The Rights of Individuals Receiving Mental Health Services

Direct Care

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www.network180.org/en/recipient-rights/about
Community Mental Health
- Public agency established by state law
- Serve Kent County citizens with particular needs and concerns
- Individuals served typically have the greatest/most complex needs but the least resources

Responsibilities of the ORR

Education
- Train Network180 and contract staff
- Train Recipient Rights Advisory Committee and Appeals Committee
- Consumer self-advocacy (peer training)
- Receive annual training in rights protection

Complaint Resolution
- Receive, review and investigate complaints
- Determine if violations have occurred
- Recommend adequate corrective action

Monitoring
- Visit all provider sites annually
- Review incident reports
- Participate in Behavior Treatment Plan Review Committee
- Review contracts for rights protection language

Prevention
- Consultation on rights-related matters
- Policy development and review
- Notify administrators of problem areas or poor practice
- Assist in preparing for accreditation reviews

Why Recipient Rights?
- There is a long history of abuse, neglect, and mistreatment of people with disabilities
- Many recipients are unable to protect themselves
- Recipients often live in environments where they would otherwise be given very few freedoms

What Is a Right?
- That which a person is entitled to have, to do, or to receive from others, within the limits prescribed by law
- Entitlements that cannot be taken away
- All rights fall into one of three categories:
  - Something an individual can do by law
  - Something an individual can have or receive by law
  - A protection under law
Rights of US Citizens
- Freely exercise religious beliefs and convictions
- Uncensored communication by telephone and mail
- Privacy
- Due process

A violation of a recipient’s civil rights are a violation of their recipient rights

The Mental Health Code
Recipients of Community Mental Health Services have additional rights the general public does not have

Seclusion/Freedom of Movement

Staff may not restrict entry or exit by:
- Locks
- Staff presence
- Timeframes or qualifiers

Staff may not force a recipient to take a time out
- Time out is always voluntary
- Should be in a behavior plan

Restraint

Restraints may never be used!
- The use of clothing, ropes or other material.
- Restricting wheelchairs or mobility aids (crutches, walkers, etc.)
- Using safety devices (helmets, wheelchair belts) incorrectly
- Forcing medication

Appropriate Treatment

- Staff must be familiar with each recipient’s treatment needs and goals
- Failing to know and follow a plan is a rights violation
- Plans must be developed using a person-centered process

Confidentiality

Disclosing Information
You can typically give information to:
- The recipient
- Guardians/Parents of a minor
- Supervisors, co-workers, clinical staff
- Office of Recipient Rights
- Michigan Protection and Advocacy Services
- Child Protective Services
• Adult Protective Services
• Licensing and Regulatory Affairs (AFC Home licensing)

You may also give confidential info to:
• ER physicians, EMTs, the police
  During
• Medical or psychiatric emergencies
• Other incidents where harm may result

**Consent**
You need prior consent before giving information to:
• Police (warrants, subpoenas, etc.)
• Other family members
• Lawyers
• Teachers

*Never give information to anyone unless you are sure!*

**HIPAA**
• Establishes a federal baseline for the protection of personal health information
• The MHC is more restrictive in many areas of overlap and must be followed over HIPAA
• Requires the secure electronic transmission of confidential information

**Importance of Confidentiality**
• Builds trust between the recipient and staff
• Encourages people to seek treatment
• Protects the reputation, privacy and basic civil rights of the individual

**Dignity and Respect**
• All employees are required to treat recipients and their family members with dignity and respect

**Personal Property**
• Staff cannot take away personal items under most circumstances
• Searches must be done according to policy requirements
• Applies to both adults and children

**Absolute Rights**
• Freedom from abuse and neglect
• Dignity and respect
• Appropriate treatment
• Safety

**Limited Rights**
• Communication/visitation
• Freedom of movement/supervision
• Access to property/money
• Confidentiality

*Individual rights may only be limited by a behavior treatment plan*

**Guardians**
- Some directives simply cannot be followed
- Recipients with guardians still have rights!

**Abuse**

**Non-Accidental Harm**
- Physical
- Sexual
- Emotional
- Verbal
- Provoking someone else

**Abuse Class I**
- A non-accidental act that caused or contributed to the death, sexual abuse of, or serious physical harm to a recipient

**Sexual Abuse**
- Engaging in sexual activity with recipients
- Sexually touching a recipient (or allowing a recipient to touch you)
- Engaging in sexual acts with recipients is criminal sexual conduct

**Abuse Class II**
- A non-accidental act that caused or contributed to non-serious physical harm or emotional harm to a recipient. Includes causing pain to a recipient with or without apparent harm
- The use of unreasonable force on a recipient with or without apparent harm
- The misuse or a recipient’s money or personal possessions

**Abuse Class III**
- The use of language or other means of communication to degrade, threaten, or sexually harass a recipient

**Physical Management**
- A technique used by staff as an emergency intervention to restrict the movement of a recipient by direct physical contact to prevent the recipient from harming himself, herself, or others

**Physical Management May Only Be Used:**
- When a recipient is presenting an imminent risk of harm
- When lesser restrictive interventions were tried but were unsuccessful
- Using approved techniques by trained staff
Neglect

Non-Compliance with a Standard

You are required to follow all:
- Laws and rules
- Policies and procedures
- Treatment plans

Not doing so may result in neglect!

Neglect Class I

- Not doing something that should have been done that caused or contributed to the death, sexual abuse of, or serious physical harm to a recipient

Neglect Class II

- Not doing something that should have been done that caused or contributed to non-serious physical harm or emotional harm to a recipient

Neglect Class III

- Not doing something that should have been done that either placed or could have placed a recipient at risk of physical harm or sexual abuse

Failure to report abuse or neglect is considered neglect

Reporting Requirements

What must be reported?
- Sexual, physical, emotional or verbal abuse
- Neglect
- Serious injury
- Death
- Retaliation or harassment

When do you have to report?
- If you witness a recipient being abused or neglected
- If you suspect a recipient has been abused or neglected
- Any allegations of abuse or neglect made by a recipient

You do not need proof

How do you report?
- Contact the Network180 rights office
- Tell your supervisor
- Fill out an incident report or complaint

How long do you have?
- Verbal reports to ORR and your supervisor must be made immediately
- The written report must be completed before you leave for the day
• Do not wait until you have all information or until speak to your supervisor first

Is there a penalty for not reporting?
• Staff who fail to report abuse or neglect will be guilty of neglect
• All staff who commit abuse or neglect must be disciplined by their employer
• You may also be held civilly liable

Other rights violations
• Network180 policy requires staff report all potential rights violations
• Remember, this is an introductory training, so if you unsure about an incident call the ORR!

Filing a Complaint
When Should You File?
• When you think someone’s recipient rights have been violated by an employee
• If a recipient asks you to help them file

Complaint Filing Tips
• You are the complainant
• Use full names
• Write the specific place/program
• Be as detailed as possible
• Make sure it gets to us

The Whistleblowers Protection Act
• You cannot be retaliated against if you file a complaint in good faith
• You cannot retaliate against a recipient or another staff that has filed a complaint against you
• Does not protect staff who file false reports

Complaint Resolution
Not All Complaints are Investigated
• Network180 may not have jurisdiction
• The accused must be a Network180 employee or an employee of a contracted provider
• The alleged violation must have occurred against a recipient of public mental health services
• The allegation must be a Code-protected right
• Concerns that are not Code-protected rights can often be solved by Customer Services
• ORR can also help fix the problem

The Complaint Process
• Staff must cooperate with investigations
• All available evidence is sought and evaluated
• We do not disclose who files a complaint
• Investigations are completed within 90 days
• The complainant and recipient receive a report

Downloading Your Certificate
• Go to http://lakeshoretraining.org/default.aspx to download
• Please keep a copy for yourself!

We do not keep copies of your certificate

Revised 06.30.2020
Recipient Rights Definitions

**Abuse Class I:** A non-accidental act or provocation of another to act by an employee, volunteer, or agent of a provider that caused or contributed to the death, or sexual abuse of, or serious physical harm to a recipient.

**Abuse Class II:** (i) A non-accidental act or provocation of another to act by an employee, volunteer, or agent of a provider that caused or contributed to non-serious physical harm to a recipient. (ii) The use of unreasonable force on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm. (iii) Any action or provocation of another to act by an employee, volunteer, or agent of a provider that causes or contributes to emotional harm to a recipient. (iv) An action taken on behalf of a recipient by a provider who assumes the recipient is incompetent, despite the fact that a guardian has not been appointed, that results in substantial economic, material, or emotional harm to the recipient. (v) Exploitation of a recipient by an employee, volunteer, or agent of a provider.

**Abuse Class III:** The use of language or other means of communication by an employee, volunteer, or agent of a provider to degrade, threaten, or sexually harass a recipient.

**Agent of a Provider:** People who work for agencies that contract with the Department, a CMHSP or PIHP, or a LPH/U.

**Degrade:** (i) Treat humiliatingly: to cause somebody or something a humiliating loss of status or reputation, or cause somebody a humiliating loss of self-esteem; (ii) To make worthless: to cause people to feel that they or other people are worthless and do not have the respect or good opinion of others; (iii) Any language or epithets that insult the person's heritage, mental status, race, sexual orientation, gender, intelligence, etc.

**Dignity:** To be treated with esteem, honor, politeness; to be addressed in a manner that is not patronizing or condescending; to be treated as an equal; to be treated the way any other individual would like to be treated, to receive the type of treatment a reasonable person would expect under similar circumstances.

**Emotional Harm:** Impaired psychological functioning, growth, or development of a significant nature as evidenced by observable physical symptomatology or as determined by a mental health professional.

**Exploitation:** An action by an employee, volunteer, or agent of a provider that involves the misappropriation or misuse of a recipient's property or funds for the benefit of an individual or individuals other than the recipient.

**Neglect Class I:** (i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law and/or rules, policies, guidelines, written directives, procedures, or individual plan of service and causes or contributes to the death, or sexual abuse of, or serious physical harm to a
recipient. (ii) The failure to report apparent or suspected abuse Class I or neglect Class I of a recipient.

**Neglect Class II:** (i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to non-serious physical harm or emotional harm to a recipient. (ii) The failure to report apparent or suspected abuse Class II or neglect Class II of a recipient.

**Neglect Class III:** (i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law and/or rules, policies, guidelines, written directives, procedures, or individual plan of service that either placed or could have placed a recipient at risk of physical harm or sexual abuse. (ii) The failure to report apparent or suspected abuse Class III or neglect Class III of a recipient.

**Non-serious Physical Harm:** Physical damage or what could reasonably be construed as pain suffered by a recipient that a physician or registered nurse determines could not have caused, or contributed to, the death of a recipient, the permanent disfigurement of a recipient, or an impairment of his or her bodily functions.

**Person-Centered Planning:** A process for planning and supporting the individual receiving services that builds upon the individual's capacity to engage in activities that promote community life and that honors the individual's preferences, choices, and abilities. The person-centered planning process involves families, friends, and professionals as the individual desires or requires.

**Physical Management:** A technique used by staff as an emergency intervention to restrict the movement of a recipient by direct physical contact in order to prevent the recipient from harming himself, herself, or others.

**Privileged Communication:** Communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, or to another person while the other person is participating in the examination, diagnosis, or treatment or a communication made privileged under other applicable state or federal law.

**Protective Device:** A device or physical barrier to prevent the recipient from causing serious self-injury associated with documented and frequent incidents of the behavior. A protective device as defined in this subdivision and incorporated in the written individual plan of service shall not be considered a restraint as defined below.

**Respect:** To show deferential regard for; to be treated with esteem, concern, consideration or appreciation; to protect the individual's privacy; to be sensitive to cultural differences; to allow an individual to make choices.

**Restraint:** The use of a physical device to restrict an individual's movement. Restraint does not include the use of a device primarily intended to provide anatomical support.
**Seclusion:** The temporary placement of a recipient in a room, alone, where egress is prevented by any means.

**Serious Physical Harm:** Physical damage suffered by a recipient that a physician or registered nurse determines caused or could have caused the death of a recipient, caused the impairment of his or her bodily functions, or caused the permanent disfigurement of a recipient.

**Sexual Abuse:** (i) Criminal sexual conduct as defined by section 520b to 520e of 1931 PA 318, being MCL 750.520b to MCL 750.520e involving an employee, volunteer, or agent of a provider and a recipient. (ii) Any sexual contact or sexual penetration involving an employee, volunteer, or agent of a department operated hospital or center, a facility licensed by the department under section 137 of the act or an adult foster care facility and a recipient. (iii) Any sexual contact or sexual penetration involving an employee, volunteer, or agent of a provider and a recipient for whom the employee, volunteer, or agent provides direct services.

**Sexual Contact:** The intentional touching of the recipient's or employee's intimate parts or the touching of the clothing covering the immediate area of the recipient's or employee's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for any of the following: (i) Revenge. (ii) To inflict humiliation. (iii) Out of anger.

**Sexual Harassment:** Sexual advances to a recipient, requests for sexual favors from a recipient, or other conduct or communication of a sexual nature toward a recipient.

**Sexual Penetration:** Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, but emission of semen is not required.

**Threaten:** (i) To utter intentions of injury or punishment against; (ii) To express a deliberate intention to deny the well-being, safety, or happiness of somebody unless the person does what is being demanded.

**Time Out:** A voluntary response to the therapeutic suggestion to a recipient to remove himself or herself from a stressful situation in order to prevent a potentially hazardous outcome.

**Unreasonable Force:** Physical management or force that is applied by an employee, volunteer, or agent of a provider to a recipient in one or more of the following circumstances: (i) There is no imminent risk of serious or non-serious physical harm to the recipient, staff or others. (ii) The physical management used is not in compliance with techniques approved by the provider and the responsible mental health agency. (iii) The physical management used is not in compliance with the emergency interventions authorized in the recipient's individual plan of service. (iv) The physical management or force is used when other less restrictive measures were possible but not attempted immediately before the use of physical management or force.
ATTENTION EMPLOYEES

The Michigan Whistleblower’s Protection Act (469 PA 1980) creates certain protections and obligations for employees and employers under Michigan Law

PROTECTIONS:
It is illegal for employers in Michigan to discharge, threaten or otherwise discriminate against you regarding your compensation, terms, conditions, location or privileges of employment because you or a person acting on your behalf reports or is about to report a violation or a suspected violation of federal, state or local laws, rules or regulations to a public body.

It is illegal for employers in Michigan to discharge, threaten or otherwise discriminate against you regarding your compensation, terms, conditions, location or privileges of employment because you take part in a public hearing, investigation, inquiry or court action.

OBLIGATIONS:
The Act does not diminish or impair either your rights or the rights of your employer under any collective bargaining agreement.

The Act does not require your employer to compensate you for your participation in a public hearing, investigation, inquiry or court action.

The Act does not protect you from disciplinary action if you make a report to a public body that you know is false.

ENFORCEMENT:
If you believe that your employer has violated this Act you may bring a civil action in circuit court within 90 days of the alleged violation of the Act.

PENALTIES:
Persons found in violation of this Act may be subject to a civil fine of up to $500.00.

If your employer has violated this Act the court can order you reinstatement, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. The court may also award all or a portion of the costs of litigation, including reasonable attorney fees and witness fees to the complainant if the court believes such an award is appropriate.
Bullard-Plawecki Employee Right to Know Act

Who is covered by the law?
Under this law, any employee or former employee hired by any employer with four or more employees in either the private or public sector has the right to request a review of his or her personnel file.

How may an employee request to see his or her personnel file?
An employee who wishes to review his or her file must make a written request which describes the personnel file to the employer. This request should include as many identifying factors as possible in order to facilitate the employer's retrieval of the record. Information should include name, Social Security number, dates of employment, branch number or location of the facility.

How can an employee obtain a copy of his or her file?
After looking at the file, an employee may obtain a copy of any or all information contained in the file by simply requesting it from the employer. If the employee is unable to review his or her personnel record, he or she must demonstrate this inability to the employer, and then make a written request to the employer that a copy of the information in the personnel file be mailed to him or her.

Must an employer notify an employee when divulging personnel record information to a third party?
Normally, the employer does not have to notify the employee when transmitting personnel records to a third party who is not a part of the employer's organization or a member of a labor organization representing the employee. In the case of disciplinary reports, letters of reprimand or other reports of disciplinary action, however, an employer or former employer must give written notice to the employee when divulging the information to third parties.

What are the legal remedies for the violation of this Act?
If an employer fails or refuses to follow this Act, an employee may bring an action for compliance in a circuit court. The appropriate court would be the circuit court located in the county where the employee lives, works, or where the personnel file is maintained. The court can issue an order enjoining the employer to comply with the Act. In addition, the employer's penalty for violation of the Act is actual damages plus costs. For a willful and knowing violation of the Act, the penalty is $200 minimum damages plus costs, reasonable attorney's fees and actual damage.
**Recipient Rights Complaint**

**Instructions:**
If you believe that one of your rights has been violated you (or someone on your behalf) may use this form to make a complaint. A rights officer/advisor will review the complaint and may investigate. Keep a copy for your records and send the original to the rights office at: network180 ORR, 3310 Eagle Park Dr NE, Ste 100, Grand Rapids MI 49525, securely email to orr@network180.org, or fax to 616.336.8812.

<table>
<thead>
<tr>
<th>Complainant’s Name</th>
<th>Recipient’s Name (if different from the complainant)</th>
</tr>
</thead>
<tbody>
<tr>
<td>[NAME OF PERSON FILING COMPLAINT]</td>
<td>[NAME OF RECIPIENT(S)]</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Complainant’s Address (street or email)</th>
<th>Where did it occur (name or address of hospital/agency)?</th>
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<tbody>
<tr>
<td>[COMPLAINANT’S STREET OR EMAIL ADDRESS]</td>
<td>[NAME OF SERVICE SITE]</td>
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</tbody>
</table>

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<thead>
<tr>
<th>Complainant’s Telephone Number</th>
<th>When did the alleged violation occur (indicate date and time)?</th>
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<tbody>
<tr>
<td>[COMPLAINANT’S TELEPHONE NUMBER]</td>
<td>[DATE ALLEGATION HAPPENED]</td>
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</tbody>
</table>

What right was violated?  
[NAME OF RIGHTS CATEGORY IF KNOWN]

Describe what happened:  
[DESCRIBE WHAT YOU SAW, HEARD, OR WAS TOLD. BE SPECIFIC AND GIVE AS MUCH DETAIL AS POSSIBLE]

What would you like to see happen in order to correct the violation?  
[List any suggestions you may have that may correct the problem]

Complainant’s Signature  
[SIGN HERE]  
Name of person assisting complainant  
[SIGN HERE IF HELPING A RECIPIENT FILING A COMPLAINT]

The Michigan Department of Health and Human Services (MDHHS) does not discriminate against any individual or group because of race, religion, age, national origin, color, height, weight, marital status, genetic information, sex, sexual orientation, gender identity or expression, political beliefs or disability.  
Authority: PA 258 of 1974 as amended
When you receive mental health services, you have rights protected by state and federal laws, including:

- The right to have services in a safe environment
- The right to be protected from abuse and neglect
- The right to privacy
- The right to own and use your own property
- The right to be treated with dignity and respect

If you would like these rights explained to you, and/or want to file a rights complaint:

Phone
616.336.3765
Toll-Free: 866.332.0002
(TTY/TTD dial 711)

Mail
Network180 Office of Recipient Rights
3310 Eagle Park Dr NE Ste 100
Grand Rapids, MI 49525

Fax
616.336.8812

Email
orr@network180.org

The Network180 Office of Recipient Rights Staff:
Bob Patterson, Melissa Gekeler, Lori Boeskool,
Edward Wilson, Deborah Fawcett

www.network180.org
## MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES

### REQUIREMENTS FOR REPORTING ABUSE AND NEGLECT

<table>
<thead>
<tr>
<th>WHERE is the report made?</th>
<th>WHAT must be reported?</th>
<th>WHO is required to report?</th>
<th>WHAT is the CRITERIA for reporting?</th>
<th>WHEN must the report be made and in what format?</th>
<th>TO WHOM are reports made?</th>
<th>If there is more than one person with knowledge must all of them make a report?</th>
<th>Is there a penalty for failure to report? YES</th>
<th>Is it necessary to report to more than one agency? YES</th>
<th>Are there other agencies to which a report can be made? YES</th>
</tr>
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</table>
| To the OFFICE of RECIPIENT RIGHTS (ORR) at your Hospital or Community Mental Health Services Program (CMHSP) A list of local rights offices can be found at: http://tinyurl.com/orroffices | Sexual, Physical, Emotional or Verbal Abuse, Neglect, Serious Injury, Death, Retaliation or Harassment | All employees, contract employees, or volunteers of Michigan Department of Health and Human Services, Community Health Services Programs, Licensed Private Psychiatric Hospitals | You must report if you:  
Suspect a recipient has been abused or neglected or any allegations of abuse or neglect made by a recipient. | A verbal report must be made immediately. A written report on an incident report form must be made before the end of your shift. | To your immediate supervisor and to the Recipient Rights Office at your agency or hospital | Not necessarily. Reporting should comply with the policies and procedures set up by each agency. | Disciplinary action may be taken and you may be held liable. | Each of these laws requires that the designated agency be contacted, if an allegation is suspected to have occurred, which falls under its specific jurisdiction. There are several references in each law indicating that reporting to one agency does not absolve the reporting person from the responsibility of having to report to other agencies, as statutorily required. | The Bureau of Community and Health Systems (LARA) is responsible for investigating abuse and neglect in Nursing Homes, Hospitals and Home Health Care. Call the NURSING HOME ABUSE HOTLINE 1-800-882-6006 The Michigan Attorney General’s Office has an Abuse Investigation Unit which may also investigate abuse in Nursing Homes. Call the ATTORNEY GENERAL HEALTH CARE FRAUD HOTLINE 1-800-24-ABUSE/ 1-800-242-2873 The LARA Adult Foster Care (AFC) Division is responsible for investigating abuse or neglect in a licensed foster care home. Call The Bureau of Community and Health Systems COMPLAINT INTAKE UNIT 1-866-856-0126 | | | | | | | | | | | |