

# SANILAC COUNTY COMMUNITY MENTAL HEALTH AUTHORITY

## CLINICAL POLICY

**NUMBER: RR006**

**NAME: RECIPIENT RIGHTS SYSTEM**

INITIAL APPROVAL DATE:	07/30/1996	BY: Sanilac CMH Board
CONSUMER/STAKEHOLDER REVIEW:	02/21/2023	BY: Recipient Rights Advisory Comm.
(LAST) REVISION DATE:	09/12/2023	BY: Recipient Rights Officer
(LAST) REVIEW DATE:	09/21/2023	BY: Policy Committee
DISCONTINUED DATE:	NA	REPLACED BY: NA

### I. **PURPOSE**

To establish standards regarding the operation of the recipient rights system in Sanilac County. To establish policy and procedures for reporting and investigating alleged recipient rights violations and recommending remedial action when such allegations are substantiated.

### II. **APPLICATION**

Populations: **ALL**  
Programs: **Direct - ALL**  
**Contracted - ALL**

### III. **POLICY**

It is the policy of Sanilac County Community Mental Health Authority (Sanilac CMH) that the rights of all individuals receiving services be safeguarded. All agencies, programs and service providers other than hospitals that have entered into a contractual relationship with Sanilac CMH must, as a condition of that contract, implement and abide by the Board's recipient rights protection system.

### IV. **DEFINITIONS**

**Appellant** – The individual receiving services, complainant, parent or guardian who appeals a recipient rights finding or a respondent's action to an appeals committee.

**Code Protected Rights** - A right that is guaranteed by the Michigan Mental Health Code [Public Act of 1995], the Administrative Rules of the Michigan Department of Community Health or applicable law.

**Complainant** – An individual who files a complaint indicating that a right has been violated.

**Intervention** -When an allegation of a suspected rights violation has taken place, the Rights Office may intervene on behalf of the complainant when: (1) the facts are clear, and (2) the remedy, if applicable, is clear and easily obtainable, and does not involve statutorily required disciplinary action.

**Investigation** – A detailed inquiry into and systematic examination of an allegation raised in a rights complaint.

**Preponderance of Evidence** - Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

**Provider** - The Chief Executive Officer of Sanilac County Community Mental Health Authority. The Chief Executive Officer may delegate his/her duties to programs or entities operated by or under contract with Sanilac County Community Mental Health Authority, but shall ensure countywide uniformity in recipient rights procedures.

**Remedial Action** - Action taken by the Chief Executive Officer[or his/her designee] to correct a violation prevent a violation from reoccurring and/or remove any contributing conditions.

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

**Substantiated** - A determination made by the Recipient Rights Officer that the recipient rights complaint was a rights violation.

**Unsubstantiated** - A determination made by the Recipient Rights Officer that a recipient rights complaint was not substantiated.

## V. **STANDARDS**

- A. Sanilac County Community Mental Health Authority has funded a full-time recipient rights officer. The hiring and dismissal procedures are established by the Sanilac County Community Mental Health Authority personnel policies. The hiring and dismissal decision is made by the Sanilac County Community Mental Health Authority Chief Executive Officer after consulting with the Recipient Rights Advisory Committee.
- B. Individuals receiving services, their families and guardians, as appropriate and applicable, newly-hired employees, contract staff, students and volunteers will all be provided information about the recipient rights system and Mental Health Code protected rights, the name[s] and contact information for the designated Rights Officer and the Rights Advisors. They will be provided with a copy of "Your Rights When Receiving Mental Health Services in Michigan" which gives a summary of Mental Health Code-protected rights, and a summary of appeal rights.
- C. The name(s) and contact information for the Recipient Rights Officers shall be prominently posted in all CMH service locations.
- D. Records compiled in the course of investigation of an alleged rights violation shall be retained by the Recipient Rights Officer and maintained independent of the individual receiving services' case record or an employee's personnel record and shall be subject to confidentiality safeguards of Public Act 290, Section 748.
- E. **The Chief Executive Officer [provider] shall:**
  1. Designate an individual in each Sanilac County Community Mental Health Authority facility or program to be the Rights Advisor for that facility.
  2. Meet, as needed, with the Recipient Rights Officer to discuss substantiated allegations, recommended remedial actions and prevention of rights violations.

V. STANDARDS continued

3. Cooperate in the prosecution of appropriate criminal charges against those who have engaged in abuse.
4. Ensure that staff members and/or individuals receiving services involved in reporting a complaint are not discriminated against or penalized as a result of such reporting.
5. Support and assist the Recipient Rights Officer in planning and implementing in-service training for staff members regarding recipient rights issues. Ensure that rights complaints filed by individuals or anyone on their behalf were sent or given to the Recipient Rights Officer in a timely manner.
6. Takes appropriate administrative action if Sanilac CMH program staff and/or contracted service providers fail to promptly report suspicions of rights violations.

F. **The Recipient Rights Officer shall:**

1. Be directly responsible to the Chief Executive Officer, have no direct service responsibilities and no other responsibilities that would be in conflict with recipient rights activities.
2. Have a personal commitment to safeguarding the recipient rights system. Maintain an impartial attitude and credibility with individuals receiving services, family members, guardians, contract providers and staff members.
3. Be regularly accessible to provide input, training and consultation services to individual receiving services, family members, guardians, staff and contract providers of the agency regarding the rights of individual receiving services.
4. Assure rights services coverage on a twenty-four-hour, seven-day-per-week basis. In the event the Recipient Rights Officer is unavailable or absent during any point of the twenty-four-hour period, the back-up Recipient Rights Officer provide back-up rights protection services.
5. Assure that all Sanilac County Community Mental Health Authority service locations are visited and inspected once per year. A variety of methods will be used to determine compliance with rights and contractual requirements including direct observation, chart review, established checklists and discussion with direct care and supervising professional staff.
6. Have authority to directly intervene in rights-related issues within the organization or with contracted providers of services.
7. Become familiar with the Mental Health Code, DHHS Administrative Rules and related agency policies and procedures.
8. Develop and implement, in consultation and review with the Chief Executive Officer and Recipient Rights Advisory Committee, policies and procedures pertinent to the rights of individuals receiving services.
9. Handle any grievances for complaints related to section 504 [Rehabilitation Act of 1973] and the Americans with Disabilities Act [ADA] of 1993.

V. STANDARDS continued

10. Participate in and provide in-service training regarding the recipient rights system. Ensure that all individuals employed by Sanilac CMH and contract providers are trained in recipient rights within 30 days of hire and annually thereafter.
11. Provide training, assistance and materials to ensure that Rights Advisors can perform their duties, and monitor their performance on a regular basis.
12. Establish procedures to ensure individuals receiving services, parent[s] if the service individual receiving services is a minor, and guardians receive a written summary of rights. The rights protection system shall be verbally explained to each service individual receiving services by the staff person responsible for conducting the initial intake procedure and at least annually thereafter.
13. Together with the Rights Advisors, will ensure that copies of rights summaries and Recipient Rights Complaint Forms (DCH 0030) are posted in appropriate places on the premises of the agency and contract providers.
14. Investigate all allegations of rights violation with assistance from other staff if necessary.
15. Assists the individual receiving service who has been physically, sexually or otherwise abused in finding legal assistance to pursue injunctive and other appropriate civil relief. If sexual assault is believed to have taken place, under the Michigan Sexual Conduct Act, the police must be notified.
16. Notify other appropriate agencies of a complaint as required by law (Department of Health and Human Services Protective Services; Adult Foster Care Licensing; police).
17. Ensure that the complainant, individual receiving services and their guardian and/or parent, are informed of:
  - a. The progress and results of the investigation regarding the complaint.
  - b. Any subsequent modification or reversal of disciplinary or other action taken as a result of the complaint.
  - c. The opportunity to appeal.
18. Submit a monthly summary report to the Chief Executive Director, Sanilac CMH Board and Recipient Rights Advisory Committee listing rights protection activities for that month.
19. Prepare for the Department of Health and Human Services a semi-annual/annual report of Sanilac County Community Mental Health Authority recipient rights activities.
20. Communicate, coordinate joint activities with, and provide liaison to, the Department of Health and Human Services Office of Recipient Rights to ensure that local interpretations of the Mental Health Code, Administrative Rules and Department of Health and Human Services policies, procedures and standards in relation to Recipient Rights are compatible with Department of Health and Human Services efforts to develop a unified statewide system for the provision of mental health care. This includes submitting policies and procedures periodically to the Department of Health and Human Services Office of Recipient Rights for review and comment.

V. STANDARDS continued

21. Provide public information on matters concerning the recipient rights system.
22. The Office of Recipient Rights shall advise the complainant that there are advocacy organizations available to assist the complainant 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 shall assist the complainant in meeting procedural requirements of a written appeal. When the acknowledgement letter is sent, the office shall inform the complainant of the option of mediation under Section 786. The office shall also inform the individual receiving services or other individual of the option of mediation and under what circumstances and when it may be exercised. Information about Appeals and Mediation will also be included in the Summary Report issued by the Chief Executive Officer.

G. **The Rights Advisors for each Sanilac County Community Mental Health Authority program or facility shall:**

1. Report directly to the Recipient Rights Officer regarding recipient rights issues.
2. Participate in in-service training regarding the recipient rights system.
3. On a monthly basis, will ensure the following are posted in areas that are accessible to individuals receiving services and others:
  - "Your Rights" booklets
  - Recipient Rights Complaint Forms (DCH0030)
  - Notices of Rights Officer and Advisor

The Rights Advisor will also ensure on a monthly basis that the following are posted in areas that are accessible to agency personnel:

- Whistleblowers Act
- Abuse and Neglect Reporting Requirements
- Recipient Rights Complaint Forms (DCH0030)

In addition, the Rights Advisor will assure an adequate supply of Incident Report forms and the above required documents are on hand at their site.

4. Assist individuals in completing the Recipient Rights Complaint Form.
5. Report to the Recipient Rights Officer oral complaints made by any individual.
6. Forward all oral and written complaints within 24 hours [marked 'Confidential'] to the Recipient Rights Officer.
7. Assist the Recipient Rights Officer in investigating recipient rights complaints when asked.
8. May serve as a back up in case the Recipient Rights Officer is absent.

H. **The Sanilac County Community Mental Health Authority Board shall:**

1. Appoint a Recipient Rights Advisory Committee of at least six (6) members that represent the CMH programs' geographic area. At least 1/3 of the members shall be primary individuals receiving services or family members and of that 1/3 at least 1/2 shall be primary individuals receiving services.
2. Appoint a Recipient Rights Appeal Committee as follows:  
Appoint the Advisory Committee as the Appeals Committee. (Note: If an Appeals Committee member has a personal or professional relationship with an individual involved in an appeal, he/she will abstain from participating in that appeal. See Sanilac CMH Appeals Process.)

I. **The Recipient Rights Advisory Committee shall:**

1. Protect the office of the recipient rights from pressures that could interfere with the impartial, even-handed and thorough performance of its duties;

V. STANDARDS continued

2. Recommend candidates to head the Recipient Rights office and shall consult with the Chief Executive Officer prior to the dismissal of the Recipient Rights Officer;
3. Shall review the operation of the Recipient Rights office annually including a review of the funding for the office.
4. Review and comment on Rights policies and procedures prior to their approval by the Sanilac County Community Mental Health Authority Board.
5. Meet at least semi-annually.
6. Assure that all meetings of the Advisory Committee comply with the Open Meetings Act, Act No. 267 of the Public Acts of 1976, MCL 15.621 to 15.275.
7. Shall review and provide comment on the Annual Report submitted to the Department of Health and Human Services.

VI. PROCEDURES

**A. Rights Notification:** The Recipient Rights Officer will:

1. Ensure that a special explanation of the rights summary is given if the individual receiving services is:
  - a. Illiterate - An entry must be made into the individual receiving services' record indicating that the explanation was given, by whom and when.
  - b. Non-English Speaking - Verbal explanation shall be made in a language that the individual receiving services understands. This explanation may be delayed for a reasonable period until a translator is available, but no later than two weeks from the initial date of service. If there is a delay, the reason for it shall be entered into the individual receiving services' record.
  - c. Emotionally Upset - The verbal explanation may be delayed until a more clinically suitable time if the individual receiving services is unable to comprehend the explanation at the time of admission but no later than two weeks from initial date of service. If there is a delay, the reason for it shall be entered into the individual receiving services' record.
  - d. Deaf or other Perceptual Difficulties - The explanation shall be communicated by a means that is understandable to the individual receiving services and may be delayed for a reasonable period until a qualified translator is available but no later than two weeks from initial date of service. If there is a delay, the reason for it shall be entered into the individual receiving services' record.
2. Ensures that the individual receiving services [and parent[s] or guardian] sign the Consent for Participation form which includes a statement that he/she has received a "Your Rights" booklet.

**B. Rights Complaint Process:** The Recipient Rights Officer will be responsible for the following:

1. Maintaining a chronological log of all complaints filed, which includes the name of the individual receiving services involved, name of complainant, category of allegation, investigation and/or intervention determination, name of the provider and remedial action taken. The log will also include the dates each step in the complaint process took place (date received, status reports, final investigative report issued, date of summary report, date of appeal).
2. Determining if the complaint concerns a Mental Health Code-protected rights allegation within the provider's jurisdiction. If no code protected right is alleged or if the allegation is

VI. PROCEDURES continued

out of provider's jurisdiction, the complainant will be notified within 5 business days of receipt of the complaint as follows:

- Out of jurisdiction: The complainant will be notified by correspondence including a copy of the complaint, and referred to the appropriate agency.
  - No code protected right: The complainant will be notified by correspondence including a copy of the complaint, and referred to another agency or advocacy organization, if appropriate.
3. If a Mental Health Code protected rights violation is alleged, acknowledgment of the complaint, together with a copy of the complaint form, will be sent to the complainant within 5 business days of receipt of complaint. If an anonymous complaint is received, the complainant's copy of the Recipient Rights Complaint form will be filed in the office of the Rights Officer.
  4. If an investigation is not warranted by the Rights Officer, notification of the intervention that took place will be sent to the complainant within 5 business days of receipt of the complaint. The complainant will be advised that if unsatisfied with the intervention, he/she can request a full investigation take place.
  5. The individual receiving services or other individuals who filed or wish to file a complaint will be notified that there are advocacy organizations available that can assist in filing a written rights complaint. The Recipient Rights Officer will offer to make referral to the various advocacy organizations available to the individual receiving services or individual. In the absence of an advocacy organization, the Rights Officer will assist the individual in preparing a rights complaint. The option of mediation will also be shared with the individual receiving services or other individual.
  6. If a complaint is received regarding the conduct of the Chief Executive Officer, the complaint will be referred to the CMH Board who will direct that the rights investigation be referred to the Rights Officer of another CMH Board or to the State Office of Recipient Rights for investigation.

**C. Rights Investigations:** The Rights Officer will initiate investigations of abuse and neglect, serious injury or death immediately upon receipt of a verbal or written complaint. All other complaints will be investigated in a timely and efficient manner. The Rights Officer will insure the provider has immediate personal knowledge of allegation. The following procedures will be followed by the Rights Officer:

1. Identifies and interviews all persons with knowledge of the allegation, including the complainant and individual receiving services (if appropriate) and summarizes each interview in writing or accepts a written statement from the person interviewed.
2. Reviews all pertinent documentation regarding the allegation (for example, treatment plans, staff notes, Incident Reports, etc.)
3. Reviews all applicable Mental Health Code, DHHS Administrative Rules, Dept. of Health and Human Services and Sanilac CMH Board policies and pertinent records and takes notes as appropriate.

VI. PROCEDURES continued

4. Assures that investigations will be conducted in a manner that will not violate employee rights and that comply with CMHSP pertinent policies.
5. Assures that investigation activities for each rights complaint were accurately recorded for each rights complaint.

**D. Investigative Findings:**

1. During the investigative process, the Rights Officer will forward a status report every 30 days to the complainant, respondent and responsible mental health agency that will include the allegations being investigated, issues involved citations from Sanilac CMH policies, Mental Health Code, Administrative Rules and guidelines, the status of investigation to date and anticipated date investigation will be completed.
2. The investigation will be completed within 90 days of receipt of complaint. In instances where other agencies are also conducting an investigation, the findings of the Rights Officer may be delayed pending completion of the investigation of the other agencies.
3. The Rights Officer will use the *preponderance of evidence standard*, based on all the available facts, to make an independent determination of whether each allegation is substantiated or is unsubstantiated.
4. The Rights Officer will prepare a written Investigative Findings report that will be submitted to the Chief Executive Director and respondent which includes all of the following:
  - a. Statement of the allegations involved;
  - b. Statement of the issues involved;
  - c. Citations to relevant provisions of Mental Health Code, rules, policies and guidelines and Sanilac CMH policies.
  - d. Investigative findings by Recipient Rights Officer;
  - e. Conclusions of investigation, substantiated or not substantiated;
  - f. Recommendations made to respondent based on conclusions of investigation. In cases of abuse and neglect, recommendations will include the requirement for firm and appropriate disciplinary action.
5. Remedial action taken on substantiated violations and/or action taken on recommendations made by the Rights Office will be documented and made part of the Rights Office record.

**E. Service Provider/Sanilac CMH Staff/All Contractual Staff**

1. Will fully cooperate in all investigations regarding alleged rights violations.
2. Staff acting on behalf of an individual receiving services will be protected from harassment and/or retaliation as a result of any recipient rights activities, including appropriate disciplinary action, if there is evidence of retaliation and harassment.

**F. Provider/Respondent**

1. Reviews conclusions and recommendations in the Final Investigative Report.
2. Provides appropriate and timely remedial and/or disciplinary action that will:
  - a. Correct and provide remedy for the rights violation, and
  - b. Attempts to prevent recurrence of the rights violations.
3. Documents that appropriate disciplinary action is taken against those who have engaged in abuse or neglect.



VI. PROCEDURES continued

**G. Chief Executive Officer**

1. The Chief Executive Officer or his/her designee submits a written Summary Report to the complainant and individual receiving services [if different than the complainant] within ten [10] business days after receipt of the investigative findings from the Recipient Rights Officer. (If the proposed Plan of Action has not been completed, a Preliminary Summary Report will be submitted. Once the proposed Plan of Action has been completed, a Final Summary Report will be submitted.)
2. The Summary Report will contain all of the following:
  - a. Statement of the allegations.
  - b. Statement of the issues involved.
  - c. Citations to relevant provisions of the Mental Health Code, rules, guidelines, policies and Sanilac CMH policies.
  - d. Summary of investigative findings of the Rights Officer.
  - e. Conclusions and recommendations of the Rights Officer.
  - f. Action taken or plan of action proposed by the respondent/CMHSP.
  - g. Statement describing appeal rights and grounds for appeal.
3. Information in the Summary Report will be provided within the guidelines of the Mental Health Code, Confidentiality, Privileged Communications, (330.1748, 330.1748(a), 330.1750 and 330.1782). Information in the Summary Report will not violate the rights of any employee.
4. Take firm and fair disciplinary action and/or remedial action when a rights violation has been substantiated or when the Rights Officer is unable to substantiate the allegation but has made recommendations as a result of an investigation.
5. Takes disciplinary or other appropriate remedial action, including, but not limited to:
  - a. Distributing interim policy memo changing current practice if policy change is required.
  - b. Assures that appropriate firm disciplinary action and remedial action is taken when abuse or neglect is substantiated.
6. The Summary Report will include information that appeals must be filed in writing within 45 days of receipt of Summary Report or when the corrective action has been completed and be based on one (1) of the following:
  - a. Investigative findings are not consistent with the facts, or with law, rules, policies or guidelines.
  - b. Investigation was not initiated or completed on a timely basis.
  - c. Action taken or plan of action proposed by respondent does not provide an adequate remedy.
  - d. For action that was to be completed in the future and is now complete, if the action taken differs from the action initially described in the Summary Report, an appeal may be made within 45 days from the **final** Summary Report on the action taken.
7. Mediation - At any time after the Investigative Findings are completed, the parties may agree to mediate the dispute. The mediator shall be jointly selected and who is not involved in any manner with the complaint or with the provisions of services to the individual receiving services. Mediator selected must have received training in mediation.

**VII. ATTACHMENTS**

Recipient Rights Complaint Form [DCH 0030] & "Your Rights" Booklet

**VIII. REFERENCES**

Michigan Mental Health Code Sections 330.1722, 330.1755, 330.1757, 330.1774, 330.1776, 330.1778, 330.1780, 330.1782, 330.1784, 330.1786, 330.1788

Department of Health and Human Services Administrative Rules 330.7011