and do not have the respect or good opinion of others. (syn) degrade, demean, humble, humiliate. These verbs mean to deprive of self-esteem or self-worth; to shame or disgrace. (b) Degrading behavior shall be further defined as any language or epithets that insult the person's heritage, mental status, race, sexual orientation, gender, intelligence, etc.

- **"Emotional harm" means impaired psychological functioning, growth, or development of a significant nature as evidenced by observable physical symptomatology or as determined by a mental health professional.**

- **“Neglect” means:**
  - 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 caused or contributed to the death, sexual abuse of, serious, or non-serious physical harm or emotional harm to a recipient, or
    - that placed, or could have placed, a recipient at risk of physical harm or sexual abuse.
  - The failure to report apparent or suspected abuse or neglect of a recipient.

- **"Non-serious physical harm" means physical damage or what could reasonably be construed as pain 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 as an emergency intervention to restrict the movement of a recipient by direct physical contact to prevent the recipient from harming himself, herself, or others.**

- **"Serious physical harm" means physical damage suffered by a recipient that a physician or registered nurse determines caused or could have caused the death of a recipient, caused the impairment of his or her bodily functions, or caused the permanent disfigurement of a recipient.**
• "Sexual abuse" means any of the following:
  ▪ Criminal sexual conduct as defined by section 520b to 520e of 1931 PA 318, MCL 750.520b to MCL 750.520e involving an employee, volunteer, or agent of a provider and a recipient.
  ▪ Any sexual contact or sexual penetration involving an employee, volunteer, or agent of a department operated hospital or center, a facility licensed by the department under section 137 of the act or an adult foster care facility and a recipient.
  ▪ Any sexual contact or sexual penetration involving an employee, volunteer, or agent of a provider and a recipient for whom the employee, volunteer, or agent provides direct services.
• "Sexual contact" means the intentional touching of the recipient’s or employee’s intimate parts or the touching of the clothing covering the immediate area of the recipient’s or employee’s intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for any of the following:
  ▪ Revenge.
  ▪ To inflict humiliation.
  ▪ Out of anger.
• "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.
• “Sexual penetration” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, but emission of semen is not required.
• “Threaten” means to tell someone that you will hurt them or cause problems if they do not do what you want.
• "Time out" means a voluntary response to the therapeutic suggestion to a recipient to remove himself or herself from a stressful situation in order to prevent a potentially hazardous outcome.
• "Unreasonable force" means physical management or force that is applied by an employee, volunteer, or agent of a provider to a recipient in one or more of the following circumstances:
  ▪ There is no imminent risk of serious or non-serious physical harm to the recipient, staff or others.
  ▪ The physical management used is not in compliance with techniques approved by the provider and the responsible mental health agency.
  ▪ The physical management used is not in compliance with the emergency interventions authorized in the recipient’s individual plan of service.
  ▪ The physical management or force is used when other less restrictive measures were possible but not attempted immediately before the use of physical management or force.

<table>
<thead>
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<tbody>
<tr>
<td>MHC 330.1704 AR 330.7009 CIVIL RIGHTS</td>
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**Code Language**

In addition to the rights, benefits, and privileges guaranteed by other provisions of law, the state constitution of 1963, and the constitution of the United States, a recipient of mental health services shall have the rights guaranteed by this chapter unless otherwise restricted by law.

The rights enumerated in this chapter shall not be construed to replace or limit any other rights, benefits, or privileges of a recipient of services including the right to treatment by spiritual means if requested by the recipient, parent, or guardian.

A provider shall establish measures to prevent and correct a possible violation of civil rights related to the service provision. A violation of civil rights shall be regarded as a violation of recipient rights and shall be subject to remedies established for recipient rights violations.

A recipient shall be permitted, to the maximum extent feasible and in any legal manner, to conduct personal and business affairs and otherwise exercise all rights, benefits, and privileges not divested or limited.
CONTENT REQUIREMENTS

- A recipient shall be permitted, to the maximum extent feasible and in any legal manner, to conduct personal and business affairs and otherwise exercise all rights, benefits, and privileges not divested or limited.
- A violation of civil rights shall be regarded as a violation of recipient rights.
- A recipient shall be asked if they wish to participate in an official election and, if desired, shall be assisted in doing so.
- A recipient shall be permitted to exercise the right to practice their religion.
- A recipient shall have the right to NOT have a religion prescribed for them.
- A recipient is presumed competent unless a guardian has been appointed.
- A recipient shall not be subject to illegal search or seizure.

Code Citation and Title

MHC 330.1748 CONFIDENTIALITY

Code Language

- Information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and shall not be open to public inspection.
- If information made confidential by this section is disclosed, the identity of the individual to whom it pertains shall be protected and shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought; and, when practicable, no other information shall be disclosed unless it is germane to the authorized purpose for which disclosure was sought.
- Individuals receiving information made confidential by this section shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained.
- For case record entries made subsequent to March 28, 1996, information made confidential by this section shall be disclosed to an adult recipient, upon the recipient's request, if the recipient does not have a guardian and has not been adjudicated legally incompetent.
- Information may be shared as necessary for the for the treatment, coordination of care, or payment for the delivery of mental health services in accordance with the health insurance portability and accountability act of 1996. (Public Law 104-91)

CONTENT REQUIREMENTS

- Recipients who are adults and do not have a guardian are entitled to review their record without exception; discuss agency protocol for assuring this.
- For recipients with a guardian and those under 18 information can be withheld determined by a physician to be detrimental.
- Explain the difference between mandatory disclosure, discretionary with consent and discretionary.
- Discuss agency policy on Correction of Record (statement by recipient).
- Preferred method for answering the phone so as not to disclose information.
- Agency protocol for inquiries by law enforcement (what happens when the police show up at the door).
- Under circumstances allowed in the Code language this right may be limited.
- MPAS can access a recipient’s record if it has received a complaint on behalf of the recipient or has probable cause to believe based on monitoring or other evidence that the recipient has been subject to abuse or neglect.
- Discuss privileged communications 33.1750 (psychiatrists and psychologists only).

Code Citation and Title

MHC 330.1708 DIGNITY AND RESPECT

Code Language

A recipient has the right to be treated with dignity and respect.
CONTENT REQUIREMENTS

Showing respect for recipients shall include:

- Discuss what it means to treat someone with dignity and respect.
- Provide definitions of dignity and respect (Use dictionary definitions below or agency’s definitions if they are in policy)
  
  **Dignity:** To be treated with esteem, honor, politeness; to be addressed in a manner that is not patronizing, condescending or demeaning; to be treated as an equal; to be treated the way any individual would like to be treated.
  
  **Respect:** To show deferential regard for; to be treated with esteem, concern, consideration or appreciation; to protect the individual’s privacy; to be sensitive to cultural differences; to allow an individual to make choices.
  
- Provide some examples such as:
  - Calling a person by his or her preferred name
  - Knocking on a closed door before entering
  - Using positive language
  - Encouraging the person to make choices instead of making assumptions about what he or she wants
  - Taking the person's opinion seriously, including the person in conversations; allowing the person to do things independently or to try new things.

**Code Citation and Title**

MHC 330.1711 RIGHTS OF FAMILY MEMBERS

**Code Language**

*Family members of recipients shall be treated with dignity and respect. They shall be given an opportunity to provide information to the treating professionals. They shall also be provided an opportunity to request and receive educational information about the nature of disorders, medications and their side effects, available support services, advocacy and support groups, financial assistance and coping strategies.*

**CONTENT REQUIREMENTS**

- Providing family members an opportunity to request and receive educational information about the nature of disorders, medications and their side effects, available support services, advocacy and support groups, financial assistance and coping strategies.
- Receive information from or provide information to family members within the confidentiality constraints of Section 748 of the Mental Health Code.

**Code Citation and Title**

MCL 330.1724 FINGERPRINTS, PHOTOGRAPHS, AUDIORECORDINGS, VIDEORECORDINGS AND USE OF ONE-WAY GLASS

- Discuss agency protocols regarding family members who want to provide information
- Be aware of the location of these materials
- Assure that family members are treated with dignity and respect

**Code Language**

*A recipient shall not be fingerprinted, photographed, audiotaped or viewed through one-way glass for purposes of identification, in order to provide services (including research) or for educational or training purposes without prior written consent.*

**CONTENT REQUIREMENTS**
Prior written consent from the recipient, the recipient’s guardian or a parent with legal and physical custody of a minor recipient must be obtained before fingerprinting, photographing, audio-recording, or viewing through one-way glass.

The procedures above shall only be utilized in order to provide services (including research) to identify, recipient, or for education and training purposes.

Photographs include still pictures, motion pictures and videotapes.

Photographs may be taken for purely personal or social purposes and must be treated as the recipient’s personal property. Photographs must not be taken for this purpose if the recipient has objected.

Fingerprints, photographs and audio-recordings and any copies of these are to be made part of the recipient record and are to be destroyed or returned to the recipient when no longer essential or upon discharge, whichever occurs first.

If fingerprints, photographs or audio-recordings are done and sent out to others to help determine the name of the recipient, the individual receiving the items must be informed that return is required for inclusion in the recipient record.

Restrictions may be put in place if the recipient is receiving services pursuant to the criminal provisions of Chapter 10 of the Mental Health Code – Incompetent to Stand Trial, Not Guilty by Reason of Insanity, recipient of the Department of Corrections Mental Health Services Program

<table>
<thead>
<tr>
<th>Code Citation and Title</th>
<th>Code Language</th>
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<tbody>
<tr>
<td>MCL 330.1744</td>
<td>FREEDOM OF MOVEMENT</td>
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<tr>
<td>MCL 330.1708</td>
<td>LEAST RESTRICTIVE SETTING</td>
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Mental health services shall be offered in the least restrictive setting that is appropriate and available.
The freedom of movement of a recipient shall not be restricted more than is necessary to provide mental health services to him or her, to prevent injury to him or her or to others, or to prevent substantial property damage, except that security precautions appropriate to the condition and circumstances of an individual admitted by order of a criminal court or transferred as a sentence-serving convict from a penal institution may be taken.

CONTENT REQUIREMENTS

- Mental health services shall be offered in the least restrictive setting that is appropriate and available.
- The freedom of movement of a recipient shall not be restricted more than necessary to provide mental health services, to prevent injury to himself, herself or others, or to prevent substantial property damage
- House rules may restrict freedom of movement only by general restrictions:
  - From areas that could cause health or safety or problems
  - Temporary restrictions from areas for reasonable unforeseeable activities including repair or maintenance
  - For emergencies in case of fire, tornadoes, floods, etc.
- Seclusion and restraint are prohibited except in a MDHHS operated or licensed hospital. Every patient in one of those settings has the right not to be secluded or restrained unless it is essential to prevent the patient from physically harming himself, herself or others.
- Time out, defined as a VOLUNTARY response to a therapeutic suggestion to a recipient to remove himself or herself from a stressful situation to another area to regain control. (AR 330.7001[x])
• Physical management, defined as a technique used by staff as an emergency intervention to restrict the movement of a recipient by direct physical contact to prevent the recipient from harming himself, herself or others. (AR 330.7001[m])

• Physical management may only be used when a recipient is presenting an imminent risk of serious or non-serious physical harm to himself, herself or others and lesser restrictive interventions have been unsuccessful in reducing or eliminating an imminent risk of serious or non-serious physical harm.

• Physical management must not be included as a component of a behavior treatment plan

• Prone immobilization of a recipient for the purpose of behavioral control is prohibited (by agency policy) or implementation of physical management techniques other than prone immobilization is medically contraindicated and documented in the recipient’s record) (AR 330. 7243 [11][i][ii])

• This right can be limited but only as allowed in the individual plan of service (IPOS) following review and approval by the Behavior Treatment Plan Review Committee (CMH only) and the special consent of the 47 Code Citation and Title

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<tbody>
<tr>
<td>MHC 330.1712     AR 330.7199    INDIVIDUALIZED WRITTEN PLAN OF SERVICES</td>
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<tr>
<td>MDHHS PRACTICE GUIDELINE</td>
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<tr>
<td>TECHNICAL REQUIREMENT FOR BEHAVIOR TREATMENT REVIEW COMMITTEES</td>
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</table>

**Code Language**

*The responsible mental health agency for each recipient shall ensure that a person-centered planning process is used to develop a written individual plan of services in partnership with the recipient. A preliminary plan shall be developed within 7 days of the commencement of services or, if an individual is hospitalized for less than 7 days, before discharge or release.*

**CONTENT REQUIREMENTS**

• The responsible mental health agency for each recipient shall ensure that a person-centered planning process is used to develop a written individual plan of services in partnership with the recipient.

• A preliminary plan shall be developed within 7 days of the commencement of services or, if an individual is hospitalized for less than 7 days, before discharge or release.

• The individual plan of services shall consist of a treatment plan, a support plan, or both.

• A treatment plan shall establish meaningful and measurable goals with the recipient.

• The individual plan of services shall address, as either desired or required by the recipient, the recipient's need for food, shelter, clothing, health care, employment opportunities, educational opportunities, legal services, transportation, and recreation.

• The plan shall be kept current and shall be modified when indicated. The individual in charge of implementing the plan of services shall be designated in the plan.

• If a recipient is not satisfied with his or her individual plan of services, the recipient, the person authorized by the recipient to make decisions regarding the individual plan of services, the guardian of the recipient, or the parent of a minor recipient may make a request for review to the designated individual in charge of implementing the plan. The review shall be completed within 30 days and shall be carried out in a manner approved by the appropriate governing body.

• An individual chosen or required by the recipient may be excluded from participation in the planning process only if inclusion of that individual would constitute a substantial risk of physical or emotional harm to the recipient or substantial disruption of the planning process. Justification for an individual’s exclusion shall be documented in the case record.

| Code Citation and Title |
MCL 330.1708 (1) (2) AR 330.7171  SAFE, SANITARY, HUMANE, TREATMENT ENVIRONMENT

Code Language
Mental health services shall be provided in a safe, sanitary, and humane treatment environment

CONTENT REQUIREMENTS

- Mental Health Code requires safe, sanitary, humane treatment environment in the least restrictive setting.
- The MHC does not define what this means so we use Adult Foster Care Licensing Rules (400.14401 – 14403) to determine if the residential setting was safe, sanitary or humane.
  - Assure pressurized hot and cold water
  - Hot water temp no more than 105 degrees to 120 degrees at the faucet
  - Assure all sewage is disposed of in a public sewer system or as approved by the health department
  - Maintain an insect, rodent or pest control program
  - Store and safeguard poisons, caustics and other dangerous materials in non-resident and non-food reparation storage areas
  - Assure adequate preparation and storage of food items.
  - Assure premises are constructed, arranged and maintained to adequately provide for the health, safety and well-being of occupants
- Provide for resident health, hygiene and personal grooming including assistance and training in personal grooming practices, including bathing, tooth brushing, shampooing, hair grooming, shaving and care of nails. Provider must supply toilet articles, toothbrush and dentifrice, opportunity to shower or bathe at least once every 2 days, regular services of a barber or beautician and the opportunity to shave daily (males) [AR 7171]

VARIABLE CODE SECTIONS PERTAINING TO THE RECIPIENT RIGHTS SYSTEM

Code Language
330.1706 Notice of rights. Except as provided in section 707, applicants for and recipients of mental health services and in the case of minors, the applicant’s or recipient’s parent or guardian, shall be notified by the providers of those services of the rights guaranteed by this chapter. Notice shall be accomplished by providing an accurate summary of this chapter and chapter 7a to the applicant or recipient at the time services are first requested and by having a complete copy of this chapter and chapter 7a readily available for review by applicants and recipients.
330.1776 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 this act or rules promulgated under this act.
330.1778 Investigation; initiation; recording; standard of proof; written status report; written investigative report; new evidence.
330.1784 Summary report; appeal. (1) Not later than 45 days after receipt of the summary report under section 782, the complainant may file a written appeal with the appeals committee with jurisdiction over the office of recipient rights that issued the summary report.

CONTENT REQUIREMENTS

- Discuss the operation of the Rights Office
- What are the various roles: Prevention, Monitoring, Education, Complaints Resolution
- Discuss the complaint process
- What is your (staff) role in complaints (1776)?
- Employee Rights (retaliation/harassment (1755 3), Whistleblowers (Civil Action), Bullard-Plawecki (by HR or waived): emphasis on non-retaliation & disciplinary action)
- Basics of rights appeals - What do staff need to know and be able to explain about appeals? (1784)
- Access by ORR to all evidence
- Preponderance of Evidence standard
- Discuss the role of the Advisory Committee
- Discuss the provision of required notice of rights; availability of complaints

**Code Citation and Title**

**MHC 330.1100(a) (19) AR 330.1703 CONSENT AND INFORMED CONSENT**

**Code Language**

"Consent" means a written agreement executed by a recipient, a minor recipient’s parent, or a recipient’s legal representative with authority to execute a consent, or a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment.

**CONTENT REQUIREMENTS**

(1) All of the following are elements of informed consent:

(a) Legal competency. An individual shall be presumed to be legally competent. This presumption may be rebutted only by a court appointment of a guardian or exercise by a court of guardianship powers and only to the extent of the scope and duration of the guardianship. An individual shall be presumed legally competent regarding matters that are not within the scope and authority of the guardianship.

(b) Knowledge. To consent, a recipient or legal representative must have basic information about the procedure, risks, other related consequences, and other relevant information. The standard governing required disclosure by a doctor is what a reasonable patient needs to know in order to make an informed decision. Other relevant information includes all of the following:

   (i) The purpose of the procedures.
   (ii) A description of the attendant discomforts, risks, and benefits that can reasonably be expected.
   (iii) A disclosure of appropriate alternatives advantageous to the recipient.
   (iv) An offer to answer further inquiries.

(c) Comprehension. An individual must be able to understand what the personal implications of providing consent will be based upon the information provided under subdivision (b)

(d) Voluntariness. There shall be free power of choice without the intervention of an element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion, including promises or assurances of privileges or freedom. There shall be an instruction that an individual is free to withdraw consent and to discontinue participation or activity at any time without prejudice to the recipient.

**Code Citation and Title**

**MHC 330.7029 SUITABLE SERVICES – FAMILY PLANNING**

**Code Language**

The individual in charge of the recipient’s written plan of service shall provide recipients, their guardians, and parents of minor recipients with notice of the availability of family planning, and health information services and, upon request, provide referral assistance to providers of such services. The notice shall include a statement that receiving mental health services does not depend in any way on requesting or not requesting family planning or health information services.

**CONTENT REQUIREMENTS:**

- Discuss the procedures for how this is accomplished in your agency
SUITABLE SERVICES – TREATMENT BY SPIRITUAL MEANS

R 330.7135 Treatment by spiritual means.
A provider shall permit a recipient to have access to treatment by spiritual means upon the request of the recipient, a guardian, if any, or a parent of a minor recipient.

MHC 330.1708 SUITABLE SERVICES – MENTAL HEALTH SERVICES SUITED TO CONDITION

Code Language
A recipient shall receive mental health services suited to his or her condition.
CONTENT REQUIREMENTS:
- Discuss the procedures for how this is accomplished in your agency

MHC 330.1713 SUITABLE SERVICES – CHOICE OF PHYSICIAN/MHP

Code Language
A recipient shall be given a choice of physician or other mental health professional in accordance with the policies of the community mental health services program, licensed hospital, or service provider under contract with the community mental health services program, or licensed hospital providing services and within the limits of available staff in the community mental health services program, licensed hospital, or service provider under contract with the community mental health services program, or licensed hospital
CONTENT REQUIREMENTS:
- Discuss the procedures for how this is accomplished in your agency

MHC 330.1714 SUITABLE SERVICES – NOTICE OF CLINICAL STATUS

Code Language
A recipient shall be informed orally and in writing of his or her clinical status and progress at reasonable intervals established in the individual plan of services in a manner appropriate to his or her clinical condition.
CONTENT REQUIREMENTS:
- Discuss the procedures for how this is accomplished in your agency

330.1715 SUITABLE SERVICES – SERVICES OF MENTAL HEALTH PROFESSIONAL

Code Language
If a resident is able to secure the services of a mental health professional, he or she shall be allowed to see the professional at any reasonable time.
CONTENT REQUIREMENTS
- Discuss the procedures for how this is accomplished in your agency
330.1719 SUITABLE SERVICES – PSYCHOTROPIC DRUG TREATMENT

**Code Language**
Before initiating a course of psychotropic drug treatment for a recipient, the prescriber or a licensed health professional acting under the delegated authority of the prescriber shall do both of the following: (a) Explain the specific risks and the most common adverse effects that have been associated with that drug. (b) Provide the individual with a written summary of the most common adverse effects associated with that drug.

**CONTENT REQUIREMENTS**
- Discuss the specifics of this section with medical professionals and those who pass medication.

**Code Citation and Title**
MHC 330.1726  COMMUNICATIONS AND VISITS

**Code Language**
Every resident is entitled to unimpeded, private and uncensored communication with others by mail, telephone and to visit with person of his/her choice. Each facility shall endeavor to implement the rights guaranteed by subsection (1) by making telephones reasonably accessible, by ensuring that correspondence can be conveniently and confidentially received and mailed, and by making space for visits available. Writing materials, telephone usage funds, and postage shall be provided in reasonable amounts to residents who are unable to procure such items.

**CONTENT REQUIREMENTS**
- Residents are allowed to use mail and telephone services. These communications must not be censored; staff should not open mail for residents without authorization. If necessary, funds must be provided (in reasonable amounts) for postage, stationary, telephone.
- Residents must be allowed access to computers to use for communication.
- If house rules are to be established regarding telephone calls and visits, these must be reasonable and support the right as indicated above.
- House rules (restrictions) must be posted in conspicuous areas for residents, guardians, visitors and others to see.
- Limitations can be made on these rights for individuals, but only as allowed in the individual plan of service (IPOS) following review and approval by the Behavior Treatment Plan Review Committee and the special consent of the resident or his/her legal representative.
- Communication by mail, telephone and the ability to have visitors shall not be limited the communications are between a resident and his/her attorney or a court, or between a resident and any other individuals when the communication involves legal matters or may be the subject of legal inquiry.

**Code Citation and Title**
AR 330.7139  ENTERTAINMENT MATERIALS, INFORMATION AND NEWS

**Code Language**
Every resident has the right to acquire entertainment materials, information and news at his or her own expense, to read written or printed materials and to view or listen to television, radio, recordings or movies made available at a facility.

**CONTENT REQUIREMENTS**
- Provider must never prevent a resident from exercising this right for reasons of, or similar to, censorship.
- Provider must establish written policies and procedures that provide for all of the following:
  - Any general program restrictions on access to material for reading, listening or viewing
• Determining a resident’s interest in, and provide for, a daily newspaper
• Assure material not prohibited by law may be read or viewed by a minor unless there is an objection by the minor’s parent or guardian
• Permit attempts by the staff person in charge of the minor’s IPOS to persuade a parent or guardian of a minor to withdraw objections to material desired by the minor.
• Provider may require that materials acquired by the resident that are of a sexual or violent nature be read or viewed in the privacy of the resident’s room
TECHNICAL REQUIREMENT
RECIPIENT RIGHTS APPEAL PROCESS

I. Background
Chapter 7A of the Michigan Mental Health Code, PA 258 of 1974 as amended, establishes the right of public mental health service recipients, or someone on their behalf, to file complaints alleging a violation of rights guaranteed by Chapter 7 of the Code. Chapter 7A also assures that an appeal can be made regarding the findings, remedial action, or timeliness of the complaint investigation. The purpose of this technical requirement is to establish a process for handling these appeals to assure all recipients, and those acting on their behalf, receive procedural due process, including its essential elements of notice and opportunity to be heard by a fair and impartial decision-making entity.

II. Definitions

A. Appeals Committee: A committee appointed by the Michigan Department of Health and Human Services (MDHHS) Director, by the board of a Community Mental Health Services program (CMHSP), or by the governing board of a licensed private psychiatric hospital/unit (LPH/U).

B. Appellant: The complainant, the recipient (if someone filed on the recipient’s behalf), or the legal guardian of the recipient (if any), who seeks review by an appeals committee or the MDHHS pursuant to sections 330.1784 and 330.1786 of the Code.

C. Complainant: The individual who files a recipient rights complaint.

D. Grounds for appeal:
   i. The investigative findings of the office are not consistent with the facts or with law, rules, policies or guidelines
   ii. The action taken, or plan of action proposed, by the respondent does not provide an adequate remedy
   iii. An investigation was not initiated or completed on a timely basis

E. Intervention: To act on behalf of a recipient to resolve a complaint alleging a violation of a code protected right when the facts are clear and the remedy, if applicable, is clear, easily obtainable within 30 days, and does not involve statutorily required disciplinary action. Interventions, at a minimum, must contain the following elements: the specific action taken by ORR, on behalf of the complainant, to resolve the complaint, identification of the code protected right, a statement indicating whether the allegation of a rights violation is substantiated or not substantiated. Additionally, if the allegation is substantiated, the specific remedial action taken is identified.
F. Investigation: A detailed inquiry into and systematic examination of an allegation raised in a rights complaint, as outlined in 330.1778 of PA 258 of 1974

G. Legal Guardian: A judicially appointed guardian or parent who has legal custody of a minor recipient.

H. Office: Any of the following:
   i. With respect to a rights complaint involving services provided directly by the MDHHS, the MDHHS Office of Recipient Rights created under section 330.1754 of the Code.
   ii. With respect to a rights complaint involving services provided directly or under contract to a community mental health services program, the Office of Recipient Rights created by the community mental health services program under section 330.1755 of the Code.
   iii. With respect to a rights complaint involving services provided directly or under contract to a licensed private psychiatric hospital/unit, the Office of Recipient Rights created by the licensed hospital under section 330.1755 of the Code.

I. Respondent: The service provider that had responsibility at the time of an alleged rights violation for the services with respect to which a rights complaint has been filed.

J. Responsible Mental Health Agency (RMHA): The hospital, center, or community mental health services program that has primary responsibility for the recipient's care or for the delivery of services or supports to that recipient.

III. Procedure – Local Appeals Committee

A. Jurisdiction
   An appeal shall be reviewed by the committee designated by the governing body. The appeals committee of a CMHSP shall have jurisdiction over their recipients placed for treatment in an LPH/U. For non-CMHSP recipients, the LPH/U, may appoint its own Appeals Committee in compliance with section 330.1774(4)(a) of the Code or, by agreement with MDHHS, designate the MDHHS Appeals Committee to hear appeals against the LPH/U under section 330.1774(4)(b) of the Code.

B. Training
   The Office of Recipient Rights with the MDHHS, a CMHSP, or an LPH/U shall assure that training is provided to the Appeals Committee, as required by Section 330.1755(2)(a) of the Code. Topics shall include the following:
Categories of rights violations
The complaint investigation process
Types and weighing of evidence
Explanation of the preponderance of the evidence standard used by the rights office in determining whether a rights violation has occurred
Statutory definition of “appropriate remedial action”
Agency disciplinary guidelines
Agency policy/procedures on the appeal process and functions of the Appeals Committee

C. Notice of Right to Appeal
Every complainant, recipient (if different than the complainant) and the recipient’s legal guardian (if one has been appointed) shall be informed in the Summary Report issued by the executive director of a CMHSP of the right to appeal to the designated Appeals Committee. Notice shall include the address for filing the appeal, the grounds for appeal as stated in section 330.1784(2) of the Mental Health Code, the time frame for submission of the appeal, information on advocacy organizations that may assist with filing the written appeal, and, in the absence of assistance from an advocacy organization, an offer of assistance by the Office of Recipient Rights.

D. Notification when the Summary Report Contains a Plan of Action
A Summary Report which contains a plan of action shall indicate a date the action is to be completed. The MDHHS facility director, CMHSP executive director or director of the LPH/U shall assure that the complainant, recipient (if different than the complainant), the recipient’s legal guardian (if any), and the office are provided written notice that the action described in the plan has been completed. If the action taken differs from the original plan, a description of that action shall be provided.

E. Time Frame
Not later than 45 calendar days after receipt of the Summary Report, or 45 days from the mailing of a notice regarding the action that was taken when the Summary Report provided only a plan of action, the appellant may file a written appeal with the Appeals Committee having jurisdiction to act upon it. The only ground for appeal of a notice of action taken is that the action failed to provide adequate remedy.

F. Preliminary Review
Within 5 business days of receipt of the request for appeal, members of the appeals committee shall review the request for appeal to determine if the appellant has standing to appeal and if the appeal request meets the timeframe and grounds. This review may be conducted by the full Committee, or by a subcommittee consisting of at least two committee members designated by the full Committee to fulfill this
responsibility. The Committee shall maintain a log of all appeals received and the disposition of each.

G. Notice of Preliminary Review Decision
Within 7 business days of receipt of the request for appeal, written notice that the appeal has been accepted, or rejected, shall be provided to the appellant and a copy of the appeal shall be provided to the respondent, the RMHA, and the Rights Office. A notice of rejection shall describe the reason for not accepting the request for appeal.

H. Committee Appeal Review
No later than 30 calendar days after receipt of a written appeal the Appeals Committee shall meet in closed session to review the facts as stated in all complaint investigation documents in light of the reason for appeal. The Committee shall not consider allegations that were not part of the original complaint, but shall inform appellant of his/her right to file a complaint with the office. Upon completion of their review, the Appeals Committee shall do one of the following:

i. Uphold the investigative findings of the office and the action taken or plan of action proposed by the respondent; OR

ii. If the appeal concerns the investigative findings of the office, either:
   a. Return the investigation to the office and direct that it be reopened or reinvestigated, or
   b. Recommend that the board (CMHSP) or governing body (LPH/U) request an external investigation by the state Office of Recipient Rights.

iii. If the appeal concerns the action taken, directs that the respondent take additional, or different, action to remedy the violation. The Appeals Committee shall base its determination upon any or all of the following as required by Sec 1780 of the MHC.
   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.

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 office.

iv. If the appeal concerns the timeliness of the investigation and the Committee confirms that the investigation was not initiated or completed in a timely manner, recommend that the MDHHS-ORR director, executive director of
the CMHSP or director of the LPH/U address the root cause of the lack of timeliness with their Rights Advisor.

I. Recusal

Any member of an Appeals Committee who has a personal or professional relationship with an individual involved in the appeal shall abstain from participating in that appeal.

J. Decision

The Appeals Committee shall document its decision in writing within 10 working days following the decision and shall provide copies of such to the respondent, appellant, recipient (if different than appellant), the recipient’s legal guardian (if any), the RMHA and the office. Documentation shall include justification for the decision made by the Committee.

IV. Subsequent Action

A. If the Appeals Committee directs that the office reopen or reinvestigate the complaint, the office shall submit another investigative report in compliance with section 330.1778(5) within 45 calendar days of receipt of the written decision of the Committee to the CMHSP executive director. The 45 calendar 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.

B. Within 10 business days of receipt of the reinvestigate report, the executive director of the CMHSP shall issue new Summary Report in compliance with section 330.1782. 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. If the Summary Report indicates the decision in the case remains unsubstantiated, the Summary Report shall contain information regarding the appellant’s right to further appeal, 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, in the absence of an advocacy organization, offer the assistance of the office.

C. If, upon review, the Committee feels that the reinvestigated results in the Report of Investigative Findings is still inadequate, the Committee shall inform the appellant of the ability to further appeal to Level 2.

D. If the reinvestigation results 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, the appellant may file an appeal on such grounds with the local Appeals Committee. The Summary Report shall inform the appellant of this right as well as provide further information as stated in II C above.
E. If the Appeals Committee directs that the respondent take additional or different action, that direction shall be based on the fact that the action taken was not in compliance with section 330.1780 of the Code.

F. 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.

G. 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, i.e., MDHHS facility director, executive director of a CMHSP or the director of an LPH/U for violation of section 330.1754(3)(c) or 330.1755(3)(b) of the Code.

H. If the Appeals Committee recommends that the board or governing body of the CMHSP, 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.

   i. Within 10 business days of receipt of the investigative report from MDHHS-ORR, the executive director of the CMHSP, or the director of the LPH/U, shall issue a Summary Report in compliance with section 330.1782. 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.

   ii. 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 a CMHSP or the director of an LPH/U of the right to appeal to the MDHHS Appeals Committee. Notice shall include information on the grounds for appeal as stated in section 330.1784(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.

   iii. Not later than 45 calendar days after receipt of the Summary Report, the appellant may file a written appeal with the MDHHS Appeals Committee.

V. Level 2 Appeals
A. Grounds and Timeframe
An appeal to Level 2 Appeals may be made only if the original appeal was based on the question of whether the investigative findings of the office were inconsistent with the facts or with law, rules, policies or guidelines; and 1) only after a decision to uphold the findings has been made on the original appeal by the local Appeals Committee or, 2) when upon reinvestigation by ORR at the request of the local appeals committee, the findings of the office remain unsubstantiated. Within 45 calendar days after receiving written notice of the decision of the Appeals Committee or the Summary Report from MDHHS-ORR the appellant may file a written appeal with Level 2 Appeals. The appeal shall be mailed to:

Level 2 ORR Appeal
MDHHS-Appeals
PO Box 30807
Lansing, MI 48909
FAX: (517) 241-7973

B. Written Notice
Upon receipt of the appeal, Level 2 Appeals shall give written notice of the receipt to the respondent, local Office of Recipient Rights holding the record of the complaint and the CMHSP Director.

C. Review
The respondent, local office holding the record of the complaint, and the CMHSP shall ensure that Level 2 Appeals has access to all necessary documentation and other evidence cited in the complaint and local appeal. Level 2 Appeals shall review the record generated by the local appeal. Level 2 Appeal shall not consider additional evidence or information that was not available during the local appeal.

D. Level 2 Action
i. Within 30 calendar days after receiving the appeal, Level 2 Appeals shall review the appeal and do one of the following:
   a. Uphold the findings of the office.
   b. Affirm the decision of the Appeals Committee.
   c. Return the matter to the director of the department’s Office of Recipient Rights, the executive director of the CMHSP or the director of the LPH/U with instruction for additional investigation or consideration.

ii. Level 2 Appeals shall provide copies of its action to the respondent, the appellant, recipient if different than appellant, the recipient’s legal guardian, if any, the board of a CMHSP, the governing body of the LPH/U and the local Office of Recipient Rights holding the record. If the appeal involves the findings of a MDHHS-ORR rights advisor, the MDHHS-ORR director shall also be provided copies of the action.
iii. If Level 2 APPEALS upholds the findings of the office, notice shall be provided to the appellant of his/her legal right to seek redress through the circuit court.

iv. If Level 2 APPEALS instructs that additional investigation be conducted, the director of MDHHS-ORR, the executive director of the CMHSP or the director of the LPH/U shall assure that such investigation is completed in a fair and impartial manner within 45 calendar days of his/her receipt of the written notice from MDHHS-APPEALS. The 45 calendar day time frame may be extended at the department’s discretion upon a showing of good cause by the MDHHS-ORR director, CMHSP executive director or LPH/U director. At no time shall the time frame exceed 90 calendar days. In cases of re-investigation by MDHHS-ORR, the director of that office shall be responsible for the submission of the investigative report to the appropriate MDHHS facility director.

E. Subsequent Action

i. Within 10 business days of the receipt of the investigative report, the facility director, executive director of the CMHSP, or the director of the LPH/U shall issue a Summary Report in compliance with section 330.1782 of the Code to the department, appellant, recipient if different than appellant and the recipient’s legal representative, if any.

ii. If the findings of the additional investigation remain the same as those appealed, the department shall inform appellant, recipient (if different than appellant) and the recipient’s legal guardian, if any, in writing of the right to seek redress through the circuit court. Copies of this notice will be provided to:

   a. MDHHS Bureau of State Hospital and Behavioral Administrative Services (if the investigation was conducted by staff of the MDHHS-ORR)
   b. MDHHS Bureau of Community Based Services (if the investigation was conducted by a CMHSP)
   c. Michigan Department of Licensing & Regulatory Affairs, Bureau of Community and Health Systems (if the investigation was conducted by an LPH/U).

If the additional investigation results in the substantiation of previously unsubstantiated violation, but the appellant disagrees with the adequacy of the action taken, or plan of action proposed to remedy the violation, the department shall inform the individual(s) of the right to appeal this to the local Appeals Committee.