

RECIPIENT RIGHTS

Annual Update Training



OFFICE OF RECIPIENT RIGHTS

Genesee Health System

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➤ What is a **RECIPIENT**?

Recipients receive mental health services from

- DHHS
- CMH
- Entity contracted with the DHHS or a CMH

➤ 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.”



RIGHTS may be protected by **state law** and/or **federal law**

- Michigan's Mental Health Code
- U.S. or State of Michigan Constitution



OFFICE OF RECIPIENT RIGHTS

(ORR)

➤ **Mandated by Mental Health Code** (state law)

MCL 330.1755(1)

➤ **Various functions:**

- ❖ **Education / Training**
- ❖ **Prevention**
- ❖ **Monitoring**
- ❖ **Complaint Resolution / Investigations**

GHS ORR reviews 3 factors upon receiving complaints:

- Does it involve a GHS **recipient**?
- Related to **mental health services** from GHS or a contract provider?
- Does it involve something stated in the law, i.e., a **'Code-Protected Right'**?



The Recipient Rights Investigation Process

The outcome of the investigation is determined based on the

PREPONDERANCE OF EVIDENCE

- Evidence which is of greater weight or more convincing / more probable than not

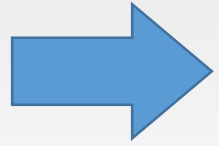


STAFF RESPONSIBILITIES / ORR INVESTIGATIONS

- **All staff are required to **comply** with the ORR investigation process**
 - All documents requested by the Office of Recipient Rights
 - ORR: **Unimpeded access** to all evidence
- **Requirement to **cooperate** fully with the investigation, which will include speaking with the ORR investigator for an interview**
 - Accurate, honest answers

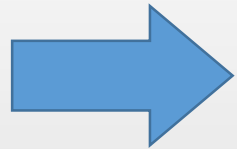
FAILURE TO COOPERATE  **DISCIPLINARY ACTION**

➤ Investigations completed within **90 days**



ORR produces a 'Report of Investigative Findings'

➤ Substantiated violations:

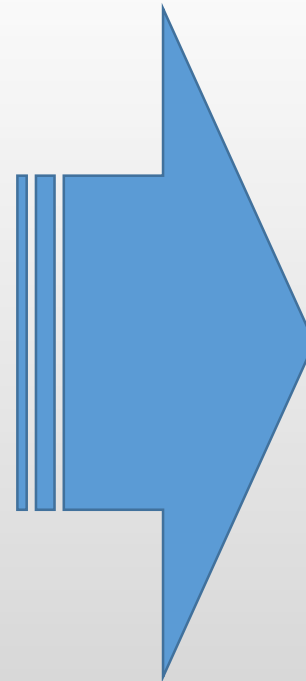


Remedial action is required from the provider to

- **Correct / remedy the violation(s)**
- **Prevent a recurrence**
- **Implemented in a timely manner**

INVESTIGATIVE SUMMARY REPORT

- **Signed by the GHS CEO**
- **Sent to:**
 - ❖ **Complainant**
 - ❖ **Recipient**
 - ❖ **Guardian**
 - ❖ **Parent of a minor recipient**



**APPEAL
RIGHTS**

APPEALS

- **Must be written**
- **Filed with the GHS RR Appeals Committee**
- **Within 45 days of the receipt of the Summary Report**
- **When the appellant believes that:**
 - The **findings** of the investigation are **inconsistent** with the law, rules, policies or guidelines
 - The **action**, or plan of action, is **inadequate**
 - The investigation was not initiated or completed **timely**



Recipient Rights Advisory Committee

- **6 members**
- **At least 1/3 of the membership must be primary consumers or family members**
 - of that 1/3, at least 1/2 must be primary consumers
- **Advise** the agency's Executive Director and the Director of the ORR
- **Protect the Office of Recipient Rights** from pressures that could interfere with the impartial, even-handed, and thorough performance of its functions.
- **Review** and provide comments on the **GHS ORR Annual and Semi-Annual Reports**
- Serves as the **GHS RR Appeals Committee**

Various Mental Health Code Sections Pertaining to Recipient Rights

- **PCP** – Person Centered Planning
 - Involves family, friends, professionals, as the recipient desires
- **IPOS** – Individualized Plan of Services
 - Developed within 7 days of commencement of service



Individual Plan of Service (IPOS) Person Centered Plan (PCP)

- Fundamental document
 - GUIDES THE TREATMENT of a recipient
- Identifies **GOALS**
- Addresses the need for:
 - Food, shelter, clothing, health care, employment opportunities, educational opportunities, legal services, transportation and recreation
- Must be **KEPT CURRENT** and modified when needed
- If not satisfied, recipient may make **REQUEST FOR REVIEW**

LIMITATIONS

on

RECIPIENT RIGHTS

- **Must be Justified and Time-limited**
- **Documented** in the IPOS
 - Attempts that have been made to avoid limitations
 - What actions will be taken to ameliorate or eliminate the need for them in the future
- **Behavior Treatment Plan Review Committee (BTPRC) reviews**

NOTICE OF RIGHTS

- **Your Rights** booklet
- Provided at the time services are first requested / initiated, and annually during the time services are provided to the recipient
 - **Written verification** filed in the recipient's record



Mental Health Services Suited to Condition

- *A recipient shall receive **mental health services suited to his/her condition***
- Staff members providing services to a recipient are required to read, understand, and **implement the IPOS** as written

Personal Property Rights - (Residents)

- *A **resident** is entitled to receive, possess, and use all personal property...*

Residents' personal property may **only** be **limited** under the following circumstances:

- In order to **prevent theft, loss, or destruction of the property**, unless a waiver is signed by the resident.
- In order to **prevent the resident from physically harming himself, herself or others.**

DIGNITY & RESPECT

Mental Health Code:

- A **recipient** has the right to be treated with dignity and respect.
- **Family members** of recipients shall be treated with dignity and respect.
 - parent, stepparent, spouse, sibling, child, or grandparent
 - an individual upon whom a primary consumer is dependent for at least 50% of his or her financial support.

RESPECT.

It's a big deal.



Recipients AND their family members have the **RIGHT** to be treated with Dignity and Respect

→ Staff have the **RESPONSIBILITY** to treat them that way

Dignity

- To Treat With Worthiness, Honor, Importance
- Not Patronizing, Not Condescending

Respect

- To Treat Courteously
- To Show Regard/Consideration
- To Treat with High or Special Regard



- ❖ **Written agreement** executed by a recipient, a minor recipient's parent, or recipient's legal representative with authority to execute a consent, or a

- ❖ **Verbal agreement of a recipient** that is witnessed and documented by an individual other than the individual providing treatment. Requires:
 - **Legal Competency**
 - **Knowledge**
 - **Comprehension**
 - **Voluntariness**

Psychotropic Drugs / Medication Administration

Before initiating a course of psychotropic drug treatment for a recipient, the prescriber or a licensed health professional acting under the delegated authority of the prescriber shall do both of the following:

*(a) Explain the specific **risks** and the most common **adverse effects***

*(b) Provide the individual with a **written summary** of the most **common adverse effects** associated with that drug.*

➤ **Recipients have the right to informed consent regarding medication and possible side effects.**

CONFIDENTIALITY

Mental Health Code Language:

- Information in the record of a recipient, and other information **acquired in the course of providing mental health services** to a recipient, **shall be kept confidential and shall not be open to public inspection.**



CONFIDENTIALITY

GHS Policy #08-008-97 (Confidentiality): [Excerpts]

- **Internal access** to confidential information (within GHS or within a contract provider), and external access to confidential information (between GHS and a contract provider) **shall be limited to**
 - those staff who have a **need to know** that specific information
.... **to perform their assigned job duties.**

Confidential Information is defined as:

- All information **in the record of a recipient**, and
- Any information **acquired in the course of providing mental health services** to a recipient, including but not limited to:
 - information acquired in **diagnostic interviews** or **examinations**
 - **results and interpretations of tests** ordered by a mental health professional
 - **entries or progress notes** by mental health professionals and supporting personnel

CONFIDENTIAL



Categories of Disclosures:

- **Mandatory** – Information **must** be disclosed
 - Example: Pursuant to a valid subpoena
 - **Discretionary with Consent** – Information **may** be disclosed, with recipient **consent**
 - Example: To a mental health service provider
 - **Discretionary** – Information **may** be disclosed
 - Example: To the police, if there's compelling reason to do so based upon a substantial probability of harm to the recipient or others.
- **Note: Michigan Disability Rights (Formerly MI Protection and Advocacy) **CAN** access a recipient's record if**
- They have received a complaint on behalf of a recipient, or if
 - They have probable cause to believe that the recipient has been subject to abuse or neglect

Instances When it is Appropriate to Disclose Information About a Recipient:

- When the **recipient agrees** and signs a release of information.
- To mental health, or other public agencies (example - police), when there is a **compelling reason** to believe that there is a **substantial probability of harm to the recipient or others**.
- To other agencies such as Social Security or the Department of Health and Human Services when **necessary in order for the service providers to receive payment**.
- When **required by court order** or to **comply with the law**.
- To a **prosecuting attorney** when necessary to participate in proceedings governed by the Mental Health Code, for example, civil commitment proceedings.
- To the **recipient's attorney** when the recipient has **given consent**.
- To the **surviving spouse** of a recipient in order to apply for and receive benefits, but only **if the surviving spouse has been appointed personal representative** of the estate by the court.
- **Emergencies / Duty to Warn**

KEY POINTS

Confidentiality is a paramount right of every recipient of mental health services.

- **All information** in a person's record and **any information about the person** obtained while you are providing services is confidential.
- **Informed consent** from the recipient, or the recipient's guardian, is required before giving out any information, with rare exception.
- There are confidentiality rules **inside the agency** – information can be shared within the agency as necessary for one to do their job.
- Think about your expectations for confidentiality if **you** were receiving mental health services

Communication by Mail, Telephone, Visits

- Applies to **RESIDENTS**

Mental Health Code Language:

A resident is entitled to unimpeded, private, and uncensored communication with others by mail and telephone and to visit with persons of his or her choice ...

- **Limitations** can only be implemented as allowed in the IPOS, following review and approval by the **GHS Behavior Treatment Plan Review Committee (BTPRC)**, and the special consent of the resident or his/her legal representative.

Safe, Sanitary, and Humane Environment

- Mental health services must be provided in a **safe, sanitary, and humane** treatment environment.

Relevant GHS Contract Language:

- *Contractor(s) will monitor and **ensure the safety and welfare** of Agency clients while they are under its service supervision pursuant to the contract.*



A recipient of mental health services shall not be **fingerprinted, photographed, audio recorded, or viewed through a 1-way glass**, except under certain circumstances.

- ‘Photographs’ include still pictures, motion pictures, and video recordings.
 - only in order to provide mental health services to a recipient, including research;
 - for **educational or training** purposes;
 - or to **determine the name** of a client,

And, only when **prior written consent** is obtained from one of the following:

- The recipient if 18 years of age or over and competent to consent.
- The guardian of the recipient
- The parent with legal and physical custody of the recipient if the recipient is less than 18 years of age.

- Consent for the same **may be withdrawn** at any time

CHOICE OF MENTAL HEALTH PROFESSIONAL

A recipient shall be given a choice of physician or other mental health professional in accordance with the policies of the community mental health services program, licensed hospital, or service provider under contract with the community mental health services program

GHS Services Suited to Condition Policy #08-010-97 requires that a recipient to be given the choice of physician or other mental health professional in accordance with GHS standards and within the limits of available staff.

Requests for a change of professional, or the ability of a resident to see a mental health professional, may be made through the GHS Customer Services Office, or through the applicable mental health professional's supervisor.



FREEDOM OF MOVEMENT

LEAST RESTRICTIVE SETTING

Mental health services must be offered in the **least restrictive setting** that is **appropriate and available**.

The **freedom of movement** of a recipient shall not be restricted more than is necessary to

- **provide mental health services** to him or her,
- to **prevent injury** to him or her or others, or
- to **prevent substantial property damage**

Entertainment Materials, Information and News

- Applies to **RESIDENTS**

Mental Health Code Language:

A provider shall not prevent a resident from acquiring entertainment materials, information and news at his or her own expense, or from reading written or printed materials, or from viewing or listening to television, radio, recordings, or movies made available at the facility for reasons of, or similar to, censorship.

- A provider may limit access to entertainment materials, information or news **ONLY** if such a limitation is specifically **approved** in the resident's **individual plan of service**.



ABUSE and NEGLECT



A recipient of mental health services shall not be subjected to **Abuse** or **Neglect**



There are 3 classes of Abuse and 3 classes of Neglect:

- Abuse Class 1
- Abuse Class 2
- Abuse Class 3
- Neglect Class 1
- Neglect Class 2
- Neglect Class 3

ABUSE CLASS 1

A non-accidental act or provocation of another to act

- which caused or contributed to

➤ **Death**, or

➤ **Sexual Abuse** of, or

➤ **Serious Physical Harm** of a recipient.

ABUSE CLASS 2:

- 1) Non-accidental act or provocation of another to act ... that caused or contributed to **non-serious physical harm** to a recipient.
- 2) The use of **unreasonable force** on a recipient **with or without apparent harm**.
- 3) Any action or provocation of another to act ... that causes or contributes to **emotional harm** to a recipient.
- 4) 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,
 - results in **substantial economic, material, or emotional harm** to the recipient.
- 5) **Exploitation** of a recipient

Unreasonable Force

Physical management or force that is applied ... 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 approved techniques
- iii. The physical management used is not in compliance with authorized emergency interventions in the recipient's IPOS
- iv. The physical management or force is used
 - when other less restrictive measures were possible but not attempted

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
 - lesser restrictive interventions have been **unsuccessful** in reducing or eliminating the imminent risk of harm.
- Physical management will **not** be included as a component in a **behavior treatment plan**.
- Prone immobilization of a recipient for the purpose of behavior control is prohibited

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

ABUSE CLASS 3

The use of language or other means of communication to

- **degrade,**
- **threaten,** or
- **sexually harass** a recipient.



Sexual Harassment

- **Sexual advances** to a recipient,
- **Requests for sexual favors** from a recipient, or
- Other **conduct** or **inappropriate communication of a sexual nature** toward a recipient.

NEGLECT

→ An Act of **COMMISSION**

- or -

→ An Act of **OMISSION**

- By an **employee, volunteer** or **agent** of a provider

- That was in **non-compliance with a standard of care**

→ That causes **harm** or **risk of harm** to a recipient

NEGLECT CLASS 1:

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, and
- causes or contributes to the **death, or sexual abuse of, or serious physical harm to a recipient.**

NEGLECT CLASS 2:

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, and
- causes or contributes to **non-serious physical harm or emotional harm to a recipient.**

NEGLECT CLASS 3:

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, and
- **placed or could have placed the recipient at risk of physical harm or sexual abuse**



IMMEDIATE verbal report:

- The verbal report must be made to both the **ORR** **AND** **your supervisor.**
- ANY apparent, suspected, or alleged violation must be reported, including rumor or hearsay.

FAILURE TO REPORT Abuse or Neglect **IS NEGLECT**

Neglect Class I (ii)

→ **The failure to report** alleged, apparent or suspected **Abuse Class I**
or **Neglect Class I**

Neglect Class II (ii)

→ **The failure to report** alleged, apparent or suspected **Abuse Class II**
or **Neglect Class II**

Neglect Class III (ii)

→ **The failure to report** alleged, apparent or suspected **Abuse Class III**
or **Neglect Class III**

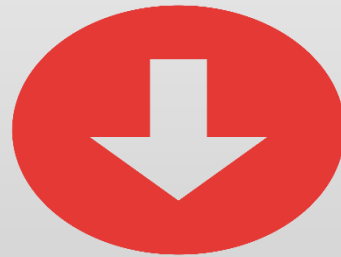
HARASSMENT AND RETALIATION



Protection from harassment or retaliation for:

- **Complainants**
- **Office of Recipient Rights**
- **Recipients**
- **Staff acting on behalf of a recipient, and/or involved, or who may become involved in recipient rights activities**

- ➔ **Harassment** - Words, gestures, or actions which: **threaten** an individual; **attempt to intimidate, coerce, or inappropriately influence** those involved, or who may become involved, in recipient rights activities; **unreasonably interfere with an individual's work performance**; or **create an intimidating, hostile, or offensive situation.**
- ➔ **Retaliation** - **Unjustified negative actions** taken against an individual involved, or who may become involved in recipient rights activities



DISCIPLINARY ACTION if there is evidence of harassment or retaliation

GENESEE HEALTH SYSTEM
OFFICE OF RECIPIENT RIGHTS:

(810) 257-3710 PHONE
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(877) 668-8933 TOLL-FREE

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