

KALAMAZOO COMMUNITY MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

ADMINISTRATIVE POLICY & PROCEDURE 25.01

Subject: Rights Complaint Resolution System	Section: Rights Complaints & Dispute Resolution	
Applies To: <input checked="" type="checkbox"/> KCMHSAS Staff <input checked="" type="checkbox"/> KCMHSAS Contract Providers	Page: 1 of 10	
Approved: <div style="text-align: center;">----- (Jeff Patton, Chief Executive Officer)</div>		
Revised: 08/15/2018	Supersedes: 09/11/2015	First Effective: N/A

PURPOSE

Establishes procedures for reporting, review, investigation and resolution of recipient rights complaints with the Kalamazoo Community Mental Health and Substance Abuse Services Office of Recipient Rights (KCMHSAS-ORR).

DEFINITIONS

Code Protected Right

A right that is guaranteed by the Michigan Mental Health Code(MMHC) (Act 258 of 1974), Michigan Department of Community Health (MDCH) Administrative Rules or other applicable law.

Complainant

An individual who files a complaint indicating that a recipient’s right has been violated.

Complaint

An oral or written allegation of a violation of the MMHC, MDCH Administrative Rules or other applicable protecting the rights of recipients of mental health services.

Harass

To irritate or torment persistently. Synonyms: hound, badger, pester, bait (to trouble or disturb a person).

Intervention

To act on behalf of a recipient to resolve a complaint alleging a violation of a code/protected right when remedial action is easily obtained because the facts and

remedies are clear, it is not an allegation of abuse or neglect, it can be resolved to the complainant's satisfaction within 30 days, and it does not involve statutorily required disciplinary action.

Preponderance of Evidence

A standard of proof which is met when, based upon all of the available evidence, it is more likely that a right was violated than not; greater weight of evidence, not as to quantity (number of witnesses), but as to quality (believability and greater weight of important facts).

Not Substantiated

A determination made by the Office of Recipient Rights (ORR) that the recipient rights complaint allegation was not supported by a preponderance of evidence and therefore was not a rights violation.

Substantiated

A determination made by the ORR that the recipient rights complaint allegation was supported by a preponderance of evidence and therefore was a rights violation.

Remedial Action

Appropriate action taken in a timely manner to correct or remedy a violation and prevent it from reoccurring and/or remove contributing conditions that may contribute to recurrence.

Retaliate

To pay back (an injury) in kind

Mediation

A private, informal dispute resolution process in which an impartial, neutral individual, in a confidential setting, assists parties in reaching their own settlement of issues in a dispute. The mediator has no legally binding authority or decision-making power.

POLICY

Any individual who believes that their rights or the rights of a recipient have been violated may file a Recipient Rights complaint in writing or verbally. Anonymous complaints are accepted and information that may lead to the identification of the anonymous complainant will be protected.

PROCEDURE

- I. A complaint may be filed by doing one of the following:
 - A. Complete a Recipient Rights Complaint form (or any written document stating the complaint) and send it to:
 1. The KCMHSAS-ORR.

2. The Recipient Rights Advisor of a program where they are receiving services.
 3. The Department of Community Health Office of Recipient Rights (DCH-ORR), who will forward the complaint to KCMHSAS-ORR.
- B. Contact KCMHSAS-ORR who will assist the complainant with the complaint process as necessary including assisting in the preparation of a written complaint and advising the complainant or other individuals of advocacy organizations available to assist in the preparation of a written complaint and offer to make a referral.
- C. Contact the Recipient Rights Advisor of the program where a recipient is receiving services who will:
1. Provide the complainant with a Recipient Rights Complaint form to complete.
 2. Assist the complainant in preparing the form.
 3. Accept the complaint verbally and complete the form on behalf of the complainant and send it to the DCH-ORR for investigation.
 4. Facilitate direct contact by telephone or in person between the complainant and KCMHSAS-ORR.
 5. Rights Advisors will **not** investigate a complaint.
- II.** A rights complaint shall contain all of the following:
- A. A statement of the allegations that give rise to the dispute.
 - B. A statement of the right(s) that may have been violated.
 - C. The outcome that the complainant is seeking as a resolution to the complaint.
- III.** Recipients, staff, parents of minors, guardians, and others will have ready access to complaint forms in all programs, services and KCMHSAS locations including the ORR.
- IV.** All rights complaints and/or other reports of alleged rights violations will be documented for investigation on complaint forms (if possible) and forwarded to the ORR immediately for appropriate action.
- A. Each category of allegation filed will be logged separately, but handled in one report of investigative findings where possible and appropriate.
 - B. When verbal complaints are received, the complaints shall be written on Recipient Rights Complaint forms with the Rights staff completing the forms adding their name as assisting a complainant. Each category of allegation filed will be documented separately. Each Recipient Rights case file will contain a written complaint whether the complaint came in verbally or in writing.

- V. KCMHSAS-ORR will record on a log in all complaints upon receipt. Each complaint will be assigned a number corresponding to the log. The complaint number will consist of the date, followed by a three-digit number identifying the number of the complaints logged to that date. Complaints consisting of more than one allegation will contain letter designations (a, b, c) for each category of allegation involved.
- VI. Acknowledgement of the recording and a copy of the complaint will be sent to the complainant within five business days and will advise whether or not an investigation will take place. Acknowledgement Letters will include:
- A. Notification to the complainant if it is determined that no investigation of the rights complaint is warranted.
 - B. Notification (when interventions are used) to the complainant that when a complainant is dissatisfied with the outcome of an intervention on a complaint involving an alleged or suspected rights violation, the complainant will be given the right to request and receive a full complaint investigation which complies with the process mandated by MMHC Chapter 7A.
 - C. Notification to the recipient or other individual that there are advocacy organizations available to assist in the preparation of a written rights complaint and an offer to refer the complainant to those organizations.
 - D. Information to advise the recipient or other individual of the option of mediation.
 - E. If the complaint received is out of KCMHSAS ORR's jurisdiction, the ORR will send referral information to the complainant, or offer to make the referral. If the complainant is in the jurisdiction of another CMHSP, then the KCMHSAS ORR will refer to the CMHSP ORR that has jurisdiction.
- VII. If a recipient rights complaint has been filed regarding the conduct of the KCMHSAS Chief Executive Officer (CEO), an investigation will be conducted by the ORR of another CMH or the DCH-ORR as decided by the KCMHSAS Board of Directors.
- VIII. A Recipient Rights Officer will determine if KCMHSAS-ORR has jurisdiction and whether the issue is a MMHC protected right.
- A. All complaints and/or other reports of alleged violations of rights that are not in the jurisdiction of the KCMHSAS-ORR, will be referred to the appropriate entity.
 - 1. Complainants will be advised in writing in a language they can understand, of the written referral by the KCMHSAS-ORR.
 - 2. The referral will be logged on the complaint log.
 - B. Complaint investigations shall be initiated immediately in cases involving:
 - 1. Alleged or suspected abuse.
 - 2. Alleged or suspected neglect

3. Serious Injury
4. Death of a recipient involving an apparent or suspected rights violation (see policy/procedure [03.06 \[Incident, Event and Death Reporting\]](#)).
5. Lack of treatment suited to condition or the existence of an unsafe environment that appears to constitute a threat to life of, or contributes to the danger or irreparable harm to, a recipient. Treatment includes medications issues.
6. A report from the Department of Human Services (DHS) that a recipient is alleged to have been abused, neglected, exploited, or endangered.
7. Any complaint that has class implications for the program, provider, or the entire system.
8. Assignment from the KCMHSAS CEO.
9. Other categories of complaints which the ORR chooses to investigate.

IX. KCMHSAS-ORR investigations of apparent or suspected rights violations will be initiated and completed in a timely and efficient manner. Subject to delays involving pending action by external agencies (i.e., APS, CPS, MDCIS, and/or law enforcement), ORR will complete investigations not later than ninety (90) calendar days after receipt of the complaint.

- A. Supervisors and/or other staff will not retaliate in any way against staff, recipients or anyone filing a complaint on a recipient's behalf. Complainants, staff of the ORR and any staff acting on behalf of a recipient will be protected from harassment or retaliation resulting from recipient rights activities. An investigation will be initiated upon allegations of harassment and retaliation. Disciplinary action will be taken if there is a substantiated occurrence of harassment or retaliation.
- B. Staff who have had rights complaints filed about them by recipients will not attempt to question or communicate with the recipient about the complaint, as that could be perceived as harassment.
- C. There will be no attempts by any staff to interfere with direct access to KCMHSAS-ORR by any recipient
- D. Staff of KCMHSAS (including contractual staff) and staff of their contracted service providers are required to report suspected violations of recipient rights to KCMHSAS-ORR. Appropriate administrative and remedial action will be taken for the failure to report suspected rights violations.
- E. Staff of KCMHSAS (including contractual staff) and staff of their contracted service providers shall not initiate internal investigations into suspected rights violations prior to reporting such suspected violations to the KCMHSAS-ORR and/or the initiation of an investigation by the KCMHSAS-ORR. It is permissible to do concurrent internal investigations in conjunction with the KCMHSAS-ORR investigation if the ORR is aware and in approval of the chronology of the internal investigation process, so as to not "taint" the evidence for the ORR and

other investigative bodies such as BCAL Licensing and DHS Adult Protective Services.

- F. All employees, students, interns or volunteers of the KCMHSAS Board and its contract agencies will be expected to respond verbally and, if requested, in writing to questions during investigations of alleged rights violations. Cooperation with a KCMHSAS-ORR investigation will be a condition of employment.
- G. KCMHSAS-ORR will have unimpeded access to all programs and services, staff, recipients and records necessary to conduct a thorough and effective investigation.
- H. When in the course of an investigation it becomes apparent that additional rights may have been violated, a separate letter designation will be assigned to each additional allegation of a rights violation (a, b, c).
- I. All reasonable attempts will be made by KCMHSAS-ORR to coordinate investigations with Adult Protective Services and Licensing investigative bodies per signed agreements.

X. STANDARD OF PROOF

The standard of proof of that will be used to determine whether a right was violated is a preponderance of the evidence.

XI. INVESTIGATION PROCESS

At a minimum, each investigation by ORR shall consist of:

- A. An interview with the complainant, preferably face to face, unless there are extenuating circumstances.
- B. An interview with recipient(s) if other than complainant, preferably face to face, unless there are extenuating circumstances.
- C. An interview with all witnesses and others who may provide relevant information, preferably face to face, unless there are extenuating circumstances.
- D. An interview(s) with the individual(s) who is (are) alleged to have violated a recipient's right(s), preferably face to face.
- E. Obtaining written statements from staff, recipients or relevant others when such a statement is necessary to support oral interviews, to obtain additional information or to provide findings relevant to the investigation.
- F. Review of the case records of recipients involved when pertinent to the complaint.

- G. Review of investigation into the same allegation conducted by law enforcement, DHS, Consumer and Industry Services or the facility when available.
- H. Visit to the site of the alleged violation when appropriate.
- I. Review of pertinent statutes, administrative rules, policies and procedures.
- J. Investigation activities for each rights complaint will be accurately recorded by the ORR.

XII. STATUS REPORTS

The KCMHSAS-ORR will issue a written status report every 30 calendar days during the course of the investigation. The report shall be submitted to the complainant, respondent and KCMHSAS CEO. A status report shall include all of the following:

- A. Statement of the allegations.
- B. Statement of the issues involved.
- C. Citations to relevant provisions of the MMHC, rules, policies and guidelines.
- D. Investigative progress to date.
- E. Expected date of completion of the investigation.

XIII. INVESTIGATION REPORTS

- A. Final investigation reports will be written in the following format:
 - 1. Statement of the allegation.
 - 2. Specific listing of all documents examined and persons interviewed.
 - 3. A narrative of pertinent information discovered during the investigative findings.
 - 4. Questions which must be answered or issues involved in order to make a determination as to whether a right was violated or not.
 - 5. A conclusion which indicates the decision that has been made and provides a basis for the decision based on the relationship between the findings, the issues involved, and the preponderance of evidence.
 - 6. Citations to relevant provisions of Code, rules, policies, guidelines and other relevant regulations.
 - 7. Recommendations for remedial action. In cases of substantiated abuse, neglect, or retaliation and harassment, the remedial action must include appropriate disciplinary action as required by Section 722(2) and 780(1), as well as 1755 (3)(a) of the MMHC and AR7035 (1) for the protection of recipients.

- B. Information in investigative reports will not violate confidentiality regulations or rights of any employee.
- C. KCMHSAS-ORR will comply with pertinent KCMHSAS policies to assure that investigations are conducted in a manner that does not violate employee rights.

XIV. DISTRIBUTION OF FINAL INVESTIGATIVE REPORT

A copy of the final investigative report will be sent to the respondent and KCMHSAS CEO or designee.

XV. RESPONSE TO FINAL INVESTIGATIVE REPORT

The KCMHSAS Provider will have 5 working days to respond to the ORR report recommendations on substantiated and/or non-substantiated complaints. Appropriate remedial action must meet the following requirements:

- A. Corrects or provides remedy.
- B. Is implemented in a timely manner.
- C. Attempts to prevent recurrence.
- D. If the response from the KCMHSAS Provider does not provide remedial action that complies with MMHC 780(1), the ORR investigator will immediately notify the ORR Director. For any case in which the KCMHSAS Provider does not take timely remedial action which complies with Code requirements, the ORR Director will advise the KCMHSAS CEO to assure remedial action is taken.

XVI. REMEDIAL ACTION

The remedial action taken on substantiated violations will meet the following requirements:

- A. Corrects or provides remedy for the violation.
- B. Is implemented in a timely manner.
- C. Attempts to prevent a recurrence of the rights violation.
- D. On substantiated abuse, neglect, retaliation or harassment violations, this will include disciplinary action.

XVII. Remedial action taken on substantiated violations will be documented and made part of the record maintained by the ORR.

XVIII. SUMMARY REPORT TO THE COMPLAINANT/RECIPIENT

Upon completion of the investigation process and receipt of the final investigation report by KCMHSAS-ORR; the KCMHSAS CEO will submit a summary report to all persons with statutory appeal rights including the complainant and recipient (if different from the complainant), guardians and parents of minors within 10 working days. Information in the summary report shall be provided within the constraints of confidentiality and privileged mandates (MMHC 748 and 750) and shall not violate the rights of any employee. This report will include:

- A. Statement of the allegations.
- B. Statement of the issues involved.
- C. Citations to relevant provisions of Acts, rules, policies and guidelines.
- D. Clear summaries of investigative findings that led to the conclusions of the Rights Office.
- E. Recommendations made by KCMHSAS-ORR.
- F. Action taken or plan of action proposed.
- G. If the summary report included a plan of action, written notice will be issued to potential appellants upon completion of the plan. If the action taken was different than the plan, the notice will include the action that was taken and the date it occurred as well as the right to appeal on action only.
- H. Notification about the rights to appeal and grounds for appeals will be made to the complainant, recipient, if different, guardian or parent of a minor recipient to appeal.
- I. Notification will include information that an appeal may be filed no later than 45 days after receipt of the summary report and that the grounds for appeal are:
 - 1. The investigation findings of the ORR are not consistent with the facts, law, rules, policy or guidelines.
 - 2. The action or plan of action taken by the respondent (KCMHSAS Provider) does not provide an adequate remedy.
 - 3. An investigation was not initiated or completed on a timely basis.
- J. Information will advise the complainant of the option of mediation.

XIX. INTERVENTION REPORT TO THE COMPLAINANT/RECIPIENT

Upon completion of an intervention by KCMHSAS-ORR, the KCMHSAS-ORR will

submit the outcome of the intervention to the complainant within 10 working days of completion. The outcome notification will include a statement advising the complainant of his/her right to request and receive a full complaint investigation compliant with the process mandated by MMHC Chapter 7A, should the complainant be dissatisfied with the outcome of an intervention.

XX. REPORT ADDENDUM

When significant new information comes to the attention of the KCMHSAS-ORR and a report of investigative findings has already been filed which may alter the finding of the completed case, the case may be reopened or re-investigated. If that does occur, an addendum will be written and attached to the report, and copies redistributed to recipients of the original final report.

XXI. Investigations will be conducted in a manner not in violation of employee rights and will be documented.

XXII. Recommended remedial action will be taken in a manner that does not violate employee rights.

REFERENCES

- DCH ORR policy on Recipient Rights Investigations
- DHS Adult Protective Services Reporting Requirements
- Public Act 258 of 1974 (MMHC) supplemented through Act 152 of 1996: Sec. 778, 780 and 782
- DCH Administrative Rule R330.7037
- DCH ORR policies Operating the Rights System and Conducting Investigations

EXHIBITS

- A. Recipient Rights Complaint
(http://www.michigan.gov/mdch/0,1607,%207-132-2941_4868_4901-14825--,00.html)