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## PURPOSE

This policy establishes a process for the Michigan Department of Health and Human Services (MDHHS) when handling and reviewing appeals regarding the findings, remedial action, or timeliness of the complaint investigation at state operated facilities, or licensed private hospitals (LPH) which have requested, under MHC 330.1774(b)(4), to use the MDHHS appeals committee.

## DEFINITIONS

### Appeals committee

Committee appointed by the MDHHS director to hear appeals brought by or on behalf of recipients in MDHHS hospitals/centers or, by agreement with the department, appeals brought by or on behalf of recipients in licensed hospitals.

### Appellant

Complainant or, if different than the complainant, the recipient or his/her legal guardian, if any, who seeks review by the appeals committee or the MDHHS pursuant to sections 784 and 786 of the Mental Health Code.

### Code

Mental Health Code.

### Complainant

The individual who files a recipient rights complaint.

### Grounds for appeal:

- The investigative findings of the office are 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.

### Level Two Appeal

The second level of appeal conducted by a member of the appeals section of the MDHHS operation and assistance legal division.

**Facility**

A department operated psychiatric hospital or center and the Center for Forensic Psychiatry, or a licensed private hospital (LPH) as defined in 330.1700 (b) (1).

**Office**

Any of the following:

- With respect to a rights complaint involving services provided directly by the MDHHS, the MDHHS Office of Recipient Rights created under section 330.1754 of the code.
- With respect to a rights complaint involving services provided directly or under contract to a licensed private psychiatric hospital, the Office of Recipient Rights created by the licensed hospital under section 330.1755 of the Code.

**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.

**Responsible Mental Health Agency (RMHA)**

The hospital, center, or licensed private hospital that has primary responsibility for the recipient's care or for the delivery of services or supports to that recipient.

**POLICY**

MDHHS assures all recipients, and those acting on their behalf, due process including its essential elements of notice and an opportunity to be heard by a fair and impartial decision-making entity, through the establishment of the recipient rights appeals committee and implementation of an appeals process in compliance with Chapter 7A of the Michigan Mental Health Code.

**STANDARDS**

1. The director of the department shall appoint an appeals committee to hear appeals. The committee shall consist of seven individuals, none of whom shall be employed by the department or a community mental health service program. The committee shall include at least three members of the

state recipient rights advisory committee and two primary consumers.

2. In accordance with 330.1774 (3), licensed private hospitals may request that the MDHHS appeals committee hear appeals from recipients not covered by a community mental health authority by completing the document, Designation of the State Appeals Committee to Act in Lieu of the Hospital Appeals Committee; see Exhibit A.
3. The MDHHS Office of Recipient Rights shall assure that training is provided to the MDHHS-ORR appeals committee. Topics shall include the following:
  - Categories of rights violations.
  - The complaint investigation process.
  - Types and weighing of evidence.
  - Explanation of the preponderance of the evidence standard used by the rights office in determining whether a rights violation has occurred.
  - Statutory definition of appropriate remedial action.
  - MDHHS disciplinary guidelines.
  - MDHHS policy/procedures on the appeal process and functions of the appeals committee.
4. Every complainant, recipient if different than the complainant, and the recipient's legal guardian, if any, shall be informed in the summary report issued by the facility director or by the LPH director of a facility that has agreed to use the committee, of the right to appeal. Notice shall include the address for filing the appeal, the grounds for appeal as stated in section 330.1784(2) of the code, the time-frame for submission of the appeal, information on advocacy organizations that may assist with filing the appeal, or in the absence of an advocacy organization an offer of assistance by the office of recipient rights in filing an appeal. Send all appeals to the following address:

Appeals Coordinator  
MDHHS-ORR  
Garden Level

Lewis Cass Building  
Lansing, Michigan 48913

5. A summary report which contains a plan of action shall indicate a date the action is to be completed. The MDHHS facility director, or director of the LPH shall assure that the complainant, recipient (if different than the complainant), the recipient's legal guardian, (if any), and the office are provided written notice that the action described in the plan has been completed. If the action taken differs from the original plan, a description of that action shall be provided.
6. Not later than 45 calendar days after the mailing of the notice regarding the action taken when the summary report provided only a plan of action, the appellant may file a written appeal with the appeals committee having jurisdiction to act upon it. The only ground for appeal of a notice of action taken is that the action failed to provide adequate remedy.
7. Any member of an appeals committee who has a personal or professional relationship with an individual involved in the appeal shall abstain from participating in that appeal.

## PROCEDURES

### Local Appeals Committee

#### 1. Preliminary Review

Within 5 business days of receipt of the request to appeal, members of the appeals committee shall review the request to appeal to determine if the appellant has standing to appeal and if the appeal meets the timeframe and grounds found in the definition. This review may be conducted by the full committee, or by a subcommittee consisting of at least two committee members designated by the full committee to fulfill this responsibility. The committee shall maintain a log of all appeals received and the disposition of each.

#### 2. Notice of Preliminary Review Decision

Within 7 business days of receipt of the appeal, written notice that the request for appeal has been accepted, or rejected, shall be provided to the appellant and a copy of the appeal request shall be provided to the respondent, the RMHA, and the rights office. A

notice of rejection shall describe the reason for not accepting the request for appeal.

### 3. Committee Appeal Review

No later than 30 calendar days after receipt of a written appeal the appeals committee shall meet in closed session to review the facts as stated in all complaint investigation documents considering the reason for appeal. The committee shall not consider allegations that were not part of the original complaint but shall inform appellant of his/her right to file a complaint with the office. Upon completion of their review, the appeals committee shall do one of the following:

1. Uphold the investigative findings of the office and the action taken or plan of action proposed by the respondent.
2. Return the investigation to the office and direct that it be reopened or reinvestigated.
3. Recommend that the or governing body (LPH) request an external investigation by the state Office of Recipient Rights.
4. If the appeal concerns the action taken, in addition to the above, the committee may direct that the respondent take additional, or different, action to remedy the violation. The appeals committee shall base its determination upon any or all of the following as required by Sec 1780 of the MHC:
  - Action taken or proposed did not correct or remedy the rights violation.
  - Action taken or proposed was/will not be taken in a timely manner.
  - Action taken or proposed did not/will not prevent a future recurrence of the violation.

Written notice of this direction for additional or different action to be taken by the respondent shall also be provided to the RMHA, if different than the respondent and the office.

If the appeal concerns the timeliness of the investigation and the committee confirms that the investigation was not initiated or completed in a timely manner, recommend that the MDHHS-ORR director, or director of the LPH address the root cause of the lack of timeliness with their rights advisor.

#### 4. Decision

The appeals committee shall document its decision in writing within 10 working days following the decision and shall provide copies of such to the respondent, appellant, recipient (if different than appellant), the recipient's legal guardian (if any), the RMHA and the office. Documentation shall include justification for the decision made by the committee.

#### 5. Subsequent Action

If the appeals committee directs that the office reopens or reinvestigate the complaint, the office shall submit another investigative report in compliance with section 330.1778(5) within 45-calendar days of receipt of the written decision of the committee to the MDHHS facility directors or the director of the LPH. Extend the 45-calendar day time-frame at the discretion of the appeals committee upon a showing of good cause by the office. At no time shall the time-frame exceed 90 days.

Within 10-business days of receipt of the reinvestigate report, the MDHHS facility director or the director of the LPH shall issue new summary report in compliance with 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 office and the appeals committee. If the summary report indicates that the decision in the case remains unsubstantiated, the summary report shall contain information regarding the appellant's right to further appeal, the time-frame for the appeal and the ground for appeal. The report shall also inform the appellant of advocacy organizations that may assist in filing the written appeal or offer the assistance of the office in filing the appeal in the absence of an advocacy organization.

If, upon review, the Committee feels that the reinvestigated results in the Report of Investigative Findings is still inadequate, the Committee shall inform the appellant of the ability to further appeal to Level 2.

If the reinvestigation results in the substantiation of a previously unsubstantiated rights violation but the appellant disagrees with the adequacy of the action or plan of action proposed by the respondent, the appellant may file an appeal on such grounds with the local appeals committee. The summary report shall inform the appellant of this right as well as provide further information found in this item.

If the appeals committee directs that the respondent takes additional or different action, that direction shall be based on the fact that the action taken was not in compliance with section 330.1780 of the code.

Within 30-calendar days of receipt of the determination from the appeals committee, respondent shall provide written notice to the appeals committee that the action has been taken or justification as to why it was not taken. Send the written notice to the appellant, recipient if different than appellant, the recipient's legal guardian, if any, the RMHA if different than the respondent, and the office.

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 shall be informed by the appeals committee of his/her right to file a recipient rights complaint against the RMHA, for example, MDHHS facility director, or the director of an LPH for violation of section 330.1754(3)(c) or 330.1755(3)(b) of the Code.

If the appeals committee recommends that the board or governing body of the LPH request an external investigation by MDHHS-Office of Recipient Rights, the board of directors may make the request to MDHHS-ORR, in writing, within 5-business days of receipt of the request from the appeals committee:

1. Within 10 business days of receipt of the investigative report from MDHHS-ORR the director of the LPH, shall issue a summary report in compliance with section 330.1782. Submit the summary report to the appellant, recipient if different than the appellant, the recipient's legal guardian, if any, the office and the appeals committee.
2. Inform the complainant, recipient if different than the complainant, and the recipient's legal guardian, (if any) in the summary report issued by or the director of an LPH of the right to appeal to the MDHHS appeals committee. Notice shall include information on the grounds for appeal as stated in section 330.1784(2), the time-frame for submission of the appeal, advocacy organizations that may assist with filing the written appeal, and an offer of assistance by the Office of Recipient Rights in the absence of assistance from an advocacy organization.
3. Not later than 45-calendar days after receipt of the summary report, the appellant may file a written appeal with the MDHHS appeals committee.

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**LEVEL 2 APPEALS****A. Grounds and Timeframe**

An appeal to level 2 appeals may be made only if the original appeal was based on the question of whether the investigative findings of the office were inconsistent with the facts or with law, rules, policies or guidelines when either:

4. A decision to uphold the findings has been made on the original appeal by the local appeals committee.
5. When upon reinvestigation by ORR at the request of the local appeals committee, the findings of the office remain unsubstantiated. Within 45-calendar days after receiving written notice of the decision of the appeals committee or the summary report from MDHHS-ORR the appellant may file a written appeal with level 2 appeals.

Mail the appeal to:

Level 2 Appeal  
Michigan Department of Health and Human Services  
PO Box 30807  
Lansing, MI 48909  
FAX: 517-241-7973

**B. Written Notice**

Upon receipt of the appeal, level 2 appeals shall give written notice of the receipt to the respondent, local office of recipient rights holding the record of the complaint and the RMHA. If the appeal involves the findings of a rights advisor with the MDHHS Office of Recipient Rights, the MDHHS-ORR director shall also receive written notice of receipt of the appeal.

**C. Review**

Level 2 appeals shall review the record generated by the local appeal. The respondent, local office holding the record of the complaint, MDHHS-ORR director, and the RMHA shall ensure that level 2 appeals has access to all necessary documentation and other evidence cited in the complaint and local appeal. It shall not consider additional evidence or information that was not available during the local appeal.



**D. Action**

1. Within 30 calendar days after receiving the appeal, level 2 appeals shall review the appeal and do one of the following:
  - Uphold the findings of the office.
  - Affirm the decision of the appeals committee.
  - Return the matter to the director of the department's Office of Recipient Rights, or the director of the LPH with instruction for additional investigation or consideration.
2. Level 2 appeals shall provide copies of its action to the respondent, the appellant, recipient if different than appellant, the recipient's legal guardian, if any, the governing body of the LPH and the local Office of Recipient Rights holding the record. If the appeal involves the findings of a MDHHS-ORR rights advisor, provide the MDHHS-ORR director with copies of the action.
3. If level 2 appeals uphold the findings of the office, provide notice to the appellant of his/her legal right to seek redress through the circuit court.
4. If level 2 appeals instruct that additional investigation be conducted, the director of MDHHS-ORR or the director of the LPH shall assure that such investigation is completed in a fair and impartial manner within 45 calendar days of his/her receipt of the written notice from MDHHS-APPEALS. Extend the 45-calendar day time-frame at the department's discretion upon a showing of good cause by the MDHHS-ORR director or LPH director. At no time shall the time-frame exceed 90 calendar days. In cases of re-investigation by MDHHS-ORR, the director of that office shall be responsible for the submission of the investigative report to the appropriate MDHHS facility director.

**E. Subsequent Action**

1. Within 10 business days of the receipt of the investigative report, the facility director, or the director of the LPH shall issue a summary report in compliance with section 330.1782 of the code to the department, appellant, recipient if different than appellant and the recipient's legal representative, if any.
2. If the findings of the additional investigation remain the same as those appealed, the department shall inform appellant, recipient (if different than appellant) and the recipient's legal

guardian, if any, in writing of the right to seek redress through the circuit court. Provide copies of this notice to the:

- MDHHS Bureau of State Hospital and Behavioral Administrative Services (if the investigation was conducted by staff of the MDHHS-ORR).
- Michigan Department of Licensing & Regulatory Affairs, Bureau of Community and Health Systems (if the investigation was conducted by an LPH).

If the additional investigation results in the substantiation of previously unsubstantiated violation, but the appellant disagrees with the adequacy of the action taken, or plan of action proposed to remedy the violation, the department shall inform the individual(s) of the right to appeal this to the local appeals committee.

## REFERENCES

- Michigan Mental Health Code, MCL 330.1752.
- Michigan Mental Health Code, MCL 330.1772 – MCL 330.1788.

## CONTACT

For additional information concerning this policy, contact the director of the Office of Recipient Rights at 517-241-2319.

## EXHIBIT A

## DESIGNATION OF STATE APPEALS COMMITTEE TO ACT IN LIEU OF HOSPITAL APPEALS COMMITTEE

APF 133 ATTACHMENT A



STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

### DESIGNATION OF STATE APPEALS COMMITTEE TO ACT IN LIEU OF HOSPITAL APPEALS COMMITTEE

I, {Hospital Director's name}, request that the Michigan Department of Health and Human Services Appeals Committee act as the Appeals Committee for {agency name}, as stated in §330.1774(4) (b) of the Michigan Mental Health Code.

{agency name} agrees to accept the complete jurisdiction of the Department of Health and Human Services Appeals Committee, to abide by its decisions and directives, and to follow the procedural guidelines set forth in MDHHS Policy APF 133 (Recipient Rights Appeal Process).

The term of this agreement is 5 years from the date of signing. {agency name} reserves the right to withdraw this designation at any time, by providing written or electronic notice to the Department of Health and Human Services, Office of Recipient Rights. Any appeals submitted prior to a notice of termination of this agreement will continue to be reviewed by the MDHHS Appeals Committee.

\_\_\_\_\_  
Hospital Director

\_\_\_\_\_  
Date

Please send this document

to: Appeals Coordinator  
Office of Recipient Rights  
Lewis Cass Building, Garden  
Level Lansing, MI 48933

FAX 517-335-0135  
E-Mail [saterleek@michigan.gov](mailto:saterleek@michigan.gov)