Recipient Rights and Due Process TRAINING

Simon Pop, MBA
Chief Operating Officer
2012 - 2013
Taylor’s Special Care Services, Inc.  
Introduction to Recipient Rights

- OCCMHA contract requires that all TSCS new employees, contracted staff, volunteers and interns attend the Recipient Rights training provided by OCCMHA Office of Recipient Rights or an OCCMHA certified Rights Trainer.

- All employees, volunteers and interns then, are required to have an Annual Update of the Recipient Rights training that is found in the training section of OCCMHA website.
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights

- **OCCMHA Office of Recipient Rights (ORR)** is the Authority that advocates on behalf of recipients of services.

- **ORR Location:**

  2011 Executive Hills Blvd.
  Auburn Hills, MI 48326

  Phone    (248) 858-1202
  Fax      (248) 858-1633
  TTD      (800) 552-8774
  Toll Free (877) RIGHTSU
Taylor’s Special Care Services, Inc.  
Introduction to Recipient Rights

- **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.”

- **What is the Mental Health Code (Act 258 of 1974)?**
  Is a compilation of laws and rights set forth to protect those people receiving public mental health services.
Taylor’s Special Care Services, Inc.

Introduction to Recipient Rights

The following Acts/Codes protect the rights of recipients:

- Community Mental Health Act of 1963
  - Established Community Mental Health

- Civil Rights Act of 1964
  - School segregation, voting, civil rights to all

- Rehabilitation Act (504) of 1973
  - Workshops, special education
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights

- Michigan Mental Health Code of 1974

- Whistle Blowers Act of 1980
  - Protects employees from harassment and retaliation when they participate in the rights protection process.

- American with Disabilities Act of 1990
  - Unimpeded access.
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights

All recipients and or their guardians receive a copy of the “YOUR RIGHTS” booklet upon entering service. Individuals that have limited-English proficiency and/or sensory impairments are provided material in their own language, on tape or by other means.

Alternative formats include Spanish, Arabic, Audio, Braille and translation services. Additional information is available from the Recipient Rights Office.
Taylor’s Special Care Services, Inc.  
Introduction to Recipient Rights

Mental Health Code and other laws safeguard the rights of recipients. Employees, volunteers and interns are responsible for protecting the rights of recipients.

Examples of Rights:

• All recipients of services have the right to be treated with dignity and respect by their health care providers.
• Recipients have the right to Freedom from Abuse and Neglect.
• The Right to Practice the Religion of their choice.
Examples of Rights (Cont’d):

- Recipients have the right not to be fingerprinted/photographed, audio taped, videotaped/viewed through one-way glass.
- Recipients have the right to ask that their information about their mental health treatment is kept private and confidential.
- Recipients have the right to access their own records.
- Recipients have the right to treatment in a place which is clean and safe.
Examples of Rights (Cont’d):
- Recipients can’t be denied civil rights. They have the right to an education, the right to vote, and the right not to be discriminated against because of their age, color, height, national origin, physical or mental disability, sex, religion, race, weight.
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights

Examples of Rights (Cont’d):
- Recipients in a RESIDENTIAL or INPATIENT setting have the right to:
  - Receive or send mail without anyone else opening or reading it.
  - Talk on the phone.
  - To see visitors in private.
  - To watch TV, buy and read newspapers, magazines, and books of their own choice, unless they are limited by plan of services or restricted by program rules.
Examples of Rights (Cont’d):

- Recipients in a RESIDENTIAL or INPATIENT setting have the right to:
  - Personal Property.
  - Be paid for work if offered work.
  - Freedom of Movement.

- Rules must be posted in the home and recipients must be given a copy of the rules when moving in.
Taylor’s Special Care Services, Inc. 
Introduction to Recipient Rights

- Recipients in a RESIDENTIAL or INPATIENT setting:
  Restrictions vs. Exclusions
  - Examples of Restrictions:
    - Phone
    - Smoking
  - Examples of Exclusions:
    - Guns.
    - Knives.
    - Drugs.
Taylor’s Special Care Services, Inc.  
Introduction to Recipient Rights

Examples of Rights (Cont’d): - *Revisions of the MHC (1996)*

- The Right to Person-Centered Planning
  - Treatment given to Recipients is made up of Goals, Objectives and Activities that the Recipient Chooses
  - Recipients Guide Treatment - Clinicians/Case Managers assist them in achieving their Goals

- Family Rights
  - To be treated with Dignity and Respect
  - To participate in the treatment of their family member
  - To request and receive educational material about their family members mental illness and medications
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights

Treatment Rights

• To have an IPOS (or Preliminary Action Plan) completed within 7 days of the start of services.

• To choose, within certain limitations, the physician or other mental health professional of their choice to provide services for them.

• Voluntary recipients have the right to withdraw consent if they do not agree with the services being provided.
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights

Rights are GUARANTEED but may be LIMITED.

Limitations need the approval of the treatment team and/or the Behavioral Support Committee (of the Core Provider/Funding Source).

- Documentation must be present to provide justification for the limitations

SAFETY can not be limited.
We must do all we can to ensure the safety and well-being of our clients.
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights

**Role of the Rights Office:**
- Prevention
- Monitoring
- Complaint Resolution

**Function of the Rights Office:**
Enforce the Mental Health Code and Advocate for Persons with Disabilities.
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights

The ORR must have the following *three things present to open an investigation*:

1. **RECIPIENT.**
2. **ACCUSED.**
3. **VIOLATION OF THE CODE.**
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights

❖ **Who is a Recipient?**
  “A person with an open case or applying for services.”

❖ **Who is the Accused?**
  Has to be an employee, volunteer or intern that works for OCCMHA or a contract agency (i.e., Easter Seals-Michigan, Inc.)
Rights Complaints:

- A Recipient Rights Complaint is filed by ANYONE.
- Its purpose is to report alleged violations of the Code.
- The Office of Recipient Rights can assist in filing a complaint.
OAKLAND COUNTY COMMUNITY MENTAL HEALTH AUTHORITY
RECIPIENT RIGHTS COMPLAINT

If you believe that your rights have been violated, you (or someone else on your behalf) may use this form to make a rights complaint.

Keep the last copy and return this form to the Rights Office:
Oakland County Community Mental Health Authority
2011 Executive Hills Boulevard
Auburn Hills, MI 48326
248-858-1202 or 1-877 RIGHTS-U

<table>
<thead>
<tr>
<th>Complainant’s Name:</th>
<th>Recipient’s Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>Address:</td>
</tr>
<tr>
<td>Phone Number:</td>
<td>Phone Number:</td>
</tr>
<tr>
<td>Where did it happen?</td>
<td>When did it happen? (Date and Time)</td>
</tr>
</tbody>
</table>

1. Describe What Happened: (Attach additional sheets if necessary)

2. What right(s) do you feel was violated?

3. What resolution do you seek?

Complainant's Signature Date

Person Assisting Complainant, Date
What Happens when there is a Complaint?

Complaint Arises

- Allegation of a Violation of a Code Protected Right?
  - Yes: 5 business days
    - Send acknowledgement letter and copy of complaint
  - No: 5 business days
    - *Send acknowledgement letter and copy of complaint

Facts & remedy clear & easy? No statutorily required disciplinary action?

- Yes: To act on recipient's behalf to resolve complaint...
- No or... Complainant dissatisfaction with intervention
  - INVESTIGATION*
    - Remedial action by RMHA or respondent
    - Written closure to complainant
      - Log Decision
      - If substantiated, document remedial action

STATUS REPORT

- 30 calendar days: 30 days
- 30 calendar days: 60 days
- 30 calendar days: 90 days

REPORT of INVESTIGATIVE FINDINGS

- 10 calendar days: Remedial action by RMHA or respondent
- SUMMARY REPORT

*Immediate initiation if abuse, neglect, serious injury or death where there is suspected or apparent rights violation
Taylor’s Special Care Services, Inc.
Intro to Recipient Rights

**Incident Reports (IR):**
- Are completed by STAFF.
- Are completed for reporting UNUSUAL EVENTS.
- Need to be:
  - CLEAR/COMPLETE/CONSISE/TIMELY.
- All IRs need to be completed by the end of each shift & mailed daily.
Taylor’s Special Care Services, Inc.
Intro to Recipient Rights

- Incident Reports (IR) (Cont’d):
  - DEATH
  - ABUSE
  - NEGLECT
  - SERIOUS INJURIES

ARE TO BE REPORTED IMMEDIATELY BY PHONE, FAX AND PUT IN THE MAIL WITHIN 24 HRS.

For more details re IR submission refer Policy # A2.002:
- Reports of deaths are to be faxed to the Director of Rights & Advocacy at: (248) 858-7833.
INCIDENT, ACCIDENT, ILLNESS, DEATH OR ARREST REPORT
OAKLAND COUNTY COMMUNITY MENTAL HEALTH SERVICES

| REPORTING FACILITY / HOME / DAY PROGRAM NAME | NAME OF RECIPIENT | Core Provider/ Responsible agency (See code on back) |
| FACILITY ADDRESS | | |
| CITY | STATE | ZIP | NAME | HOME ADDRESS | |
| FACILITY PHONE # | FACILITY LICENSE # | CORPORATION NAME | HOME PHONE # | |

| FACILITY PHONE | FACILITY LICENSE # |
| | |

| NAME | HOME ADDRESS | |
| | |

| CASE #: | DOB: | SEX: | MALE | FEMALE |
| | | |

| NAMES OF STAFF INVOLVED / WITNESSES: | DATE OF INCIDENT: |
| | |

| TIME: | LOCATION OF INCIDENT (KITCHEN, YARD, MALL, WORKSHOP, VAN, ETC.): |
| | IN CODE: |

| PHYSICAL INJURY: | YES | NO |
| | |

| PHYSICIAN MEDICAL FACILITY: | PHONE NUMBER | DATE AND TIME CARE GIVEN | |
| | | | |

| DIAGNOSIS & TREATMENT: |
| | |

| SIGNATURE OF PERSON COMPLETING REPORT | PRINT NAME & TITLE | DATE AND TIME COMPLETED |
| | | |

| NAMES OF PERSONS NOTIFIED | DATE & TIME | NAMES OF PERSONS NOTIFIED | DATE & TIME |
| | | | |

| ADULT FOSTER CARE LICENSING: | OFFICE OF RECIPIENT RIGHTS: | ADULT / CHILD PROTECTIVE SERVICES: | LEGAL GUARDIAN: |
| | | | |

| [ ] PHONE | [ ] INCIDENT REPORT | | |

| [ ] PHONE | [ ] INCIDENT REPORT | | |

| [ ] INCIDENT REPORT | | | |

| LAW ENFORCEMENT AGENCY: | OTHER (PLEASE SPECIFY): | |
| | | |

| [ ] PHONE | | [ ] PHONE | |

| [ ] PHONE | | [ ] PHONE | |

| [ ] INCIDENT REPORT | |

| [ ] INCIDENT REPORT | |

| SIGNATURE OF LICENSEE/DESIGNEE | PRINT NAME & TITLE | DATE AND TIME COMPLETED | |
| | | | |

| CORRECTIVE ACTION TAKEN BY LICENSEE / DESIGNEE TO REMEDY AND/OR PREVENT REOCURRENCE | |

| SIGNATURE OF LICENSEE/DESIGNEE | PRINT NAME & TITLE | DATE AND TIME COMPLETED | |
| | | | |

COPY DISTRIBUTION: (White) - Recipient's Record (Pink) - MORC or CRS or CMH (Yellow) - Facility Record
If required, a copy of this form must also be submitted to AFC Licensing and to Legal Guardian/Designated
PUBLIC ACT 519/238 states:
“A person employed to provide mental health services, who suspects or has reasonable cause to believe that an adult or a child has been abused or neglected, shall make immediately, by telephone or otherwise, an oral report to the county Department of Human Services Protective Services Division, and file a written report.”
PUBLIC ACT 32 states:

“A mental health professional, a person employed by or under contract to the Community Mental Health Board, who has reasonable cause to suspect the abuse of a recipient shall immediately, make or cause to be made by telephone or otherwise, an oral report of the suspected Abuse to law enforcement, within 72 hours after making the oral report a written report shall be filed.”
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights

**ABUSE**  = Non-accidental act that causes harm.

**ABUSE I**  = Serious physical harm, death or sexual contact.
   e.g. Hitting with a large, heavy or pointed object or choking a client. ANY sexual contact.

**ABUSE II**  = Non-serious physical harm, unreasonable force with or without apparent harm.
   e.g. Slapping, pinching, pulling a client’s hair.

**ABUSE III**  = Language or other means of communications to: degrade, threaten or sexually harass.
   e.g. Using sarcasm, name calling, swearing, making fun of or teasing a client.
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights

**NEGLECT** = An Act or Failure to act that denies a recipient the appropriate standard of care

**NEGLECT I** = Serious harm, death, failure to report.
  e.g. Permitting a client to harm themselves (banging their head, cutting).

**NEGLECT II** = Non-serious physical harm, failure to report.
  e.g. Allowing a client to go out in clothing not suitable for conditions (no coat in the winter).

**NEGLECT III** = Placed or could have placed a recipient at risk of harm.
  e.g. Sleeping on duty, not buckling client’s seatbelt
Taylor’s Special Care Services, Inc. 
Introduction to Recipient Rights

**CONFIDENTIALITY**
Information in the record of a recipient and other information acquired in the course of providing mental health services to recipients, shall be kept confidential and shall not be open to the public.

**EXCEPTIONS**
Reporting Abuse & Neglect, Medical Emergency, With Consent, Duty to Warn.
# Taylor’s Special Care Services, Inc.
## Introduction to Recipient Rights

### Due Process

*Recipients have additional Rights beyond making a Rights Complaint*

<table>
<thead>
<tr>
<th>Appeals</th>
<th>VS</th>
<th>Grievance</th>
</tr>
</thead>
<tbody>
<tr>
<td>What is an Appeal?</td>
<td>What is a Grievance?</td>
<td>A request for review about any matter of dissatisfaction other than those issues covered by the appeal process. Includes Recipient Rights Complaints and Local Grievance.</td>
</tr>
<tr>
<td>A request for review of an action taken by an OCCMHA contracted Provider Agency</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### What is a Grievance?
A request for review about any matter of dissatisfaction other than those issues covered by the appeal process. Includes Recipient Rights Complaints and Local Grievance.
When Can a Person Appeal?

- Proposed termination, suspension or reduction in services.
  - Denial of a request for new or increased services
  - Denial of Services at intake based upon Eligibility
    - Denial of Admission to a Psychiatric Hospital
    - New, Amended or Updated IPOS
  - Delay in authorizing or Starting services

*OCCMHA must resolve a Grievance within 60 days*
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights
Due Process

Medicaid Fair Hearing for Medicaid Recipients ONLY

- If a provider takes an “action” and a recipient is not notified or they disagree with the “action” they may request a Fair Hearing.
- “Action” = when services are denied, changed, discontinued or reduced.
- Recipients should be encouraged to discuss their concerns with their worker before filing for a Fair Hearing.
- Recipients have 90 calendar days from the date of the written notice of action to file a request for a Fair Hearing.
- If the Fair Hearing is requested not more than 12 calendar days from the date of notice - the services must be reinstated/continued until the disposition of the Fair Hearing.
Taylor’s Special Care Services, Inc.  
Introduction to Recipient Rights  
Due Process

Medicaid Fair Hearing continued.....

- An Administrative Law Judge will preside over the hearing.
- Someone from OCCMHA will give justification for the action.
- The Recipient will be able to talk about why they disagree with the action.
- Funding Source representatives will be present at the hearing to be available for any clarifying questions.
  - The Judge will mail a written decision to the Recipient.
  - The written decision is **FINAL** - OCCMHA and TSCS are bound by **LAW** to follow the ruling.
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights

Due Process

Local Appeal for Non-Medicaid Recipients ONLY

- Local Appeals are made when Recipients disagree with an action taken by TSCS.
- Recipients should be encouraged to discuss their concerns with their worker before filing for a Local Appeal.
- A Recipient can either mail a request to OCCMAH/Due Process Department or call them at 248-858-1262.
- Must be done within 45 calendar days from the date of the action.
- If requested within 12 days of the action all services must be reinstated/continued until disposition.
- OCCMHA Due Process will review the request
- A letter will be sent to the Recipient and TSCS explaining the decision made by OCCMHA.
When can a person ask for a Second Opinion?

- *BOTH* Medicaid and Non-Medicaid Recipients can ask for a Second Opinion.
- Denial of Services based on eligibility for mental health services ~ Must be requested within 5 days of the denial.
- Denial of psychiatric hospitalization or denial of admission to a state facility for persons with developmental disabilities ~ Must be requested within 24 hours of the denial.
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights
Due Process

The Second Opinion Process....

- An employee who has clinical training may meet with the recipient to complete another assessment.
- The employee will either agree or disagree with the TSCS first decision.
- If overturned, the recipient will receive the services and the decision will be sent to them in the mail.

To Request a Second Opinion, Call OCCMHA
248-858-1210
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights
Due Process

When can a person ask for a Local Grievance?

- When a person disagrees with anything about their services that cannot be appealed and is not a Recipient Rights Complaint
- There is no time limit, but waiting can make it harder to resolve the issue.

- To talk to someone about this process it should be discussed first with the TSCS worker, or his/her supervisor.
  - OCCMHA is also available to discuss this process
    1-800-341-2003
Taylor’s Special Care Services, Inc.
Introduction to Recipient Rights

Due Process

Questions?

TSCS Worker/Supervisor

all concerns/issues should be addressed to them first

OCCMHA Due Process
248-858-1262

OCCMHA Customer Service
1-800-341-2003

Recipient Rights
1-877-552-8774
TTY 1-800-552-8774
QUIZ

1. All employees, volunteers and interns then, are required to have an Annual Update of the Recipient Rights training that is found in the training section of OCCMHA website.
   □ TRUE □ FALSE

2. OCCMHA Office of Recipient Rights (ORR) is the Authority that advocates on behalf of recipients of services.
   □ TRUE □ FALSE

3. A RIGHT is that which a “person is entitled to have, to do, or to receive from others, within the limits prescribed by law”.
   □ TRUE □ FALSE

4. Guns, knives and drugs are examples of restrictions.
   □ TRUE □ FALSE

5. Abuse is non-accidental act that causes harm.
   □ TRUE □ FALSE

6. Neglect is an act or failure to act that denies a recipient the appropriate standard of care.
   □ TRUE □ FALSE

7. An appeal is a request for review of an action taken by a contracted provider.
   □ TRUE □ FALSE

8. A grievance is a request about any matter of dissatisfaction other than those issues covered by the appeal process.
   □ TRUE □ FALSE

   □ TRUE □ FALSE

10. Incident Reports are completed by staff for reporting unusual events.
    □ TRUE □ FALSE