

## CENTRA WELLNESS NETWORK

<b>Board Adopted Procedure</b>		
<b>Procedure</b>	03.25	<b>Policy Title: 03.00 Enrollee Rights</b>
<b>Effective Date:</b>	1/13/2011	<b>Subject: Recipient Rights Complaints</b>
<b>Review Cycle:</b>	3 years	
<b>Approval Validation Record</b>		
<b>Action</b>	<b>Date</b>	<b>Board Sec'y Initials</b>
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<b>Accountability</b>		
<b>Board Committee:</b>	Policy Committee	
<b>Agency Function:</b>	Recipient Rights Complaints	
<b>Sunset Review Begins:</b>		
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<b>Review Date:</b>	4/24/2014	ARH

## **CENTRA WELLNESS NETWORK PROCEDURE 03.25 RECIPIENT RIGHTS COMPLAINTS**

### **I. PURPOSE STATEMENT:**

Centra Wellness Network's (CWN) Governing Body establishes and evaluates policies and related procedures as required by statutory and contractual obligations.

CWN reserves the right in its sole discretion to adopt and implement policies and procedures that ensure a safe, functional and professional workplace that operates with integrity using person-centered focus and planning, trauma informed practices and respect of others, cultural sensitivity and transparency in communication and practice. Organizationally and in practice, CWN is responsive to the needs of clients, community and staff.

Any statements and procedures are subject to review and/or unilateral change, modification, suspension or cancelation in whole or in part of any published/unpublished policies or procedures without notice and without having to give cause, justification, or consideration to any employee. Recognition of these rights and prerogatives of CWN is a term and condition of and maintaining employment.

Policies and Procedures are approved by the Board and/or upon recommendation by the Executive Director or his/her designee.

### **II. APPLICATION:**

Agency Wide.

### **III. DEFINITIONS:**

#### **Code Protected Rights:**

A right that is guaranteed by the Michigan Mental Health Code (Act 258 of 1974), or other applicable law.

#### **Complainant:**

A consumer or any other person who files a complaint indicating that a right has been violated.

#### **Complaint:**

Either an oral or written statement of a code protected right within the jurisdiction of CWN. The rights complaint will include all of the following elements:

- a. A statement of the allegation that gave 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 resolution to the complaint.

#### **Individual representative:**

A recipient's legal guardian, minor recipient's parent, or other person authorized by law to represent the recipient in decision-making related to the recipient's services and supports.

#### **Intervention:**

The method of handling a complaint that does not involve abuse or neglect and that can be resolved informally to the satisfaction of all parties involved.

#### **Mediation:**

A confidential process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable resolution. A mediator does not have authoritative decision-making power.

#### **Preponderance of Evidence:**

Means a standard of proof that 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

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quantity (number of witnesses), but as to quality (believability and greater weight of important facts).

**Remedial Action:**

Action taken to correct a violation from reoccurring and/or remove contributing conditions.

**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 the recipient rights complaint was unable to be substantiated based on available evidence at the time of the investigation.

**IV. POLICY STATEMENT:**

The intent of this procedure is to ensure that all Recipient Rights complaints will be handled by CWN in a manner consistent with Chapter 7A of the Michigan Mental Health Code.

**V. PROCEDURES:**

**A. Receipt of Rights Complaints:**

1. Any consumer, guardian, relative, friend, parents of minor, or anyone on behalf of the consumer who thinks a consumer's rights have been violated may file a rights complaint with the office alleging a violation of the Michigan Mental Health Code or rules or policies of CWN. The Rights Officer will assure that complaint forms are readily available and assist the consumer or individual with the complaint process as necessary. Complainants will be assured that their complaint will not result in retaliation or barriers to service.
2. The Rights Officer will notify consumers or others that there are advocacy organizations available to assist in the preparing of complaints and offer to refer the individuals to the advocacy organizations. If a referral is declined, rights office staff will offer assistance in preparing the written complaint that will include the following elements: a statement of the allegation, the right alleged to be violated, and the desired outcome. The option of mediation will be also offered at this point in time and so documented.
3. Any provider making a complaint in good faith with the Office of Recipient Rights is protected by the Michigan Whistleblower's Protection Act (469 P.A. 1980) and will not be discharged, threatened, or otherwise discriminated against for doing so. Appropriate disciplinary action will be taken if there is evidence of harassment or retaliation.
4. If the complaint is related to the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, the Recipient Rights Officer will accept such complaints and may assist/refer for further action.
5. Each complaint shall be logged upon receipt. The log shall contain a number reflecting the year and order the complaint was received. The log shall also record the recipient's name, the date the complaint was received, the action taken, the category of rights violation, the decision, and status of investigation.
6. A notice shall be sent to the complainant within 5 business days of receipt of the complaint, stating that the complaint was received and the determination by the rights officer whether an investigation is warranted or not. A copy of

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the complaint shall be sent with the acknowledgment letter.

7. The Rights Officer will also notify the Executive Director and the provider of the receipt of complaints against their respective programs and the decision whether to investigate the complaint or not.
8. The Recipient rights Officer will determine if the alleged rights violation involves abuse or neglect and if so will immediately initiate an investigation, and:
  - a. Ensure all mandatory reporting to external agencies and required written reports are completed within specified time frames.
  - b. Informs the appropriate supervisor of the employee named in the alleged rights violation to take steps necessary, such as reassignment of the employee, to prevent contact between the employee and the consumer named in the complaint, or if this is not possible suspend the employee with pay until investigation is complete.
  - c. For verbal complaints that involve code-protected rights, but not abuse or neglect, The Rights Officer instructs the complainant to describe the alleged violation. The Rights Officer will fill out a Recipient Rights form and send to the complainant within 5 days with the acknowledgement letter.
  - d. If a rights complaint is filed regarding the conduct of the Executive Director, the rights investigation shall be conducted by the rights office of another community mental health services program or by the state office of recipient rights as decided by the CWN Board.

**B. Investigation of Right Complaints:**

1. The Recipient Rights Officer determines if the complaint will be investigated or handled as an intervention. All complaints will be reviewed and receive a response. Rights staff throughout the investigative process will accurately record investigation activities for each rights complaint.
2. The Rights Officer shall initiate an investigation of apparent or suspected rights violations in a timely and efficient manner, with initial contact to the complainant within five (5) business days of receipt of complaint. Allegations will be investigated with priority assigned to the allegation concerning safety or personal injury. Immediate investigation will occur in allegations of serious abuse, neglect, injury or death.
3. Inform the staff of the recipient rights allegation if he/she has not already been informed by the provider/employer.
4. Interview the complainant and consumer if appropriate.
5. Identify all persons who may have information about the allegation.
6. Interview all persons identified and where appropriate secure written statements in regard to the recipient rights allegation.
7. Review all the pertinent records applicable DCH and Board policies, and document the necessary information.
8. Assure the investigation is conducted in a manner consistent with pertinent CWN policies that did not violate employee rights.
9. Make an independent determination of whether or not the majority of all the available facts lead to a conclusion that the allegation can be substantiated, refuted, or unsubstantiated based on the preponderance of evidence standard.
10. The Rights Officer shall issue a written status report every thirty (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. A status report shall include all of the following:

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- a. Statement of the allegations.
  - b. Statement of the issues involved.
  - c. Citations to relevant provisions of this act, rules, policies, and guidelines.
  - d. Investigative progress to date.
  - e. Expected date for completion of the investigation.
11. Upon completion of the investigation, the office shall submit a written investigative report to the respondent and to CWN Executive Director. The investigative report shall include all of the following:
- a. Statement of the allegations.
  - b. Statement of the issues involved.
  - c. Citations to relevant provisions of code, rules, policies, and guidelines.
  - d. Investigative findings.
  - e. Conclusions.
  - f. Recommendations, if any.
12. The investigative report will be completed within 90 days of receiving the complaint. Issuance of the written investigative report may be delayed pending completion of investigations involving external agencies (i.e. law enforcement agencies, Department of Human Services).
13. 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:
- a. Corrects or provides a remedy for the rights violations.
  - b. Is implemented in a timely manner.
  - c. Attempts to prevent a recurrence of the rights violation.
  - d. The action shall be documented and made part of the record maintained by the office.
14. The Executive Director shall submit a written summary report to the complainant and recipient, if different than the complainant, guardian or parent of minor, within 10 business days after the Executive Director receives a copy of the investigative report from the rights office. The summary report shall include all of the following:
- a. Statement of the allegations.
  - b. Statement of issues involved.
  - c. Citations to relevant provisions of the Mental Health Code, rules, policies, and guidelines.
  - d. Summary of investigative findings.
  - e. Conclusions.
  - f. Recommendations made by the office.
  - g. Action taken, or plan of action proposed, by the respondent.
  - h. A statement describing the complainant's right to appeal no later than 45 days after receipt of the summary report, the grounds for an appeal, and shall list all persons who have the right to appeal.
  - i. Information in the summary report will be provided within the constraints of the confidentiality/privileged communications Sections 748 and 750 of the Mental Health Code.
  - j. Information in the summary report will not violate the rights of any employee. (ex. Bullard-Plawecki Employee Right to Know Act, Act No. 397 of the Public Acts of 1978, MCL 423.501 et. seq)
15. The complainant's copy of the summary report should state whether the allegation was substantiated, or not substantiated, and contain only non-confidential material.

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16. CWN administrative staff and the service provider will ensure appropriate disciplinary action is taken against those who have engaged in abuse or neglect.
17. If CWN staff persons or contractual provider personnel failed to report suspected violations of rights, the CWN Executive Director and/or the contractual provider will take appropriate administrative action.
18. Rights complaints filed by recipients or anyone on their behalf were sent or given to the CWN rights office in a timely manner.
19. A rights complaint investigation may be reopened or reinvestigated by the rights office if there is new evidence that was not presented at the time of the investigation.
20. A rights complaint/issue handled as a rights intervention and resolved to the mutual satisfaction of all parties involved requires the rights office to maintain record of such cases however no formal written report is required.
21. At any time during the rights investigation, a recipient or his or her individual representative must be offered an opportunity to request mediation to resolve a dispute between the recipient or his or her individual representative and the community mental health services program or other service provider under contract with the community mental health services program related to planning and providing services or supports to the recipient. The recipient rights office shall provide notice to the recipient or his or her individual representative, of the right to request and access mediation of this right at the time services or supports are initiated and at least annual after that, in addition the recipient or his or her individual representative will be notified of the this right at the start of the rights investigation. Michigan Department of Health and Human Services must provide funding and directly contract with 1 or more mediation organizations experienced in coordinating statewide case intake and mediation service delivery through local community dispute resolution centers. A mediator must be an individual trained in effective mediation technique and mediator standard of conduct. A mediator must be knowledgeable in the laws, regulations, and administrative practices relating to providing behavioral health services and supports. The mediator must not be involved in any manner with the dispute or with providing services or supports to the recipient. The community mental health services program or service provider involved in the rights complaint must participate in mediation if mediation is requested. A request for mediation must be recorded by a mediation organization, and mediation must begin within 10 business days after the recording. Mediation does not prevent a recipient or his or her individual representative from filing a recipient rights complaint. A mediation organization shall ascertain if an alternative dispute resolution process is currently ongoing and notify the process administrator of the request for mediation. In accordance with the Chapter 7 of the Michigan Mental Health Code the recipient rights investigation will continue even if mediation is requested. Mediation must be completed within 30 days after the date the mediation was recorded unless the parties agree in writing to extend the mediation period for up to an additional 30 days. The mediation process must not exceed 60 days. If the dispute is resolved through the mediation process, the mediator shall prepare a legally binding document that includes the terms of the agreement. The document must be signed by the recipient or individual representative and a party with the authority to bind the service provider according to the terms of the agreement. The mediator must provide a copy of the signed document to all parties within 10 business days after the end of the mediation process. The signed document

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is enforceable in any court of competent jurisdiction in this state. If the dispute is not resolved through the mediation process, the mediator must prepare a document that indicates the dispute could not be resolved. The mediator shall provide a copy of the document to all parties within 10 business days after the end of the mediation process.

### **C. Appeal Process:**

1. The Executive Directors summary report will inform the complainant, recipient (if different than complainant), guardian or parent of minor the right to file an appeal stating both the following:
  - a. An appeal may be filed no later than 45 days after receipt of the summary report.
  - b. The grounds for an appeal are:
    1. The investigative findings of the rights office are not consistent with the facts, law, rules, policies, or guidelines.
    2. The action taken or proposed plan of action by the respondent does not provide an adequate remedy.
    3. The investigation was not initiated or completed on a timely basis.
2. The right office will advise the complainant that there are advocacy organizations available to assist the complainant in preparing the written appeal and offer to refer the complainant to those organizations or in absence of assistance from an advocacy organization provide assistance in completing the written appeal.
3. Within 5 business days after receipt of the written appeal, the Appeals Committee (CWN Recipient Rights Advisory Committee as designated by the Board) will review the appeal to determine whether it meets the criteria for grounds for appeals. A member of the appeals committee who has a personal or professional relationship with an individual involved in an appeal shall abstain from participating in that appeal as a member of the committee.
4. If the appeal is denied the appellant will be provided written notification within five (5) business days. If the appeal is accepted the appellant will be provided written notification within the five (5) business day period and a copy of the appeal shall be provided to the respondent and the Executive Director of Manistee-Benzie CMH.
5. Within 30 days after receipt of a written appeal, the Appeals committee shall meet and review the facts as stated in all complaint investigation documents and do one of the following:
  - a. Uphold the investigative findings of the office and the action taken or plan of action proposed by the respondent.
  - b. Return the investigation to the office and request that it be reopened or reinvestigated.
  - c. Uphold the investigative findings of the office but recommend that the respondent take additional or different action to remedy the violation.
  - d. Recommend that the CWN Board request an external investigation by the DCH Office of Recipient Rights.
6. The Appeals Committee shall document its decision in writing. The written decision will include a statement of the appellants right to appeal to the DCH, the time frame for appeal (45 days from receipt of decision) and ground for appeal (investigative findings of the rights office are inconsistent with facts, rules, policies, or guidelines).
7. Within 10 working days after reaching its decision, the Appeals Committee

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will provide copies of the decision to the respondent, appellant, recipient if different than the appellant, the recipient's guardian, if applicable, the CWN Executive Director, and the CWN Rights Office.

- D. Storage and Distribution of Recipient Rights Complaint Reports:
1. One copy of the complaint report with a request for corrective action will go to the Director of the contract agency or, internally, to the appropriate Director.
  2. Persons receiving these reports are responsible for assuring their confidentiality and maintained in a locked storage area.
  3. These reports are only to be shared on a 'need to know" basis, consistent with any CWN or contract agency personnel policies and Section 748 of the Mental Health Code.
  4. When the complaint report is used in a disciplinary action, the names of all consumers and provider involved in the case must be eliminated to preserve their confidentiality.

**VI. EXHIBITS:**

N/A

**VII. REFERENCES:**

<b>Authority and Related Directives Trace</b>	
Federal	CFR 438.224, 42 CFR Subchapter IV, Mental Health Rights and Advocacy, Section 9501. (O) (2) (B)
State	MHC 330.1722, 330.1752, 330.1755, 330. 776-782, 330.788
NMRE	
County	Interlocal Agreement of December 1992 Section IX(j)
CARF	CARF 2018 Behavioral Health Standards
Other	Board By-Laws, Section 7.E.