



SHIAWASSEE
Health & Wellness

The Rights Of Individuals Receiving Mental Health Services

Andrea Andrykovich-Recipient Rights Director
Ardis Bates-Recipient Rights Advisor

COMPLAINT LINE: 989-723-0725 * FAX: 989-723-0888

TOLL-FREE: 800-622-4514, EXT.4725 * TTY: 989-723-0850



Overview of the Course

1. Evolution of the Mental Health System in Michigan
2. The Role of the Recipient Rights Office as outline in the Mental Health Code.
3. Employee Rights
4. “Protected Rights”
5. Additional Rights as provided by the Mental Health Code
6. Abuse, Neglect, and Reporting Requirements
7. When and how to complete the Critical Incident Report Form
8. Test



Past Practices

What should move us to action is human dignity: The inalienable dignity of the oppressed, but also the dignity of each of us. We lose dignity if we tolerate the intolerable.



State Institutions

- Massive cuts to budgets resulted in:
- 1:30 or 40 ratio, instead of 1:4
- Fed in 3 minutes with ladle or bowl pureed food (Time)
- Didn't chew food=weak gums. Lost teeth.
- NOTHING on the walls
- NOTHING to do all day (Lay on floor)
- 100% of the patients in Willowbrook contracted Hepatitis within 6 months
- Able-bodied recipients filled employee shortages for \$2.00/week instead of \$2.00/hr. (Exploitation)
- Physical problems immobility and sitting on floor (surgical rod)
- Hoarding. Wrap arm around bowl (institutional behavior – same occurs in prisons.)
- Physical abuse: Learn to aggress against largest person
- Willowbrook: A report on how it is and why it doesn't have to be that way . G Rivera. 1972. Staten Island, New York. Closed in 1987.

<https://youtu.be/8ZQJZBVOLdI>



Role of the Rights Office: Four Functions

1. Prevention:

- Policy Development and Review
- Consultation
- Annual Site Visits

2. Education:

- By Law- all staff are required to be trained within 30 days of hire
- Initial Recipient Rights training- three hour training
- All staff are to be trained annually thereafter



Role of the Rights Office: Four Functions

3. Monitoring:

- Review Incident Reports- follow up as necessary
- BTPRC
- Review of all recipient deaths

4. Complaint Resolution:

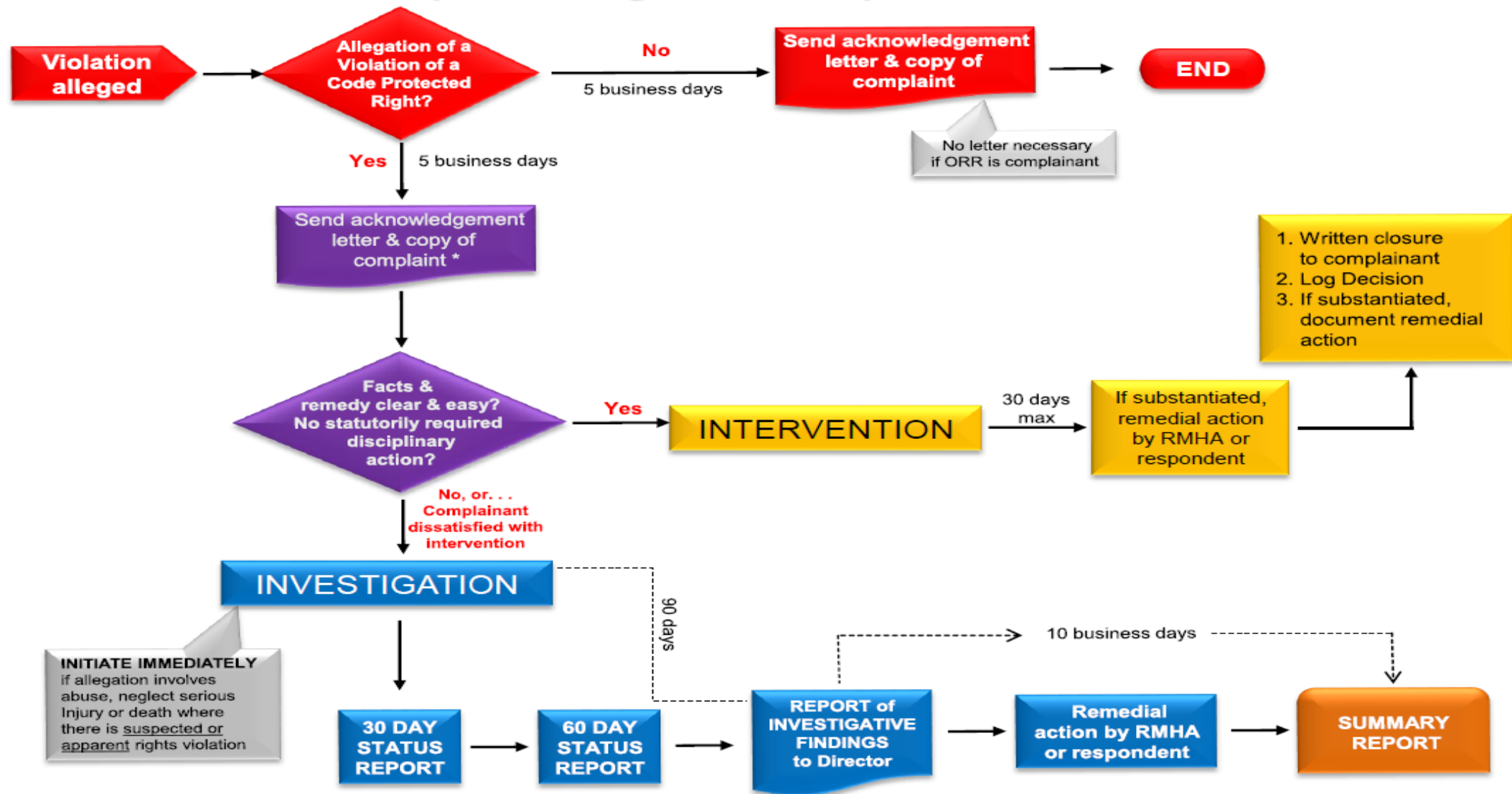
- Receive and review complaints
- Investigations as necessary-
 - Must be a recipient of Shiawassee Health and Wellness
 - The complaint involves SHW mental health services or services of a contract provider
 - Must involve a Code Protected Legal Right
- Advise recipients of advocacy organizations and appeal requests/ processes
- ORR has unimpeded access to all information necessary



RECIPIENT RIGHTS CATEGORIES MDHHS-ORR REVISED 10/15/22

CODE		CATEGORY	CODE		CATEGORY
7221	AR7001	Abuse Class I	7170	AR 7017	Electroconvulsive Therapy
72221		Abuse Class II- Non Accidental Act	7180	AR 7158	Psychotropic Drugs
72222		Abuse Class II- Unreasonable Force	7190		Medication Side Effects
72223		Abuse Class II- Emotional Harm	7240		Fingerprints, Photos, Audio, and 1way-glass
72224		Abuse Class II- Treating as Incompetent	7249		Video Surveillance
72225		Abuse Class II- Exploitation	7261		Communication- Visits
7223		Abuse Class III	7262		Communications- Telephone
7224		Sexual Abuse	7263		Communication- Mail
72251	AR 7001	Neglect Class I	7281		Personal Property- Possession and Use
72252		Neglect Class I- Failure to Report	8286		Personal Property- Limitations
72261		Neglect Class II	7300		Safeguarding Money -Use State Hosp. ONLY
72262		Neglect Class II- Failure to Report	7360		Labor and Compensation
72271		Neglect Class III	7400	AR 7243	Restraint
72272		Neglect Class III- Failure to Report	7440		Freedom of Movement
7550		Rights Protection System	7420	AR 7243	Seclusion
7555		Retaliation/Harassment	7460		Complete Record
7040	AR 7003, 7029, 7135, 7139	Civil Rights (Discrimination, Accessibility)	7480	AR 7051	Disclosure of Confidential Information
7044		Religious Practice	7481		Withholding of Confidential Information
7045		Voting	7490		Correction of Record
7081	AR 7003, 7029, 7135, 7139	MH Services Suited to Condition Includes Ch. 4 Violations	7500		Privileged Communication
7082		Safe, Sanitary Humane Treatment Env.	0000		No Right Involved
7083		Least Restrictive Setting	0001		Outside Provider Jurisdiction
7084		Dignity and Respect			
7100		Physical and Mental Exams			
7110		Family Rights			APS 855-444-3911
7120		Individual IPOS/PCP			Licensing/LARA 800-882-6006
7130		Choice of Physician/MH Professional			
7140		Notice to Clinical Status/Progress			
7150		Services of a MH Professional-External			
7160		Surgery			

Recipient Rights Complaint Process



Preponderance of the Evidence



It is the greater weight of the evidence required to decide in favor of one side or the other. A preponderance of the evidence means that there is a greater weight of the evidence, not as to quantity, but as to quality (believability and greater weight of important facts provided).



Appeal Process

- At the end of a recipient rights investigation, a summary report is issued to the complainant and the recipient, if different from the complainant, and legal guardian. Attached to each summary report is a notice of the right to appeal.
- An appeal request shall be in writing and is sent to the SHW CEO, who will forward the appeal to the SHW Appeals Committee. The SHW Appeals Committee is comprised of members of the SHW Recipient Rights Advisory Committee.
- An appeal must be filed within 45 days of receiving the summary report and must be based on the following reasons:
 - The investigative findings of the office were not consistent with the facts or with law, rules, policies, or guidelines
 - The action taken or plan of action proposed was not an adequate remedy
 - The investigation was not initiated or completed in a timely manner



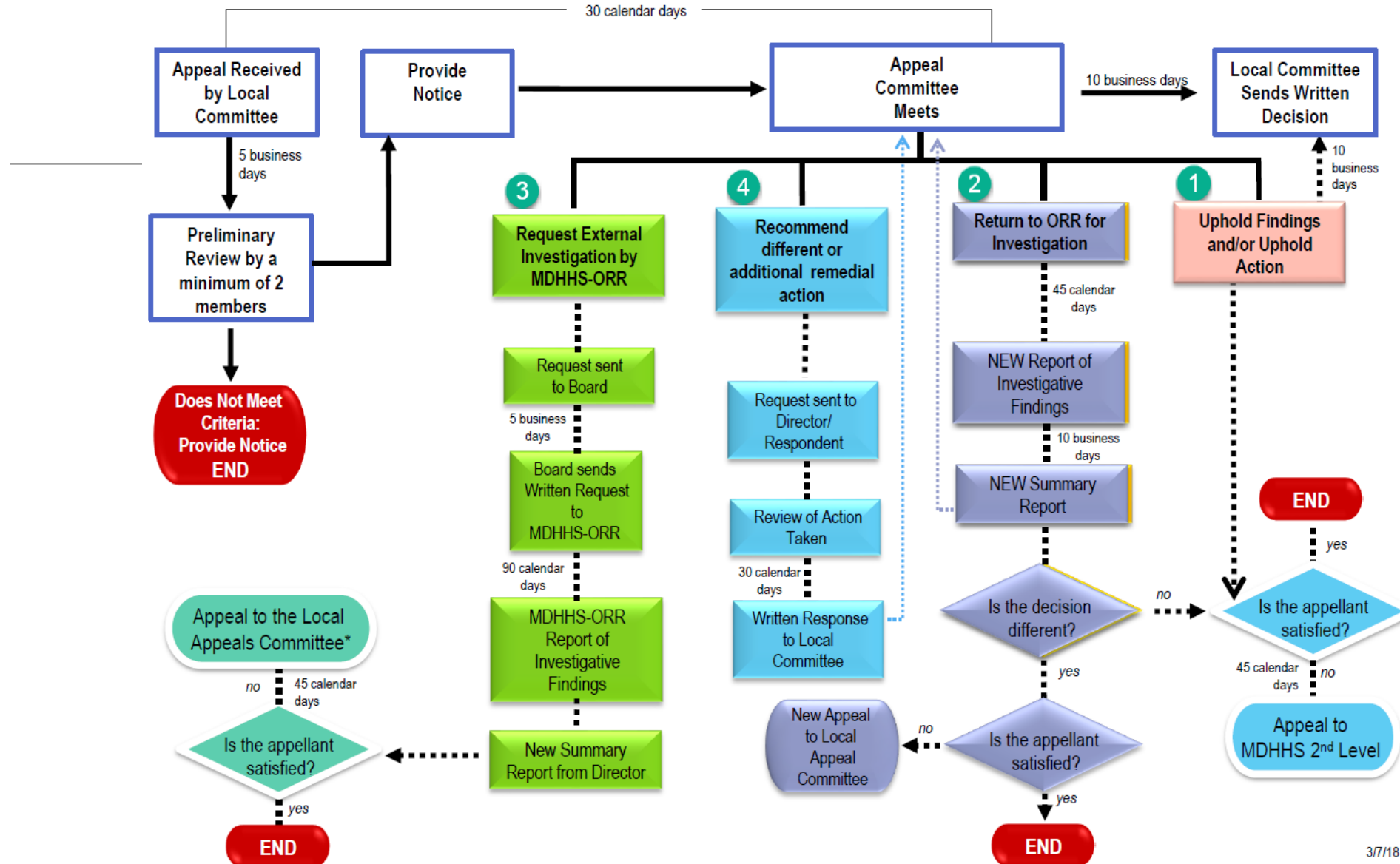
Appeal Process (continued)

Within 30 days, the SHW Appeals Committee will meet and can do one of the following:

- Uphold the investigative findings and the action taken or plan of action proposed
- Return the investigation and request that it be reopened or reinvestigated
- Uphold the investigative findings but recommend the respondent take different or additional remedial action
- Request an external investigation by the MDHHS- Office of Recipient Rights



The Recipient Rights Appeal Process



Employee Rights: Retaliation/Harassment

Mental Health Code Section 330.1755 states that complainants, staff of the ORR, and any staff acting on behalf of a recipient will be protected from harassment or retaliation resulting from recipient rights activities and that appropriate disciplinary action will be taken if there is evidence of these activities.

- SHW Policy also mandates that recipients be free from harassment and/or retaliation resulting from recipient rights activities
- If you believe that you are the subject of harassment or retaliation resulting from recipient rights activities- you should file a complaint with the Office of Recipient Rights



Whistleblowers Protection Act

(Public Act 469 of 1980)



This law states that it is illegal for an employer in Michigan to discharge, threaten, or otherwise discriminate against you regarding your compensation, terms, conditions, location, or privileges of employment because you, or a person acting on your behalf, reports or is about to report a violation or a suspected violation of a law, rule, or regulation to a public body.

- If you believe that your employer has violated this Act you may bring civil action in circuit court within 90 days of the alleged violation of the Act.
- A person found in violation of this Act may be subject to a civil fine of up to \$500.00
- The court may also order your reinstatement, payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies.
- All or a portion of the costs of litigation may also be awarded if the court believes it to be appropriate.



Bullard-Plawecki Employee Right to Know Act

(Public Act 387 of 1978)

This Act requires that you be notified when an employer or former employer divulges:

- A disciplinary report
- Letter of Reprimand
- Other disciplinary action

To an outside party (unless they are representing you) without written notice.

Written notice shall be by first-class mail to the employee's last known address and shall be mailed on or before the day the information is divulged.



Legal Basis of Rights

A 'right' is that which a person is entitled to have, to do, or to receive from others, within the limits prescribed by law- according to Black's Law Dictionary.

In order to qualify as a 'right', something must be defined by law and have a legal means of protecting it.

The 'rights' described in this training are some that are protected by the Constitution of the United States, the Michigan Constitution, Federal and State laws, such as the Americans with Disabilities Act, and the Michigan Mental Health Code.

Remember: Persons who receive mental health services have the same rights as you. It is important to understand where rights come from, what they are, and what additional rights are granted to recipients of mental health services in Michigan...



Civil Rights

A recipient shall be permitted, to the maximum extent possible and in any legal manner, to conduct personal and business affairs and otherwise exercise all rights, benefits, and privileges not divested or limited.

The Right to be presumed competent, unless:

- A guardian has been appointed
- A judicial ruling of incompetency has been made

The Right to Religious Expression:

- To practice the religion of their choice
- Not to attend any religious service against their wishes
- Not to be discriminated against based on their religious beliefs



Civil Rights (continued)

- **The Right to Freedom of Speech**

- To speak freely and to write, or express, one's views without restrictions
- To make and receive phone calls, in private
- To send and receive mail without censorship

- **The Right not to be discriminated against because of race, sex, national origin, or disability.**

- **The Right to Vote**

- **The Right to not be subjected to illegal search and seizure**

- **The Right to have a free public education**

A violation of civil rights shall be regarded as a violation of recipient rights



Additional Rights

The Michigan Mental Health Code states that persons who receive mental health service have some additional rights to ensure that they receive mental health services suited to their condition in a humane environment.

MHC Chapter 7 and 7A grants recipients:

- The right to independent evaluations and consultations, and to see a private physician or healthcare professional at any reasonable time
- The right to be treated without discrimination, to have privacy, to practice one's religion, and to get paid for work that is done
- The right to a hearing, to be represented by an attorney, and to discharge planning that assures that appropriate mental health services are provided in the least restrictive setting
- The right to be treated in a safe, sanitary, and humane environment. The Code does not provide further clarification, AFC Licensing regulations could be considered, depending on the issue. For example, providing for a residents' health and personal care needs, including providing necessary supplies such as toiletries.



Additional Rights (continued)

- The right to receive mental health services suited to condition, medical care, and medication for mental and physical health, as needed
- The right to have access to his or her own funds, and to be able to use them as they see fit
- The right to have personal property safely kept and to have any rules regarding any limitations on using it clearly stated, consistent, and posted in a place where all can see
- The right to not be force or coerced to take medication, or to take more medication than desired, and the right to be provided with informed consent regarding medication and possible side effects
- The right to have the specific risks and most common adverse effects associated with a drug explained and be provided with a written summary of the most common adverse effects associate with that drug
- The right to treatment by spiritual means if requested. A spiritual discipline or school of thought that a recipient wishes to rely on to aid physical or mental recovery
- The right to refuse treatment unless the law requires it and a court orders it
- The right to family planning and health information
- The right to choose their physician and/ or other mental health professional in accordance with SHW policy or contracted service provider and within the limits of available staff



Additional Rights (continued)

- The right to be free from abuse or neglect
- The right to be treated with dignity and respect
- The right to send and receive mail, have visitors, use the telephone, and get legal advice.
- The right to have information about the person receiving treatment kept confidential
- The right to access to information contained in the clinical record ¹
- The right to insert a statement correcting or amending their record upon a challenge of its accuracy, completeness, timeliness, or relevance. This applies to the recipient, guardian, or parent of a minor and shall become part of the record.
- The right to have a written individual plan of service developed through a person-centered planning process and to be informed of their clinical status.
- A recipient shall not be fingerprinted, photographed, audiotaped or viewed through one-way glass for the purpose of providing services to, educational reasons, identification, or research, without prior written consent

¹ *The Mental Health Code requires that, upon request, a competent adult recipient (meaning no guardian has been appointed) be given access to ALL information entered in their record after March 28, 1996, without exception*



Additional Rights (continued)

The Code also states that under certain circumstances, some of these additional rights may be modified through the use of restrictions or limitations:

- Communication by mail, phone, or visits
- Personal Property
- Money
- Freedom of movement
- Confidentiality/ privilege
- Consent to treatment



Additional Rights (continued)

Restrictions are made for all the recipients in a particular setting and are determined by policy. Restrictions must be clearly posted where everyone can see them.

Limitations are placed on an individual and can only be made through the person centered planning process.

The plan of service shall identify at a minimum all of the following: Restrictions, limitations, or behavior treatment techniques. These shall be reviewed and approved by a formally constituted committee of mental health professionals with specific knowledge, training, and expertise in applied behavioral analysis (BTPRC).

In the recipient's record you should find:

- A description of the behavior and the limitation
- A time limit on the limitation
- An indication that previous measures to stop the behavior were unsuccessful
- An indication that the limitation is the least restrictive or intrusive measure possible
- Measures to reduce or eliminate the behavior (what you will do when the behavior occurs)



The Written Plan of Service

A recipient has the right to have a written plan of service developed through a person-centered planning process.

Person-centered planning means a process for planning and supporting the individual receiving services that builds upon the individual's capacity to engage in activities that promote community life while honoring the individual's preferences and choices, and abilities. The person-centered planning process involves families, friends, and professionals, as the individual desires or requires.

- The preliminary plan shall be developed within 7 days of the commencement of services. If the individual is hospitalized for less than 7 days, before discharge or release
- The Plan of Service developed shall be kept current and modified when indicated
- The person in charge of implementing the plan of service shall be designated in the plan
- The Plan shall consist of a treatment plan, a support plan, or both. A treatment plan shall establish meaningful and measurable goals with the recipient



The Written Plan of Service (continued)

- It shall address, as either desired or required by the recipient, the recipient's need for food, shelter, clothing, health care, employment opportunities, educational opportunities, legal services, transportation, and recreation
- A recipient shall be informed, orally and in writing, of their clinical status and progress at reasonable intervals established in the Individual Plan of Service in a manner appropriate to their clinical condition
- If the recipient is not satisfied with the plan, the recipient, person authorized by the recipient to make decisions regarding the plan, the guardian of the recipient, or the parent of a minor recipient may ask for a review of the plan. The review shall be completed within 30 days and shall be carried out in a manner approved by SHW
- An individual chosen or required by the recipient may be excluded from participating in the planning process if including that individual would constitute a substantial risk of physical or emotional harm to the recipient or substantial disruption in the planning process. Justification must be documented in the recipient's record



Freedom of Movement

Freedom of Movement: A recipient shall not be restricted more than what is necessary to provide mental health services, to prevent injury to himself, herself, or others, or to prevent substantial property damage.

Recipients shall receive services in the LEAST restrictive setting that is appropriate and available.

Any limitations on freedom of movement must be clinically justified in the person centered plan and must be approved by SHW Behavior Treatment Plan Review Committee.



Key Information to Remember

Restraint and Seclusion are ***prohibited*** except in a MDHHS operated or licensed hospital.

Restraint: The use of a physical device to restrict an individual's movement. Restraint does not include the use of a device primarily intended to provide anatomical support.

Seclusion: The temporary placement of a recipient in a room, alone, where egress is prevented by any means

Time out: a voluntary response to the therapeutic suggestion to a recipient to remove himself or herself from a stressful situation in order to prevent a potentially hazardous outcome.



Key Information to Remember (continued)

- **Physical Management:** A technique used by staff as an emergency intervention to restrict the movement of a recipient by direct physical contact to prevent the recipient from seriously harming himself, herself, or others.
 - Physical Management can only be used when a recipient is presenting an imminent risk of serious or non-serious physical harm to himself, herself, or others and lesser restrictive interventions were unsuccessful in reducing or eliminating an imminent risk of serious or non-serious physical harm.
 - Physical Management cannot be included as a component in a behavior treatment plan
- **Prone Immobilization:** Extended physical restraint of an individual in a face down (prone) position, usually on the floor, where force is applied to his or her body in a manner that prevents him or her from moving out of the prone position for the purpose of control. **PRONE IMMOBILIZATION IS PROHIBITED UNDER ANY CIRCUMSTANCES**



Fingerprints, Photographs, Audio-Recordings, Video-Recordings, and Use of One-Way Glass

The Mental Health Code states that a recipient shall not be fingerprinted, photographed, audiotaped or viewed through one-way glass for purposes of identification, or in order to provide services (including research), or for educational or training purposes, without prior written consent

- Prior written consent from the recipient, the recipient's guardian, or a parent with legal and physical custody must be obtained and a copy placed in the recipient's record
- Fingerprints, photographs, and audio-recordings and any copies of these are to be made part of the recipient record and are to be destroyed or returned to the recipient when no longer essential or upon discharge, whichever occurs first.



Fingerprints, Photographs, Audio-Recordings, Video-Recordings, and Use of One-Way Glass (continued)

- If photographs, fingerprints, or audio-recordings are sent to others to help determine the identity of a recipient, the individual receiving the items must be informed that return is required, as well as any copies made, for inclusion in the recipient record
- Photographs may be taken for purely personal or social purposes and will be treated as the property of the recipient. **Photographs must not be taken if the recipient has objected.**
- Photographs include still pictures, motion pictures, and videotapes.



Communication

Every **resident** is entitled to unimpeded, private and uncensored communication with others by mail, telephone and to visit with persons of his/her choice. Each facility shall endeavor to implement these rights

- Residents are able to use the telephone and to use mail services, uncensored and if necessary, funds will be provided for postage, writing material, telephone expenses (all within reasonable amounts)
- Space will be made available for visitors
- Limitations may be made on these rights, but only as allowed in the Person Centered Plan and following review of the SHW Behavior Treatment Plan Review Committee (BTPRC)
- A limitation under this rule shall not apply between a resident and an attorney or court, or between a resident and other individuals if the communication involves matters that are or may be the subject of legal inquiry.

***** Note: a resident is defined as an individual who receives services in a state operated facility, a licensed psychiatric hospital or unit or an adult foster care facility*****



Entertainment Materials, Information and News

A **resident** has the right to acquire entertainment materials, information and news at his or her own expense, to read written or printed materials and to view or listen to television, radio, recordings or movies made available at a facility

- A provider must never prevent a resident from exercising this right for reasons of, or similar to, censorship
- A provider may limit access to entertainment materials, information, or news only if such a limitation is specifically approved in the resident's Person Centered Plan.
- A provider must establish written policies and procedures that provide for:
 - General program restrictions on access to material for reading, listening or viewing
 - Determining a resident's interest in, and provide for, a daily newspaper
 - Assure that material not prohibited by law, may be read or viewed by a minor unless there is an objection by the minor's parent or guardian
 - Permit attempts by the staff person in charge of the minor's PCP to persuade a parent or guardian of a minor to withdraw objections to material desired by the minor
 - A mechanism for the resident to appeal a denial of their right to entertainment materials, Information and news, and to remedy a wrongful denial
- A provider may require that materials acquired by a resident that are of a sexual or violent nature be read or viewed in the privacy of the resident's room



Dignity & Respect

MHC Section 330.1708(4) states that a recipient has the right to be treated with dignity and respect.

Dignity: To be treated with esteem, honor, politeness, or honesty; to be addressed in a manner that is not patronizing, condescending, or demeaning, to be treated as an equal; to be treated the way the individual wants to be treated.

Respect: To show differential 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 the individual to make choices.



Dignity & Respect (continued)

Examples:

- Include people in decisions – involve people in daily activities of life
- Don't talk about people in front of them
- How you say something is as important as what you say. (tone- yelling, screaming, sarcastic)
- Thank people
- Don't assume you always know what a consumer wants
- Listen/ Be Patient
- Call people by their preferred name
- Care about people- treat others the way that you want to be treated

MHC Section 330.1711 states that **Family Members** are entitled to:

- **Be treated with dignity and respect**
- **An opportunity to receive information from or provide information to the treating professionals within the constraints of confidentiality**
- **Be provided an opportunity to request and receive educational information about the nature of disorders, medications and their side effects, available support services, advocacy and support groups, financial assistance and coping strategies**



Confidentiality

The right to confidentiality is one of the most important rights granted to recipients. Each mental health service provider is required to have policies and procedures which provide for maintaining the confidentiality of those receiving services. Each recipient is entitled to confidentiality when seeking the services of a lawyer, a doctor or other mental health services professional. In order to assure the confidentiality of recipients, ***all staff must protect written and unwritten information gained while providing mental health services.***

The Mental Health Code Requires that:

- Every recipient be informed about the law requiring confidentiality
- A record be maintained of any information about the recipient that is disclosed. This record must include what information was released, to whom it was released, and the reason for the release
- Under certain circumstances, the release of information may be delayed, or even withheld.



Confidentiality (continued)

There are times when it is appropriate to disclose information about a recipient. If information made confidential by this section is disclosed, the identity of the individual to whom it pertains shall be protected and shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought, and when practicable, no other information shall be disclosed unless it is germane to the authorized purpose for which disclosure was sought.

Ask your supervisor who is authorized to release information about a recipient. Know who the persons or agencies are that are authorized to receive information about a particular recipient. It may be different for each recipient. If you are uncertain about releasing information, ask your supervisor prior to providing any information about a recipient.

Ask your supervisor about your agency protocol for answering the telephone or leaving voicemail messages for recipients to ensure confidentiality.

Ask your supervisor about your agency protocol for disclosing documents from a recipient's record.



Mandatory Disclosure without Consent

(Information requested)

- Through orders or subpoenas of a court of record (judge's order) or to comply with the law
- By a prosecuting attorney when necessary to participate in proceedings governed by the Mental Health Code, i.e., involuntary commitment proceedings
- To comply with another provision of law, i.e., Duty to Warn
- By MDHHS in order for it to discharge its responsibilities
- By the Auditor General if the information is necessary for that office to discharge its constitutional responsibility
- By Disability Rights Michigan when it has received a complaint by the recipient or when it has reasonable cause to believe that a recipient has been subject to abuse or neglect



Mandatory Disclosure with Consent

- To the recipient's attorney when the recipient has given consent (written consent)
- Case record information requested by a competent adult recipient. ***A competent adult recipient is entitled to review their record and receive any and all information contained in his or her record subsequent to March 28, 1996***



Discretionary Disclosure without Consent

- As necessary in order for the recipient to apply for or receive benefits (only if these benefits accrue to the provider for liability for payment of mental health services)
- As necessary for outside research, evaluation, accreditation, etc. (no recipient identifiers shall be given unless identification is essential to the purpose for which the information is sought or if preventing identification would be impractical, unless harm is likely)
- As necessary for treatment, coordination of care, or payment for the delivery of mental health services, in accordance with the health insurance portability and accountability act
- To mental health providers, health services, or a public agency if there is compelling need for disclosure based upon a substantial probability of harm to the recipient or others
- To comply with a request by MDDHS under MHC Section 178a (child abuse or neglect investigations). Refer to Clinical Policy #30



Mandatory Disclosure with Consent

To the recipient (with a guardian) or guardian or parent of a minor recipient or another person or agency UNLESS in the written judgement of the holder of the record the disclosure would be detrimental to the recipient or others.

Some information can be provided to legal and medical personnel who provide services to a recipient without obtaining a release of information. However, the information released must be limited to the services being provided.

Examples of Confidentiality Violations:

- Talking about recipients outside of work; Referring to recipients by name when discussing work with family or friends
- Taking photographs or videotapes of recipients without permission
- Discussing recipients or making a recipient reasonably identifiable on social network sites; Face Book, Snap Chat, etc.
- Listening in on a recipient's phone call
- Discussing information in a recipient's record with other mental health or service professionals who are not authorized to receive information
- Referring to a recipient by name in another recipient's record or on an incident report for another recipient



Consent and Informed Consent

Confidentiality is a right of every recipient of mental health services. Everyone involved with the delivery of services must work to maintain and protect this right. All information in a person's record, and any information about the person discovered while providing services, is confidential.

Consent of the recipient, or the recipient's guardian, is required before giving out information.

Consent means a written agreement executed by a recipient, a minor recipient's parent, or a recipient's legal representative with authority to execute a consent, or a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment.

A recipient cannot simply agree to have confidential information released. In order for a release of information to be valid, it must be given with ***Informed Consent***. This means the recipient:

- Has the legal capacity to give consent. An individual is presumed to be legally competent unless there is a court appointment of a guardian and only to the extent of the scope and duration of the appointment- **Legal Competency**
- Is not pressured in any way to give consent and is instructed that they may withdraw consent at any time without prejudice- **Voluntariness**
- Is able to understand what information he/she is agreeing to release- **Knowledge**
- Understands the risks, benefits, and consequences of agreeing or not agreeing to the release of information requested- **Comprehension**



Abuse and Neglect

Shiawasse Health and Wellness has zero-tolerance regarding the abuse or neglect of a recipient. It is important to understand what is meant by abuse and neglect and to know what the law requires you to do when you become aware that a recipient has been abused or neglected.

The definitions used to define Abuse and Neglect are taken from MDHHS Administrative Rules. Abuse and Neglect definitions have three classes each and are based upon the action taken and the severity of the injury to the recipient.



Abuse Class I

A non-accidental act or provocation of another to act, by an employee, volunteer, or agent of a provider, which caused or contributed to ***death, serious physical harm, or sexual abuse*** of a recipient.

Serious Physical Harm: Physical damage suffered by a recipient, which a physician or registered nurse determines caused or could have caused the **death** of a recipient, or caused the **impairment of his/her bodily function(s)**, or the **permanent disfigurement** of a recipient

- Bodily function is defined as the usual action of any region or organ of the body



Abuse Class I (Con't)- Sexual Abuse

- i. Criminal sexual conduct involving an employee, volunteer, or agent of a provider and a recipient
- ii. Any sexual contact or sexual penetration involving a recipient and an employee, volunteer, or agent of an adult foster care facility, a facility licensed by MDHHS, or a Department operated hospital or center.
- iii. Any sexual contact or sexual penetration involving an employee, volunteer, or agent of a provider and a recipient for whom the employee, volunteer, or agent provides direct services to.
 - **“Sexual contact”**: the intentional touching of the recipient's or employee's intimate parts or the touching of the clothing covering the immediate area of the recipient's or employee's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for any of the following:
 - Revenge
 - To inflict humiliation
 - Out of anger
 - **“Sexual penetration”**: Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however, slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.



Abuse Class I (continued)

Examples:

- An act by staff that is not an accident; such as, biting, punching, slapping, etc. that caused or contributed to death, permanent disfigurement, or impairment of a bodily function.
- Shoving a recipient down the stairs and the recipient sustains a closed head injury.
- Hitting a recipient in the eye, resulting in damage to the eye
- A staff person having sexual relations with a recipient who lives in an adult foster care home.
- A staff person having a sexual relationship with a recipient for whom the staff person provides direct services



Abuse Class II

- i. A non-accidental act or provocation of another to act, by an employee, volunteer, or agent of a provider, which caused or contributed to non-serious physical harm to a recipient;
- ii. The use of unreasonable force on a recipient, by an employee, volunteer, or agent of a provider, with or without apparent harm;
- iii. Any action or provocation of another to act by an employee, volunteer, or agent of provider that causes or contributes to emotional harm to a recipient;
- iv. An action taken on behalf of a recipient by a provider who assumes the recipient is incompetent, despite the fact that a guardian has not been appointed, that results in substantial economic, material, or emotional harm to a recipient
- v. Exploitation of a recipient by an employee, volunteer, or agent of a provider.



Abuse Class II (continued)

Non-Serious Physical Harm: Physical damage, or what could reasonably be construed as pain, suffered by recipient, which a physician or registered nurse determines could not have caused or contributed to death, the permanent disfigurement of a recipient, or an impairment of his/her bodily functions

Unreasonable Force: Physical management or force, that is applied by an employee, volunteer, or agent of a provider to a recipient in one or more of the following circumstances:

- A. There is no imminent risk of serious or non-serious physical harm to the recipient, staff or others
- B. The physical management is not in compliance with techniques approved by the provider, and the responsible mental health agency
- C. The physical management used is not in compliance with the emergency interventions authorized in the recipient's plan of service
- D. The physical management or force is used when other less restrictive measures were possible but not attempted immediately before the use of physical management or force



Abuse Class II (continued)

“Physical Management”: A technique used by staff as an emergency intervention to restrict the movement of a recipient by direct physical contact to prevent the recipient from harming himself, herself, or others

“Emotional Harm”: impaired psychological functioning, growth, or development of a significant nature as evidenced by observable, physical symptomatology, or as determined by a Mental Health Professional

Exploitation: an action that involves the misappropriation or misuse of a recipient’s property or funds for the benefit of an individual or individual other than the recipient

Examples:

- An act by staff that is not an accident; such as, biting, punching, slapping, etc. that could not have caused or contributed to death, permanent disfigurement, or impairment of a bodily function
- Doing a take-down when less restrictive measures could have been used first (unreasonable force)
- Hitting a recipient in the face, causing a black eye (non-serious physical harm)
- Taking a recipient’s money to purchase items for another individual (exploitation)
- Shoving a recipient to the ground- no injury results (unreasonable force)



Abuse Class III

The use of language or other means of communication by an employee, volunteer, or agent of a provider to **degrade, threaten, or sexually harass** a recipient.

- **Sexual harassment:** sexual advances to a recipient, requests for sexual favors from a recipient, or other conduct or communication of a sexual nature toward a recipient.
- **Threaten** means... :
 - to utter intentions of injury or punishment against,
 - to express a deliberate intention to deny the well-being, safety, or happiness of somebody unless the person does what is being demanded
 - to tell someone that you will hurt them or cause problems if they do not do what you want
- **Degrade** means...:
 - to treat humiliatingly: to cause somebody a humiliating loss of status or reputation or cause somebody a humiliating loss of self-esteem;
 - to make worthless; to cause a person to feel that they or other people are worthless and do not have the respect or good opinion of others
 - to debase, demean, humble, humiliate. These verbs mean to deprive of self-esteem or self-worth; to shame or disgrace.
 - any language or epithets that insult the person's heritage, mental status, race, sexual orientation, gender, intelligence, etc.

Examples:

- Swearing at a recipient
- Using racial or ethnic slurs toward a recipient
- Calling a recipient a degrading name
- Requesting a sexual favor from a recipient
- Shaking your fist in a recipient's face in a threatening manner
- An obscene gesture toward a recipient



Neglect Class I

- I. Acts of commission or omission by an employee, volunteer or agent of a provider that result from a noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and that causes or contributes to the death, or sexual abuse of, or serious physical harm to a recipient
- II. The failure to report apparent or suspected Abuse Class I or Neglect Class I.

Examples:

- The staff person responsible for administering medications accidentally gives a recipient a medication that is not prescribed to them, i.e., not on their physician order. The recipient dies as a result.
- A staff person does not provide the level of supervision to a recipient that is specified in his or her Person Centered Plan. During this time, the recipient is able to leave the home, falls into the river and drowns as a result.



Neglect Class II

- I. Acts of commission or omission by an employee, volunteer or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to non-serious physical harm or emotional harm to a recipient
- II. The failure to report apparent or suspected Abuse Class II or Neglect Class II.

Examples:

- The staff person responsible for administering medications accidentally gives a recipient a medication that is not prescribed to them, i.e., not on their physician order. The recipient becomes ill as a result.
- A staff person does not provide the level of supervision to a recipient that is specified in his or her Person Centered Plan. During this time, the recipient is able to leave the home, falls down and breaks their arm as a result.



Neglect Class III

- I. Acts of commission or omission by an employee, volunteer or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and that either placed or could have placed a recipient at risk of physical harm or sexual abuse, or
- II. The failure to report apparent or suspected Abuse Class III or Neglect Class III

Note: No actual harm has to occur to the recipient in Neglect Class III; the law only requires that the recipient be placed in a situation where there is, or **could be**, a risk of harm.



Examples of Neglect Class III

- The staff person responsible for administering medications accidentally provides a recipient a medication that is not prescribed to them, i.e., not on their physician order. The RN consulted indicated that based on the medications given and the recipient's medical history, he could have been placed at risk for physical harm.
- A staff person does not provide the level of supervision to a recipient that is specified in his or her Person Centered Plan and, during that time, the recipient is able to leave the home. Shortly after, staff notice that the recipient is gone and find him/her in the adjacent yard. The assigned Clinician stated that based on the recipients history of elopement and lack of safety skills, the recipient could have been placed at risk for harm.



Reporting Abuse and Neglect

WHEN YOU SEE OR HEAR ABOUT A RECIPIENT BEING ABUSED OR NEGLECTED, IT IS IMPORTANT THAT YOU TAKE ACTION QUICKLY!

- A verbal report must immediately be made to **BOTH** the Office of Recipient Rights **AND** your supervisor.
- An Incident Report must be completed by the end of your shift. The completion of an incident report does not relieve you of your responsibility to make an immediate verbal report.

It is your responsibility to report Abuse or Neglect or any potential Rights complaint to the ORR (Office of Recipient Rights) and to any and all applicable agencies as required by law.

Protecting the recipient is your primary responsibility. The failure to report apparent or suspected abuse or neglect could result in your being cited for neglect.



Examples of Failure to Report Abuse or Neglect

- You hear of another staff person hitting a recipient the day before. You didn't report because you didn't witness this, you only heard of it happening.
- You hear a co-worker threaten a recipient. You don't call the ORR or your supervisor for two days.
- You are reviewing documentation from the previous week. You note that a co-worker documented 'pushing' a recipient out of the kitchen. You assume that this was just a bad choice of wording and don't report to the ORR or your Supervisor.



Incident Reports

Unusual circumstances in which an Incident Report is required:

- Any explained or unexplained injury of a recipient – bruising
- An unusual or first time medically related occurrence, such as seizures
- Environmental emergencies
- Problem behaviors not addressed in the treatment plan such as breaking things, attacking people, or setting fires
- Suspected abuse or neglect (a complaint form may also be completed)
- Inappropriate sexual acts (excessive masturbation, inappropriate touch of others, etc.)
- Use of physical intervention
- Involvement of other agencies (police, hospital, fire, etc.)
- Any unauthorized leave of absence of a recipient
- The death of a recipient- also fill out the trigger event/death report



Incident Reports (continued)

The Following Questions Must be Answered on the Incident Report:

- **WHO was involved?**
 - When referring to other recipients in the description, use relationships, i.e., roommate or peer, rather than names or case numbers.
 - An incident report should be filled out for every recipient involved. If there are two recipients involved in an incident, then two incident reports must be completed.
 - If an employee is hurt in any way during an incident, an Employee Injury Report must be completed for SHW employees. Contract employees should contact their HR department.
- **WHAT happened?**
 - Be descriptive in the explanation of what happened, but only describe observed circumstances. This description is to provide a clear picture of what occurred.
- **WHAT did you do?**
 - What did you do in response to the incident, what if any interventions were performed?
- **WHEN did it happen?**
 - Clearly denote the time and date of the event as well as Person(s) Notified.
- **WHERE did it happen?**
 - Clearly denote where the event occurred, this could be in the home or even in a public setting.
- **HOW did it happen?**
 - Outline the circumstances that led up to the event.



Incident Reports - Medications

- Consumers have the right to refuse their medications. If this happens do not complete an Incident Report.
 - If you have direct access to the SHW Electronic Medical Record
 - Complete a Non-Billable Contact Note. Explain the situation in detail.
 - Using “Send Copy To” notify the case holder and nursing staff if, the consumer is assigned to “psychiatric and nursing”.
- If you do not have direct access to SHW Electronic Medical Record include the consumers refusal of medications in the progress note then contact the case holder and inform them of the refusal.



Filling Out The Incident Report Form

The person filling out the **Incident** Report should complete all sections of the form, offering as much detail as possible in the narrative sections. All sections must be easy to read. This includes but is not limited to:

- The name and case number of the recipient involved. The case number used should be the same as the one used by the responsible organization (SHW) in their medical record system
- The date and time the incident occurred or was noticed (denote a.m. or p.m.)
- The date and time the incident is being reported to the responsible agency (under the “persons notified” section (include a.m. or p.m.)
- Indicate all witnesses or others involved
- The site (facility name) and location where the incident occurred.
- Identify the area where the incident occurred. Write a complete and detailed description of what happened, stating facts not listed elsewhere on the form including what events may have led up to the incident. Give a clear picture of what happened and what action was taken. A second sheet may be filled out and attached if necessary.



Incident Reports (continued)

The Following Questions Must be Answered on the Incident Report:

- **WHO was involved?**
 - When referring to other recipients in the description, use relationships, i.e., roommate or peer, rather than names or case numbers.
 - An incident report should be filled out for every recipient involved. If there are two recipients involved in an incident, then two incident reports must be completed.
 - If an employee is hurt in any way during an incident, an Employee Injury Report must be completed for SHW employees. Contract employees should contact their HR department.
- **WHAT happened?**
 - Be descriptive in the explanation of what happened, but only describe observed circumstances. This description is to provide a clear picture of what occurred.
- **WHAT did you do?**
 - What did you do in response to the incident, what if any interventions were performed?
- **WHEN did it happen?**
 - Clearly denote the time and date of the event as well as Person(s) Notified.
- **WHERE did it happen?**
 - Clearly denote where the event occurred, this could be in the home or even in a public setting.
- **HOW did it happen?**
 - Outline the circumstances that led up to the event.



Finishing The Incident Report

Identify exactly what happened:

- The nature and the severity of the injury.
- The location of where the injury occurred “on” the individual’s body (may be more than one spot injured).

If the author requires more space to document the event then additional pages may be used.

Identify any Corrective Measures Taken to Remedy and/or Prevent Recurrences as well as any treatment that was provided to the recipient. This may include identifying the treating physician and/or facility in the spaces provided.

Clearly print the name of the person reporting and then sign and date the Incident Report.

The completed Incident Report should be submitted to SHW within 48 hours.



**If you have any questions regarding Recipient Rights,
please contact your local Recipient Rights Office at
(989) 723-0725.**

[Click here to take the exam required to pass this course.](#)

