

## PATHWAYS CMH

<b>POLICY TITLE:</b> COMPLAINT INVESTIGATION AND RESOLUTION	<b>CATEGORY:</b> RECIPIENT RIGHTS	
<b>EFFECTIVE DATE:</b> July 6, 2005	<b>BOARD APPROVAL DATE:</b> July 6, 2005	
<b>REVIEWED DATE:</b> April 15, 2017	<b>REVISION(S) TO POLICY STATEMENT:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>OTHER REVISION(S):</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>RESPONSIBLE PARTY:</b> Recipient Rights Supervisor or Designee	<b>CEO APPROVAL:</b> Mary J. Swift, CEO	

**APPLIES TO:**

Employees, volunteers and contractual providers of Pathways CMH

**POLICY:**

It is the policy of the Pathways Board that:

- A. A mechanism within Pathways and contracted programs shall be provided for prompt reporting, review, investigation, and resolution of apparent or suspected rights violations which includes an appeals process and a mediation option;
- B. Adequate remedial action shall be taken in the event of a violation.
- C. Disciplinary action for a violation may be taken at the discretion of the supervisor.
- D. Appropriate disciplinary action is taken with those who have engaged in abuse or neglect.

The following standards shall be adhered to:

- A. Pathways and respondents shall ensure that:
  - 1. Appropriate administrative action is taken for failure to report suspected rights violations;
  - 2. Action is taken to protect the recipient during the investigation;
  - 3. The Office of Recipient Rights (Office) has unimpeded access to all of the following:
    - a. All programs and services.
    - b. All employees, volunteers, contractual agents, and recipients;
    - c. All evidence that the Office determines is necessary to conduct a thorough investigation or to fulfill its monitoring of remedial actions;
  - 4. Employees, volunteers, and contractual agents who may have knowledge pertinent to the investigation, cooperate fully with the Office and other authorized investigative bodies, respond to questions put forth, verbally or in writing, provide written statements when requested, and provide accurate and honest information. Appropriate disciplinary action shall be taken for any failure to cooperate;
  - 5. All employees, volunteers, contractual agents, recipients, and others who file a complaint or cooperate in an investigation are protected from discrimination, harassment, or retaliation in accordance with applicable laws and agency policies/procedures, and appropriate disciplinary action is taken if this does occur;
  - 6. The recipient's record and other documentary or physical evidence is immediately secured as necessary and protected from tampering, erasures, deletions, or any other type of falsification;
  - 7. Copies of documentation requested by the Office are provided in a timely manner.
- B. The Office of Recipient Rights shall assure that recipients, parents, guardians, and others have ready access to complaint forms.

**PURPOSE:**

To protect the rights of recipients

**DEFINITIONS:**

**Mediation**

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

**Preponderance of Evidence**

A standard of proof which is met, when based upon all available evidence it is more likely that something is true than untrue; greater weight of evidence, not as to quantity (number of witnesses), but as to quality (believability and greater weight of important facts); more than 50 percent.

**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 has been filed.

**Rights Complaint**

A written or oral statement filed by a recipient, or another individual on behalf of a recipient, with the Office of Recipient Rights, alleging a violation of the Mental Health Code or Administrative Rules, and which contains the following information:

- A. A statement of the allegations that give 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 a resolution to the complaint.

**REFERENCES:**

- A. Act 258 of the Public Acts of 1974, as amended (Mental Health Code), Sections 100a, 146, 722, 755, 772, 774, 776, 778, 780, 782, 784, 786, and 788
- B. Department of Community Health Administrative Rule 7035
- C. Flow Chart for the Complaint Process
- D. Flow Chart for the Appeal Process

**HISTORY:**

Dates Reviewed: May 2008; June 2011; April 2013; July 11, 2013; April 4, 2014; May 5, 2015; April 19, 2016; April 15, 2017

Dates Revised: July 11, 2013

Dates Approved: July 6, 2005

## PROCEDURES

### **A. Reporting Rights Violations**

1. All employees, volunteers, and contractual agents who witness, discover or have reasonable cause to suspect recipient rights violations shall report, verbally or in writing, to a designated supervisor and/or the Office of Recipient Rights within 24 hours.
2. Any supervisor who receives an allegation of a suspected rights violation shall contact the Office within 24 hours.
3. Individuals who orally report a suspected violation, or individual who file an Incident Report which contains a possible violation, will be asked if they wish to be considered the complainant.
  - a. If the individual assents, s/he will be informed of the availability of assistance with the complaint process and a complaint form will be provided.
  - b. If the individual declines, s/he will be informed that the Office of Recipient Rights will act as the complainant and the individual will not receive a copy of the report or have access to the complaint appeal process.

### **B. Filing Rights Complaints**

1. The Office of Recipient Rights shall:
  - a. Date, number and record each rights complaint when it is received and send an acknowledgment, along with a copy of the complaint, to the complainant within five (5) business days. If the Office determines that no investigation of the rights complaint is warranted, it shall notify the complainant within five (5) business days;
  - b. Assist the recipient or other individual with the complaint process as necessary;
  - c. Advise the recipient or other individual that there are advocacy organizations such as Michigan Protection and Advocacy Services available to assist in preparation of a written rights complaint and offer to refer the recipient or other individual to those organizations. In the absence of assistance from an advocacy organization, the Office shall assist in preparing a written rights complaint that includes a statement of the allegation, the allegedly violated, and the outcome desired by the complainant;
  - d. Inform the recipient or other individual of the option of mediation and under what circumstances and when it may be exercised;
  - e. Accept complaints that are filed anonymously and protect any information that may lead to identification of the anonymous complainant;
  - f. Route complaints involving alleged abuse, neglect, serious injury, or death to the Chief Executive Officer (CEO).
2. When the Office determines that no investigation of the rights complaint is warranted, it may:
  - a. Recommend remedial action for obvious rights violations;
  - b. Refer complaints to the respondent or other appropriate personnel for resolution and notify the complainant of the referral when acknowledging the complaint. The respondent or other appropriate personnel shall have 30 calendar days to remediate the issue and submit written documentation of this or the plan of remediation to the Office and the complainant;
  - c. Inform the complainant of other agencies he or she may contact for complaints outside the agency's jurisdiction and assist if requested by the complainant;
3. An employee who is aware that a recipient or other individual wants to file a rights complaint shall either assist that person or refer him/her to the office. Complaints shall be sent to the Office within 24 hours.

### **C. Investigation**

1. All employees, volunteers, and contractual agents shall cooperate fully with investigators from the Office of Recipient Rights and other authorized investigative bodies, respond to questions put forth, verbally or in writing, and provide accurate and honest information.
2. The Office of Recipient Rights shall:
  - a. Initiate investigation of apparent or suspected rights violations in a timely and efficient manner. Investigation shall be initiated immediately in cases involving alleged abuse, neglect, serious injury, or the death of a recipient that involves an apparent or suspected rights violation;
  - b. Conduct investigations in a manner that does not violate employee rights;
  - c. Complete the investigation not later than 90 days after receiving the rights complaint, subject to delays involving pending action by external agencies including law enforcement, protective services, or licensing entities.
  - d. Include the following when pertinent to the investigation:
    - i. An interview with the complainant when circumstances allow, preferably face to face;
    - ii. An interview with the recipient if other than complainant when circumstances allow, preferably face to face;
    - iii. Interviews with all witnesses and others who may provide relevant information, preferably face to face;
    - iv. Interviews with employees, volunteers, and contractual agents who are alleged to have violated a right, preferably face to face;
    - v. Written statements from employees, volunteers, contractual agents, recipients, and relevant others when such a statement is necessary to support oral interviews, to obtain additional information, or to provide findings relevant to the investigation;
    - vi. Review of recipient records and appropriate other documentation;
    - vii. Review of investigations into the same allegation conducted by law enforcement, licensing, entities, or others when available;
    - viii. Visit to the site of the alleged violation;
    - ix. Review of pertinent laws, rules and policies and procedures.
  - e. Maintain accurate records of investigative activities and findings;
  - f. Store all investigative documents and evidence in a secure manner in a locked cabinet in the Office, separate from clinical or personnel records and within the constraints of confidentiality and privileged communications in Sections 748 and 750 of the Mental Health Code;
  - g. Determine whether a right was violated by using a preponderance of evidence as the standard of proof;
3. Monitor progress toward remediation of all substantiated violations of rights. The Office may:
  - a. File additional rights complaints when it becomes apparent that other rights may have been violated;
  - b. Consult with the respondent to determine appropriate remedial action.
4. If a rights complaint has been filed regarding the conduct of the Chief Executive Officer, the rights investigation shall be conducted by the office of another community mental health services program or by the State Office of Recipient Rights as decided by the Pathways Board.

#### **D. Status Report**

The Office of Recipient Rights shall:

1. Issue a written Status Report every 30 calendar days during the course of an investigation. The report shall be submitted to the complainant, the respondent, and Pathways;
2. Include all of the following in the Status Report:
  - a. Statement of the allegations;
  - b. Statement of the issues involved;

- c. Citations to relevant provisions of the Mental Health Code, Administrative Rules, guidelines, and Pathways policies and procedures;
- d. Investigative progress to date;
- e. Expected date for completion of the investigation.

**E. Investigative Report**

1. The Office of Recipient Rights shall:
  - a. Submit a written Investigative Report to the respondent and the Pathways CEO upon completion of the investigation. Issuance of the written Investigative Report may be delayed pending completion of investigations that involve external agencies, including law enforcement, protective services, or licensing entities;
  - b. Include all of the following in the Investigative Report:
    - i. Statement of allegations;
    - ii. Statement of the issues involved;
    - iii. Citations to relevant provisions of the Mental Health Code, Administrative Rules, guidelines, and Pathways policies and procedures;
    - iv. Investigative findings;
    - v. Conclusions;
    - vi. Recommendations, if any.
2. The Office may reopen or reinvestigate a complaint if there is new evidence that was not presented at the time of the original investigation.

**F. Remedial Action**

If it has been determined through investigation that a right has been violated, or if an intervention determines that remedial action is necessary:

1. The respondent shall:
  - a. Take appropriate remedial action that meets all of 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;
  - b. Provide the Office with written documentation of the remedial action for its record.
2. Pathways and respondents shall:
  - a. Ensure that appropriate disciplinary action is taken against those who have engaged in abuse or neglect;
  - b. Apply remedial action for specific complaint to all recipients in similar situations, when applicable.

**G. Summary Report**

1. The Chief Executive Officer shall:
  - a. Submit a written Summary Report to the complainant and recipient, if different than the complainant, the recipient's guardian, if one has been appointed the guardian and parent of a minor recipient, and the Office within 10 business days after receiving a copy of the Office's Investigative Report;
  - b. Include all of the following in the Summary Report:
    - i. Statement of all the allegations;
    - ii. Statement of the issues involved;
    - iii. Citations to relevant provisions of the Mental Health Code, Administrative Rules, guidelines, and Pathways policies and procedures;
    - iv. Summary of investigative findings;
    - v. Conclusions;
    - vi. Recommendations made by the Office;
    - vii. Action taken, or plan of action proposed, by the respondent;
    - viii. Statement describing the option of mediation and the complainant's right to appeal that includes the following:

- a) The Complainant may file a written appeal with the Pathways Appeals Committee not later than 45 days after receipt of the Summary Report;
  - b) The appeal shall be based on one of the following grounds:
    - 1) The investigative findings of the Office are not consistent with the facts or with law, rules, policies, or guidelines;
    - 2) The action taken or 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;
  - c. An offer from the Office of Recipient Rights to either refer the complainant to an advocacy organization for assistance in preparing the written appeal or assist the complainant in preparing the written appeal.
  - d. Provide information in the Summary Report within the constraints of confidentiality and privileged communications in Section 748 and 750 of the Mental Health Code;
  - e. Provide information in the Summary Report in a manner that does not violate the rights of any employee.
2. The Chief Executive Officer may designate the Office to prepare a draft of the Summary Report for review and approval by the CEO.

#### **H. Appeals**

See the Recipient Rights Complaint Appeals Procedure VI A.22.0.

#### **I. Mediation**

1. At any time after the Office 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 who is not involved in any manner with the dispute or with the provision of services to the recipient.
2. If the parties agree to mediation and reach agreement through the mediation process, the mediator shall prepare a report summarizing the agreement, which shall be signed by both parties. Notice that an agreement has been reached shall be sent to the Office.
3. 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 Office within 10 days after the end of the mediation process.
4. 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 the written documentation to the parties and the Office that mediation was not successful.