



## SHIAWASSEE HEALTH AND WELLNESS POLICY AND PROCEDURE MANUAL

<b>Title:</b>	Reporting, Investigating, and Resolving Alleged/ Suspected Rights Violations
<b>Section:</b>	Recipient Rights
<b>Policy Number:</b>	2
<b>Issued By:</b>	Recipient Rights Director
<b>Approved by:</b> Leadership Team	<b>Effective Date:</b> 10/27/97 <b>Last Revision:</b> 5/20/2020
<b>Approved on:</b> 05/21/2020	<b>Last Review:</b> 08/15/19

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### POLICY STATEMENT:

It shall be the policy of the Shiawassee Health and Wellness (SHW) that all complaints of alleged or suspected rights violations filed by recipients or on their behalf shall be given to the designated Rights Director/Advisor in a timely manner and shall be promptly investigated and resolved and that information about recipient rights and the process for reporting alleged or suspected violations be adequately disseminated to recipients and employees.

### PURPOSE:

To provide a process for prompt reporting and investigating of alleged or suspected recipient rights violations, including a process for appeals and mediation, as established in the Michigan Mental Health Code and Michigan Department of Health and Human Services Administrative Rules.

### APPLICATION:

All SHW employees, contracted providers and employees, independent contractors, volunteers, and Residents and Interns.

### DEFINITIONS:

Appellant: The complainant, the recipient (if someone filed on the recipient's behalf), or the legal guardian of the recipient (if any), who is seeking review by an appeals committee, or the MDHHS.

Chief Executive Director: The individual, otherwise known as the Executive Director appointed under section 330.1226 of the Mental Health Code

Complainant: an individual who files a recipient rights complaint

Intervention: To act on behalf of a recipient to resolve a complaint alleging a violation of a code protected right when the facts are clear and the remedy, if applicable, is clear, 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

Legal Guardian: an individual who is judicially appointed guardian or the parent who has legal custody of a minor recipient.

Mediation: A private, informal dispute resolution process in which an impartial, neutral individual, with no authoritative decision-making power and in a confidential setting, assists parties in reaching their own settlement of issues in a dispute.

Preponderance of the Evidence: A standard of proof which is met when, based upon all of the available evidence, not as to quantity, but as to quality, i.e., believability and greater weight of important facts.

Reasonable Cause: A suspicion founded upon circumstances sufficiently strong to warrant a reasonable person to believe that the suspicion is true.

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 was filed.

Rights Complaint: A written or oral statement filed by a recipient, or another individual on behalf of a recipient, with the ORR, alleging a violation of the Mental Health Code or DHHS Administrative rules, containing the following information:

- A statement of the allegations that give rise to the dispute;
- A statement of the right or rights that may have been violated;
- The outcome that the complainant is seeking as a resolution to the complaint.

**STANDARDS:**

- A. Shiawassee Health and Wellness (SHW) shall ensure that:
  1. The Office of Recipient Rights (ORR) has unimpeded access to all programs, services, employees, volunteers, and all evidence that the ORR determines necessary to conduct a thorough investigation or fulfill its monitoring function.
  2. All copies of documentation requested by the ORR is provided in a timely manner.
  3. Action is taken to protect the recipient during the investigation.
  4. All employees, contractors and employees, volunteers, recipients, and others who file a recipient rights complaint, cooperate in an investigation, or otherwise engage in rights-related activities are protected from discrimination, harassment, or retaliation in accordance with applicable laws and agency policies/procedures. All substantiated cases of harassment and/or retaliation will result in appropriate disciplinary action.

5. Employees, contracted providers and their employees, Residents and Interns and volunteers must cooperate fully with the ORR and other authorized investigative bodies upon request. This could include; responding to questions put forth verbally or in writing; providing written statements if requested; and providing accurate information. Administrative action will be taken for failure to cooperate.
6. Appropriate administrative action is taken for failure to report apparent, suspected, or alleged rights violations.

## **PROCEDURE:**

### **1. Reporting Rights Violations:**

- A. A recipient, or any other individual on behalf of a recipient, may file a rights complaint with the SHW Office of Recipient Rights.
- B. It is the responsibility of all SHW employees, contract providers and employees, contractors, Residents and Interns and volunteers who become aware of any type of apparent, suspected, or alleged rights violation to report (verbally and in writing) to their designated supervisor and the ORR within twenty-four (24) hours. If the allegation is of abuse or neglect, a verbal report must be made immediately.
- C. Any supervisor receiving an allegation of a rights violation shall contact the ORR within twenty-four (24) hours. If the allegation is of abuse or neglect, contact must be made immediately.
- D. All rights complaints filed by a recipient or anyone on their behalf shall be given to the SHW ORR in a timely manner. Any Recipient Right complaint form documenting alleged violations filed by a recipient, or anyone on a recipients' behalf, shall be delivered to the SHW ORR within twenty-four (24) hours. If the employee, contract provider and/or employee, volunteer, or contractor has knowledge that the complaint includes an allegation of abuse or neglect, the requirements outlined in 1.B and 1.C apply.

### **2. Complaint Process:**

- A. The ORR will:
  1. Assist the recipient or other individual with the complaint process as necessary.
  2. Inform the recipient or other individual that there are advocacy organizations, such as Michigan Protection and Advocacy, to assist in the preparation of a written rights complaint and the ORR shall offer to refer the recipient or other individual to those advocacy organizations. In the absence of assistance from an advocacy organization, the ORR shall assist, when necessary, in preparing a written rights complaint that will contain a statement of the allegation, the right allegedly violation, and the outcome sought by the complainant.
  3. Date, assign a number, and record each rights complaint when it is received and send an acknowledgment letter, along with a copy of the complaint, to the complainant within five (5) business days. If the ORR determines that no investigation of the rights complaint is warranted, it shall notify the complainant within five (5) business days.

4. When the ORR determines that a rights complaint filed is outside of the ORR's jurisdiction, or does not involve a code protected right, it shall inform the complainant of the rationale for the decision, of other agencies they may contact, and will assist the complainant with contacting the agency if requested.

B. Any employee who becomes aware that a recipient, or other individual, wants to file a rights complaint shall either assist that person in filing the complaint within the appropriate timeframes or shall refer them to the ORR.

**3. Investigation:**

A. All employees, contract providers and employees, Residents and Interns, volunteers, and contractors will cooperate fully with investigations from the ORR and other authorized investigative entities, respond to questions put forth upon request, and provide accurate information.

B. The ORR shall:

1. Initiate investigation of apparent or suspected violations in a timely and efficient manner, subject to delays involving Protective Services, licensing entities, etc., or pending action by external agencies including law enforcement.
2. Immediate investigation shall be initiated in cases involving alleged abuse, neglect, serious injury, alleged harassment or retaliation, or death of a recipient that involve an apparent or suspected rights violation, subject to delays referenced above in B-1.
3. Conduct investigations in a manner that does not violate employee rights as defined by related employment law.
4. Complete the investigation not later than ninety (90) days after receiving the rights complaint, subject to delays involving pending action by external agencies.
5. As part of an investigation, when pertinent, the following shall occur:
  - i. An interview with the complainant when circumstances allow
  - ii. An interview with the recipient (if other than the complainant) when circumstances allow
  - iii. Interviews with all identified witnesses who may have relevant information when possible.
  - iv. Interviews with employees, contractors, or volunteers alleged to have violated a right
  - v. Written statements from employees, contractors, volunteers, recipients, and/or relevant others.
  - vi. Review of recipient records or other appropriate records or documentation
  - vii. Review of pertinent laws, rules, policies, or procedures
  - viii. A visit to the site of the alleged violation, if necessary and possible
6. Ensure all investigative activities for each rights complaint are accurately recorded

7. Use the preponderance of the evidence as the standard of proof when determining whether a right was violated.
8. In cases not warranting investigation, the ORR may conduct an intervention of an apparent or suspected recipient rights violation. In such cases, the facts must be clear, the remedy shall be: a) clear, b) easily obtainable, and c) shall not require disciplinary action, and the intervention can be completed within thirty (30) days. If the intervention cannot be completed within thirty (30) days, or the complainant is not satisfied, it shall be converted to an investigation and completed within the statutorily required ninety (90) day timeframe.

#### **4. Status Reports:**

##### **A. The ORR will:**

1. Issue a written status report every thirty (30) calendar days during the course of an investigation. The report will be issued to the complainant, the respondent, and the responsible mental health agency (SHW).
2. The report will contain all of the following:
  - i. A statement of the allegations
  - ii. Statement of the issues involved
  - iii. Citations to relevant provisions of the Mental Health Code, DHHS Administrative Rules, guidelines, and/or relevant policies and procedures.
  - iv. Investigative progress to date.
  - v. Expected date for completion of the investigation

#### **5. Report of Investigative Findings (RIF):**

##### **A. The ORR will:**

1. Submit a Report of Investigative Findings to the respondent and to the SHW CEO (RMHA) upon completion of an investigation. Issuance of the RIF may be delayed pending the completions of investigations that involve external agencies, including law enforcement.
2. Include in the Report of Investigative Findings all of the following:
  - i. A statement of the allegations.
  - ii. Statement of the issues involved.
  - iii. Citations to relevant provisions of the Mental Health Code, DHHS Administrative Rules, guidelines, and/or relevant policies and procedures.
  - iv. Investigative Findings.
  - v. Conclusions.
  - vi. Recommendations, if any.

- ##### **B. The Office of Recipient Rights may reopen or reinvestigate a complaint if new relevant evidence is given that was not present at the time of the original investigation.**

**6. Remedial Action:**

- A. If it has been determined through investigation that a right has been violated, the ORR will:
  - 1. Request that the respondent provide documentation of any remedial action taken by them.
  - 2. If the remedial action has yet to occur and the respondent submitted a plan of remedial action, the ORR will monitor progress toward the completion of the proposed remedial action for the substantiated rights violations.
  - 3. Assure that the remedial action provided by the respondent is made part of the record maintained by the ORR.
  
- B. If it has been determined through investigation that a right has been violated, the Respondent will:
  - 1. Take appropriate remedial action that meets the following requirements;
    - i. Corrects or provides a remedy for the rights violation,
    - ii. Is implemented in a timely manner,
    - iii. Attempts to prevent a recurrence of the rights violation.
  - 2. Take appropriate disciplinary action when there is a substantiated violation of abuse, neglect, harassment, or retaliation.
  - 3. Provide the ORR with written documentation of the remedial action within five (5) business days upon receiving the Report of Investigative Findings. If the remedial action is a proposed plan of remedial action, the Respondent shall document the proposed plan and promptly forward documentation to the ORR upon the completion of the plan of remedial action.
  
- C. Shiawassee Health and Wellness and the Respondent shall:
  - 1. Ensure that appropriate disciplinary action is taken against those who have engaged in abuse, neglect, harassment, or retaliation.
  - 2. Take appropriate administrative action when SHW employees, contract provider employees, contractors, or volunteers fail to report apparent, alleged, or suspected rights violations.

**7. Summary Report:**

- A. The SHW CEO or designee shall:
  - 1. Issue a written Summary Report to the complainant, recipient (if different than the complainant), parent or guardian, within ten (10) business days after receiving a copy of the Report of Investigative Findings.
  - 2. The Summary Report will include:
    - i. A statement of the allegations.
    - ii. Statement of the issues involved.
    - iii. Citations to relevant provisions of the Mental Health Code, DHHS Administrative Rules, policies and procedures, and/or guidelines.
    - iv. A summary of investigative findings.
    - v. Conclusions.
    - vi. Recommendations made, if any.

- vii. The remedial action taken, or the plan of remedial action proposed, by the respondent.
  - viii. A statement describing the complainant's right to appeal in writing to the SHW Appeals Committee. This statement shall inform the complainant that the written appeal must be received no later than 45 days after receipt of the summary report and that the following grounds for appeal are:
    - a) The investigative findings of the ORR are not consistent with facts, law, rules, policies, or guidelines.
    - b) The action taken or proposed plan of action by the respondent does not provide an adequate remedy.
    - c) The investigation was not initiated or completed on a timely basis.
  - ix. The statement regarding the right to appeal must also contain information regarding the advocacy organizations that may assist with filing the written appeal or an offer of assistance by the SHW ORR in the absence of assistance from an advocacy organization.
3. Provide information in the Summary Report within the constraints of confidentiality and privileged communication in Mental Health Code Section 330.1748 and Section 330.1750.
  4. Ensure that the information is provided in a manner that does not violate the rights of any employee.
  5. Ensure that if the Summary Report contains a plan of action, written notice of the plan is provided to the complainant, recipient (if different than the complainant), legal guardian, if any. Upon completion of the plan, the complainant, recipient (if different than the complainant), legal guardian, if any, will be notified of the completion as well as the date done.
    - i. If the respondent has taken different action than that proposed in the Summary Report, the notice shall include information as to the specific action that was taken and the date that it occurred. The complainant, recipient if different than the complainant, and his/her legal guardian, if any, will be afforded forty-five (45) days after receipt of the notice to appeal to the SHW Appeals Committee on the grounds of inadequate action taken to remedy the rights violation.

#### **8. SHW Appeals Committee:**

Shiawassee Health and Wellness Recipient Rights Advisory Committee has been appointed by the Board of Directors to act as the SHW Appeals Committee

A. The Appeals Committee shall:

1. Appoint one member to serve as chair of the committee
2. Receive training about recipient rights, investigations, and appeals;
3. Ensure that if in the event a member has a personal or professional relationship with an individual involved in an appeal, the member abstains from participation in that appeal.

4. Conduct appeal proceedings within the constraints of confidentiality and privileged communications as specified in the Mental Health Code Section 330.1748 and Section 330.1750. \*Such meetings are not subject to the Open Meetings Act\*.
- B. If necessary, in the event that a quorum is not present, the Appeals Committee may reschedule the hearing of an appeal.
- C. Request consultation and technical assistance from the ORR or the DHHS Appeals Committee.
- D. Maintain a log of all appeals received and the disposition of each appeal.

**9. Appeal of a Summary Report:**

- A. Not later than forty-five (45) days after receipt of the Summary Report, the complainant, recipient (if different than the complainant), and the recipient's guardian (if appointed), may file an appeal with the SHW Appeals Committee.
- B. Only the complainant, recipient (if different than the complainant), or guardian (if any) have standing to file an appeal of a summary report.
  - i. If an individual without standing requests an appeal, or if an individual with standing to appeal files the appeal later than forty-five (45) calendar days after receipt of the summary report, the Chair and designated Vice Chair will review the request and inform the individual in writing that the request was not filed in a timely manner, or that they do not have standing to appeal a summary report.
  - ii. In the event that the Chair or Vice Chair are not available, any member of the SHW Appeals Committee may be called upon to review the request in their place.
- C. An appeal of a summary report must be based on one of the following grounds:
  1. The findings of the ORR are not consistent with the facts or the law, rules, policies, or guidelines;
  2. The action taken or the plan of action proposed by the respondent does not provide an adequate remedy;
  3. An investigation was not initiated or completed on a timely basis.
- D. The ORR will advise the complainant that there are advocacy organizations to assist in preparing the written appeal and will offer to refer the complainant to those organizations. In the absence of assistance from an advocacy organization, the ORR will assist the complainant in preparing the written appeal consistent with meeting the procedural requirements.
- E. The Appeals Committee will:

1. Review the appeal within five (5) business days after receipt of the written appeal to determine whether it meets the criteria established above in C 1-3. This review may be conducted by the Committee Chair and Vice Chair, or any member of the appeals committee may be called upon in one of their absence.
2. Within seven (7) business days of receipt of the appeal, the appellant will be notified in writing of the appeals acceptance or rejection. The respondent, SHW CEO, and the ORR will also be provided a copy of the appeal. If the appeal has been rejected, the reason for not accepting the appeal will be described in the written notice.
3. Meet in a closed session, within thirty (30) days after receipt of a written appeal, to review the facts as stated in all complaint investigation documents.
4. At the conclusion of the closed session, the committee will do one of the following:
  - i. Uphold the investigative findings of the ORR and the action taken or the plan of action proposed by the respondent
  - ii. Return the investigation to the ORR and request that it be reopened or reinvestigated.
  - iii. Uphold the investigative findings of the ORR but recommend that the respondent take different or additional remedial action to remedy the violation.
  - iv. Recommend that the SHW Board of Directors request an external investigation by DHHS ORR.

If the appeal was based upon the assertion that the recipient rights investigation was not initiated or completed in a timely manner, and the committee confirms the assertion (with consideration of the permissible delays), the committee may recommend that the CEO address the root cause of the lack of timeliness.

5. The committee will not consider additional allegations that were not part of the initial complaint at issue on the appeal. Where applicable, the committee shall inform the appellant of his/her right to file a new complaint with the ORR.
6. The Appeals Committee shall document its decision and justification for the decision in writing and will provide copies of the decision to the respondent, appellant, recipient (if different than appellant), recipient's legal guardian (if one has been appointed), SHW, and the ORR, within ten (10) working days of reaching its decision.

#### **10. Recipient Rights Appeals Committee Decisions:**

- A. The Appeals Committee upheld the findings of the ORR and the action taken or plan of action provided by the respondent as indicated in 9. F. 4(i):

The written notice documenting the Appeals Committee decision shall include a statement of the appellant's right to appeal to the MDHHS Appeals-Level 2 Appeals Department, including its current address. The statement shall include:

- i. The timeframe for appeal (within forty-five [45] calendar days after receiving written notice of the decision by the SHW Appeals Committee), and
  - ii. Notice that the appeal shall be based only upon the ground alleging that the investigative findings of the ORR are not consistent with the facts or with law, rules, policies, or guidelines.
- B. The Appeals Committee directs the ORR to reopen or reinvestigate the complaint as indicated in 9. F. 4(ii):
  - i. The ORR will submit another Report of Investigative Findings to the SHW CEO, in compliance with Mental Health Code Section 330.1778(5), within 45 days of receipt of the written decision of the SHW Appeals Committee. The 45 calendar day timeframe may be extended at the discretion of the Appeals Committee upon a showing of good cause by the ORR. At no time shall the timeframe exceed 90 days.
  - ii. Within 10 business days of receipt of the reopened or reinvestigated Report of Investigative Findings, the SHW CEO or designee will issue another Summary Report in compliance with Mental Health Code Section 330.1782. The Summary Report will be issued to the appellant, recipient (if different than appellant), recipient's legal guardian, if any, the ORR and the SHW Appeals Committee. The Summary Report will contain information regarding the appellant's right to further appeal, the timeframe for appeal (45 calendar days after receiving written notice of the decision by the SHW Appeals Committee), and the applicable ground for appeal. The report shall also inform the appellant of advocacy organizations that may assist in filing the written appeal or offer assistance of the ORR in the absence of an advocacy organization.

If the findings of the ORR ***remain unsubstantiated*** upon reinvestigation, the appellant may file an appeal to the MDHHS Appeals- Level 2 Appeals Department that the investigative findings of the ORR are not consistent with the facts or with law, rules, policies, or guidelines. The Summary Report shall inform the appellant of the right to appeal on this ground, as well as the additional information stated above in B. ii.

If upon reinvestigation, the investigative findings result in a substantiation of a previously unsubstantiated rights violation, the appellant may file an appeal to the SHW Appeals Committee on the ground that the action taken or plan of action proposed by the respondent does not provide an adequate remedy. The Summary Report shall inform the appellant of this right as well as the additional

information as stated above in B. ii.

- C. The Appeals Committee upholds the findings of the Office but recommends that the respondent take different or additional remedial action as indicated in 9. F.4(iii), the recommendation shall be written, and shall be based on the determination that appropriate remedial action has not been taken in compliance with Mental Health Code Section 330.1780, i.e., that any or all of the following apply:
- i. The action taken or proposed action did not correct or remedy the rights violation
  - ii. The action taken or proposed action was/will not be taken in a timely manner
  - iii. The action taken or proposed action did not/will not prevent a future recurrence of the violation.
- a. The written notice of the Appeals Committee recommendation for different or additional action shall be provided to the respondent, RMHA if different than the respondent, and the SHW ORR, within five (5) business days after reaching its decision.
- (1) Within 30 calendar days of receipt of the written recommendation for the SHW Appeals Committee, the respondent shall provide written notice/response to the Committee that additional or different action has been taken, or justification as to why it was not taken.
- b. The SHW Appeals Committee will ensure that the respondent's written notice is sent within five (5) business days to the appellant, recipient if different than appellant, the recipient's legal guardian, if any, the RMHA if different than respondent, and the SHW ORR.
- (1) If the action taken by the respondent is determined by the Appeals Committee and/or the appellant still to be inadequate to remedy the violation, the appellant will be informed by the Appeals Committee of his/her right to file a recipient rights complaint against the RMHA, i.e., the CEO of SHW, for an alleged violation of Mental Health Code Section 330.1755(3) (b).
- D. The Appeals Committee recommends that the SHW Board of Directors request an external investigation by MDHHS ORR as indicated in 9.F. 4(iv), the Board of Directors may make the request to MDHHS-ORR in writing, within 5 business days of recipient of the request from the Appeals Committee.
- a. Within 10 business days of receipt of the resulting investigative report from MDHHS-ORR, the SHW CEO shall issue a Summary Report in compliance with the Mental Health Code Section 330.1782. The Summary Report shall be submitted to the appellant, recipient if different than the appellant, the recipient's legal guardian, if any, the SHW ORR, and the SHW Appeals Committee.
  - b. The complainant, recipient if different than complainant, and recipient's legal guardian, if any, shall be informed in the Summary

Report issued by the SHW CEO of the right to appeal to the MDHHS Appeals Committee. Notice shall include information on the grounds for appeal and the timeframe for submission of the appeal as stated in Section 9.C. 1-3 of this policy, advocacy organizations that may assist with filing the written appeal, and an offer of assistance by the ORR in the absence of assistance from an advocacy organization.

**Change Log:**

<b>Date of Change</b>	<b>Description of Change</b>	<b>Responsible Party</b>
11/28/18	RRAC made the decision that the Chair and Vice Chair would review appeals to determine standing, instead of the committee as a whole.	Recipient Rights Director
8/2/19	Added alleged harassment/retaliation to Section 3.B.2 and added NCPR to Section 2.A.5	Andrea Andrykovich
5/20/2020	Removed references to mediation	Andrea Andrykovich