

## War Memorial Hospital

**TYPE:** DEPARTMENTAL – BEHAVIORAL HEALTH

**POLICY:** RECIPIENT RIGHTS COMPLAINT AND APPEAL PROCESS

**REPLACES:** 9/10, 6/11, 2/14, 2/16

**PURPOSE:** To define the procedure of War Memorial Hospital Behavioral Health Center regarding Recipient Rights complaints and investigations of alleged or suspected violations of rights guaranteed by Chapters 7 & 7A of the Michigan Mental Health Code.

It is the policy of the Behavioral Health Center 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.

### **PROCEDURE:**

#### A. Definitions:

1. Appellant: the recipient, complainant, parent, or guardian who appeals a recipient rights finding or a respondent's action to an appeals committee.
2. Investigation: a detailed inquiry into, and systematic examination of, an allegation raised in a rights complaint.
3. Intervention: to act on a person's behalf to resolve a complaint that does not involve suspected or apparent abuse, neglect, or when a serious injury or death has occurred or when the issue is disputed by a party directly involved. Intervention shall easily and quickly remedy the issue and shall satisfy the complainant or the patient if different than the complainant.
4. 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.
5. Preponderance of the evidence: 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.
6. Reasonable cause: a suspicion founded upon circumstances sufficiently strong to warrant a reasonable person to believe that the suspicion is true.

## War Memorial Hospital

7. Respondent: the service provider that had responsibility for the services rendered to the patient at the time of an alleged rights violation.

8. 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 Michigan Mental Health Code, the Michigan Mental Health Code's Administrative Rules, or other associated Behavioral Health Center policy and guidelines pertinent to Recipient Rights which contains the following:

A. A statement of the allegations that give rise to the dispute.

B. A statement of the right, or rights that may have been violated.

C. The outcome that the complainant is seeking as a resolution to the complaint.

### B. Process

1. 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.

2. The Office of Recipient Rights shall assure that recipients and others have ready access to complaint forms. [MHC 330.1776(3)]

3. Recipient rights complaints, whether verbal or in writing, shall be kept confidential by anyone assisting the patient with the complaint process.

A. A secured container shall be used as a drop box which the Recipient Rights Officer shall access.

4. The Behavioral Health Center's Program Director and Office of Recipient Rights shall ensure that:

A. Action is taken to protect the recipient during the investigation.

B. The Office of Recipient Rights has unimpeded access to all of the following:

a. All program and services;

b. All employees, volunteers, and patients;

c. All evidence that the Office of Recipient Rights determines is necessary to conduct a thorough investigation.

## War Memorial Hospital

C. All employees, volunteers, and recipients who may have knowledge pertinent to the investigation shall cooperate with the Office of Recipient Rights investigation.

D. 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.

### C. Reporting suspected or apparent rights violations:

1. All employees and volunteers who witness, discover, or have reasonable cause to suspect recipient rights violations shall immediately report verbally, or in writing, to a designated rights advisor or officer.

2. Appropriate administrative action shall be taken for failure to report suspected rights violations. [MHC 330.1752(1)]

3. Appropriate disciplinary action will be taken against employees who have engaged in abuse and neglect. [MHC 330.1722(2)]

### D. Filing rights complaints:

#### 1. The Behavioral Health Center 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. [MHC 330.1776(3)]

B. This written complaint will include a statement of the allegation, the right allegedly violated, and the outcome desired by the complainant. [MHC 330.1776(2) (a-c) (5)]

C. Within 5 business days after the Office of Recipient Rights receives a complaint, it shall notify the complainant if it determines that no investigation of the rights complaint is warranted. [MHC 330.1776(4)]

D. Assist the recipient or other individual with the complaint process and/or offer to make the referral or advise the recipient or other individual that there are advocacy organizations/service agencies that are available to assist in the preparation of written rights complaints. [MHC 330.1776(5)]

## War Memorial Hospital

E. Rights complaints filed by recipients or anyone on their behalf will be sent or given to the Office of Recipient Rights in a timely manner. [MHC 330.1776(1); 330.1778(1)]

F. Inform the complainant of the option of mediation when applicable. [MHC 330.1776(5)]

G. Inform the Behavioral Health Center's Chief Executive Officer /Program Director of all complaint investigations.

### 2. Intervention:

A. When a complaint contains allegation involving a Michigan Mental Health Code protected right and does not involve suspected or apparent abuse, neglect, serious injury, or death of a patient an intervention may be conducted by the Office of Recipient Rights.

B. An intervention shall contain all of the following elements:

a. Issues contained in the complaint are not disputed by any party directly involved in the situation that gave rise to the complaint;

b. Easy and timely resolution, and/or remediation when applicable.

c. Completion, including the written intervention summary within 30 days of receipt of the complaint.

d. The complainant, and patient if different than the complainant, shall be satisfied with the results.

### 3. Investigation: will be initiated in cases where element (a.) above is not met.

A. The Behavioral Health Center's Office of Recipient Rights shall:

a. Initiate an investigation of apparent or suspected rights violations in a timely and efficient manner of receipt of a complaint. [MHC 330.1778(1)]

b. The investigation is subject to delays involving pending action by external agencies including law enforcement, protective services, or licensing bureaus. [MHC 330.1778(1)]

c. 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. [MHC 330.1778(1)]

## War Memorial Hospital

- d. Conduct investigations in a manner that does not violate employee rights.
- e. Complete the investigation not later than 90 days after receiving the rights complaint.
- f. As circumstances permit, perform face to face interviews and obtain written statements from the following:
  - i. Complainant
  - ii. Recipient
  - iii. Witness(es)
  - iv. Individuals that may provide pertinent information.
  - v. Employee, volunteer or individual that has been accused or suspected of violating a right.
- g. Maintain accurate records of investigative activities of the Office of Recipient Rights. [MHC 330.1778(2)]
- h. 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 medical, clinical or personnel records, and within the limitations of confidentiality and privileged communications. (MHC 330.1748; 330.1750)
- i. Determine whether a right was violated by using the preponderance of the evidence as the standard of proof. [MHC 330.1778(3)]
- j. If a rights complaint has been filed against the Chief Executive Officer/ Program Director, the rights investigation shall be conducted by the Office of Recipient Rights of the DHHS (Department of Health and Human Services,) or another licensed private hospital or a CMH (Community Mental Health.)

#### 4. Status report:

##### A. The Behavioral Health Center's Office of Recipient Rights shall:

- a. Provide a written status report every 30 days during the course of an investigation. The report shall be submitted to the complainant, the respondent, and the responsible mental health agency, when applicable. [MHC 330.1778(4)]

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## War Memorial Hospital

- b. Include all of the following in the status report: [MHC 330.1778(4)]
  - i. Statement of the allegations;
  - ii. Statement of the issues involved;
  - iii. Citations to relevant provisions of the Michigan Mental Health Code, Administrative Rules, and any applicable Behavioral Health Center policies, procedures, and guidelines;
  - iv. Investigative progress to date;
  - v. Expected date for completion of the investigation/report.

### 5. Investigative report:

#### A. The Behavioral Health Center's Office of Recipient Rights shall:

a. Submit a written investigative report upon completion of the investigation to the Program Director/Chief Executive Officer. Issuance of the written investigative report may be delayed pending completion of investigations that involve external agencies, including law enforcement, protective services, or licensing bureaus. [MHC 330.1778(5)]

#### b. Included in the investigative report shall be: [MHC 330.1778(5)]

- i. Statement of the allegations;
- ii. Statement of the issues involved;
- iii. Citations to relevant provisions of the Michigan Mental Health Code, Administrative Rules, guidelines, policies and procedures
- iv. Investigative findings
- v. Conclusions
- vi. Recommendations, if any.

c. The Office of Recipient Rights may reopen or reinvestigate a complaint if there is new evidence that was not presented at the time of the original investigation.

## War Memorial Hospital

### 6. 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: [MHC 330.178(1)]

- a. Corrects or provides remedy for the rights violation;
- b. Is implemented in a timely manner;
- c. Attempts to prevent a reoccurrence of the rights violation.

B. The remedial action taken on substantiated violations was documented and made part of the record maintained by the Office of Recipient Rights. [MHC 330.1782(2)]

C. The Behavioral Health Center and respondent shall ensure that appropriate disciplinary action is taken against those who have engaged in abuse or neglect.

### 7. Summary report:

A. The Behavioral Health Center's Program Director/Chief Executive Officer shall submit a written summary report to the complainant and recipient, if different than the complainant, guardian or parent of minor recipient within 10 business days after receiving the Office of Recipient Rights final investigative report. The summary report shall include all of the following: [MHC 330.1782(1)]

- a. Statement of the allegations;
- b. Statement of the issues involved;
- c. Citations to relevant provisions of the Michigan Mental Health Code, Administrative Rules, guidelines and behavioral health center's policies and procedures;
- d. Summary of investigative findings;
- e. Conclusions of the Office of Recipient Rights;
- f. Recommendations made by the Office of Recipient Rights;
- g. Action taken, or proposed plan of action, by the respondent;
- h. Statement regarding the complainant's right to appeal and the grounds for an appeal;
- i. The grounds for appeal are:

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## War Memorial Hospital

“The investigative findings of the rights office are not consistent with the facts, law, rules, policies or guidelines.” The action taken or plan of action proposed by the hospital/unit does not provide an adequate remedy.” An investigation was not initiated or completed on a timely basis.

j. Statement regarding the complainant's option to activate the mediation

k. Provide information in the summary report in a manner within the limitations of confidentiality and privileged communications. (MHC 330.1748; 330.1750)

l. The Recipient Rights Office shall advise the complainant that there are advocacy organizations available to assist in preparing the written appeal and in the absence of an advocacy organization, assist the complainant in meeting the procedural requirements of a written appeal. [MHC 330.1784(3)]

m. The summary report shall not violate the rights of any employee. [MHC 330.1755(3)(b)]

### 8. Mediation:

A. The Office of Recipient Rights must inform the complainant of the option of mediation, when mediation is available. A mediator shall be jointly selected to facilitate a mutually agreeable settlement between the parties. The mediator shall be an individual who has received training in mediation and who is not involved in any manner with the dispute or with the provision of services to the patient. [MHC 330.1784(3)]

B. If the parties agree to mediation and reach agreement through the mediation process, the mediator shall prepare a report summarizing the agreement, which shall be signed by both parties. The signed agreement shall be binding on both parties. Notice that an agreement has been reached shall be sent to the Office of Recipient Rights.

C. If the parties fail to reach agreement through the mediation process, the mediator shall document that fact in writing and provide a copy of the documentation to both parties and the Office of Recipient Rights within ten (10) days after the end of the mediation process.

D. If the parties engage in mediation, all appeal and response times required under chapter 7a of the Michigan Mental Health Code are suspended during the period of time the mediation process is taking place. The suspension of time period



## War Memorial Hospital

begins on the day the parties agree to mediate and expires five (5) days after the day the mediator provides the written documentation to the parties and the office of recipient rights that mediation was not successful. The Recipient Rights Officer shall arrange for the mediation appeal.

### 9. Appeal of the summary report:

A. Not later than 45 days after receipt of the summary report, the complainant, recipient (if different than complainant), guardian or parent of minor may file a written appeal with the designated appeals committee. [MHC 330.1782(1)(2)]

B. The grounds for appeal are:

- a. The investigative findings of the Office of Recipient Rights are not consistent with the facts, law, rules, policies, or guidelines.
- b. The action taken or the plan of action proposed by the hospital/unit does not provide an adequate remedy.
- c. An investigation was not initiated or completed on a timely basis.

C. An appeal accidentally received in the Behavioral Health Center's Office of Recipient Rights shall immediately be forwarded to the designated appeals committee by the Recipient Rights Officer.

D. The governing body of War Memorial Hospital designates the appeals committee of the responsible CMH to hear of a decision of a recipient rights matter brought by or on behalf of a recipient of that CMH. [MHC 330.1778(4)]

E. If an individual is not a recipient of a CMH, the governing body of War Memorial Hospital, by agreement with DHHS, designates the appeals committee appointed by DHHS to hear appeals of rights complaints brought against the hospital/unit.

F. For persons appealing that are Medicaid enrolled, the appeal shall immediately be provided to the responsible CMH's designated appeals committee.

G. For persons with any other insurance the appeal shall immediately be forwarded to the DHHS's appeals committee.

H. The Office of Recipient Rights will advise the complainant that there are advocacy organizations available to assist in preparing the written appeal and offer to assist in making the referral. [MHC 330.1784(3)]

## War Memorial Hospital

I. In the absence of assistance from an advocacy organization the Rights Office will provide assistance to the complainant in meeting the procedural requirements of a written appeal. [MHC 330.1784(3)]

### 10. Appeal decision

A. The appeals committee did one of the following in deciding upon an appeal:

- a. Upheld the findings of the Rights Office and the action taken or plan of action of proposed respondent.
- b. Returned the investigation to the Office of Recipient Rights with request that it be reopened or reinvestigated.
- c. Upheld the investigative findings of the Rights Office but recommended that respondent take additional or different action to remedy the violation.
- d. Recommended that the board of the CMH request an external investigation by the DHHS Office of Recipient Rights.

B. The appeals committee documented its decision in writing.

C. Within 10 days after reaching its decision, the appeals committee provides copies of the decision to the respondent, appellant, recipient if different than the appellant, recipient's guardian if one has been appointed, the CMH, and the Rights Office.

D. Copies of appeals committee decision included a statement of appellant's right to appeal to the DHHS, the time frame for appeal (45 days from receipt of decision) and ground for appeal (investigative findings of the Office of Recipient Rights are inconsistent with facts, rules, policies or guidelines.)

Cross reference and legal authority:

A. Public Act 258 of 1974 as amended - MI Mental Health Code - sections 330.1100a, 330.1100b, 330.1700, 330.1707, 330.1722, 330.1723, 330.1748, 330.1748a, 330.1755.

B. MI Department Of Community Health Administrative Rules R - 330.7001 & 330.7035.

C. Child Protection Act 238 Of The Public Acts Of 1975.

D. Adult Protection Law Act 519 Of The Public Acts Of 1982.

E. Michigan Penal Code Act 266 Of The Public Acts Of 1974.

F. Public Act 397 - 423.506 - Bullard-Plawecki Employee Right To Know Act

## War Memorial Hospital

G. War Memorial Policy And Procedure - Abuse And Neglect

H. War Memorial Behavioral Health Confidentiality/Disclosure Policy & Procedure

**WRITTEN BY:** Deanna Murray, Program Director Date: June 28, 2011

**APPROVED BY:** Dr. Hermann Von Greiff, Medical Director Date: June 28, 2011

**REVIEWED/REVISED BY:** Stephanie Spray, Recipient Rights Officer

Date: May 8, 2015

**REVIEWED BY:** Dr. Paul Sorgi, Program Director/Jessica Jannetta, Director Of Nursing,BHC

Date: September 4, 2015

**REVIEWED BY:** Recipient Rights Advisory Committee Date: September 9, 2015

**REVIEWED BY:** Corinna Haller, Director of Nursing/Paul Sorgi, Program Director

Date: February 4, 2016

**REVIEWED/UPDATED BY:** Allison NM Campbell, Recipient Rights Officer

Date: November 14<sup>th</sup>, 2016

**REVIEWED BY:** Corinna Haller, Director of Nursing Date: December 12, 2016

**REVIEWED/APPROVED BY:** Recipient Rights Advisory Committee

Date: February 20<sup>th</sup>, 2017

**REVIEWED BY:** Corinna Haller, Director of Nursing Date: October 17, 2017

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