

HIAWATHA BEHAVIORAL HEALTH
Administrative Policy

CHAPTER: Recipient Rights	SECTION: Complaint and Appeal Process – 6.17
EFFECTIVE DATE: 11/26/01	APPROVAL /REVISED DATE: 11/22/2021
REVIEW DATE: 11/24/2025	REVIEW COMMITTEE: Recipient Rights CHANGES: Yes: X No:

I. Purpose

To establish procedures concerning the investigation of alleged or suspected violations of rights guaranteed by Chapters 7 and 7a of the Michigan Mental Health Code.

II. Policy

It is the policy of Hiawatha Behavioral Health to provide a mechanism for prompt reporting, review, intervention, investigation, and resolution of all apparent or suspected rights violations which include mediation and/or an appeals process.

III. Definitions

- A. Appellant: The recipient, complainant, parent, or guardian who appeals a recipient rights finding or a respondent's action to an appeals committee.
- B. Harassment: Words, conduct, or action, usually repeated or persistent that, being directed at a specific person, annoys, alarms or causes substantial emotional distress in that person and serves no legitimate purpose.
- C. Intervention: To act on behalf of a recipient to resolve a complaint alleging a violation of a Mental Health Code protected right when the facts are clear and the remedy, if applicable, is clear and easily obtainable in 30 days or less, and does not involve statutorily required disciplinary action. Interventions, at a minimum, must contain the following elements:
 - 1. The specific action taken by the Office of Recipient Rights on behalf of the complainant to resolve the complaint;
 - 2. Identification of the code protected right;
 - 3. A statement indicating whether the allegation of a rights violations is substantiated or not substantiated.
 - a. Additionally, if the allegation is substantiated, the specific remedial action taken is identified.
- D. Investigation: A detailed inquiry into and systemic examination of an allegation raised in a rights complaint, as outlined in 330.1778 of the MI Mental Health Code.
- E. Legal Guardian: A court appointed Guardian or Parent who has legal custody of a minor recipient.

- F. 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 and has no authoritative decision-making power.
- G. Preponderance of the Evidence: A standard of proof which is met when, based upon all available evidence, it is more likely that something is true than untrue; greater weight of evidence, not as to quantity (number of witnesses), but as to quality (believability and greater weight of important facts); more than 50 percent.
- H. Reasonable Cause: A suspicion founded upon circumstances sufficiently strong to warrant a reasonable person to believe that the suspicion is true.
- I. Respondent: The service provider that had responsibility for the services rendered to the recipient at the time of an alleged rights violation.
- J. Responsible Mental Health Agency (RMHA): The hospital; center or community mental health services program that has primary responsibility for the recipient's care or for the delivery of services or supports to that recipient.
- K. Rights Complaint: A written or oral statement filed by a recipient, or other individual on behalf of a recipient, with the Office of Recipient Rights, alleging a violation of the Mental Health Code, Administrative Rules, or other associated Hiawatha Behavioral Health Policy and Guidelines pertinent to recipient rights which contains the following:
 - 1. A statement of the allegations that give rise to the dispute;
 - 2. A statement of the right or rights that may have been violated;
 - 3. The outcome that the complainant is seeking as a resolution to the complaint.

IV. Procedure

- A. A recipient, or another individual on behalf of a recipient, may file a rights complaint with the Office of Recipient Rights alleging a violation of his/her rights. The Office of Recipient Rights shall assure that recipients and others have ready access to complaint forms.
 - 1. The service provider will provide an accurate summary of Chapter 7 and Chapter 7a to the applicant when services are first requested and periodically during the time services are provided.
 - a. If a recipient is unable to read or understand the materials provided the provider will make a reasonable attempt to assist the recipient in understanding the materials.
 - b. A note describing the explanation of the materials and who provided will be entered in the recipient's record.
- B. The Hiawatha Behavioral Health Office of Recipient Rights shall ensure that:
 - 1. Action is taken to protect the recipient during the investigation.
 - 2. The Office of Recipient Rights has unimpeded access to all of the following:
 - a. All program and services;
 - b. All employees, volunteers and recipients;
 - c. All evidence that the Office of Recipient Rights determines is necessary to

conduct a thorough investigation.

3. All employees, volunteers, and recipients who may have knowledge pertinent to the investigation, shall cooperate with the Office of Recipient Rights investigation.
4. All employees, volunteers, recipients and others who file a complaint and/or cooperate in an investigation are protected from discrimination, harassment, or retaliation in accordance with applicable laws and/or agency policies and procedures.

V. REPORTING SUSPECTED OR APPARENT RIGHTS VIOLATIONS:

- A. All employees, contract employees, staff of contractual employers and volunteers who witness, discover, or have reasonable cause to suspect recipient rights violations shall report verbally or in writing, to a designated rights advisor or officer within 24 hours of the incident or discovery.
- B. Appropriate administrative action shall be taken for failure to report suspected rights violations.

VI. FILING RIGHTS COMPLAINTS: (The Hiawatha Behavioral Health Office of Recipient Rights shall)

- A. Date, number, and record each rights complaint as it is received and send acknowledgment along with a copy of the complaint to the complainant (if known) within 5 business days of receipt of the complaint.
- B. Within 5 business days after the office receives a complaint, it shall notify the complainant if it determines that no investigation of the rights complaint is warranted.
- C. The Office of Recipient Rights shall assist the recipient or other individual with the complaint process. The office shall advise the recipient or other individual that there are advocacy organizations available to assist in preparation of a written rights complaint and shall offer to refer the recipient or other individual to those organizations. In the absence of assistance from an advocacy organization, the office shall assist in preparing a written rights complaint. The written complaint shall contain a statement of the allegation, the right allegedly violated, and the outcome desired by the complainant.
- D. Inform the complainant of the option of mediation.
- E. Inform Hiawatha Behavioral Health Chief Executive Officer of all complaint investigations.

VII. INVESTIGATION:(The Hiawatha Behavioral Health Office of Recipient Rights shall)

- A. Initiate an investigation of apparent or suspected rights violations in a timely and efficient manner, subject to delays involving pending action by external agencies including law enforcement, protective services, or licensing bureaus. Investigation shall be initiated immediately in cases involving alleged abuse, neglect, serious injury, or the death of a recipient that involves an apparent or suspected rights violation.
- B. Conduct investigations in a manner that does not violate employee rights.
- C. Subject to delays involving pending action in investigations conducted by external agencies, the Office of Recipient Rights will complete the investigation not later than 90 days after receiving the rights complaint.
- D. As circumstances permit, perform face to face interviews and obtain written statements from the following:
 - 1. Complainant

2. Recipient
 3. Witness(es)
 4. Individuals that may provide pertinent information.
 5. Employee, volunteer or individual that has been accused or suspected of violating a right.
- E. Maintain accurate records of investigative activities of the Office of Recipient Rights.
 - F. Store all investigative documents and evidence in a secure manner in a locked area in the Office of Recipient Rights. All investigative records shall be kept separate from clinical or personnel records and within the limitations of confidentiality and privileged communications as stated in sections 330.1748, 330.1748a and 330.1750 of the Michigan Mental Health Code.
 - G. Determine whether a right was violated by using the preponderance of the evidence as the standard of proof.
 - H. If a rights complaint has been filed against the Chief Executive Officer, the rights investigation shall be conducted by the Office of Recipient Rights of another community mental health services program or by the state Office of Recipient Rights, to be determined by the Hiawatha Behavioral Health Governing Board.

VIII. STATUS REPORT: (The Hiawatha Behavioral Health Office of Recipient rights shall)

- A. Provide a written status report every 30 days during the course of the investigation. The report shall be submitted to the complainant, the respondent and the responsible mental health agency.
- B. Include all of the following in the status report:
 1. Statement of the allegations;
 2. Statement of the issues involved;
 3. Citations to relevant provisions of the Mental Health Code, Administrative rules, and Hiawatha Behavioral Health Policies and Procedures;
 4. Investigative progress to date;
 5. Expected date for completion of the investigation/report.

IX. INVESTIGATIVE REPORT: (The Hiawatha Behavioral Health Office of Recipient Rights shall)

- A. Submit a written Report of Investigative Findings (RIF) to the respondent and Hiawatha Behavioral Health Chief Executive Officer. Issuance of the RIF may be delayed pending completion of investigations that involve external agencies, including law enforcement, protective services, or licensing bureaus.
- B. Included in the Report of Investigative findings shall be:
 1. Statement of the allegations;
 2. Statement of the issues involved;
 3. Citations to relevant provisions of the Mental Health Code, Administrative Rules, guidelines, policies and procedures;
 4. Investigative findings

5. Conclusions;
 6. Recommendations, if any.
- C. If there is new evidence the Office of Recipient Rights shall reopen or reinvestigate an investigation that is returned to the CMH by an appeals committee for reinvestigation, the office will complete the reinvestigation within 45 days following the standards established in 330.1778.

X. REMEDIAL ACTION:

- A. If it has been determined through investigation that a right has been violated the respondent shall take appropriate remedial action that meets all of the following requirements:
 1. Corrects or provides remedy for the rights violation;
 2. Is implemented in a timely manner
 3. Attempts to prevent a reoccurrence of the rights violation
- B. Provide the Office of Recipient Rights and the Chief Executive Officer with written documentation of the remedial action for the investigative file.
- C. If remedial action is proposed to occur in the future, the recipient if different then the complainant, his/her legal representative and the ORR will be provided written notice when the action was. The notice shall include specific information;
 1. Action that was taken
 2. The date(s) that it occurred.
 3. If the action taken differs from the original plan, a description of that action shall also be provided.
- D. The recipient if different then the complainant, and / or his/her legal representative shall be afforded 45 days from the date of the mailing of the notice to appeal to the Appeals Committee on the grounds of inadequate action taken to remedy a recipient rights violation.
- E. Hiawatha Behavioral Health and respondents shall ensure that appropriate disciplinary action is taken against those who have engaged in abuse or neglect or retaliation or harassment.

XI. SUMMARY REPORT (The Hiawatha Behavioral Health Chief Executive Officer shall:)

- A. Submit a written Summary Report to the complainant and recipient, if different than the complainant within 10 business days after receiving the Office of Recipient Rights Report of Investigative Findings. Include all of the following in the Summary Report:
 1. Statement of the allegations;
 2. Statement of the issues involved;
 3. Citations to relevant provisions of the Mental Health Code, Administrative Rules, guidelines and Hiawatha Behavioral Health Policies and Procedures;
 4. Summary of investigative findings;
 5. Conclusions of the Office of Recipient Rights;

6. Recommendations made by the Office of Recipient Rights;
 7. Action taken, or proposed plan of action, by the respondent;
 8. Statement regarding the complainant's right to appeal and the grounds for an appeal.
- B. If the Summary Report contains a plan of action to be completed in the future, the Hiawatha Behavioral Health Chief Executive Officer shall assure that the complainant, the recipient if different than the complainant, his/her legal representative, if any, and the Office of recipient Rights are provided with written notice of the completion of the plan. The notice shall include specific information as to the action that was taken and the date that it occurred. If the action taken differs from the original plan a description of that action shall be provided. The complainant, recipient, if different than the complainant and his/her legal representative, if any, shall be afforded 45 days from the date of the mailing of the notice to appeal to the Local Level Appeals Committee on the grounds of inadequate action taken to remedy a rights violation.
 - C. Provide information in the Summary Report in a manner within the limitations of confidentiality and privileged communications as stated in sections 330.1748 and 330.1750 of the Mental Health Code and shall not violate the rights of any employee. (Bullard-Plawecki Employee Right to Know Act 397 of 1978)
 - D. The Office of Recipient Rights shall advise the complainant that there are advocacy organizations available to assist in preparing the written appeal and shall offer to refer the complainant to those organizations. In the absence of assistance from an advocacy organization, the Office of Recipient Rights shall assist the complainant in meeting the procedural requirements of a written appeal. The Office of Recipient Rights shall also inform the complainant of the option of mediation as required under section 330.1786 of the MI Mental Health Code.
 - E. Hiawatha Behavioral Health shall conduct ongoing analysis of complaint data that will determine the presence of patterns, trends; areas needing performance improvement.
 - Complaint data shall be reviewed on a quarterly basis by the Recipient Rights Advisory Committee with a written analysis of the data prepared no less than annually.
 - The written analysis shall be reviewed by the Hiawatha Behavioral Health Quality Improvement Council as well as the Recipient Rights Advisory Committee on a quarterly basis and the Hiawatha Governing Board on an annual basis.

XII. APPEAL OF THE SUMMARY REPORT:

- A. Not later than 45 days after receipt of the Summary Report or 45 days from the receipt of an amended Summary Report the Appellant may file a written appeal with the Local Appeals Committee.
- B. An appeal shall be based on any of the grounds as stated below:
 1. The decision of the Hiawatha Behavioral Health Office of Recipient Rights is not consistent with the facts or with law, rules, policies, or guidelines;
 2. The action or proposed plan of action does not provide an adequate remedy;

- (a) The only ground for appeal of a notice of action taken is that the action failed to provide adequate remedy.
- 3. An investigation was not initiated or completed on a timely basis.
- C. The Appeals Committee shall:
 - 1. Review the appeal within 5 business days after receipt of the written appeal to determine whether it meets the criteria set forth above.
 - a. The Appeals Committee shall designate a minimum of two (2) Committee members to conduct the initial review and determine if it meets the criteria.
 - 2. If the Appellant has standing to appeal and if the appeal requests meets the timeframe and grounds.
 - 3. Within five (5) business days notify the appellant in writing if the appeal is denied due to the criteria not being met.
 - 4. Within five (5) business days if the appeal is accepted; provide written notice and a copy of the appeal to the appellant, respondent and Hiawatha Behavioral Health Chief Executive Officer.
 - 5. No later than 30 calendar days after receipt of a written appeal, the Appeals Committee shall meet in closed session to review the facts as stated in all complaint investigation documents in light of the reason for the appeal. The Committee shall not consider allegations that were not part of the original complaint, but shall inform the appellant of his/her right to file a complaint with the Hiawatha Behavioral Health Office of Recipient Rights. The Committee shall do one (1) of the following:
 - a. Uphold the investigative findings of the Office of Recipient Rights and the action or proposed plan of action by the respondent;
 - b. Return the investigation to the Office of Recipient Rights and request that it be reopened or reinvestigated;
 - c. Uphold the investigative findings of the Office of Recipient Rights but recommend that the respondent take additional or different action to remedy the violation;
 - d. Recommend that the Hiawatha Behavioral Health Governing Board request an external investigation by the Michigan Department of Health and Human Services Office of Recipient Rights. If the appeals committee recommends that the CMHSP board request an external investigation by MDHHS rights office, the board of directors must make the request to the director of MDHHS rights office in writing within 5 business days of receipt of the request from the appeals committee. An external investigation must be conducted within the timeframes outlined under Sec. 778. The MDHHS right office must submit an amended investigative report to the executive director and board of the CMHSP. Within 10 business days of receipt of the amended report the CMHSP executive director must issue an amended summary report in compliance with Sec. 782. The amended summary report must be submitted to the appellant, recipient if different than the appellant, the recipient's legal guardian, if any, the parent of a minor recipient, rights office and the appeals committee. If the appellant still disagrees with the conclusion of the rights investigation or asserts that the investigative findings of the rights office are

not consistent with the facts or with law, rules, policies, or guidelines they may file an appeal under Sec. 786.

- e. Document its decision and justification for the decision in writing. Within 10 business days after reaching its decision, provide copies of the decision to the respondent, appellant, recipient if different than the appellant, the recipient's guardian if appropriate, and the Hiawatha Behavioral Health Office of Recipient Rights.
- f. Copies shall include a statement regarding the appellant's right to, within 45 days from receipt of the Appeals Committee decision, a Level 2 appeal to the Department of Health and Human Services Appeals Department. Notice shall include the basis for which the appeal is being made which is specific to the grounds (reason); the investigative findings of the Hiawatha Behavioral Health Office of Recipient rights was not consistent with the facts or with the law, rules, guidelines, or policies.
- g. The Appeals Committee shall maintain a log of all appeals received and disposition of each.
- h. The Hiawatha Behavioral Health's designated appeals committee shall hear appeals of decisions on recipient rights investigations brought by or on behalf of all contract recipients under the authority of the Hiawatha Behavioral Health Board.

XIII. APPEALS COMMITTEE:

- A. The Hiawatha Behavioral Health Recipient Rights Advisory Committee shall serve as the Recipient Rights Appeals Committee
- B. The Appeals Committee shall:
 - 1. Appoint one member to serve as chairperson;
 - 2. Receive training regarding the Rights of Persons Served;
 - 3. Ensure that a member who has a personal or professional relationship with an individual involved in an appeal abstains from participation in that appeal as a member of the Appeals Committee;
 - 4. Conduct appeals proceedings within the constraints of confidentiality and privileged communications in 330.1748 and 330.1750 of the Mental Health Code.
 - 5. Appeal Committee meetings are not subject to the Open Meetings Act;
 - 6. Complete written reports within the constraints of confidentiality and privileged communications as stated in Sections 330.1748 and 330.1750 of the Mental Health Code and in a manner that does not violate the rights of any employee.

XIV. APPEAL OF AN APPEALS COMMITTEE DECISION:

- A. Within 45 days after receiving written notice of the decision of the Appeals Committee, the appellant may file a written appeal with the Michigan Department of Health and Human Services (MDHHS) Level 2 Appeals. The appeal shall be based on the record established in the previous appeal, and on the allegation that the

- investigative findings of the Hiawatha Behavioral Health Office of Recipient Rights are not consistent with the facts or with the law, rules, guidelines, or policies.
- B. MDHHS shall give written notice of receipt of the appeal to the appellant, respondent, and local Office of Recipient Rights. Hiawatha Behavioral Health shall ensure that MDHHS has access to all evidence and necessary documents contained in the investigative file.
 - C. The MDHHS shall review the record based on the basis of the appeal and shall not consider additional evidence or information that was not available during the local appeal process, although MDHHS may return the matter to Hiawatha Behavioral Health requesting additional investigation.
 - D. Within 30 days after receiving the appeal, MDHHS shall review the appeal and do one of the following:
 - 1. Uphold the findings of the Office of Recipient Rights
 - 2. Affirm the decision of the local appeals committee; Return the matter to Hiawatha Behavioral Health Chief Executive Officer with instruction for additional investigation and consideration.
 - E. MDHHS shall provide copies of its action to the respondent, appellant, the recipient if different than the appellant, the recipient's guardian when appropriate, and the Hiawatha Behavioral Health Office of Recipient Rights.

XV. APPEAL TO CIRCUIT COURT:

A person aggrieved by a decision of MDHHS may appeal to the circuit court, requesting an order reversing the decision. The appeal shall be based upon the whole record, and the circuit court shall consider whether the decision is authorized by law and supported by competent evidence.

XVI. Application

All programs operated by or under contract with Hiawatha Behavioral Health

XVII. Cross Reference and Legal Authority

- A. Act 258 of the Public Acts of 1974, as amended - Mental Health Code Sections 330.100a, 330.1146, 330.1722, 330.1755, 330.1774, 330.1776, 330.1778, 330.1780, 330.1782, 330.1784, 330.1786, 330.1788.
- B. Public Act 397 - 423.506 - Bullard-Plawecki Employee Right To Know Act
- C. MI Department of Health & Human Services Technical Advisory – Recipient Rights Appeal Process
- D. Black's Law Dictionary, Seventh Edition
- E. Commission on Accreditation Rehabilitation Facilities (CARF) (K) Rights of Persons Served
- F. MDHHS/CMHSP Managed Specialty Supports and Services Contract Attachment C6.3.2.4.