

**BAY-ARENAC BEHAVIORAL HEALTH AUTHORITY  
POLICIES AND PROCEDURES MANUAL**

<b>Chapter: 3</b>	<b>Member Rights and Responsibilities</b>		
<b>Section: 5</b>	<b>Complaint Investigation and Resolution</b>		
<b>Topic: 1</b>	<b>Investigation/Resolution</b>		
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**Policy**

It is the policy of Bay-Arenac Behavioral Health Authority (BABHA) that:

- A. A mechanism shall be provided for prompt reporting, review, investigation, and resolution of apparent or suspected rights violations, which includes an appeal process. Further, it is the policy of BABHA that an acknowledgement of the receipt of any submitted complaint be issued to the complainant within five (5) business days; and if the investigation is not completed and a report issued within thirty (30) calendar days of receipt of the complaint, a status report is issued to the complainant reporting on:
  - Statement of allegation
  - Statement of issues
  - Citations of relevant portions of the Michigan Mental Health Code (MMHC), rules, policies, and guidelines
  - Investigative process to date
  - Expected completion date
  
- B. An Investigative Report is to be completed by the Recipient Rights Officer within 90 calendar days of the initial complaint receipt following by a Summary Report completed by the Chief Executive Officer (CEO) within 10 business days of the Investigation Report.
  
- C. The complainants, staff or the Office of Recipient Rights, and any staff acting on behalf of a recipient shall be protected from harassment or retaliation resulting from recipient rights activities.
  
- D. Appropriate disciplinary action shall be taken in accordance with agency policy and procedure if there is evidence of harassment or retaliation.

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### Purpose

This policy and procedure is established to ensure that there is a mechanism in place for the prompt reporting, review, investigation and resolution of apparent or suspected rights violations which includes an appeals process.

### Education Applies to:

- All BABHA Staff
- Selected BABHA Staff, as follows:
- All Contracted Providers:     Policy Only     Policy and Procedure
- Selected Contracted Providers, as follows:
  - Policy Only     Policy and Procedure
- BABHA's (Affiliates):     Policy Only     Policy and Procedure
- Other:

### Definitions

Appellant: The recipient, complainant, parent of a minor or guardian who appeals a recipient rights finding or a respondent's action to an Appeals Committee.

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. The Recipient Rights Office shall determine whether a right was violated by using the preponderance of evidence standard as its standard of proof.

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 to

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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 MMHC 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.

Harassment: Words, gestures, or actions which threaten an individual, unreasonably interfere with an individual's work performance, or create an intimidating, hostile or offensive work environment.

Retaliation: Unjustified negative actions taken against an individual. Examples include but are not limited to: discharge, deterioration in performance evaluations, changes in job classification, job responsibilities, compensation, benefits, location, and number of hours assigned, or specific shift assigned.

**Procedure**

**I. Standards**

- A. BABHA and respondents shall ensure that:
  - Appropriate administrative action is taken for failure to report suspected rights violations;
  - Action is taken to protect the recipient during the investigation;
  - The Office of Recipient Rights has unimpeded access to all of the following:

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All programs and services  
All employees, volunteers, trainees, and recipients;  
All evidence that the Recipient Rights Office determines is necessary to conduct a thorough investigation or to fulfill its monitoring of remedial action.

Employees, volunteers, or agents of a provider who may have knowledge pertinent to the investigation, cooperate fully with the Office of Recipient Rights 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. Disciplinary action shall be taken for any failure to cooperate.

All employees, volunteers, agents of a provider, 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 BABHA policies/procedures, and appropriate disciplinary action is taken if this does occur.

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.

Copies of documentation requested by the Office of Recipient Rights 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.

C. Rights complaints filed by recipient or anyone on their behalf are sent or given to the designated rights officer/advisor in a timely manner.

## II. Procedure

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**A. Reporting of Rights Violations**

1. All employees, volunteers, and trainees who witness, discover, or have reasonable cause to suspect recipient rights violations shall report, verbally or in writing, to a designated supervisor AND the Office of Recipient Rights within 24 hours.

**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 Recipient Rights 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;
  - c. Advise the recipient or other individual that there are advocacy organizations such as Disability Rights Michigan 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 of Recipient Rights shall assist in preparing a written rights complaint;
  - d. Accept complaints that are filed anonymously and protect any information that may lead to identification of the anonymous complainant.
  - e. Route complaints involving alleged abuse, neglect, serious injury, or death to the CEO.
  
2. When the Recipient Rights Office determines that no investigation of the rights complaint is warranted, the office may complete an intervention within 30 days which shall include:
  - a. Recommendations for remedial action for obvious rights violations;
  
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 Recipient Rights Office.

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**C. Investigation**

1. All employees, volunteers, and trainees 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. Investigate activities for each rights complaint 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. Maintain accurate records of all complaints and corresponding documentation.
  - c. Conduct investigations in a manner that does not violate employee rights.
  - d. Complete the investigation no 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. 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 trainees who are alleged to have violated a right, preferably face-to-face;
    - v. Written statements from employees, volunteers, trainees, 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;

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- 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, 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 of Recipient Rights, separate from clinical or personnel records and within the constraints of confidentiality and privileged communications in Sections 748 and 750 of the MMHC.
  - g. Determine whether a right was violated by using a preponderance of evidence as the standard of proof.
  - h. Monitor progress toward remediation of all substantiated violations of rights.
3. The Office of Recipient Rights 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 CEO, the rights investigation shall be conducted by the office of another Community Mental Health Services Program (CMHSP) or by the State Office of Recipient Rights, as decided by BABHA.

**D. Status Report**

- 1. The Office of Recipient Rights shall:
  - a. Issue a written Status Report every 30 calendar days during the course of the investigation. The report shall be submitted to the complainant, the respondent, and the responsible mental health agency (RMHA).
  - b. Include all the following in the Status Report:
    - i. Statement of the allegations;
    - ii. Statement of the issues involved;

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- iii. Citations to relevant provisions of the MMHC, Administrative Rules, guidelines, and BABHA policies and procedures;
- iv. Investigative progress to date;
- v. 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 Agency Director 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 following in the Investigative Report:
    - i. Statement of the allegations;
    - ii. Statement of the issues involved;
    - iii. Citations to relevant provisions of the MMHC, Administrative Rules, guidelines, and BABHA policies and procedures;
    - iv. Investigative findings;
    - v. Conclusions;
    - vi. Recommendations, if any
2. The Office of Recipient Rights 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**

1. If it has been determined through investigation that a right has been violated, 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 of Recipient Rights with written documentation of the remedial action for its record.



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2. BABHA and each provider under contract with BABHA shall:
  - a. Ensure that appropriate disciplinary action is taken against those who have engaged in abuse or neglect;
  - b. Apply remedial action for a specific complaint to all recipients in similar situations, when applicable.
3. BABHA shall:
  - a. Ensure that remedial action taken on substantiated violations is documented and maintained by the Rights Office.

**G. Summary Report**

The CEO shall:

- a. Submit a written Summary Report to the complainant and recipient, if different from the complainant, guardian or parent of a minor recipient, and the Office of Recipient Rights within 10 business days after receiving a copy of the Office of Recipient Rights investigative report.
- b. Include all of the following in the Summary Report:
  - i. Statement of the allegations;
  - ii. Statement of the issues involved;
  - iii. Citations to relevant provisions of the MMHC, Administrative Rules, guidelines, and BABHA 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 complainant's, guardian or parent of a minor recipient's right to appeal and the grounds for an appeal.

Provide information in the Summary Report within the constraints of confidentiality and privileged communications in Sections 748 and 750 of the MMHC.

- c. Provide information in the Summary Report in a manner that does not violate the rights of any employee. (ex. Bullard-Plawecki Employee Right to Know Act, Act No. 397 of the Public Acts of 1978, MCL 423.501 est.seq)

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**H. Board Appeals Committee**

1. The Recipient Rights Advisory Committee is designated as the Appeals Committee.
2. The Appeals Committee shall:
  - a. Appoint one member to serve as chair;
  - b. Receive training about recipient rights;
  - c. Ensure that a member who has a personal or professional relationship with an individual involved in an appeal abstains from participating in that appeal as a member of the committee;
  - d. Conducts appeals proceedings within the constraints of confidentiality and privileged communications in Sections 748 and 750 of the MMHC. Such meetings are not subject to the Open Meetings Act.
  - e. Write reports within the constraints of confidentiality and privileged communications in Section 748 and 750 of the MMHC and in a manner that does not violate the rights of any employee.
3. The Appeals Committee may:
  - a. Schedule to meet within 30 days to review the appeal in a non-public session and review the facts as stated in all complaint investigation documents and;
  - b. Request consultation and technical assistance from the Michigan Department of Health and Human Services (MDHHS).

**I. Appeal of a Summary Report**

1. Not later than 45 days after receipt of the Summary Report, the complainant may file a written appeal with the Appeals Committee.
2. An appeal shall be based on one of the following grounds:
  - The decision of the Office of Recipient Rights is not consistent with the facts or with law, rules, policies, or guidelines;
  - The action taken or plan of action proposed by the respondent does not provide an adequate remedy.
  - An investigation was not initiated or completed on a timely basis.
3. The Office of Recipient Rights shall:

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- a. Inform the appellant of their right to appeal the decision made by the Rights Office;
- b. Advise the appellant that there are advocacy organizations such as Michigan Protection and Advocacy Services available to assist in preparing the written appeal and offer to refer the appellant to those organizations;
- c. In the absence of assistance from an advocacy organization, assist the appellant in meeting the procedural requirements of a written appeal;
4. The Appeals Committee shall:
  - a. Review the appeal within five (5) business days after receipt of the written appeal to determine whether it met criteria (above);
  - b. Notify the appellant, in writing, if the appeal was accepted or denied, within the five (5) business day period;
  - c. Provide written notice to the complainant and provide a copy of the appeal to the respondent and the Agency if the appeal is accepted within the five (5) business day period;
  - d. Provide a copy of the appeal, if it was accepted, to the respondent and the CMHSP within the five (5) business day period;
  - e. Meet to review the facts as stated in all complaint investigation documents within 30 days after receipt of a written appeal was received, and do one of the following:
    - i. Uphold the investigative findings of the Office of Recipient Rights and the action taken or plan of action posed by the respondent. If an investigation is returned to the CMH by an appeals committee for reinvestigation, upon receipt of the RIF, the director will take appropriate remedial action and will submit a written summary report to the complainant, recipient, if different than the complainant, parent or guardian, and the appeals committee within 10 business days.
    - ii. Return the investigation to the Office of Recipient Rights and request that it be reinvestigated and completed within 45 days;

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- iii. Uphold the investigative findings of the Office of Recipient Rights but recommend that the respondent take additional or different action to remedy the violation. If a request for additional or different action is sent to the Director, a response will be sent within 30 days as to the action taken or justification as to why it was not taken. The response will be sent to the complainant, recipient, if different than the complainant, parent or guardian, and the appeals committee.
- iv. Recommend that the Agency Board request an external investigation by the MDHHS Office of Recipient Rights. If the committee notifies the CMH Board chair of a recommendation to seek an external investigation from MDHHS-ORR, the board will send a letter of request to the director of MDHHS-ORR within 5-business days of receipt of the request from the appeals committee. The director of the CMH making the request will be responsible for the issuance of the summary report, which will identify the grounds and advocacy information as in A32-A34 of this document and MDHHS-ORR Appeal Committee as the committee for any Appeal.

Document its decision in writing, and

- i. Within 10 days after reaching its decision, the Appeals Committee provide copies of the decision, to the respondent, appellant, recipient if different than the appellant, the recipient's guardian if a guardian has been appointed, the Agency, and the Office of Recipient Rights. Copies shall include a statement of the appellant's right to appeal to MDHHS Appeals Committee (Level 2 appeal), the time frame for appeal (45 days from receipt of decision) and grounds for appeal (investigative findings or the rights office are

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<b>Topic: 1</b>	<b>Investigation/Resolution</b>		
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inconsistent with facts, rules, policies or guidelines).  
(MMHC 786)

**J. Appeal of an Agency Appeals Committee Decision**

1. Within 45 days after receiving written notice of the decision of the Agency Appeals Committee, the appellant may file a written appeal with the MDHHS. The appeal shall be based on the record established in the previous appeal, and on the allegation that the investigative findings of the Office of Recipient Rights are not consistent with the facts or with law, rules, policies, or guidelines.
2. MDHHS shall give written notice of receipt of the appeal to the appellant, respondent, local Office of Recipient Rights, and the Agency. The respondent, local Office of Recipient Rights and the Agency shall ensure that the MDHHS has access to all necessary documentation and other evidence cited in the complaint.
3. MDHHS shall review the record based on the evidence or information that was not available during the local appeal process, although the MDHHS may return the matter to the Agency requesting an additional investigation.
4. Within 30 days after receiving the appeal, the MDHHS shall review the appeal and do one of the following:
  - a. Affirm the decision of the local appeals committee;
  - b. Return the matter to the Agency with instructions for additional investigation and consideration.
5. The MDHHS shall provide copies of its action to the respondent, appellant, recipient if different than the appellant, the recipient's guardian, the Agency and the local Office of Recipient Rights.

**K. Appeal to Circuit Court**

A person aggrieved by a decision of the Director of the MDHHS may appeal to the Circuit Court, requesting an order reversing the decision. The appeal shall be based upon the whole record, and the Circuit Court considers whether the decision is authorized by law and supported by competent evidence.

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**L. Harassment/Retaliation**

An individual who believes he or she is the subject of retaliation resulting from recipient rights activities should use the Agency’s grievance procedure as a means for resolving the matter.

In any instance where the immediate supervisor is involved, the employee should process his or her complaint with the CEO.

**Attachments**

N/A

**Related Forms**

DCH 0030 Complaint Form (Intranet-Forms for Employees)

**Related Materials - Exhibits:**

N/A

**References/Legal Authority**

- A. Act 258 of the Public Acts of 1974, as amended (Mental Health Code), Sections 330.1722, 752, 755, 776-782, 788.
- B. Act 469 of the Public Arts of 1980 (Whistleblowers Protection Act)
- C. Department of Health and Human Services Administrative Rule 7035.
- D. The Agency Board minutes, June 1996.

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<b>SUBMISSION FORM</b>				
<b>AUTHOR/ REVIEWER</b>	<b>APPROVING BODY/COMMITTEE/ SUPERVISOR</b>	<b>APPROVAL /REVIEW DATE</b>	<b>ACTION (Deletion, New, No Changes, Replacement or Revision)</b>	<b>REASON FOR ACTION - If replacement list policy to be replaced</b>
Sara Heydens	Linda Maze	6/15/09	Revision	Grammatical/Combined Policy
Sara Heydens	Linda Maze	3/30/11	Revision	Language added to update to current practices
		12/31/12	Revision	Triennial Review-Minor grammatical changes
Melissa Prusi	Christopher	6/27/16	Revisions	Triennial Review-Minor changes to reflect current state agency names
Melissa Prusi	Christopher Pinter	06/22/2019	Review	Triennial and annual review. No changes.
Melissa Prusi	Christopher Pinter	09/10/2020	Revision	Annual review and removal of mediation option from policy.
Melissa Prusi	Christopher Pinter	07/29/2021	Revision	Changed Michigan Protection and Advocacy Services to Disability Rights Michigan.
Melissa Prusi	Christopher Pinter	03/14/2023	Revised	To reflect 2023 MDHHS ORR standards