

19. Timeframes and Templates

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Recipient Rights Investigative Documents When do they go? Where are they going?

Clarifying for CMH Officers:

Here is a summary of where (to whom) everything goes during the investigative process:

Complaint: see acknowledgement letter

Acknowledgment letter: complainant with copy of complaint attached.

330.1776 (3) Each rights complaint shall be recorded upon receipt by the office, and acknowledgment of the recording shall be sent along with a copy of the complaint to the complainant within 5 business days. Rights complaint; filing;

Intervention letter: complainant. (Some agencies send to recipient as well)

Status Report: complainant, respondent (who will be taking the action?), RMHA (your Director)

330.1778 (4) The office shall issue a written status report every 30 calendar days during the course of the investigation. The report shall be submitted to the complainant, the respondent, and the responsible mental health agency.

Investigation: respondent, director

330.1778 (5) Upon completion of the investigation, the office shall submit a written investigative report to the respondent and to the responsible mental health agency.

Summary Report: recipient, complainant, guardian, parent of a minor

330.1782 (1) The executive director, ... shall submit a written summary report to the complainant and recipient, if different than the complainant, within 10 business days after the executive director,... receives a copy of the investigative report under section 778(5).

Recipient Rights Investigative Documents When do they go? Where are they going?

Clarifying for LPH/U Advisors:

Here is a summary of where (to whom) everything goes during the investigative process:

Complaint: see acknowledgement letter

Acknowledgment letter: complainant with copy of complaint attached.

330.1776 (3) Each rights complaint shall be recorded upon receipt by the office, and acknowledgment of the recording shall be sent along with a copy of the complaint to the complainant within 5 business days. Rights complaint; filing;

Intervention letter: complainant. (Some agencies send to recipient as well)

Status Report: complainant, LPH director/designee (respondent and RMHA ARE the LPH)

330.1778 (4) The office shall issue a written status report every 30 calendar days during the course of the investigation. The report shall be submitted to the complainant, the respondent, and the responsible mental health agency.

Investigation: LPH director/designee

330.1778 (5) Upon completion of the investigation, the office shall submit a written investigative report to the respondent and to the responsible mental health agency.

Summary Report: recipient, complainant, guardian, parent of a minor

330.1782 (1) The ...hospital director, ... shall submit a written summary report to the complainant and recipient, if different than the complainant, within 10 business days after the ... hospital director ... receives a copy of the investigative report under section 778(5).

Parts may be sent to the CMH, if the contract with the CMH stipulates; copies of the acknowledgement letter (with complaint) Investigative Report & Summary. These would be sent as a package after everything is completed, not as individual pieces throughout the process.

**OFFICE OF RECIPIENT RIGHTS
COMPLAINT ACKNOWLEDGMENT**

Date: _____

COMPLAINT # _____

Ms. Recipient
0000 Street Boulevard
Detroit, MI 48204

Dear Ms. Recipient:

On _____ the Office of Recipient Rights received a complaint (insert allegation).

Following a review by this office:

A Rights Advisor will intervene on your behalf to resolve your concern and will advise you, in writing, of the results within 30 days. If you are not satisfied with the results of this intervention, you may contact me at the number below within 10 days of your receipt of the results of this intervention to either request additional information or to request that we conduct an investigation into this matter.



Your complaint has been assigned for investigation. A Rights Advisor will be contacting you soon. Under most circumstances, the investigation will be completed within 90 days. While the investigation is being conducted you will receive a status report on its progress every 30 days. When the investigation is completed, a Report of Investigative Findings (RIF) will be sent to the { AGENCY DIRECTOR/Hospital CEO }. At this time, you have the right to request mediation to resolve your dispute. If you wish to do this, please contact me. Otherwise, the Director will send you a **Summary Report** within 10 days after he/she receives the RIF. The Summary Report will also include information on the Recipient Rights Appeal process.



It has been determined that the issue raised in your complaint is not a Code protected right in which the Office of Recipient Rights may become involved.



Your complaint is not within our jurisdiction. It has been forwarded to: (or) You may wish to contact:

_____ at _____. *[If referring to another Rights Office: The Rights Office is required to send you a letter of acknowledgement with 5 business days following their receipt of this letter and your complaint].*

Sincerely,

_____, Recipient Rights Officer

Phone: _____

Attached: copy of complaint
complaint information/advocacy organizations (if your agency doesn't use posters)

Advocacy Organizations (assistance in preparing a written recipient rights complaint)

- Alliance on Mental Illness (AMI)
Telephone: (800) 331-4264 (Michigan only)
- ARC of Michigan
Telephone (800) 292-7851
- Association for Children's Mental Health (ACMH)
Telephone: (800) 782-0883
- Michigan Protection and Advocacy Services
Telephone: (800) 288-5923
- Michigan Disability Rights Coalition
Telephone: (800) 760-4600

OR

You may contact me at (____) _____, Monday through Friday, from 8:00 a.m. until 4:30 p.m. to assist you in contacting an advocacy organization.

**OFFICE OF RECIPIENT RIGHTS
COMPLAINT ACKNOWLEDGMENT**

Date: _____

COMPLAINT # _____

Ms. Recipient
0000 Street Boulevard
Detroit, MI 48204

Dear Ms. Recipient:

On _____ the Office of Recipient Rights received a complaint alleging
(insert allegation).

Following a review by this office:

A Rights Advisor will intervene on your behalf to resolve your complaint and will advise you, in writing, of the results within 30 days. If you are not satisfied with the results of this intervention, you may contact me at the number below within 10 days of your receipt of the results of this intervention to either request additional information or to request that we conduct an investigation into the matter.



Your complaint has been assigned for investigation. A Rights Advisor will be contacting you soon. Under most circumstances, the investigation will be completed within 90 days. While the investigation is being conducted you will receive a status report on its progress every 30 days.

When the investigation is completed, a Report of Investigative Findings (RIF) will be sent to the { AGENCY DIRECTOR }. At that time, you have the right to request mediation to resolve your dispute. If you wish to do this, please contact me. The Director will send you a **Summary Report** within 10 days after he/she receives the RIF. The Summary Report will also include information on the Recipient Rights Appeal process.



It has been determined that the issue raised in your complaint is not a Code protected right in which the Office of Recipient Rights may become involved. (May include action taken)



Your complaint is not within our jurisdiction. It has been forwarded to: (or) You may wish to contact: _____ at _____. *[If referring to another Rights Office]* The Rights Office listed above is required to send you a letter of acknowledgement with 5 business days following their receipt of this letter.

Sincerely,

_____, Recipient Rights Advisor

Phone () _____

Attached: copy of complaint
complaint information/advocacy organizations

Further Complaint Information

Please be aware that you also have the right to file a complaint with any one or more of the following agencies:

- ▶ Centers for Medicare and Medicaid Services, Beneficiary Complaint Response Program, by calling 1-800-MED-ICARE (1-800-633-4227). For the hearing impaired please dial 1-877-486-2048.
- ▶ The toll free CMS Complaint Hotline 1-800-882-6006.
- ▶ The Joint Commission by calling 1-800-994-6610, 9:30 a.m. to 6 p.m., Monday through Friday, or website: <http://www.jointcommission.org>.
- ▶ Healthcare Facilities Accreditation Program (AOA) complaint number is 1-800-621-1773 or website: <http://www.hfap.org>.
- ▶ If you are a Medicare beneficiary and have a quality of care concern, you may call KEPRO at 1-855-408-8557. If you are hearing impaired, you may use TTY by dialing 855-843-4776. FAX 844-834-7130.
- ▶ Recipients and/or family members may also file a complaint with the hospital grievance committee.

Advocacy Organizations (assistance in preparing a written recipient rights complaint)

- ▶ Alliance on Mental Illness (AMI)
Telephone: (800) 331-4264 (Michigan only)
- ▶ ARC of Michigan
Telephone (800) 292-7851
- ▶ Association for Children's Mental Health (ACMH)
Telephone: (800) 782-0883
- ▶ Michigan Protection and Advocacy Services
Telephone: (800) 288-5923
- ▶ Michigan Disability Rights Coalition
Telephone: (800) 760-4600

OR

You may contact me at (____) _____, Monday through Friday, from 8:00 a.m. until 4:30 p.m. to assist you in contacting an advocacy organization.

ACKNOWLEDGEMENT LETTER QUALITY REVIEW CHECKLIST

- ☐ Is the letter dated?
- ☐ Is the reference number of the complaint noted?
- ☐ Is the complaint stated and, if necessary, further clarified? (Has the rights office talked to the complainant? Does it include:
 - ☐ Date received by ORR?
 - ☐ Date of alleged violation, if known, or does it indicate “unknown”?
 - ☐ A restatement of the complaint?
 - ☐ Names – recipient, accused staff
 - ☐ Words and terms from the complaint - This is usually written to the complainant and should clearly say what was said in the complaint
- ☐ Does it include a statement of the ACTION the office will take (**ONLY THE APPLICABLE STATEMENT**)?
 - ☐ If no code protected right, is there a statement to that effect.
 - ☐ Is there an explanation of why the complaint cannot be addressed?
 - ☐ Was some action taken despite the “no” code? Example: “Although the issue raised in your complaint is not a code protected right, the Office of Recipient Rights took the following action on your behalf.” Then the action is described.
 - ☐ If out of jurisdiction, was the complaint forwarded?
 - ☐ Is there a name, address, phone where the complaint may be sent?
 - ☐ If an intervention is being done, is the word “intervention” used?
 - ☐ Is the time frame clear?
 - ☐ Is the option for an investigation clear?
 - ☐ Is contact with the recipient noted?
 - ☐ If an investigation is being done, is the word “investigation” used?
 - ☐ Is the time frame for investigation clear?
 - ☐ Is the right to request mediation, following investigation, noted?
 - ☐ Is the time frame for the summary report clear?
- ☐ Does the letter have the name and phone number of the rights officer/advisor for further contact?
- ☐ Is a copy of the complaint included?

Criteria for Interventions:

- The complaint involves an allegation in which the facts are clear and the remedy, if applicable, is clear, easily obtainable, and does not involve statutorily required disciplinary action?
- The complainant receives a response within 30 days, containing the allegation, intervention response and action.

Allegation:

- The allegation is clearly stated and if necessary, further clarified? (including recipient and accused staff involved) and includes
- The date of alleged violation, if known (or indicate unknown)
- The date received by ORR
- Identification of who filed the complaint? (recipient, staff, anonymous, etc.)

Response & Action:

- The response section includes specific action taken by ORR, on behalf of the complainant to resolve the complaint. (who was talked to, what documents were reviewed)
- The code protected right is identified.
- There is a statement indicating whether the allegation of a rights violation is substantiated or not substantiated.
- If the allegation is substantiated, the specific remedial action taken is identified.
- The complainant is offered an opportunity to express dissatisfaction with the resolution and informed of the opportunity to request an investigation.

Other:

- There is documentation of the remedial action in case file.
- The intervention is converted into an investigation if: 1) it was determined that it did not meet intervention criteria or; 2) it could not be completed within 30 days. (If an intervention is converted at 30 days, a status report is required.)

When the Acknowledgement and Intervention are combined:

- The Acknowledgement/Intervention is sent within 5 business days
- A copy of the complaint is attached
- If not posted in common areas, there is notification that there are advocacy organizations available to assist in preparing written recipient rights complaints

**OFFICE OF RECIPIENT RIGHTS
ACKNOWLEDGMENT/INTERVENTION**

Date: January 11, 20XX

COMPLAINT #: XX-01-008

Dear: Ms. Williams:

On January 7, 20XX the Office of Recipient Rights received your complaint alleging that you did not receive a copy of your treatment plan until your day of discharge, January 7, 20XX.

As a result, Office of Recipient Rights has completed an intervention on your behalf. Your allegation of a violation of your right to a person centered process that is in keeping with the law is not substantiated. On January 10, I spoke to the nurse who indicated that your treatment plan was completed on January 07, which was your last day of treatment at the hospital. I also spoke with you by phone on that same day and you indicated that the plan was completed on the 7th and you received a copy of it at that time. The plan was completed within the timeframe required by the law, "within 7 days ... or before discharge or release" and a copy given at the close of the meeting.

If you are not satisfied with the results of this intervention, you may contact me at the number below within 10 days of receipt of the intervention results to request additional information or to initiate an investigation.

Sincerely,



Recipient Rights Officer
Lakeside Psychiatric Hospital
Phone: (555) 555-5555

Intervention Quality Review Checklist

Complaint Case # _____

Date of Review _____

Rights Staff _____

General Criteria:

yes no Allegation Section

- ☐ ☐ ** *The allegation involves a code protected right*
- ☐ ☐ ** *The complaint has been put into writing*

yes no Does the complaint involve an allegation in which:

- ☐ ☐ The facts are clear and;
- ☐ ☐ The remedy, if applicable, is clear, easily obtainable and;
- ☐ ☐ does not involve statutorily required disciplinary action?

- ☐ ☐ Did the complainant receive a response within 30 days?

yes no Allegation:

- ☐ ☐ Was the allegation clearly stated?
- ☐ ☐ Does it include date of alleged violation, if known or indicate unknown?
- ☐ ☐ Does it include date received by ORR?
- ☐ ☐ Is it clear who filed the complaint? (recipient, staff, anonymous, etc.)
- ☐ ☐ Is the allegation stated and if necessary, further clarified? (including recipient and accused staff involved)

yes no Intervention Response & Action:

- ☐ ☐ Does the intervention response include specific action taken by ORR, on behalf of the complainant to resolve the complaint? (who did you talk to, what did you review...?)
- ☐ ☐ Is the code protected right identified?
- ☐ ☐ Does the intervention state whether the allegation of a rights violation is substantiated or not substantiated?
- ☐ ☐ If the allegation is substantiated, is the specific remedial action taken identified?
- ☐ ☐ Is there documentation of remedial action in case file?
- ☐ ☐ Was the complainant offered an opportunity to express dissatisfaction with the resolution and informed (in writing) of the opportunity to request an investigation.
- ☐ ☐ Was the intervention converted into an investigation if: 1) it was determined that it did not meet intervention criteria or; 2) it could not be completed within 30 days? ***status reports would be required.*

yes no If the Acknowledgement and Intervention are combined:

- ☐ ☐ Has the Acknowledgement/Intervention been sent within 5 business days?
- ☐ ☐ Is a copy of the complaint attached?
- ☐ ☐ If not posted in common areas, is there notification that there are advocacy organizations available to assist you in preparing a written recipient rights complaint?

OFFICE OF RECIPIENT RIGHTS
YOUR AGENCY NAME HERE
DAY STATUS REPORT

Date: _____

COMPLAINT # _____

Dear:

This letter contains information regarding your complaint and a status report on the progress of the recipient rights investigation as required by the Michigan Mental Health Code; 330.1778 (4). If you have any questions regarding this information, please call me at the number listed below.

ALLEGATION

CITATIONS

ISSUES

INVESTIGATIVE PROGRESS TO DATE

The case is still under investigation and, at this point, no conclusions have been reached. Documents are being reviewed and interviews with persons who may have knowledge of this issue are being conducted.

(or other similar language)

Documents have been reviewed and interviews with persons who may have knowledge of this issue have been conducted, however, the investigation is not yet complete.

EXPECTED DATE FOR COMPLETION OF THE INVESTIGATION:

It is anticipated that the investigation will be completed by MM/DD/XX (we recommend using the date the RIF is due on the 30 & if needed, the 60 day letter). At that time a report of investigative findings will be submitted to the agency Director. Once the report is completed, you have the right to request mediation to resolve the dispute, if both parties agree. The Director will send you a **Summary Report** within 10 days after he/she receives the RIF. The Summary Report will also include information on the Recipient Rights Appeal process and your right to mediation.

_____, Recipient Rights Officer

Phone: (____) _____



OFFICE OF RECIPIENT RIGHTS INVESTIGATIVE REPORT

RECIPIENT'S NAME Keira Holmes	ORR #: 20XX-08-014A	CATEGORY: 72221	REPORT DATE: 9/09/20XX
COMPLAINANT'S NAME DCW James Coburn	AGENCY/PROGRAM: Lakeside Psychiatric Center	DECISION: Unsubstantiated	ORR USE ONLY

ALLEGATION:

A complaint was received by ORR on August 19, 20XX from Kit Fire, Administrative RN at Lakeside Psychiatric Center. RN Fire received an Administrative Report containing an allegation by DCW James Coburn that on August 14, 20XX, DCW Roger Cross wrapped his hand in recipient Keira Holmes' hair and pulled the recipient's head back. He stated that Mr. Cross also interlaced his fingers in with the recipient's fingers, bending the recipient's wrist back. During the investigation it was determined that DCW Roger Cross was not involved in the incident involving the recipient, and that the staff who participated was DCW Roger Wilde, assisted by DCW Shari Rigby. The complaint also resulted in a second allegation, which is covered in another report.

CITATIONS:

Mental Health Code Sec. 330.1722(1): A recipient of mental health services shall not be subjected to abuse or neglect.

MDHHS Administrative Rule 330.7001(a): Abuse class II means... a non accidental act or provocation of another to act by an employee...that caused or contributed to nonserious physical harm to a recipient.

MDHHS Administrative Rule 330.7001 (I): "Nonserious 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.

ISSUES:

1. Did staff DCW Roger Wilde wrap his hand in the recipient Keira Holmes' hair on August 14, 20XX and pull the recipient's head back or interlace his fingers in with the recipient's fingers bending the recipient's wrist back?
2. If yes, was the act by staff Roger Wilde non-accidental?
3. If yes, did Roger Wilde's actions cause or contribute to pain or bruising to the recipient Keira Holmes?
4. If yes, was the pain or bruising determined to be nonserious physical harm?

FINDINGS:

Documentation: (All documentation was reviewed on 8/23 and 8/24 20XX)

On August 14, 20XX DCW Roger Wilde wrote an Incident Report (IR) about recipient Keira Holmes. The IR identified self & Shari Rigby as present and states that:

“Pt had toilet paper in her R ear and stated she wanted it out. . . Pt began picking at fingers and biting them. Staff gave verbal prompts to stop. Pt compliant for a moment, then began scratching at L arm. Pt then started throwing socks at staff. Staff gave more verbal prompts to stop SIB without success. Staff then applied manual hold for health & safety of pt. RN notified.”

The “extent of injury at time care given” section of this IR indicated “NA”.

The “DESIGNATED SUPERVISOR” section of this IR was completed by the RN, Brenda Storey, who wrote:

Staff acted promptly to situation and took all measures for the patient’s safety as well as the safety of others

On August 14, 20XX DCW Sheri Rigby wrote an Incident Report (IR) about recipient Keira Holmes. The IR identified self & Roger Wilde as present and states that:

“Pt had put toilet paper in her ear and stated she wanted it out. . . Pt began picking at fingers and biting them. Staff gave verbal prompts to stop. Compliant for a moment, then began scratching at L arm. Staff gave verbal prompts to stop behavior without response from pt. Pt picking at toes and arm, threw socks at staff. Staff tried verbal redirection. Pt attempted to hit staff and spit at them. Staff applied manual hold for safety of pt & staff. RN notified.

The remainder of the IR is blank, referencing IR 029812.

On August 15, 20XX Dr. Mycroft Bell indicated in the medical record that he examined the recipient following a 2-person backward come along to a lower, which occurred the previous night. He was not notified about the hold, but indicated that the psychiatrist was notified at the time of the incident. Dr. Bell saw the recipient, who denied any pain or discomfort. With the exception of the injury on the recipient’s forearm (the site of self-abusive behavior) no injury was noted.

Administrative Reports were completed by all staff who worked the afternoon shift on August 14, 20XX and submitted to RN Kit Fire as part of the Center Administrative Review:

Three staff indicated that they witnessed the manual hold. All indicated that the two-person backwards come along to a lower was executed appropriately without any unusual occurrence.

On August 19, 20XX, DCW James Coburn completed an Administrative Report, submitted to his supervisor, DCW Barry Frost, in which he stated in the DESCRIPTION OF INCIDENT:

While on unit, writer was asked to go and standby in apartment #1 as above patient was acting up. Writer entered the unit and saw that above patient was sitting in a chair with her arms crossed and at the time seemed calm. Writer sat near by and observed above patient begin lightly scratching her arm, the scratching began to get harder before staff verbally asked for her to stop. Patient did not comply and was lowered from the chair and held on the ground until she was given her IM's. After the IM's the patient was given the chance to get up and sit in a chair, which she

did. No further action by this safety officer and I left the area.

On August 19, 20XX DCW James Coburn completed the following correspondence to his supervisor DCW Barry Frost:

Mr. Frost, while speaking with you, I advised you that a few staff were pushing the limit of excessive force with a particular patient. ... This excessive force would include staff grabbing the patients hair and yanking back to talk to patient about calming down and holding the hand of a patient and bending their wrist back to try and get patient to stop self abuse. There was numerous staff present from both the primary apartment as well as other apartments, so it is unclear to me who saw what on that night.

My wife Sheri Rigby who is a primary on the unit ... was not involved in these allegations and in fact was not on the unit during this time and knew nothing of them when I spoke to her about it.

On August 20, 20XX, DCW Barry Frost, completed an Administrative Report, submitted to RN Kit Fire, in which he stated in the DESCRIPTION OF INCIDENT:

On 8/19/XX at 2:45pm DCW James Coburn approached this writer and stated that he had some questions for me. Mr. Coburn informed me that on Friday 8/14/XX he was at unit apt. # 1 at approximately 8:30pm. He stated that while there patient #5989 was lightly scratching her arm. He further stated that the scratching became more intense and that staff asked her to stop. When the patient did not comply with the direction from staff she was lowered to the floor from the chair she was sitting in and held on the floor while she was given an IM.

DCW Coburn then informed me that during the time the patient was held on the floor he had observed Roger Cross (DCW) wrap his hand in the patient's hair and pull the patient's head back and talk to her about following directions and calming down. He stated that Mr. Cross also interlaced his fingers in with the patient's fingers bending the patient's wrist back in an attempt to stop her from scratching herself. DCW Coburn also stated that Roger Wilde (DCW) was involved with this situation in some way but he was not sure of the extent.

DCW Coburn also indicated that he had spoken to the unit RN after the incident and told her that some of her staff members are using more force than necessary in this type of situation.

Interviews:

Interview with DCW Roger Cross on 8/26/09 (in person); Also present, Bob Seger, union representative DCW Cross stated that he usually works apartment 1, but, as he was working overtime, he was working in apartment 2. He heard a stat call as well as some people screaming on the day and time in question (8-14). He then went to the other apartment. When he arrived, he saw the other staff with the recipient and everything was "under control". The recipient Keira Holmes was already on the floor. He then assisted the LPN, who was new, with the passing of medication, which requires all the residents to remain at a table until called (as there have been med issues in the past).

When asked, DCW Cross stated that he did not remember if Keira Holmes was let up from the floor before he left the apartment. He was not aware of any verbalizations from the recipient, as he was with the recipients receiving meds.

Upon request, DCW Cross and Mr. Seger demonstrated the “two-person backwards come along to a lower”. This hold was noted in the written statement of DCW Sheri Rigby. Mr. Seger asked who had made the complaint and writer indicated that the complaint was from incident reports and that writer was unsure if more information could be shared. DCW Cross stated he was concerned with the time lag between the incident and his removal from the apartment. He stated that he was anxious to return to his regular assignment.

Interview with DCW Roger Wilde on 8/26/09 (in person) (Kit Fire present)

DCW Wilde stated that the incident began when the recipient had some toilet paper in her ear. Her behavior escalated from light scratching to self-injurious and Keira Holmes did not respond to requests to stop, redirection or attempts to distract. Mr. RW and DCW Sheri Rigby took the recipient in a two person hold from the chair to the floor and placed her on her back. DCW Wilde was asked to demonstrate his position in relation to the recipient, once she was on the floor. He indicated that he had one wrist/forearm with each hand parallel to each other, with hands supinated, about 9” to the side of the recipient’s head. He was asked if the recipient was head banging and how he positioned himself at that time. He demonstrated placing his forearm on top of the recipient’s hand/wrist and cupping his hand under her head until a staff returned with a towel, which was placed under the recipient’s head. He stated that in addition to himself, and DCW Rigby, the LPN Christine Zorg was present to give the injection and the safety officer, DCW James Colburn was present during the incident. A second safety officer arrived at the end of the incident, because when DCW James Colburn was talking on his phone, the recipient was very verbal and the second DCW, Mr. Joe Penny, interpreted it as a stat call and came to the apartment. However, he did not observe the incident.

Interview with Sheri Rigby on 8/26/XX (in person) (Kit Fire present)

DCW Sheri Rigby stated that the incident began when the recipient had some toilet paper in her ear. Her behavior escalated from having her arms crossed to self injurious and the recipient did not respond to requests to stop. DCW Rigby and DCW Roger Wilde took the recipient in a two person hold from the chair to the floor and placed her on her back. DCW Rigby was asked to demonstrate her position in relation to the recipient, once Keira Holmes was on the floor. She demonstrated her own position holding the recipient’s legs. DCW Rigby indicated that she was facing the recipient’s feet and did was not facing DCW Wilde as he held Ms. Holme’s hands, but thought DCW Wilde had Ms. Holme’s wrists held with his hands together, supinated, above the recipient’s head. She stated that in addition to himself, and DCW Wilde, the LPN Christine Zorg was present to give the injection and the safety officer, her husband DCW James Coburn was present during the incident. A second safety officer arrived at the end of the incident. However, he did not observe the incident.

Interview with DCW James Coburn on 8/26/09 (in person) (Kit Fire present)

Writer indicated to DCW Coburn that his written statements had been reviewed, as well as the report of his conversation with his supervisor, and these raised some questions which he could clarify for the investigation. DCW Coburn was asked why he was present at the incident and what he observed. He

stated that he was present at the incident because he was making his usual rounds and was in apartment 1 when the incident began. He observed the recipient sitting alone. She was self-injuring. Someone asked her to uncross her arm, which she complied with for a few minutes. However, the behavior started again and staff had to slide her from the chair and onto the floor. She was face up. The LPN gave her a couple of shots. When the patient was calm, she sat up and he left the apartment. When asked about the actions of each of the staff, DCW Coburn stated that one staff took patients to the other apartment, one staff was with the one-to-one and the other staff were involved in the incident. DCW Coburn was asked about his statement that a male staff involved grabbed Keira Holmes' hair and pulled her head back. He stated that a staff went to get a blanket. While that staff was gone, one of the male staff involved grabbed Keira Holmes' hair and pushed her head forward, bringing her chin closer to her chest. Writer asked DCW Coburn to demonstrate the way he observed staff holding the recipient on the floor. He indicated that there were two staff holding the recipient's arms, one on each side & one staff holding her feet. He stated could not recall the names of the specific staff. Upon further questioning, DCW Coburn stated he was about 5 feet from the recipient's feet, looking up at her head and that in retrospect, his view may have been unclear and staff may have been "holding her head up", not grabbing her hair. He indicated that Joe, the other DCW may have had a better view. DCW Coburn was also asked if he could be confusing two different incidents. Writer reminded DCW Coburn that his written statement to his supervisor, he indicated that his wife was not present at the incident. However, all witnesses and the IRs indicate that there were only two staff involved in the "manual hold" (not three), Shari Rigby. If he is recalling another manual hold or incident involving the recipient and other staff, he may have confused it with this incident, due to the delay in reporting. DCW Coburn stated he was sure that the incident he observed was on a Friday, as he was off from work the following days and thought about it quite a bit before coming forward to inform his supervisor that he had failed to report an incident he observed. However, he was unable to explain how the things he observed could have occurred during the 8:55 incident on 08/14/XX.

CONCLUSION:

The decision in this case is based upon the standard of a preponderance of evidence, which means a standard of proof which is met when, based upon all the available evidence, it is more likely that a right was violated than not, given the greater weight of evidence, not as to quantity (number of witnesses), but as to quality (believability and greater weight of important facts provided). The facts of this case are as follows:

1. Did staff Roger Wilde wrap his hand in the recipient Keira Holmes' hair on August 14, 20XX and pull the recipient's head back or interlace his fingers in with the recipient's fingers bending the recipient's wrist back?

No. Based on the testimony of DCW Roger Wilde, DCW Roger Cross, DCW Sheri Rigby and DCW James Coburn, interviewed on August 23 and 24, 20XX, and the review of the IRs, administrative reports, progress notes by Dr. Bell and email correspondence, on August 23 and 24, 20XX, there is no evidence to support the occurrence of the act in question; that DCW Roger Wilde wrapped his hand in the patient's hair and pulled the patient's head back or interlaced his fingers in with the patient's fingers bending the patient's wrist back. The demonstrations by staff of the manual

hold, show that the person engaged in the hold as described would be unable to bend the recipient's wrist back while the recipient was supine on the floor. In addition, the testimony of DCW Coburn, who stated that he saw Roger Wilde engage in the aforementioned behavior was contradicted by the written comments of the RN, Brenda Storey, as well as the verbal testimony of the other witnesses.

2. If yes, was the act by staff RW non-accidental?

NA, as the answer to question #1 is no.

3. If yes, did Roger Wilde's actions cause or contribute to pain or bruising to the recipient Keira Holmes?

NA, as the answer to question #1 is no. The injury on the recipient's forearm is a site of previously self-abusive behavior.

4. If yes, was the pain or bruising determined to be nonserious physical harm?

NA, as the answer to question #1 is no.

IN SUMMARY, there *is NOT a preponderance of evidence* to support that DCW Roger Wilde wrapped his hand in the patient's hair and pulled the patient's head back or interlaced his fingers in with the patient's fingers bending the patient's wrist back, therefore Abuse class II *is not substantiated*.

RECOMMENDATION

There are no recommendations at this time.

PERSONS INTERVIEWED

Complainant DCW James Coburn

DCW Roger Cross

DCW Roger Wilde

Union Representative Bob Seger.

DCW Shari Rigby

PERSONS NAMED, NOT INTERVIEWED

Recipient Keira Holmes (not interviewed, refused all requests by ORR)

DCW Joe Penny (not interviewed; did not observe the incident)

DCW Supervisor Barry Frost (not interviewed, documentation reviewed)

LPN Christine Zorg (not interviewed)

RN Brenda Storey (not interviewed; documentation reviewed)

DOCUMENTS REVIEWED

Incident Reports dated August 14, 20XX

Recipient's Progress Notes dated August 14, 20XX

Recipient's Medical Progress Notes dated August 15, 20XX

Recipient's OAS (Overt Aggression Scale Report dated August 14, 20XX

OAS by Kit Fire, dated August 20, 20XX
Staff Assignment Logs for August 14, 20XX
Correspondence from DCW James Coburn to DCW Supervisor Barry Frost
Administrative Report by DCW James Coburn, dated August 19, 20XX
Administrative Report by DCW Barry Frost, dated August 20, 20XX
Administrative Report by RN Brenda Storey, dated August 22 and 23, 20XX
Administrative Reports, submitted to RN Kit Fire, by all staff assigned on August 14, 20XX

Rights Advisor

Date

Required Elements for the Recipient Rights Report of Investigative Findings

Yes No

Allegation Section

- ☐ ☐ Includes date of alleged violation, if known or indicate unknown
- ☐ ☐ Includes date received by ORR?
- ☐ ☐ It is clear who filed the complaint? (Name, or recipient, staff, anonymous, etc.)
- ☐ ☐ The allegation is stated and if necessary, further clarified (including names of recipient and accused staff involved)

Citation Section

- ☐ ☐ Relevant portions of the citations from the MHC are quoted, including definitions
- ☐ ☐ Relevant portions of the citations from the MDCH Administrative Rules are quoted, including definitions
- ☐ ☐ Relevant provisions of Agency policy, (if different), guidelines, other federal and state laws, and other applicable citation sources quoted?

Issues Section

- ☐ ☐ Elements of the citations are addressed in the issues
- ☐ ☐ Issues are specific to the allegation
- ☐ ☐ Issues are written as questions

Investigative Findings Section

- ☐ ☐ The complainant is interviewed. If not, an explanation is provided
- ☐ ☐ Potential witnesses are identified and interviewed (including recipients) If not, there is there an explanation
- ☐ ☐ The accused is interviewed. If not, an explanation is provided
- ☐ ☐ The recipient is interviewed. If not, an explanation is provided
- ☐ ☐ All relevant documents are identified and reviewed If not, an explanation is provided

The findings contain all relevant evidence.

- ☐ ☐ Testimonial (verbal or written)
- ☐ ☐ Documentary
- ☐ ☐ Observation
- ☐ ☐ Physical
- ☐ ☐ Findings contain dates of interviews and dates evidence is gathered
- ☐ ☐ Inconsistencies that were identified from the testimony and documents, if any, addressed

Conclusion Section

- ☐ ☐ Preponderance of evidence is identified as the standard of proof used
- ☐ ☐ The issue questions referenced and answered
- ☐ ☐ Evidence used from the findings to establish a logical rationale for the conclusion
- ☐ ☐ The code protected right involved identified
- ☐ ☐ The determination to substantiate or not substantiate is clearly stated
- ☐ ☐ The staff person(s) or entity responsible is clearly identified
- ☐ ☐ The recipient(s) that is the subject of the allegation is clearly identified

Recommendations Section

- ☐ ☐ MCL 330.1722 and AR 3307035 or MCL 330.1780, as applicable are quoted in this section
- ☐ ☐ For substantiated allegations of abuse/neglect and harassment/retaliation disciplinary action is recommended.

The recommended actions:

- ☐ ☐ Correct or provide a remedy for the rights violation
- ☐ ☐ Can be implemented in a timely manner
- ☐ ☐ Attempts to prevent a recurrence
- ☐ ☐ Upon completion, is the rights investigator identified and date of completion of RIF

SUMMARY REPORT

Recipient Rights Complaint # 20XX-08-014A

A complaint was received by ORR on August 19, 20XX from Kit Fire, Administrative RN at Lakeside Psychiatric Center. RN Fire received an Administrative Report containing an allegation by DCW James Coburn that on August 14, 20XX, DCW Roger Cross wrapped his hand in recipient Keira Holmes' hair and pulled the recipient's head back. He stated that Mr. Cross also interlaced his fingers in with the recipient's fingers, bending the recipient's wrist back. During the investigation review of the room maps denoting staff present indicated that DCW Roger Cross was not present at the incident involving the recipient, and that the staff who participated was DCW Roger Wilde, assisted by DCW Shari Rigby. The complaint also resulted in a second allegation, which is covered in another report.

CITATIONS:

1. Mental Health Code Sec. 330.1722(1): A recipient of mental health services shall not be subjected to abuse or neglect.
2. MDHHS Administrative Rule 330.7001(a): Abuse class II means... a non accidental act or provocation of another to act by an employee ...that caused or contributed to nonserious physical harm to a recipient.
3. MDHHS Administrative Rule 330.7001 (I): "Nonserious 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.

ISSUES:

1. Did staff DCW Roger Wilde wrap his hand in the recipient Keira Holmes' hair on August 14, 20XX and pull the recipient's head back or interlace his fingers in with the recipient's fingers bending the recipient's wrist back?
2. If yes, was the act by staff Roger Wilde non-accidental?
3. If yes, did Roger Wilde's actions cause or contribute to pain or bruising to the recipient Keira Holmes?
4. If yes, was the pain or bruising determined to be nonserious physical harm?

SUMMARY OF FINDINGS:

Staff Roger Wilde did not wrap his hand in the recipient Keira Holmes's hair on August 14, 20XX and pull the recipient's head back or interlace his fingers in with the recipient's fingers bending the recipient's wrist back. Based on the testimony of DCW Roger Wilde, DCW Roger Cross, DCW Sheri Rigby and RCA James Coburn, interviewed on August 23 and 24, 20XX, and the review of the IRs, administrative reports, progress notes by Dr. Bell and email correspondence, on August 23 and 24, 20XX, there is no evidence to support the occurrence of the act in question; that DCW Roger Wilde wrapped his hand in the patient's hair and pulled the patient's head back or interlaced his fingers in with the patient's fingers bending the patient's wrist back. The demonstrations by staff of the manual hold, show that the person engaged in the hold as described would be unable to bend the recipient's wrist back while the recipient was supine on the floor. In addition, the testimony of RCA Coburn, who stated that he saw Roger Wilde engage in the aforementioned behavior was contradicted by the written comments of the RN, Brenda Storey, as well as the verbal testimony of the other witnesses. Additionally, the only injury observed on the recipient's forearm is a site of previously self-abusive behavior.

CONCLUSION:

The decision in this case is based upon the standard of a preponderance of evidence, which means a standard of proof which is met when, based upon all the available evidence, it is more likely that a right was violated than not, given the greater weight of evidence, not as to quantity (number of witnesses), but as to quality (believability and greater weight of important facts provided).

There *is NOT a preponderance of evidence* to support that DCW Roger Wilde wrapped his hand in the patient's hair and pulled the patient's head back or interlaced his fingers in with the patient's fingers bending the patient's wrist back, therefore Abuse class II *is not substantiated*.

RECOMMENDATIONS:

There are no recommendations at this time.

ACTION TAKEN, OR PLAN OF ACTION PROPOSED BY THE AGENCY:

None

Agency Director

Date

PERSONS INTERVIEWED

DCW James Coburn, complainant

DCW Roger Cross

DCW Roger Wilde

Union Representative Bob Seger

DCW Shari Rigby

PERSONS NAMED, NOT INTERVIEWED

Recipient Keira Holmes (not interviewed, refused all requests by ORR)

DCW Joe Penny (not interviewed; did not observe the incident)

DCW Supervisor Barry Frost (not interviewed, documentation reviewed)

LPN Christine Zorg (not interviewed)

RN Brenda Storey (not interviewed; documentation reviewed)

DOCUMENTS REVIEWED

Incident Reports dated August 14, 20XX

Recipient's Progress Notes dated August 14, 20XX

Recipient's Medical Progress Notes dated August 15, 20XX

Recipient's OAS (Overt Aggression Scale Report dated August 14, 20XX

OAS by Kit Fire, dated August 20, 20XX

Staff Assignment Logs for August 14, 20XX

Correspondence from RCA James Coburn to RCA Supervisor Barry Frost

Center Administrative Report by RCA James Coburn, dated August 19, 20XX

Center Administrative Report by RCA Barry Frost, dated August 20, 20XX

Center Administrative Report by RN Brenda Storey, dated August 22 and 23, 20XX

Center Administrative Reports, submitted to RN Kit Fire, by all staff assigned on August 14, 20XX

NOTICE OF RIGHT TO APPEAL

The Michigan Health Code states that you may appeal the information presented in this Summary Report if you disagree with them for one of the following reasons:

1. You feel that the findings or conclusion of the rights office are not consistent with the facts, or with law, rules, policies or guidelines.
2. You feel that the action taken, or the action that is proposed, does not provide an adequate solution.
3. The investigation did not begin, or was not completed, on a timely basis. (The Rights Office has 90 days to complete an investigation)

Your appeal must be in writing and received no later than 45 days from the day you receive this report. Your written request for appeal should be sent to:

Insert name of Appeals Committee
c/o XXX
ADDRESS OF APPEALS COMMITTEE
ADDRESS OF APPEALS COMMITTEE

NOTICE OF RIGHT TO MEDIATION

At this time, you also have the option of requesting mediation to resolve your complaint. If you wish to seek mediation, please contact the Rights Advisor, who will assist you in this process. If you elect to engage in mediation, all appeal processes shall be suspended until the conclusion of the mediation process.

There are several advocacy organizations to assist you:

- *Alliance on Mental Illness (AMI)* Telephone: (800) 331-4264 (State of Michigan)
- *ARC of Michigan* Telephone (800) 292-7851
- *Association for Children's Mental Health (ACMH)* Telephone: (800) 782-0883
- *Michigan Protection and Advocacy Services* Telephone: (800) 288-5923
- *Michigan Disability Rights Coalition* Telephone: (800) 760-4600

****For hearing impaired access through the Michigan Relay Center call (844) 578-6563**

If you should need assistance with your appeal or with contacting an advocacy organization you can contact the local rights office.

Required Elements for Recipient Rights Summary Reports

Allegation Section: Same as RIF:

- ☐ Does it include date of alleged violation, if known or indicate unknown?
- ☐ Does it include date received by ORR?
- ☐ Is it clear who filed the complaint? (recipient, staff, anonymous, etc.)
- ☐ Is the allegation stated and if necessary, further clarified?
(including recipient and accused staff involved) *** If during the course of the investigation, the citations/suspected rights violation changes it should be explained/clarified in the allegation section.*
- ☐ Does the allegation include a code protected right?

Citations Section: Same as RIF:

- ☐ Are all the relevant portions of the citations from the MHC quoted, including definitions, if applicable?
- ☐ Are all relevant portions of the citations from the MDCH Administrative Rules quoted, including definitions, if applicable?
- ☐ Are all the relevant portions of the citations from CMH policy (if different), other federal and state laws, and other documents quoted, if applicable?

Issues Section: Same as RIF:

- ☐ Are issues written as questions?
- ☐ Are all elements of the citations addressed in the issues?
- ☐ Are issues specific to the allegation?

Summary of Findings Section:

- ☐ Have the findings been described sufficiently to reflect all relevant evidence that was obtained during the investigation? (including dates evidence was obtained)
- ☐ Was information provided within the constraints of confidentiality and privileged communication?

Conclusion Section:

- ☐ Is it clear that preponderance of evidence is the standard of proof used?
- ☐ Are all the issue questions referenced and answered? *(Can also be done in findings section)*
- ☐ Does the conclusion use evidence from the findings to establish a logical rationale for the conclusion? *(Can also be done in findings section)*
- ☐ Is the code protected right involved identified?
- ☐ Has a determination been made to substantiate or not substantiate the allegation?
- ☐ Is the staff person(s) or entity responsible clearly identified?

Recommendation Section: Same as RIF:

- ☐ Are all the recommendations made by ORR in the RIF included in the summary report?
- ☐ Does it recommend action that:
 - a) corrects or provide a remedy for the rights violation?
 - b) is to be implemented in a timely manner?
 - c) attempts to prevent a recurrence?
- ☐ Is disciplinary action recommended for substantiated allegations of abuse, neglect and harassment/retaliation?

Action /Plan of Action Section:

- ☐ Is the specific remedial/disciplinary action taken clearly stated?
- ☐ If action was taken against an individual, are they identified?
- ☐ If a plan of action is proposed, is it to be implemented in a timely manner?

Appeal Notice:

Are there clear instructions for making an appeal?

- ☐ grounds
- ☐ committee address
- ☐ assistance notification

Follow up:

Is there an addendum to the summary report issued once proposed action is taken?

- ☐ Written notice of the completion of the plan
- ☐ The notice includes specific information as to the action that was taken and the date that it occurred, if it is different than that proposed & Appeal Rights re-offered (affording 45 days to appeal the appropriate Appeals Committee on the grounds of inadequate action taken to remedy a rights violations.

Retention Guidelines for Rights Office Documents (MDHHS-ORR)

This retention plan is a compilation of the State retention and MDHHS-ORR procedures. Page 1 is from the ORR Procedures Manual and contains two pertinent subjects. Pages 2 and 3 explain what each area means (i.e. "what is a case file") and how long it should be retained if it is sent to records retention. The last part explains the "footer" abbreviations. This document is not meant to replace contractual requirements of your agency policies. However, if you are reviewing your agency retention policies, this may be a valuable reference.

Chapter Central Office	Section Office Management	Chapter 01	Section 01	Subject 01
Subject Record Retention		Date 10/01/2006	Page 1 of 1	

I. SUMMARY

Establishes standards for the retention and disposal of records in facility rights offices.

II. STANDARDS

A. Records shall be retained in the CORR or field rights offices according to the following schedule:

<u>Item</u>	<u>Retain</u>	<u>Disposal Method</u>
Training Records	CR + 3	Shred
Recipient Rights Appeal Records	CR + 3	To Records Retention
Annual Report	CR + 3	To Records Retention
Incident Reports	CR + 1	Shred
Case Files	CR + 3	To Records Retention
Death Review Files	CR + 3	To Records Retention
CMHSP Assessments & Related Documentation	CR + 6	Shred
BMC Minutes and Site Review Forms	CR + 3	Shred

B. All items sent to Records Retention shall be boxed and labeled according to standards set forth in MDHHS Policy 04-011-0001.

III. PROCEDURES

None

IV. EXHIBIT

None

State of Michigan
Department of History, Arts and Libraries - Records Management
Records Retention and Disposal Schedule

Dept Code: */39/RRI/*

Dept Name: *Office of Recipient Rights*

Item Number	Series Title	Agency Retention	Total Retention	State Administrative Board Approval Date
0.1 INTRO-	The Michigan Mental Health Code, PA 258 of 1974, established the Michigan Department of Health and Human Services Office of Recipient Rights (MDHHS-ORR), its functions and responsibilities. The primary mandates of the office are to provide direct rights protection and advocacy services to individuals admitted to state psychiatric hospitals and centers for developmental disabilities and to assess and monitor the quality and effectiveness of the rights protection systems in community mental health service programs and licensed private psychiatric hospitals/units.			
34965 -	<u>Training Records (Supersedes Item Number 1403)</u>	ACT+2	ACT+2	03/06/2007
	The Training Unit of the Office of Recipient Rights develops and conducts instructional programs that assist in assuring the rights of recipients in public mental health programs will be applied in a consistent manner across the state. These programs focus on providing rights staff from licensed hospital psychiatric units, community mental health service providers, staff from other state agencies and advocacy programs, service providers, and contract agencies the skills necessary to carry out the duties of their office. Another function of this unit is to coordinate educational activities carried out by ORR staff located in hospitals and centers operated by the Department of Community Health. Training records may include copies of contracts, conference information, handouts, correspondence, procedures related to seminars, workshops or conferences, evaluations, etc. Records will be retained for the duration of the current training module (ACT) plus 2 years.			Because this material is required for the monitoring process, the ORR Procedures Manual requires CR+3. (01-02-01) There is no retention after that. (BKS)
34967 -	<u>Recipient Rights Case Files (Supersedes Item Numbers 1406, 1436 and 1437)</u>	ACT+3	ACT+10	03/06/2007
	Recipient Rights Case Files are maintained to document allegations and complaints which have been investigated. The files may include Incident Reports, Case File Sheets, Reports of Investigative Findings, Recipient Rights Complaints, investigative reports, special clinic reports, police reports, photographs, statements, staffing notes/reports, medical reports, correspondence, etc. The files will be retained until the case is closed (ACT) plus 10 years.			The ORR Procedures Manual has a more thorough list of required documentation (02-02-05)
34969 -	<u>Rights Special Investigations (Supersedes Item Numbers 1410 and 1415)</u>	ACT	ACT+10	03/06/2007
	These files are used for monitoring, investigative or technical assistance purposes. The files may include compliance reviews, assessments, plans of corrective action, complaints, correspondence, and other supporting documentation. Records will be retained until the investigation is closed (ACT) plus 10 years.			
34970 -	<u>Recipient Rights Appeal Records (Supersedes Item Number 1412)</u>	ACT+3	ACT+10	03/06/2007
	The Department of Community Health Appeals Committee reviews appeals of rights complaints filed by or on behalf of patients/residents of state hospitals/centers. Additionally, it reviews appeals submitted by or on behalf of individuals who are or have been patients in licensed private psychiatric hospitals/units who have entered into an agreement to use the department's appeals committee in lieu of appointing its own. These records may include correspondence, complaint documentation, initial worksheets, investigative findings, report of appeal, decisions, and other supporting documentation. Records will be retained until the appeal is closed (ACT) plus 10 years.			

The BPCT System monitors and tracks ORR investigations and complaints. This Oracle database is the primary tool used for ORR management, supervisory and quality review purposes. Major data elements include Facility Number, ORR #, ORR Action, Date Complaint Received, Case # of Recipient, Rights Category, Resident Unit, Decision, Rights Advisor Name and Number, Case Comments, Acknowledgement Letter Date, 30 Day Status Date, 60 Day Status Date, Expiration Date of Investigation, Summary of Investigation, Expiration Date of Summary Report, and Summary of Director. Data will be retained until the investigation or complaint is closed and until it is determined to have no further value (ACT).

This standard is for
computer based data
systems (BKS)

D. DEFINITIONS OF RETENTION CODES (from Records Management manual for State Employees):

The **retention codes** that appear on Records Retention and Disposal Schedules are used to establish how long records are retained by the creating agency before they are destroyed (or transferred to the State Archives for permanent retention). Retention codes determine how destruction dates will be automatically calculated by Versatile (Versatile is the records management software that is used by Records Management Services to manage the retention of records), and the date upon which the calculation will be based. When one of these codes is assigned to a record series, Versatile knows how to calculate retention for any items sent to the State Record Center for storage. In addition to the retention code, a period of time, years and/or months, can be used in the calculation. Years are expressed as whole numbers, and months are expressed as fractions. For example, the fraction "0/6" would represent 6 months. The retention code plus the period of time results in a mathematical formula to determine a disposal date. Agencies can also use this formula to calculate a destruction date for records that are maintained in their offices.

ACT = Active

An active code is usually assigned to records that are case or project related. The records are retained "until the case or project is closed." This code can also be applied to records where a subjective decision is needed to determine when the records become inactive, as with a subject file. The record is retained "until it is determined to be inactive." The retention period is applied when the ACT condition has been met. For instance, a case file might be retained until the case is closed (ACT) plus five years. Active should be defined in the last sentence of the series description.

CR = Creation

A creation code is assigned to records when a definitive retention period can be assigned. The retention period is usually based on a calendar year and where there are no conditions that must be met. For instance, correspondence has a two-year retention period. The retention period begins from the date the correspondence is created or received.

EXP = Expiration

An expiration code is typically assigned to contracts, grants or other types of agreements that must be retained until an expiration date or other legal condition has been met. For instance, contracts may be held until contract expiration (EXP) plus six years.

FY = Fiscal Year

A fiscal year code is similar to a CR code. The code is assigned to records when a definitive retention period can be assigned, however the retention is based on a fiscal year rather than a calendar year. This retention code is usually assigned to accounting records and their supporting documentation.

SUP = Superseded

A superseded code is typically assigned to records that are updated or revised at various times during the records lifetime. Examples would include policies or procedures. As a policy is updated and the old version is replaced or superseded, only the current version is needed.

EVT = Event

Event codes are assigned to records when a retention period is based on a future action or condition. We use this code when we know that a future action or condition will be met, but we don't know exactly when it will happen. For instance, deeds are retained to document the ownership of land by the State of Michigan. If and when the State of Michigan divests itself of that land, a retention period can be applied to the records. The records will be retained until the State of Michigan sells the land (EVT). The event should be defined in the last sentence of the series description.

DISP = Immediate Disposal

Immediate Disposal is a retention code that is used when an agency requires an authorization to destroy obsolete records upon the approval of their Records Retention and Disposal Schedule. Once the Retention Schedule is approved the agency has the legal authority to destroy the obsolete records.

PERM = Permanent

These records are not authorized for destruction at any point in time, and will be retained in the custody of the creating agency.

TITLE 42--PUBLIC HEALTH

CHAPTER IV--CENTERS FOR MEDICARE &
MEDICAID SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES
(Continued)

Subpart E--Fair Hearings for Applicants and Recipients

Sec. 431.200 Basis and purpose.

Source: 44 FR 17932, Mar. 29, 1979, unless otherwise noted.

General Provisions

This subpart implements section 1902(a)(3) of the Act, which requires that a State plan provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly. This subpart also prescribes procedures for an opportunity for hearing if the Medicaid agency takes action to suspend, terminate, or reduce services. This subpart also implements sections 1819(f)(3), 1919(f)(3), and 1919(e)(7)(F) of the Act by providing an appeals process for individuals proposed to be transferred or discharged from skilled nursing facilities and nursing facilities and those adversely affected by the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

[57 FR 56505, Nov. 30, 1992]

Effective Date Note: At 66 FR 6403, Jan. 19, 2001, Sec. 431.200 was revised, effective April 19, 2001. At 66 FR 11546, Feb. 26, 2001 the effective date was delayed until June 18, 2001, at 66 FR 32776, June 18, 2001 it was furthered delayed until Aug. 17, 2001, and at 66 FR 43090, Aug. 17, 2001 it was furthered delayed until Aug. 16, 2002. For the convenience of the user, the revised text is set forth as follows:

Sec. 431.200 Basis and scope.

This subpart--

- (a) Implements section 1902(a)(3) of the Act, which requires that a State plan provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly;
- (b) Prescribes procedures for an opportunity for hearing if the State agency takes action to suspend, terminate, or reduce services, or an MCO or PHP takes action under subpart F of part 438 of this chapter; and
- (c) Implements sections 1919(f)(3) and 1919(e)(7)(F) of the Act by providing an appeals process for any person who—
 - (1) Is subject to a proposed transfer or discharge from a nursing facility; or
 - (2) Is adversely affected by the pre-admission screening or the annual resident review that are required by section 1919(e)(7) of the Act.

Sec. 431.201 Definitions.

For purposes of this subpart:

Action means a termination, suspension, or reduction of Medicaid eligibility or covered services. It also means determinations by skilled nursing facilities and nursing facilities to transfer or discharge residents and adverse determinations made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

Adverse determination means a determination made in accordance with sections 1919(b)(3)(F) or 1919(e)(7)(B) of the Act that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

Date of action means the intended date on which a termination, suspension, reduction, transfer or discharge becomes effective. It also means the date of the determination made by a State with regard to the preadmission screening and annual resident review requirements of

section 1919(e)(7) of the Act.

De novo hearing means a hearing that starts over from the beginning.

Evidentiary hearing means a hearing conducted so that evidence may be presented.

Notice means a written statement that meets the requirements of Sec. 431.210.

Request for a hearing means a clear expression by the applicant or recipient, or his authorized representative, that he wants the opportunity to present his case to a reviewing authority.

[44 FR 17932, Mar. 29, 1979, as amended at 57 FR 56505, Nov. 30, 1992]

Effective Date Note: At 66 FR 6403, Jan. 19, 2001, in Sec. 431.201 the definition of Service authorization request was added, effective April 19, 2001. At 66 FR 11546, Feb. 26, 2001 the effective date was delayed until June 18, 2001, at 66 FR 32776, June 18, 2001 it was further delayed until Aug. 17, 2001, and at 66 FR 43090, Aug. 17, 2001 it was further delayed until Aug. 16, 2002. For the convenience of the user, the added text is set forth as follows:

Sec. 431.201 Definitions.

Service authorization request means a managed care enrollee's request for the provision of a service.

Sec. 431.202 State plan requirements.

A State plan must provide that the requirements of Secs. 431.205 through 431.246 of this subpart are met.

Sec. 431.205 Provision of hearing system.

(a) The Medicaid agency must be responsible for maintaining a hearing system that meets the requirements of this subpart.

(b) The State's hearing system must provide for--

(1) A hearing before the agency; or

(2) An evidentiary hearing at the local level, with a right of appeal to a State agency hearing.

(c) The agency may offer local hearings in some political subdivisions and not in others.

(d) The hearing system must meet the due process standards set forth in *Goldberg v. Kelly*, 397 U.S. 254 (1970), and any additional standards specified in this subpart.

Sec. 431.210 Content of notice.

A notice required under Sec. 431.206 (c)(2), (c)(3), or (c)(4) of this subpart must contain--

(a) A statement of what action the State, skilled nursing facility, or nursing facility intends to take;

(b) The reasons for the intended action;

(c) The specific regulations that support, or the change in Federal or State law that requires, the action;

(d) An explanation of--

(1) The individual's right to request an evidentiary hearing if one is available, or a State agency hearing; or

(2) In cases of an action based on a change in law, the circumstances under which a hearing will be granted; and

(e) An explanation of the circumstances under which Medicaid is continued if a hearing is requested.

[44 FR 17932, Mar. 29, 1979, as amended at 57 FR 56505, Nov. 30, 1992]

Sec. 431.211 Advance notice.

The State or local agency must mail a notice at least 10 days before the date of action, except as permitted under Secs. 431.213 and 431.214 of this subpart.

Sec. 431.213 Exceptions from advance notice.

The agency may mail a notice not later than the date of action if--

(a) The agency has factual information confirming the death of a recipient;

(b) The agency receives a clear written statement signed by a recipient that--

(1) He no longer wishes services; or

(2) Gives information that requires termination or reduction of services and indicates that he understands that this must be the result of supplying that information;

(c) The recipient has been admitted to an institution where he is ineligible under the plan for further services;

(d) The recipient's whereabouts are unknown and the post office returns agency mail directed to him indicating no forwarding address (See Sec. 431.231 (d) of this subpart for procedure if the recipient's whereabouts become known);

(e) The agency establishes the fact that the recipient has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;

(f) A change in the level of medical care is prescribed by the recipient's physician;

(g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or

(h) The date of action will occur in less than 10 days, in accordance with Sec. 483.12(a)(5)(ii), which provides exceptions to the 30 days notice requirements of Sec. 483.12(a)(5)(i).

[44 FR 17932, Mar. 29, 1979, as amended at 57 FR 56505, Nov. 30, 1992; 58 FR 25784, Apr. 28, 1993]

Sec. 431.214 Notice in cases of probable fraud.

The agency may shorten the period of advance notice to 5 days before the date of action if--

(a) The agency has facts indicating that action should be taken because of probable fraud by the recipient; and

(b) The facts have been verified, if possible, through secondary sources.

Right to Hearing

Sec. 431.220 When a hearing is required.

(a) The agency must grant an opportunity for a hearing to:

(1) Any applicant who requests it because his claim for services is denied or is not acted upon with reasonable promptness;

(2) Any recipient who requests it because he or she believes the agency has taken an action erroneously;

(3) Any resident who requests it because he or she believes a skilled nursing facility or nursing facility has erroneously determined that he or she must be transferred or discharged; and

(4) Any individual who requests it because he or she believes the State has made an erroneous determination with regard to the preadmission and annual resident review requirements of section 1919(e)(7) of the Act.

(b) The agency need not grant a hearing if the sole issue is a Federal or State law requiring an automatic change adversely affecting some or all recipients.

[44 FR 17932, Mar. 29, 1979, as amended at 57 FR 56505, Nov. 30, 1992]

Effective Date Note: At 66 FR 6403, Jan. 19, 2001, Sec. 431.220 was amended by revising the introductory text of paragraph (a), the semicolons after paragraphs (a)(1), (a)(2), and (a)(3) and the "and" after the third semicolon are removed and periods are inserted in their place, and a new paragraph (a)(5) is added, effective April 19, 2001. At 66 FR 11546, Feb. 26, 2001 the effective date was delayed until June 18, 2001, at 66 FR 32776, June 18, 2001 it was furthered delayed until Aug. 17, 2001, and at 66 FR 43090, Aug. 17, 2001 it was furthered delayed until Aug. 16, 2002. For the convenience of the user, the revised and added text is set forth as follows:

Sec. 431.220 When a hearing is required.

(a) The State agency must grant an opportunity for a hearing to the following:

* * * * *

(5) Any MCO or PHP enrollee who is entitled to a hearing under subpart F of part 438 of this chapter.

* * * * *

Sec. 431.221 Request for hearing.

(a) The agency may require that a request for a hearing be in writing.

(b) The agency may not limit or interfere with the applicant's or recipient's freedom to make a request for a hearing.

(c) The agency may assist the applicant or recipient in submitting and processing his request.

(d) The agency must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearings.

Sec. 431.222 Group hearings.

The agency--

- (a) May respond to a series of individual requests for hearing by conducting a single group hearing;
- (b) May consolidate hearings only in cases in which the sole issue involved is one of Federal or State law or policy;
- (c) Must follow the policies of this subpart and its own policies governing hearings in all group hearings; and
- (d) Must permit each person to present his own case or be represented by his authorized representative.

Sec. 431.223 Denial or dismissal of request for a hearing.

The agency may deny or dismiss a request for a hearing if--

- (a) The applicant or recipient withdraws the request in writing; or
- (b) The applicant or recipient fails to appear at a scheduled hearing without good cause.

Procedures

Sec. 431.230 Maintaining services.

(a) If the agency mails the 10-day or 5-day notice as required under Sec. 431.211 or Sec. 431.214 of this subpart, and the recipient requests a hearing before the date of action, the agency may not terminate or reduce services until a decision is rendered after the hearing unless--

- (1) It is determined at the hearing that the sole issue is one of Federal or State law or policy; and
- (2) The agency promptly informs the recipient in writing that services are to be terminated or reduced pending the hearing decision.

(b) If the agency's action is sustained by the hearing decision, the agency may institute recovery procedures against the applicant or recipient to recoup the cost of any services furnished the recipient, to the extent they were furnished solely by reason of this section.

[44 FR 17932, Mar. 29, 1979, as amended at 45 FR 24882, Apr. 11, 1980]

Sec. 431.231 Reinstatement of services.

(a) The agency may reinstate services if a recipient requests a hearing not more than 10 days after the date of action.

(b) The reinstated services must continue until a hearing decision unless, at the hearing, it is determined that the sole issue is one of Federal or State law or policy.

(c) The agency must reinstate and continue services until a decision is rendered after a hearing if--

- (1) Action is taken without the advance notice required under Sec. 431.211 or Sec. 431.214 of this subpart;
- (2) The recipient requests a hearing within 10 days of the mailing of the notice of action; and
- (3) The agency determines that the action resulted from other than the application of Federal or State law or policy.

(d) If a recipient's whereabouts are unknown, as indicated by the return of unforwardable agency mail directed to him, any discontinued services must be reinstated if his whereabouts become known during the time he is eligible for services.

Sec. 431.232 Adverse decision of local evidentiary hearing.

If the decision of a local evidentiary hearing is adverse to the applicant or recipient, the agency must--

- (a) Inform the applicant or recipient of the decision;
- (b) Inform the applicant or recipient that he has the right to appeal the decision to the State agency, in writing, within 15 days of the mailing of the notice of the adverse decision;
- (c) Inform the applicant or recipient of his right to request that his appeal be a de novo hearing; and
- (d) Discontinue services after the adverse decision.

Sec. 431.233 State agency hearing after adverse decision of local evidentiary hearing.

(a) Unless the applicant or recipient specifically requests a de novo hearing, the State agency hearing may consist of a review by the agency hearing officer of the record of the local evidentiary hearing to determine whether the decision of the local hearing officer was supported by substantial evidence in the record.

(b) A person who participates in the local decision being appealed may not participate in the State agency hearing decision.

Sec. 431.240 Conducting the hearing.

(a) All hearings must be conducted--

(1) At a reasonable time, date, and place;

(2) Only after adequate written notice of the hearing; and

(3) By one or more impartial officials or other individuals who have not been directly involved in the initial determination of the action in question.

(b) If the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, and if the hearing officer considers it necessary to have a medical assessment other than that of the individual involved in making the original decision, such a medical assessment must be obtained at agency expense and made part of the record.

Sec. 431.241 Matters to be considered at the hearing.

The hearing must cover--

(a) Agency action or failure to act with reasonable promptness on a claim for services, including both initial and subsequent decisions regarding eligibility;

(b) Agency decisions regarding changes in the type or amount of services;

(c) A decision by a skilled nursing facility or nursing facility to transfer or discharge a resident; and

(d) A State determination with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

[57 FR 56505, Nov. 30, 1992]

Sec. 431.242 Procedural rights of the applicant or recipient.

The applicant or recipient, or his representative, must be given an opportunity to--

(a) Examine at a reasonable time before the date of the hearing and during the hearing:

(1) The content of the applicant's or recipient's case file; and

(2) All documents and records to be used by the State or local agency or the skilled nursing facility or nursing facility at the hearing;

(b) Bring witnesses;

(c) Establish all pertinent facts and circumstances;

(d) Present an argument without undue interference; and

(e) Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

[44 FR 17932, Mar. 29, 1979, as amended at 57 FR 56506, Nov. 30, 1992]

Sec. 431.243 Parties in cases involving an eligibility determination.

If the hearing involves an issue of eligibility and the Medicaid agency is not responsible for eligibility determinations, the agency that is responsible for determining eligibility must participate in the hearing.

Sec. 431.244 Hearing decisions.

(a) Hearing recommendations or decisions must be based exclusively on evidence introduced at the hearing.

(b) The record must consist only of--

(1) The transcript or recording of testimony and exhibits, or an official report containing the substance of what happened at the hearing;

(2) All papers and requests filed in the proceeding; and

(3) The recommendation or decision of the hearing officer.

- (c) The applicant or recipient must have access to the record at a convenient place and time.
- (d) In any evidentiary hearing, the decision must be a written one that--
 - (1) Summarizes the facts; and
 - (2) Identifies the regulations supporting the decision.
- (e) In a de novo hearing, the decision must--
 - (1) Specify the reasons for the decision; and
 - (2) Identify the supporting evidence and regulations.
- (f) The agency must take final administrative action within 90 days from the date of the request for a hearing.
- (g) The public must have access to all agency hearing decisions, subject to the requirements of subpart F of this part for safeguarding of information.

Effective Date Note: At 66 FR 6403, Jan. 19, 2001, Sec. 431.244 was amended by revising paragraph (f), effective April 19, 2001. At 66 FR 11546, Feb. 26, 2001 the effective date was delayed until June 18, 2001, at 66 FR 32776, June 18, 2001 it was furthered delayed until Aug. 17, 2001, and at 66 FR 43090, Aug. 17, 2001 it was furthered delayed until Aug. 16, 2002. For the convenience of the user, the revised text is set forth as follows:

Sec. 431.244 Hearing decisions.

- (f) The agency must take final administrative action as follows:
 - (1) Ordinarily, within 90 days from the earlier of the following:
 - (i) The date the enrollee files an MCO or PHP appeal.
 - (ii) The date the enrollee files a request for State fair hearing.
 - (2) As expeditiously as the enrollee's health condition requires, but no later than 72 hours after the agency receives, from the MCO or PHP, the case file and information for any appeal of a denial of a service that, as indicated by the MCO or PHP--
 - (i) Meets the criteria for expedited resolution as set forth in Sec. 438.410(c)(2) of this chapter, but was not resolved within the timeframe for expedited resolution; or
 - (ii) Was resolved within the timeframe for expedited resolution, but reached a decision wholly or partially adverse to the enrollee.
 - (3) As expeditiously as the enrollee's health condition requires, but no later than 72 hours after the agency receives, directly from an MCO or PHP enrollee, a fair hearing request on a decision to deny a service that it determines meets the criteria for expedited resolution, as set forth in Sec. 438.410(c)(2) of this chapter.

* * * * *

Sec. 431.245 Notifying the applicant or recipient of a State agency decision.

- The agency must notify the applicant or recipient in writing of--
- (a) The decision; and
 - (b) His right to request a State agency hearing or seek judicial review, to the extent that either is available to him.

Sec. 431.246 Corrective action.

The agency must promptly make corrective payments, retroactive to the date an incorrect action was taken, and, if appropriate, provide for admission or readmission of an individual to a facility if--

- (a) The hearing decision is favorable to the applicant or recipient; or
 - (b) The agency decides in the applicant's or recipient's favor before the hearing.
- [57 FR 56506, Nov. 30, 1992]

Federal Financial Participation

Sec. 431.250 Federal financial participation.

- FFP is available in expenditures for--
- (a) Payments for services continued pending a hearing decision;

- (b) Payments made--
 - (1) To carry out hearing decisions; and
 - (2) For services provided within the scope of the Federal Medicaid program and made under a court order.
- (c) Payments made to take corrective action prior to a hearing;
- (d) Payments made to extend the benefit of a hearing decision or court order to individuals in the same situation as those directly affected by the decision or order;
- (e) Retroactive payments under paragraphs (b), (c), and (d) of this section in accordance with applicable Federal policies on corrective payments; and
- (f) Administrative costs incurred by the agency for--
 - (1) Transportation for the applicant or recipient, his representative, and witnesses to and from the hearing;
 - (2) Meeting other expenses of the applicant or recipient in connection with the hearing;
 - (3) Carrying out the hearing procedures, including expenses of obtaining the additional medical assessment specified in Sec. 431.240 of this subpart; and
 - (4) Hearing procedures for Medicaid and non-Medicaid individuals appealing transfers, discharges and determinations of preadmission screening and annual resident reviews under part 483, subparts C and E of this chapter.

[44 FR 17932, Mar. 29, 1979, as amended at 45 FR 24882, Apr. 11, 1980; 57 FR 56506, Nov. 30, 1992]

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