network180

ADMINISTRATIVE DIRECTIVE

SECTION: Recipient Rights	**SUBJECT:** Compliant Resolution Process
ORIGINAL POLICY DATE: 4/1/97	**REVISIONS:** 7/1/01, 4/1/02, 9/1/02, 2/1/04, 6/1/04, 3/1/05, 10/1/05
APPROVED DATE: 6/1/08	
	EXECUTIVE DIRECTOR

POLICY:

To provide a process for resolution of complaints concerning recipient rights violations.

PROCEDURE:

Possible violations of recipient's rights shall be reported to the Office of Recipient Rights. Staff observations that raise a question about whether a possible violation should be reported. All allegations by recipients shall be reported. The Office of Recipient Rights (ORR) may investigate and shall determine whether a violation has occurred.

The Network180 Office of Recipient Rights (ORR) shall assure that recipients, parents of minors, guardians, and others have ready access to complaint forms. The ORR or designated Rights Advisor shall assist recipients and other individuals with the complaint process as needed. The ORR or designated Rights Advisor shall advise recipients or other complainants that there are advocacy organizations available to assist them in preparing their complaints. In the absence of assistance from an advocacy organization, the ORR or designated Rights Advisor shall assist the complainant in filing a complaint.

The ORR shall inform the recipient or other individual of the option of mediation.

1. **Complaint receipt**

   The Office of Recipient Rights shall record each rights complaint. An acknowledgement of the recording shall be sent along with a copy of the complaint to the complainant within 5 business days.

   The ORR shall notify the complainant within 5 business days after receipt of a complaint if it has been determined that no investigation of the complaint is warranted.

   Investigation activities for each rights complaint shall be accurately recorded and readily available, if necessary.

2. **Decision Criteria**
   The ORR will review all complaints/concerns and reports to determine if they constitute a

rights violation based on:

- The Mental Health Code, PA 258 of 1974.
- Adult Protective Services Act PA 519 of 1983.
- Child Protection Law, PA 238 of 1975.

3. **Documents used for further clarification of specific recipient rights may include:**
   - Department of Community Health - Administrative Rules.
   - Department of Community Health Guidelines, Rights of Recipients of Specialized Residences.
   - Department of Community Health - Rights Categories.

4. **Contractual violations may be concluded if actions disagree with:**
   - Policies approved by Network180.
   - Policies of a service provider under contract with Network180.

5. **Network180/ORR Investigation Process:**
   The following steps shall be followed once a recipient rights compliant/concern, or report of possible violation has been received.

   A. Notify the recipient and complainant in writing within five working days that the complaint/concern has been received. A copy of the original complaint/concern will be included with this written notification. Complainants may request that their identity not be kept anonymous, and confidential. If so, the Network180 ORR will not share the identity of the complainant with the service provider

   B. Notify the Service provider Director who is responsible for the program or location where the stated complaint, concern, or report is alleged to have occurred; Department of Community Health Adult Foster Care Licensing Division (if appropriate), Adult Protection Services (APS) (if appropriate).

   C. Information necessary to make a decision shall be gathered. The ORR shall have unimpeded access to all evidence necessary to conduct a thorough investigation or to fulfill its monitoring function. This is to include access to all employees of Network180, all programs and services whether directly operated or provided by contract, as well as all staff under contract with each service provider. Non-union staff do not have the right to have anyone else present during investigative interviews. Staff also may not audiotape or videotape investigative contacts or inquiries without the consent of the Network180 ORR. Providers are required to take disciplinary action with staff who interfere or impede the rights protection mechanism.

      1. A decision shall be made regarding whether the complainant/concern or inquiry involves an area of rights protection and whether the complaint/concern or inquiry will be investigated and an investigation report written. A determination that the findings were substantiated, unsubstantiated, or that there was insufficient information shall be made within 90 days except if a delay is caused by pending

action of an external agency. A substantiated determination shall be based upon the preponderance of evidence standard. The findings, including recommendations shall be sent to the Service provider Director, Network180 Executive Director, APS (if appropriate), DCIS (if appropriate) and appropriate Network180 Contract Manager.

2. An investigation will be immediately initiated if the allegation is one of abuse, neglect, serious injury, or death of recipient when a rights violation was apparent or suspected.

3. When it is determined that the complaint does not involve an area of recipient rights, the person shall be informed in writing and shall be referred to other services relating to the specific issue.

D. If a conclusion is not reached within thirty days, the ORR shall forward a status report every 30 days to the complainant, respondent and provider. The status report will include – statement of the allegation(s):
- Statement of the issues involved
- Citations relevant to provisions of rules, policies, and guidelines
- Investigative progress to date
- Expected date for completion of the investigation

E. The Report of Investigative Findings shall be provided to:
- The Contract Service provider Director(s)
- The Contract Service provider Rights Advisor
- The Network180 Executive Director, or designee

F. Any service provider required to implement corrective action associated with a substantiated complaint shall have five business days from the date that the report is received to respond to the ORR. The Recipient Rights Director or designee will review the contract agency's response within two-business days. If the Recipient Rights Director or designee disagrees with the action taken by the Service provider, the Recipient Rights Director or designee will deliver a letter to the Service provider Director within three business days indicating the specific reasons why the corrective action taken has not been accepted. The Service provider shall submit a revised action plan or initiate contract dispute resolution within 3 business days of receipt of the original plan rejection.

In situations where disciplinary action is required, the provider will take the appropriate action consisting of an official reprimand, demotion, suspension, reassignment, or dismissal or other discipline specified in the providers personnel policies and procedures.

6. <u>Investigative Report</u>

A. The written investigative report shall include all of the following:
- Statement of the allegations.
- Statement of the issues involved.

- Citations to relevant provisions of the Mental Health Code, rules, policies, and guidelines.
- Investigative findings.
- Conclusions.
- Recommendations, if any.

B. On substantiated rights violations, the respondent and/or CMHSP shall take appropriate remedial action to meet all of the following requirements:
   - Corrects or provides remedy for the rights violation.
   - Is implemented in a timely manner.
   - Attempts to prevent a recurrence of the rights violation.

C. The remedial action taken on substantiated violations shall be documented and made part of the investigative record and maintained by the Network180/ORR.

D. If a remedial action plan is to be completed in the future, the service provider shall ensure that the ORR is provided written notice of completion of the plan. The notice shall include specific information as to the action that was taken and the date it occurred. The ORR shall then notify the complainant, recipient if different than the complainant, and the legal guardian if any, of the change and they shall be afforded 45 days from the date the notice of the change is mailed, to appeal the remedial action on the grounds of inadequate action taken to remedy a rights violation.

E. If the disciplinary or corrective action taken against an employee should be changed for any reason (such as employee grievance) the service provider shall notify the ORR of this change. The ORR shall then notify the complainant, recipient, if different than the complainant, and the legal guardian, if any, of the change and they shall be afforded 45 days from the date of the mailing of the notice to appeal the remedial action on the grounds of inadequate action taken to remedy a rights violation.

7. <u>Summary Report</u>

Information in the summary report shall be provided within the constraints of the confidentiality / privileged communications sections (748,750) of the Michigan Mental Health Code. Information in the summary report shall not violate the rights of any employee (e.g. Bullard-Plawecki Employee Right to Know Act, Act No. 397 of the Public Acts of 1978, MCL 423.501 et. seq).

The Executive Director or his/her designee of Network180 shall submit a written summary report to the complainant and the recipient within 10 business days after he/she has received a copy of the investigation report.

<u>The summary report shall be forwarded to the following</u>:
- The Complainant.
- The Recipient.
- The Recipient's guardian, if any.

- APS and DCIS (if appropriate).
- The appropriate Network180 Contract Manager.

The summary report will include the following:

- Statement of the allegation.
- Statement of issues involved.
- Citations to relevant provisions of this act, rules, policies, and guidelines.
- Summary of investigative findings.
- Conclusions.
- Recommendations made by the ORR, if applicable.
- Action taken, or plan of action proposed, by the respondent.
- A statement describing the complainant's right to appeal and the grounds for an appeal.

The appeal statement will read as follows:
If you, the recipients, or the recipients' guardians believe that the investigative findings of the Office of Recipient Rights are not consistent with the facts, law, rules, policies, or guidelines, you have the right to appeal. You may also appeal if you believe the action taken or plan of action proposed by the respondent does not provide adequate remedy, or the investigation was not initiated or completed on a timely basis.

To appeal, you must submit a written request to the Network180 Appeals Committee within 45 days after you have been informed of the investigation results. Your agency Recipient Rights Advisor and Network180 Recipient Rights staff are available to assist you if necessary. If you are interested in mediation as an alternative to appeal, or would like information on advocacy organizations, please contact the Office of Recipient Rights at 336-3765.

If information in the investigative report is in part confidential or privileged, then written consent must be obtained before releasing the report. Privileged information includes any information that a recipient may have shared with staff.

The ORR shall ensure that appropriate disciplinary action is taken against those who have engaged in abuse or neglect.

The Network180 (ORR) Office of Recipient Rights shall comply with pertinent Network180 policies to assure that investigations are conducted in a manner that does not violate employee rights.

8. If a rights complaint has been filed against the conduct of the Network180 Executive, the Network180 Board shall decide if the investigation shall be conducted by the Office of Recipient Rights of another CMHSP or by the State Office of Recipient Rights.

MEDIATION

- At any time after the ORR completes the Investigative Report, the parties may agree to mediate the dispute. A mediator shall be jointly selected to facilitate a mutually acceptable settlement between the parties. The mediator shall be an individual who has received training in mediation and also is not involved in any manner with the dispute or with the provision of services to the recipient.

- If the parties agree to mediation and reach an agreement through the mediation process, the mediator shall prepare a report summarizing the agreement, which shall be signed by the parties. Notice that an agreement has been reached shall be sent to the ORR.

- 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 ORR within ten days after the end of the mediation process.

- If the parties engage in mediation, all appeal and response times are suspended during the period of time the mediation process is taking place. The suspension of time periods begins on the day the parties agree to mediate and expires five days after the day the mediator provides written documentation to the parties and the ORR that mediation was not successful.

9. <u>Organization and Retention of Records – Implementation:</u>

- Investigations and interventions shall be maintained in appropriate files. The files shall be color coded to coincide with each DCH/ORR site assessment.

- All complaints shall be kept for a minimum of 7 years from the date the final report was mailed.

- Reports from which information has been released either through the Freedom of Information Act (FOIA), employee reference check, or other legal matters, shall be kept indefinitely. Any appeal of a completed report shall be kept indefinitely. These complaints shall be "flagged" in the Recipient Rights Database and be placed in a red folder.

- All complaint correspondence relating to a complaint will be labeled with a complaint number, corresponding to the Recipient Rights Database.

- Supporting documentation such as treatment plans, progress notes, interview notes, etc. should be maintained in the file until all appeal timelines have past.