The Right Door

for Hope, Recovery, and Wellness

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Recipient Rights Officer

RECIPIENT RIGHTS REFRESHER TRAINING

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
- There are many types of rights
  - **Natural Rights**
  - **Legal Rights**
  - **Liberty Rights**

- Some things we think are rights aren't actually rights
- Rights are guaranteed, but can be limited under certain circumstances

WHERE DO RIGHTS COME FROM?

- Michigan Mental Health Code a.k.a. Public Act 258 of 1974.
  - Mandates that each CMH and Inpatient Unit have at least one RRO.
- United States Constitution
- State of Michigan Constitution of 1963.
- American's with Disabilities Act
- The Michigan Administrative Code
- The Healthcare Insurance Portability and Accountability Act (HIPAA)

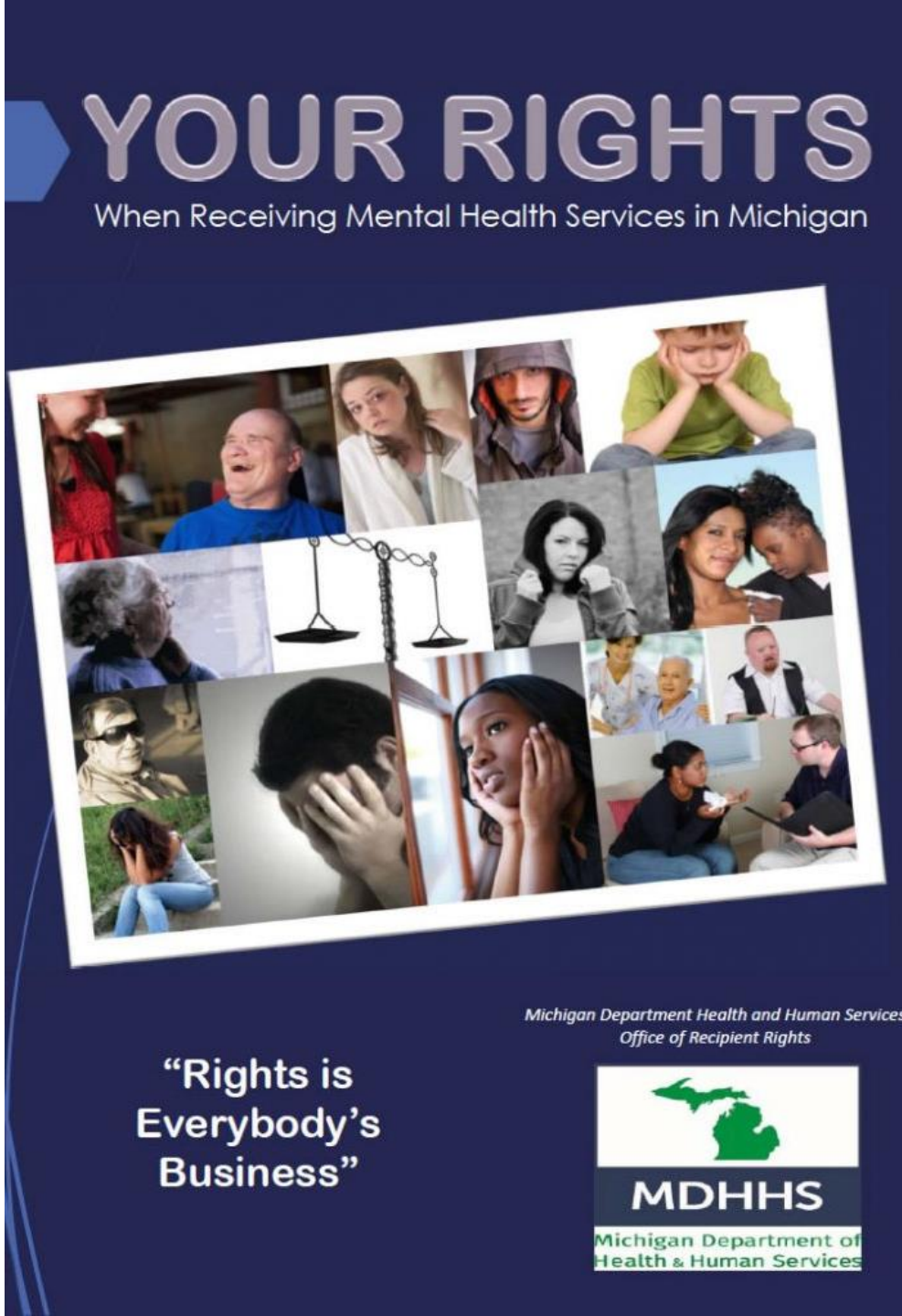


ADA
Americans with Disabilities Act



RECIPIENTS RECEIVING SERVICES

- Must be made aware of their rights.
  - This is typically done upon entrance into services and annually but they can request documentation at any time.
  - Recipients get a Rights booklet and a summary of Chapter 7 and 7a of the Mental Health Code
- Complaint forms must be easily available (aka, they should not have to ask for a complaint form)
  - Should be visible in the homes to residents, guardians & visitors



RIGHTS VS. PRIVILEGE

- Rights

- Guaranteed by law
- Cannot be taken away
- Example:
  - Freedom of speech
  - Right to vote

- Privilege

- Must be earned
- Can be taken away/limited
- Example:
- Driver's license
- Diploma

RIGHTS VS. PRIVILEGE

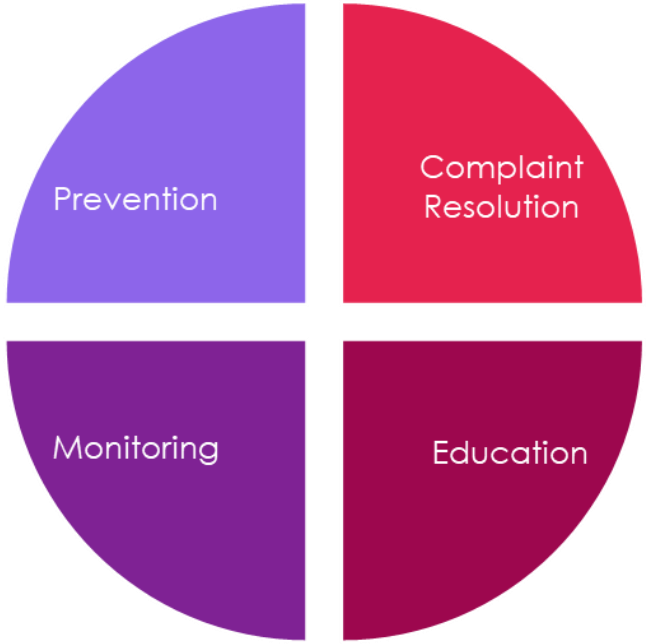


- Is smoking a right or a privilege?
- Safe from harm a right or privilege?
- Is driving a car a right or a privilege?



THE OFFICE OF RECIPIENT RIGHTS

- Reports directly to the Chief Executive Officer.
- Exists to protect the rights of individuals receiving public mental health services.
- Reviews all incident reports.
- Has four main duties:
  - **Prevention**
  - **Monitoring**
  - **Education**
  - **Complaint Resolution**



COMPLAINT PROCESS



- REMEMBER, <u>ANYONE</u> CAN FILE A RIGHTS COMPLAINT.
- WHAT DOES THE RIGHTS OFFICE LOOK AT WHEN A COMPLAINT IS RECEIVED?
  - IS IT A RIGHT PROTECTED BY THE MENTAL HEALTH CODE?
  - IS THERE PROBABLE CAUSE?
  - IS THE COMPLAINT WITHIN THE JURISDICTION OF THE RIGHTS OFFICE?

IF YES….

MAKING A COMPLAINT

- **Any suspected Rights violations should be reported in a timely manner (within 24-hours) with the exception of Abuse/Neglect**
- Staff are required to notify their immediate supervisor or the ORR (Office of Recipient Rights) of any suspected rights violation IMMEDIATELY!
- Staff may also file a Recipient Rights complaint on behalf of the recipient
- Staff should assist recipients in filing complaints if asked

Customer Service

- For non-rights related issues
- Service disputes
- Second opinion requests

RIGHTS REPORTING REQUIREMENTS

- You MUST report suspected Abuse/Neglect **IMMEDIATELY**!!!
  - Failure to report immediately can result in you being cited for Failure to Report, which falls under Neglect.
  - If you cannot complete a written complaint immediately, you can still call the rights office to report. A phone call or message can be followed up with a written report at a later date.

- You have the option to report anonymously.
  - Some worry about causing problems with co-workers for reporting suspected rights violations.
  - The Mental Health Code protects against retaliation and harassment for Rights activities. Retaliation and Harassment will be dealt with by disciplinary action.

COMPLAINT PROCESS



THE right DOOR for hope, recovery and wellness

Complaint Number:

RECIPIENT RIGHTS COMPLAINT

NSTRUCTIONS:
f you believe that one of your rights has been violated you (or someone on your behalf) may use this form to make a complain
\ rights officer/advisor will review the complaint and may conduct an investigation. Send this form to the rights office at th
CMH or hospital where you are receiving (or received) services. Keep a copy for yourself. If you send your complaint t
MDHHS-ORR it will be forwarded to the appropriate rights office. The address for The Right Door for Hope, Recovery, an
Wellness is: Office of Recipient Rights, 375 Apple Tree Drive, Ionia, MI 48846.

Complainant's Name:	Recipient's Name (if different from complainant):
Complainant's Address:	Where did it occur (name or address of hospital/agency):
Complainant's Phone:	When did the alleged violation occur (Indicate date and time):

What right was violated:

Describe What Happened:

What would like to see happen in order to correct the violation?

Complainant's Signature:	Date:	Name of Person Assisting Complainant:

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Original to ORR — Copy to Complainant (with acknowledgement lette

- REMEMBER, ANYONE CAN FILE A RIGHTS COMPLAINT.
- WHAT DOES THE RIGHTS OFFICE LOOK AT WHEN A COMPLAINT IS RECEIVED?
  - IS IT A RIGHT PROTECTED BY THE MENTAL HEALTH CODE?
    - If no, nothing the Rights office can do.
      IS THE COMPLAINT WITHIN THE JURISDICTION OF THE RIGHTS OFFICE?
      If No, it will be referred to whichever entity has jurisdiction (licensing, APS, etc)
- IF YES TO <u>BOTH</u>….The Rights office can either complete an Intervention or an Investigation

COMPLAINT PROCESS CONTINUED

- **INTERVENTION**
  - Can be done if the solution is clear and the allegation does not involve Abuse or Neglect.
  - 30 days to complete.



- **INVESTIGATION**
  - 90 days to complete
  - Includes interviews, unimpeded access to any documents.

PREPONDERANCE OF EVIDENCE

- Complaints that are done as interventions or investigations will either be "**SUBSTANTIATED**" or "**NOT SUBSTANTIATED**" based on preponderance of evidence. But what does that mean?
- Preponderance of Evidence is based on the greater weight- is it more likely than not that something occurred.
  - Based on QUALITY, not QUANTITY of evidence gathered (documentation, interviews, etc.)
- If SUBSTANTIATED, the employer of the accused must provide a plan of action/correction. This must include measures to prevent violations from happening in the future.
- A copy of the final Summary Report detailing all of this goes out to the complainant, recipient and/or guardian.



RIGHT TO APPEAL



- Who has appeal rights?
  - Complainant
  - Recipient/Guardian

- Under what grounds can they appeal?
  - Investigation not timely
  - Planned action won't remedy the situation/prevent recurrence
  - Rights office did not take into account all the evidence/rules/laws

EMPLOYEE RIGHTS

- Under the Mental Health Code, employees also have rights



  - Freedom from retaliation and harassment stemming from recipient rights activities.
  - Whistleblowers Protection Act of Michigar
  - Bullard Plawecki Act
    - If there is found to be retaliation/harassment, disciplinary action will be taken!

INCIDENT REPORTING

- An incident report MUST be filled out to document any unusual incident that occurs. **When in doubt, fill it out!!!**
- What requires an incident report?
  - Serious physical aggression not addressed in a plan
  - Serious physical aggression requiring assistance from legal authorities (i.e., calling 911)
  - Physical aggression that results in the injury of a recipient or staff
  - Attempt at self-inflicted harm
  - Suicide attempt or gesture
  - Any use of physical management to control aggressive behavior (always needs to be reported!)

INCIDENT REPORT

Use name of primary person served only; for all others use initials or first name with last initial. Additional incident reports should be created when multiple person served are involved.

First & Last Name: _____ **CMH ID #:** _____ ☐ **COFR** (for admin use)

Make separate report for each person served involved

DOB:

Check one: Medicaid ____ **Non-Medicaid** ____

Date **Occurred/Noticed:** _____ Date **Reported:** _____

Time **Occurred/Noticed:** ____ **a.m.** ☐ **p.m.** ☐ Time **Reported:** _____**a.m.** ☐ **p.m.** ☐

Site of Incident (*select one*):

☐ **1. AFC** _____ ☐ **2. Home of Person Served**_____ ☐ **3. In Vehicle**

Name of AFC home Address of consumer's home

☐ **4. CMH-Ionia** ☐ **5. CMH – Portland** ☐ **6. CMH – Belding** ☐ **7. Community**

☐ **8. Other (details):**_____

Setting (*select all that apply*):

☐ **1. Indoors** ☐ **2. Outdoors** ☐ **3. During Transport** ☐ **4. Other (**details**):**_____

What happened? **(add additional paper if you run out of space)**

_____

_____

_____

If Injured, Type of Injury (*please describe*):

_____

_____

Immediate Action Taken(*select all that apply*):

☐ **0. None** ☐ **1. Insured Safety** ☐ **2. Checked for Injuries** ☐ **3. Monitored** ☐ **4. First Aid** ☐ **5. Called 911**

☐ **6. Other (*list*) :**_____☐**7. Emergency Physical Management (explain):** _____

☐ **8. Seclusion OR Restraint (CIRCLE correct one and explain):**

_____

Person Served has Behavior Treatment Plan in Place (Fill out if they have a plan) (Use additional paper to explain if needed):

1. **Was the behavior plan utilized in this incident? Y/N, If No, why not:**

   _____

2. **Were restrictive/intrusive measures utilized? Y/N, If Yes, note restrictive/intrusive measures taken:**

   _____

3. **If physical intervention occurred, report each intervention, and amount of time intervention used EACH TIME. (Ie. Hold for 5 mins, then released)**

Type of Physical Intervention used (detailed)	Length of Time (mins)

4. **Use of PRN medication for behavior modification during incident: Y/N, If yes, please note medication and when used:**

   _____

INCIDENT REPORTING CONT.

- Any explained or unexplained injury
- Any unusual or first time medical issue
- Environmental emergencies
- Any involvement of other agencies- police/EMS/fire/hospital
- Death of a recipient
- Problem behaviors not addressed in plan
- Inappropriate Sexual acts/behaviors
- Medication errors/refusals
- Significant property damage (in excess of $100)
- Any room, person, or property search and/or seizure
- Unauthorized leave of absence
- Injury, whether accidental or intentional, that requires assistance from emergency medical personnel (i.e., calling 911), a visit to an emergency room, med center, or admission to a hospital



INCIDENT REPORTING CONT

- Injury to a recipient or staff sustained during or as a result of physical management
- Physical illness that requires assistance from emergency medical personnel (i.e., calling 911), a visit to an emergency room, med center, or admission to a hospital
- Hospitalization due to a chronic illness or scheduled procedure
- Contraction or suspected contraction of a communicable disease
- Recipient death, whether anticipated or unanticipated
- Adverse medication reactions or side-effects
- Medication errors involving wrong medication, wrong dosage, double dosage, or missed dosage
- Traffic accidents involving a recipient
- Fire occurring in the treatment facility, with or without damage
- Room or person search and property seizure
- Recipient arrest
- Apparent or suspected abuse or neglect of a recipient
- Other apparent or suspected recipient rights violations



When in doubt, fill it out!!!

*

INCIDENT REPORTS CONT.

What does NOT need to be reported?

- Personal care refusals
- Behavioral incidents that are also documented elsewhere due to an existing behavior plan
- Staff injury or illness
- Attempts to get other staff "in trouble"
- Minor injuries or medical issues



INCIDENT REPORTS CONT.

- Only use one recipient name in each Incident Report. This means that if an incident involved more than one recipient, you have to create multiple incident reports. You are okay to use initials of the other recipients in each I.R. or "resident A, Peer 1"
- Use full names, dates and times
- Use your senses, be specific
- Don't use assumptions, stick to the facts, don't fill in gaps with opinions

When does it need to be reported?

- Incident reports should be written directly after the incident. If you cannot write it directly after the incident, it must be completed before the end of your shift
- Give the completed incident report to your supervisor
- Incident Reports should be completed as soon as possible after the event occurs
- All incident reports must be submitted for CMH review within 24 hours per contract language.
  - If there is an issue in getting the I.R. to the CMH, please call.

UNLIMITABLE RIGHTS

- Freedom from Abuse/Neglect
- Treatment Suited to Condition
- Dignity and Respect
- Safe/Sanitary/Humane Environment
- Person-Centered Process for IPOS
- Contact with one's attorney or others related to legal matters.



LIMITATIONS

- Sometimes, limitations can be placed on an individuals rights.
- These limitations are made on an individual basis and can ONLY BE DONE through the Person-Centered Process or through Behavior Treatment Committee. In order to put a limitation in place, you MUST have:
  - Documentation, Justification, proof that lesser restrictive measures were unsuccessful.
  - Limitations must be approved by the Behavior Treatment Committee.
  - Limitations are ALWAYS least restrictive/intrusive, time-limited, and are measures to decrease/stop/eliminate the behavior.



OTHER LIMITATIONS

- Communication by mail, phone, and/or visits
- Access to personal property
- Access to money
- Freedom of movement
- Confidentiality / privilege
- Consent to treatment

- **REMEMBER! A LIMITATION MUST BE IDENTIFIED IN IPOS/PCP. IT ALSO MUST IDENTIFY MEASURES TO REDUCE OR ELIMINATE THE BEHAVIOR, TIME LIMITED.**

SO WHAT RIGHTS DO RECIPIENTS OF MENTAL HEALTH SERVICES HAVE?



CIVIL RIGHTS

- When someone is diagnosed with a Mental Illness or Intellectual Disability, it does NOT mean that they lose their rights.
- A violation of Civil Rights is regarded as a violation of Recipient Rights
- Guaranteed by the United States Constitution
  - Right to Vote
  - Right to practice their religion AND not have a religion prescribed for them.
  - Freedom of Speech
  - Freedom from Discrimination
  - Privacy/No illegal search or seizure
  - Presumed competent unless deemed otherwise by a court of law

ABUSE AND NEGLECT

- "A recipient of mental health services shall not be subjected to abuse or neglect." MHC 330.1722 (1)
- Failure to report suspected Abuse or Neglect IS A RIGHTS VIOLATION!
- Abuse and Neglect are broken down into three categories each- Classes I-III.

ABUSE

- **Abuse** is defined as "a non-accidental act or provocation of another to act by an employee, volunteer, or agent of the provider…"

- Doing something Intentional to Harm a Recipient
  - Physical Harm
  - Sexual Harm
  - Emotional Harm
  - Verbal Abuse
  - Provoking someone else to harm



ABUSE

Abuse Class I

Causes or contributes to the death, sexual abuse, or serious physical harm.

Abuse Class II

causes or contributes to non-serious physical harm, the use of unreasonable force, emotional harm, and exploitation.

Abuse Class III

Abuse Class III is the use of language or other means of communication to degrade, threaten or sexually harass.

- Basically making someone feel worthless or to humiliate them.

EXAMPLES OF ABUSE

- Paying a resident in a home to start a fist fight with another resident.
- Asking a recipient for sexual favors in return for extra cigarettes.
- A recipient throws a rock at a staff person's car and the staff person "flips them off."
- A recipient spits in staff's face and staff spits back.
- Staff is having a sexual relationship with a recipient
- Staff becomes upset and punches a recipient after the recipient calls them names.

NEGLECT

- Neglect is defined as "acts of commission or omission that result from a non-compliance with a standard of care…"
  - Basically doing something you are not supposed to do or not doing something you are supposed to do that is required by policy, procedure, law, etc.
- Failure to Report suspected Abuse or Neglect falls under Neglect.



NEGLECT

Neglect Class I

- causes or contributes to death, sexual abuse, or serious physical harm
- The failure to report apparent or suspected abuse Class I or Nelgect Class I of a recipient

Neglect Class II

- causes or contributes to non-serious physical harm or emotional harm
- Neglect Class III- places or could have placed recipient at risk of physical harm or sexual abuse.

Neglect Class III

- Not doing something that should have been done that either placed or could have placed a recipient at risk of physical harm or sexual abuse
- The failure to report apparent or suspected abuse Class III or Neglect Class III of a recipient

NEGLECT



Not doing something that should have been done required by:

- Federal/State Law or Administrative Rule
- Policy / Procedure
- House Rules
- Written Staff Directive
- Person-Centered Plan

EXAMPLES OF NEGLECT

- A recipient complains of chest pain and staff tells them “it’s just your anxiety, go back to bed.” The recipient is found dead the next morning- cause of death is a heart attack.
- A staff leaves a recipient in the car alone while they run into the store. This is against policy. The recipient gets out of the car, trips and breaks their arm.
- A recipient has a doctors order for position changes every two hours. Staff are too busy during the shift to do this.
- Staff witnesses another staff push a recipient down but doesn’t report it because “I didn’t want to cause problems- I will have to work with that staff.”

CONFIDENTIALITY

- "Information in the record of the recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and is not open to public inspection." MHC 330.1748(1)
- Recipients have the right to review their record. If the parent of a minor or the guardian is requesting records, they can be reviewed for detriment.
- Within the agency/provider network
  - Need to know



CONFIDENTIALITY

- Mandatory Disclosure
  - Subpoena
  - Michigan Protection and Advocacy



- Discretionary Disclosure
  - Risk of harm to self or others.
  - As necessary for treatment, coordination of care, or payment of mental health services.

CONFIDENTIALITY

- Recipient have the right to enter a statement into their record if they do not agree with something- this is called Correction of Record.
- Law enforcement does not have the right to get information without a release or warrant.
- Michigan Protection and Advocacy Services (MPAS) can access record if they have a complaint on behalf of a recipient or have probable cause to believe that the recipient has been subjected to abuse/neglect.

CONFIDENTIALITY EXAMPLES

- Posting a picture of you and a recipient on social media with the caption “Fun day while working with Jane.”
- Going home and telling your family that you saw your neighbor come out of a colleagues office at work.
- Providing information about a recipient to law enforcement just because they are asking for it and they are the police.
- Releasing information to a family member with whom an adult recipient lives without a release.

DIGNITY AND RESPECT

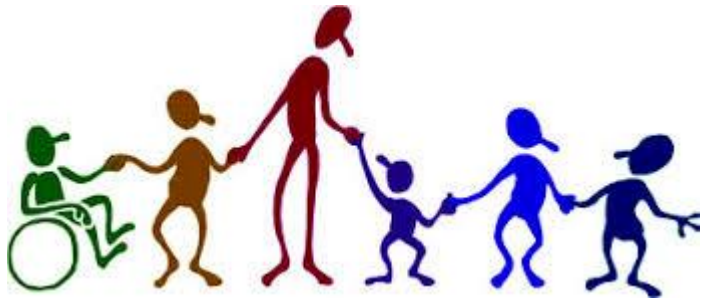
- "A recipient has the right to be treated with dignity and respect." MHC 330.1708(4)
- **Dignity**: to be treated with esteem, honor, politeness; to be addressed in a manner that is not patronizing, condescending or demeaning; to be treated as an equal; to be treated the way any individual would like to be treated.
- **Respect**: to show deferential regard for; to be treated with esteem, concern, consideration or appreciation; to protect the individual's privacy; to be sensitive to cultural differences; to allow an individual to make choices.
- Includes family members of recipients.





DIGNITY AND RESPECT

- Call the person by their preferred name- no pet names, nicknames.
- Encourage a person to make choices instead of assuming what they want/need.
- Take someone's opinion seriously; Include them in conversations about themselves; Allow them to try new things or to try to do something independently.
- Knock on closed doors
- Use positive language
- Avoid using inappropriate language
- Be aware of what you say around recipients.



- Using expletives in front of recipients is a least a work policy violation
- Treatment with dignity and respect shall be further clarified by the recipient or family member, and considered in light of the specific incident, treatment goals, safety concerns, laws and standards, and what a reasonable person would expect under similar circumstances.

FAMILY DIGNITY AND RESPECT

- Family members of recipients must also be treated with dignity and respect.
- They have the right to request and receive educational information pertaining to disorders, medications, medication side effects, support groups, etc. Remember to be careful of confidentiality!!
- They have the right to provide us with information regarding a recipient, even without a release– we can gather information without a release, we just cannot give information.
    - "I will take this information but cannot confirm or deny that we are currently working with this recipient."



DIGNITY AND RESPECT EXAMPLES



- Continuing to call someone “sweetie” when they have already told you that they do not like you calling them that.
- A parent yells at you about their child’s services so you yell and scream back at them.
- A recipient voices fears and concerns about an upcoming medical procedure to you and you laugh at them and tell them they are being ridiculous.
- A recipient is in their bedroom with the door closed and you just barge right in without knocking.
- Yelling at a recipient to “hurry up.”

FREEDOM OF MOVEMENT

Mental health services shall be offered in the LEAST RESTRICTIVE SETTING that is appropriate and available.

"Freedom of movement of a recipient shall not be restricted more than necessary to provide mental health services, to prevent injury, or to prevent substantial property damage."

You can have temporary restrictions due to repair or maintenance or for emergencies, such as a flood, fire, tornado, etc.

SECLUSION AND RESTRAINT

- ARE PROHIBITED except in a MDHHS operated or licensed hospital. This can only be done to prevent harm to self or others.
- "Time Out" is a voluntary response to a therapeutic suggestion to remove oneself from a stressful situation.
- Physical Management is an **EMERGENCY** intervention (remember from our conversation about Abuse). It can only be used when there is imminent risk of harm and all other lesser restrictive measures have been tried and have failed. You must also be trained to properly use the techniques.



SECLUSION



Seclusion

Staff May NOT:

- Send a recipient to "time out" without a behavior plan
- Physically manage a recipient to their bedroom or other area
- Restrict entry or exit by:
  - Locks
  - Staff presence (blocking movement)
  - Timeframes or qualifiers

Seclusion may only be used in Inpatient hospital settings

RESTRAINTS

Restraints are Not:

- Seatbelts
- Safety restraints used correctly with a doctor's order, e.g., helmets, wheelchair belts





Restraints ARE:

- The use of clothing, ropes, or other material
- Restricting wheelchair movement or mobility aids, e.g., crutches, walkers, etc.
- Using safety restraints for purposes other than which they were ordered by a physician





Restraints may only be used in Inpatient hospital settings

RESTRAINTS CONT.

Treatment is Voluntary

- Recipients have the right to refuse medications and other treatments
- A doctor cannot write an order that supersedes law (holding people down, restraining people, spanking children)
- Do not hide medication in food
- Talk to other staff to see what works with resistive recipients



PHOTOGRAPHS, FINGERPRINTS, VIDEO RECORDINGS, AUDIO RECORDINGS, AND ONE-WAY GLASS

- Must have PRIOR written consent.
- Can only be used to provide services to identify recipient or for education/training purposes.
- Photographs can be taken for social/personal purposes but must be treated as the recipients personal property. If the recipient objects, you cannot take photos.
- If any of these items are sent to others to determine identity, they must be returned. Any of these items in a recipient's record will be destroyed or returned to the recipient when no longer needed or when discharge occurs, whichever occurs first.







VIDEO RECORDINGS

- Recorded video monitoring can only be done in a MDHHS licensed hospital. Recordings can only be done in common areas such as hallways, nurses stations and activity rooms.
- Video recording is prohibited in foster care settings. Live feed video can be placed in common areas.
- Video (live or recorded) cannot be placed in bedrooms or bathrooms under ANY CIRCUMSTANCES.



SAFE, SANITARY, HUMANE TREATMENT ENVIRONMENT

- Services must be provided in safe, sanitary, and humane environment.
- For these guidelines, we look to the Adult Foster Care Licensing Rules
  - Pressurized hot/cold water
  - Sewage disposed into a public or health department approved system.
  - Maintenance of insects, rodents, and pests.
  - Appropriate storage of poisons and other dangerous materials
  - Adequate and safe preparation and storage of food items
  - Premises must be constructed in a safe manner and maintained.
  - Provide for health, hygiene, and personal grooming of residents.

SAFE, SANITARY, HUMANE TREATMENT ENVIRONMENT CONT.

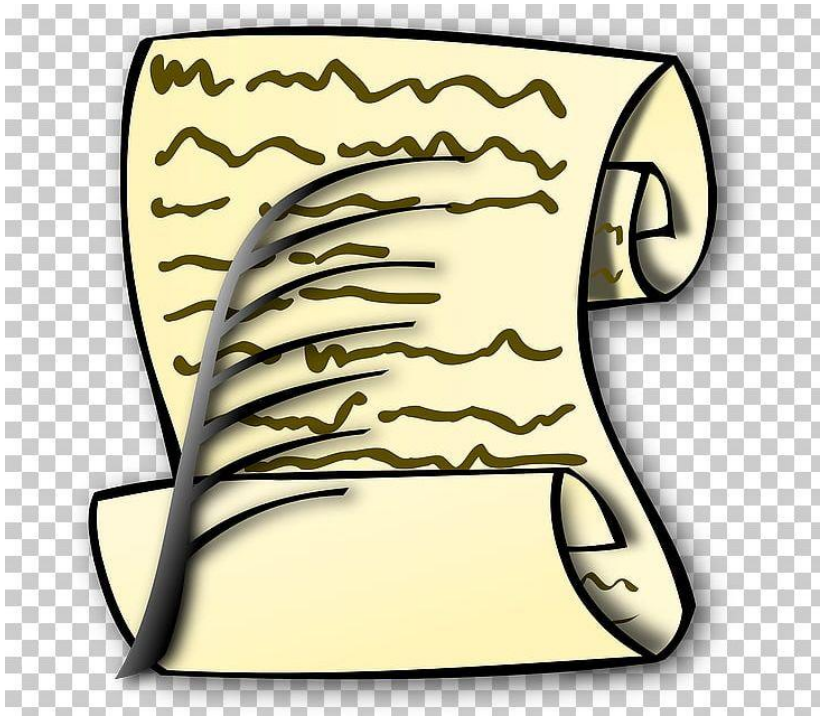
- Safety of recipients is the top priority!
- The service site must be free of dangerous items
- Sidewalks, hallways, etc. need to be clear
- The site needs to be clean and free of debris
- Includes providing adequate nutrition for sites that provide meals





OTHER RIGHTS

- Right to a second opinion
- Family Rights
- Freedom of Movement
- Treatment Suited to Condition
- Clinical record Amendment
- Property Search / Seizure
- Choice of Mental Health Professional



THINGS TO REMEMBER…

- Anyone can file a rights complaint.
- Better to report, than not report and find out later something was going on.
- When in doubt, ask questions!

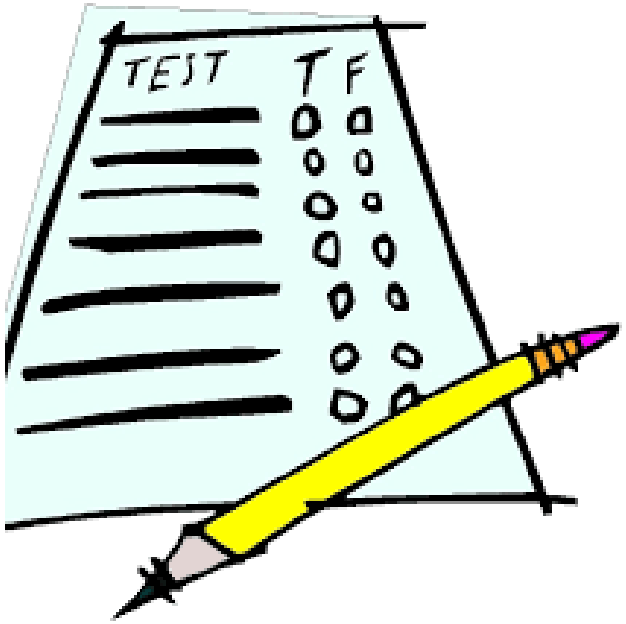


QUESTIONS???



If you ever have questions, feel free to call or email the Rights office.

Jennifer Morgan, LLMSW
jmorgan@rightdoor.org
616-527-1790 or 1-888-527-1790
Cell: 755-2000



TEST TIME!!

YOU MUST HAVE AN 80% ON TEST TO PASS COURSE AND RECEIVE CERTIFICATE