

CMHSP LOCAL DISPUTE RESOLUTION PROCESS

I. SUMMARY BACKGROUND

All consumers have the right to a fair and efficient process for resolving complaints regarding their services and supports managed and/or delivered by Community Mental Health Services Programs (CMHSPs) and their provider networks. A recipient of or applicant for public mental health services may access several options to pursue the resolution of complaints. These options are defined through the Recipient Rights requirements referenced in the Michigan Mental Health Code (hereafter referred to as the Code) for all recipients of public mental health services, and the MDCH/CMHSP contract. Additional options for Medicaid beneficiaries are explained in the Appeal and Grievance Technical Requirement located in Attachment P.6.3.2.1 of the MDCH contracts with the Pre-paid Inpatient Health Plans (PIHPs). It is important to note that an individual receiving mental health services and supports may pursue their complaint within multiple options simultaneously.

Chapters 7, 7a, 4 and 4a of the Code describe the broad set of rights and protections for recipients of public mental health services as well as the procedures for the investigation and resolution of recipient rights complaints. For the purposes of this requirement, the focus will be on those complaints related to the denial, reduction, suspension or termination of services and supports. Specifically, the purpose of this document is to provide operational guidance to CMHSPs to meet the requirements of the MDCH/CMHSP contract regarding grievance and appeal systems for recipients who are not Medicaid eligible, contained in Section 6.3.2 - Recipient Rights and Grievance/Appeals.

This requirement is based upon the premise that all recipients of, or applicants for, public mental health services will receive notice of their rights and an explanation of the grievance and appeal processes. This requirement in no way requires the exhaustion of grievance or alternative dispute resolution processes prior to the filing of a recipient rights complaint pursuant to Chapter 7 and 7a of the Code.

II. UNDERLYING VALUES AND PRINCIPLES

Properly structured grievance and appeal processes for consumers should promote the resolution of consumer concerns, as well as support and enhance the overall goal of improving the quality of care. The internal and external grievance and appeal processes should be:

- * Timely
- * Fair to all parties
- * Administratively simple
- * Objective and credible
- * Accessible and understandable to consumers
- * Cost and resource efficient
- * Subject to quality review

In addition, the process should:

- * Not interfere with communication between consumers and their CMHSP service providers.
- * Assure that service providers who participate in a grievance and appeal process on behalf of enrollees should be free from discrimination or retaliation.
- * Assure that consumers who file a grievance should be free from discrimination or retaliation.

(Adapted from the Consumer Bill of Rights and Responsibilities, A report to the President of the United States, prepared by the Advisory Commission on Consumer Protection and Quality in the Health Care Industry, November 1997.)

III. RECIPIENT RIGHTS REQUIREMENTS REGARDING THE DENIAL OF SERVICES

A. Denial of Hospitalization

1. If a pre-admission screening unit or children's diagnostic and treatment service of the CMHSP denies hospitalization, the individual, his/her guardian or his/her parent in the case of a minor child, may request a second opinion from the executive director of the CMHSP.

The request for the second opinion shall be processed in compliance with Sections 409(4), 498e(4) and 498h(5) of the Code. If the conclusion of the second opinion is different from the conclusion of the children's diagnostic and treatment service or the pre-admission screening unit, the executive director, in conjunction with the medical director, shall make a decision based upon all clinical information available within one business day.

2. If the request for a second opinion is denied, the individual or someone on his/her behalf may file a recipient rights complaint with the CMHSP Office of Recipient Rights.
3. If the initial request for inpatient admission is denied, **and** the individual is a current recipient of other CMHSP services, the individual or someone on his/her behalf may file a Chapter 7 complaint alleging a violation of his/her right to treatment suited to condition.
4. If the second opinion determines the individual is not clinically suitable for hospitalization **and** the individual is a current recipient of other CMHSP services, **and** a recipient rights complaint has not been filed previously on behalf of the individual, the individual or someone on his/her behalf may file a complaint with the CMHSP Rights Office for processing under Chapter 7A.

B. Denial of Access to Community Mental Health Service Program Services

1. If an initial applicant for CMHSP services is denied such services, the applicant or his/her guardian, or the applicant's parent in the case of a minor must be informed

of their right to request a second opinion of the executive director. The request shall be processed in compliance with Section 705 of the Code and must be resolved within five business days.

2. The applicant may not file a recipient rights complaint for denial of services suited to condition as he/she does not have standing as a recipient of mental health services. He or she may, however, file a rights complaint if the request for a second opinion is denied.

C. Denial of Family Support Subsidy

1. Pursuant to Section 159(3) of the Code, "if an application for a family support subsidy is denied or a family support subsidy is terminated by a community mental health services program, the parent or legal guardian of the affected eligible minor may demand, in writing, a hearing by the community mental health services program. The hearing shall be conducted in the same manner as provided for contested case hearings under Chapter 4 of the Administrative Procedures Act of 1969, Act No. 306 of the Public Acts of 1969, being Sections 24.271 to 24.287 of the Michigan Compiled Laws."

1. Pursuant to the Administrative Rules: Copies of blank application forms, parent report forms, the forms for changed family circumstances, and appeal forms shall be available from the community mental health services program. (R330.1616 Availability of forms) (Note: It is acceptable to ask families to write a letter to the CMHSP requesting an appeals hearing, in lieu of a standardized form.)

A community mental health services program shall review an application and promptly approve or deny the application and shall provide written notice to the applicant of its action and of the opportunity to administratively appeal the decision if the decision is to deny the application. If the denial is due to the insufficiency of the information on the application form or the required attachments, the CMHSP shall identify the insufficiency. (Rule R330.1641 Application review)

If an application is denied or the subsidy terminated, a parent or legal guardian may file an appeal. The appeal shall be in writing and be presented to the community mental health service program within two months of the notice of denial or termination. (R330.1643 Appeal)

IV. REQUIRED LOCAL DISPUTE RESOLUTION PROCESS

- A. The CMHSP must have a local dispute resolution process, to address decisions by the CMHSP and/or their provider networks that impact the consumer's access to, or satisfaction with, services and supports.

Each CMHSP must have a written description of its local dispute resolution process available for review by MDCH. The description must reflect all of the requirements below and indicate if the CMHSP ORR system is to be used, and if so, any modifications or additions to the CMHSP ORR system to be implemented. CMHSPs are encouraged to utilize their local ORR system for this purpose rather than establishing another process that would be duplicative.

B. The local dispute resolution process at a minimum must possess the following characteristics:

1. It provides for prompt resolution.

The Code provides for up to 90 days for a recipient rights complaint to be resolved (Section 778).

2. It assures the participation of individuals with the authority to require corrective action.

Someone with the authority to act upon the recommendations of the dispute resolution process must be involved. This would include the executive director or designee.

3. It assures that the person reviewing the grievance, complaint or dispute will not be the same person(s) who made the initial decision that is subject to the dispute, complaint or grievance.

4. It has a mechanism for expedited review of a grievance, complaint or dispute involving emergency situations as defined by the Code and further operationalized below.

Sections 409(4), 498e(4) and 498h(5) of the Code provide an opportunity for an individual denied hospitalization to request a second opinion from the CMHSP executive director. The executive director shall arrange for an additional evaluation to be performed within three days, excluding Sundays and legal holidays, after he/she receives the request. If the conclusion of the second opinion is different from the conclusion of the children's diagnostic and treatment service or the pre-admission screening unit, the executive director, in conjunction with the medical director, shall make a decision within one business day based upon all clinical information available.

5. It provides the individual with written notification of the local dispute resolution process decision and subsequent avenues available to the individual if he or she is not satisfied with the result, including the right of individuals without Medicaid coverage to access the MDCH Alternative Dispute Resolution process after exhausting local procedures.

6. It provides reports of disputes, complaints and grievances periodically to the CMHSP governing body.
7. Reports of disputes, complaints and grievances will be reviewed by the CMHSP Quality Improvement Program to identify opportunities for improvement.
8. Records of disputes, grievances, and complaints must be made available to the MDCH for review upon request.

V. DISPUTES, GRIEVANCES AND COMPLAINTS PROCESS—FOR NON-MEDICAID RECIPIENTS

A. Background

A principle reflected throughout the MDCH/CMHSP contract is that all recipients of mental health services and supports shall be treated in the same manner, wherever possible. With respect to appeals and grievances, there is a fundamental difference between Medicaid-funded services and those funded through state funds.

Public formula funded mental health services are not an entitlement programs. The Code describes broad groups of individuals with certain qualifying conditions to whom public mental health services shall or may be directed, with priority always given to individuals with severe conditions and impairments. The Code does not establish an individual entitlement to mental health services in the way that the Federal Medicaid program does for health insurance, but rather it indicates that persons with certain qualifying conditions and impairments must have the first priority for available resources and services within the public mental health system.

The Code provides protections, second opinions and dispute resolution mechanisms for all individuals receiving public mental health services, with the expectation that all disputes will be resolved locally, with the ability to appeal to the MDCH in only those instances where it is alleged that the investigative findings of the local office of recipient rights are not consistent with the facts or with law, rules, policies or guidelines (Section 786). To implement the principle that all consumers are to be treated in the same manner whenever possible, this requirement expands the non-Medicaid individual's ability to appeal to the MDCH.

B. Expedited Processes for Service Denials:

1. Whenever initial access to CMHSP services or supports are denied, the CMHSP must inform the individual, his or her guardian, or in the case of a minor, his/her parent, of their right to a second opinion consistent with Section 705 of the Code. The second opinion must be performed within five business days.
2. If access to psychiatric inpatient service is denied, the individual or, if a minor, his/ her parent or guardian, must be informed of his/her right to a

second opinion consistent with Sections 409(4), 498e(4) and 498h(5) of the Code and the CMHSP Local Dispute Resolution Process as described in Section III.A above.

2. In the event that a physician or licensed psychologist external to the CMHSP attests in writing that the individual (applicant or current recipient) meets the definition of an emergency situation as defined in Section 100a (23)(a) or (c) of the Code, the CMHSP must assess the individual to determine if the individual meets the inpatient admission certification criteria, as defined in the MDCH Service Selection Guidelines. If psychiatric inpatient services are denied, the individual, his/her guardian, or his/her parent in the case of a minor child, must be informed of their right to a second opinion consistent with Section III.A above and their right to further contest an unfavorable second opinion through the Local Dispute Resolution Process, with the decision from that process to be reached within three business days.

If the CMHSP does not recommend hospitalization and an alternative service requested by the individual, his/her guardian, or his/her parent is denied, the CMHSP must inform the individual, his/her guardian, or in the case of a minor, his/her parent, of his/her ability to access the Local Dispute Resolution Process. The decision from that process for these persons must be reached within three business days.

The CMHSP must communicate the decision of the Local Dispute Resolution Process and inform the individual, his/her guardian, or his/her parent of a minor child of their right to access the MDCH Alternative Dispute Resolution Process.

C. Processes for Suspension, Reduction or Termination of Existing Services:

4. Whenever an existing service or support or existing services are to be suspended, terminated, or reduced by an agency or unit performing a utilization review (UR) function, or when the action is taken outside of the person-centered planning process when the CMHSP does not have an identifiable UR unit, the CMHSP must inform the individual in writing of the change at least 10 business days prior to the effective date of the action. The notice shall include:
 - a. A statement of what action the CMHSP intends to take;
 - b. The reasons for the intended action;
 - c. The specific justification for the intended action;
 - d. An explanation of the Local Dispute Resolution Process

Actions taken as a result of the person-centered planning process or those ordered by a physician are not considered an adverse action.

5. In the event that the individual utilizes the Local Dispute Resolution Process or the second opinion processes as described above, the CMHSP must communicate in writing the outcome of that process to the individual. That communication must include notification to the individual of their ability to request access to the MDCH Alternative Dispute Resolution Process by sending such request to:

Department of Community Health
Division of Program Development, Consultation and Contracts
Bureau of Community Mental Health Services
ATTN: Request for DCH Level Dispute Resolution
Lewis Cass Building - 6th Floor
Lansing, MI 48913

Access to the MDCH process does not require agreement by both parties, but may be initiated solely by the consumer.

The individual has 10 days from the written notice of the Local Dispute Resolution Process outcome to request access to the MDCH Alternative Dispute Resolution Process.

6. A Model Local Dispute Resolution Process for Persons without Medicaid is presented in Exhibit 1.
- D. MDCH responsibilities regarding the Alternative Dispute Resolution Process for persons not receiving Medicaid.
1. MDCH shall review all requests within two business days of receipt.
 2. If the MDCH representative, using a “reasonable person” standard believes that the denial, suspension, termination or reduction of services and/or supports will pose an immediate and adverse impact upon the individual’s health and safety, the issue is referred within one business day to the Community Services Division within Mental Health and Substance Abuse Services for contractual action consistent with Section 8.0 of the MDCH/CMHSP contract.
 3. In all other cases, the MDCH representative shall attempt to resolve the issue with the individual and the CMHSP within 15 business days. The recommendations of the MDCH representative are non-binding in those cases where the decision poses no immediate impact to the health and safety of the individual.

VI. DEFINITIONS

Resolution notice - notice to the consumer that is required within established time frames relative to the disposition of disputes, complaints and grievances, and resolution of the disputes, complaints and grievances.

Rights complaint - a written or verbal statement by a recipient or anyone acting on behalf of a recipient alleging a violation of a Mental Health Code protected right cited in Chapter 7, which is resolved through the processes established in Chapter 7A.

Utilization Review - A process in which established criteria are used to recommend or evaluate services provided in terms of cost-effectiveness, necessity, and effective use of resources.

VIII. REFERENCES

PA 516 of 1996
PA 258 of 1974, as amended
S.353-Health Insurance Bill of Rights of 1997
42 CFR Chapter IV, Subpart E, Sections 431.200 et seq

Exhibit 1

Model CMHSP Local Dispute Resolution Process

1. The individual, guardian, or parent of a minor child or his/her legal representative may dispute the determination to suspend, terminate or reduce services by filing a written dispute with the CMHSP Recipient Rights Office within five business days of receipt of the advance notice.

2. The Recipient Rights Office shall then:
 - a. Log receipt of the written dispute for reporting to the CMHSP Quality Improvement Program.
 - b. Submit the written dispute to appropriate staff including a CMHSP administrator with the authority to require corrective action, none of whom shall have been involved in the initial determination.
 - c. Facilitate resolution of the dispute within 15 business days of receipt.
 - d. Assure an expedited review of the dispute involving an emergent situation where the standard 15-day time frame would seriously jeopardize the individual's health or safety. Such a review shall be completed within 24 hours of receipt of all necessary information by relevant CMHSP staff involved in the dispute resolution process.
 - e. Upon a decision by CMHSP staff involved in the local dispute resolution process and within the 24-hour or 15-day time frame, provide written notification of the outcome of the process to the individual, guardian, or parent of a minor child. The written notification shall include:
 - (1) Information regarding the individual, guardian, or parent of a minor child's ability to access the MDCH Alternative Dispute Resolution Process and an offer of assistance in doing this;
 - (2) Information on the individual, guardian, or parent of a minor child or his/her legal representative's right to file a recipient rights complaint with the Recipient Rights Office alleging a violation of the consumer's right to treatment suited to his/her condition.