

**Community Mental Health  
Association of Michigan**

**Boardworks 2.0: Leadership: Legal  
2024**

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**Leadership: Legal**

**Overview**

- **Mental Health Code**
- **Contractual Arrangement**
- **Open Meetings Act**
- **Freedom of Information Act**
- **Other**

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## MENTAL HEALTH CODE (MHC)

(MCL 330.1001, et seq)

- Duties and Responsibilities
- Recipient Rights
- Dispute Resolution



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## MENTAL HEALTH CODE, CHAPTER 2

- Chapter 2 of the MHC governs the establishment, organization and duties of community mental health services programs.
- Discusses in detail the procedures for formation, merger, consolidation and transformation of CMHSPs.

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## Purposes of a CMHSP

CMHSPs provide an “array” of mental health services including:

- ***Crisis stabilization*** and response including a 24/7 crisis emergency service to respond to persons experiencing acute dysfunctions, and the provision of inpatient / protective environment for treatment.
- ***Identification, assessment, and diagnosis*** to determine the specific needs of the recipient and to develop an individual plan of services.

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- ***Planning, linking, coordinating, follow-up, and monitoring*** to assist the recipient in gaining access to services.
- ***Specialized mental health recipient training, treatment, and support***, including therapeutic clinical interactions, socialization and adaptive skill and coping skill training, health and rehabilitative services, and prevocational and vocational services.
- ***Recipient rights services.***
- ***Mental health advocacy.***
- ***Prevention activities*** that serve to inform and educate with the intent of reducing the risk of severe recipient dysfunction. MHC §206.

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### Priorities of a CMHSP

- Services are to be directed to individuals who have serious mental illness, emotional disturbance, or developmental disability.
- Priority is to be given to those suffering the most severe forms of mental illness, emotional disturbance, or developmental disability, and to those in urgent/emergency situations.
- Service cannot be denied due to inability to pay.  
MHC § 208

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### CMHSP Diversion/Transition Services

- CMHSPs shall provide services designed to ***divert*** (jail diversion) those with serious mental illness, emotional disturbance, or developmental disability from incarceration. MHC § 207.
- CMHSPs shall develop individualized pre/postrelease plans for any recipient/resident, for community placement and aftercare. MHC § 209a.
- Placement of an individual in a supervised community living arrangement will involve the individual, any legal guardian, any other advocate the recipient chooses, and other individuals and entities where appropriate.  
MHC § 209b

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### CMHSP Board Composition

- 12 members
- If a single-county CMHSP, all representatives from that County
- If a multiple-county CMHSP, board membership will be proportional to County population. MHC §§ 212, 214.
- Special rules for single-county CMHSPs including a large city (>500,000). MHC §216.



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### CMHSP Board Composition

- Representation: providers of mental health services, recipients/primary consumers of mental health services, agencies and occupations having a working involvement with mental health services, and the general public.
- At least 1/3 of the membership shall be primary consumers or family members, and of that 1/3 at least half of those members shall be primary consumers.
- All board members shall be 18 years of age or older.

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### CMHSP Board Terms

- Generally, board members appointed to three-year terms
- Board members may be paid per diem and mileage.  
MHC § 330.224.



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### CMHSP Board Responsibilities

The board of a CMHSP must do all of the following:

- Annually conduct a needs assessment to determine the mental health needs of the residents of the service area and identify services necessary to meet those needs.
- Submit a needs assessment and an annual plan and request for new funds to the department in accordance with procedures and at a time established by the department. The needs assessment must include information gathered from all appropriate sources, including community mental health waiting list data and school districts providing special education services.

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### **CMHSP Board Responsibilities**

- If the CMHSP is an agency, the board must obtain approval of its needs assessment, annual plan and budget, and request for new funds from the county board of commissioners.
- A non-agency CMHSP must provide a copy of its needs assessment, annual plan, and request for new funds to the board(s) of commissioners.
- The CMHSP board must have a public hearing on the needs assessment, annual plan, and request for new funds before providing them to the county board of commissioners.

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### **CMHSP Board Responsibilities**

- The CMHSP board must approve an operating budget for each year
- The CMHSP board must submit an annual request for county funds to support the program to the county board(s) of commissioners for their approval.
- The CMHSP board must act to secure private, federal, and other public funds to help support the program.
- The CMHSP board must approve and authorize all contracts for the provision of services.

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## CMHSP Board Responsibilities

- The CMHSP board must review and evaluate the quality, effectiveness, and efficiency of services being provided by the CMHSP and make them available for public inspection upon request.
- The CMHSP board must appoint an *executive director* who meets MDCH experience and training standards. The executive director has the authority and responsibility for supervising all employees including the physician, credentialed nurse or psychologist. The MHC requires the director to select a health care professional to provide advice on treatment issues.
- The CMHSP must establish general policy guidelines for the executive director to operate the CMHSP. MHC § 226.

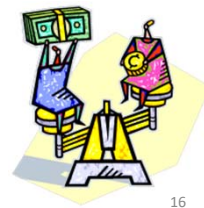
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## The Executive Director

Executive Director of a CMHSP is the chief executive and administrative officer of the program. S/he is responsible for administering the CMHSP in compliance with annual plan, budget, policy guidelines established by the board, governmental procedures and policies, and the terms of the MHC. MHC § 230.

The Executive Director shall appoint a *medical director* who is a psychiatrist to advise on medical policy/treatment issues. MHC § 231.



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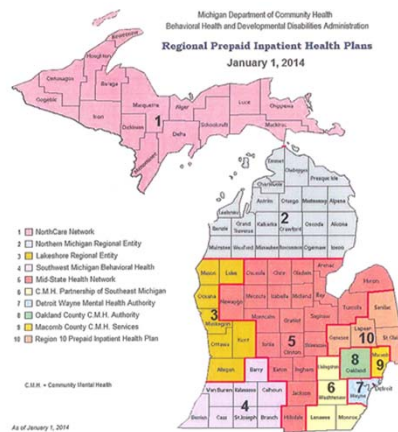
### Regional Entities

- Code section – 330.1204(b)
- A combination of community mental health organizations or authorities may establish a regional entity by adopting bylaws that satisfy the requirements of this section. A community mental health agency may combine with a community mental health organization or authority to establish a regional entity if the board of commissioners of the county or counties represented by the community mental health agency adopts bylaws that satisfy the requirements of this section. All of the following shall be stated in the bylaws establishing the regional entity

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- 10 Regional Entities



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## CONTRACTUAL ARRANGEMENTS

### Generally

- Relationship between MDCH and CMHSP is that of independent contractors. The same is true of MDCH and Regional Entities,
- No agent, employee, or servant of PIHP/CMHSP shall be deemed to be agent, employee, or servant of the State.
- CMHSP solely and entirely responsible.



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## CONTRACTUAL ARRANGEMENTS

### Contract Liability

- All liability, loss, or damage as a result of CMHSP obligations under contract shall be the responsibility of the CMHSP.
- All liability, loss, or damage as a result of MDCH obligations under contract shall be the responsibility of MDCH.
- Written notification immediately of any pending legal action.

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## CONTRACTUAL ARRANGEMENTS

Prepaid Inpatient Health Plan  
(PIHP)

Contractual Services Terms and Conditions

Medicaid and Healthy Michigan

The purpose of this contract is to obtain the services of the selected PIHP to:

- manage the concurrent 1915(b) and (c) programs
- to manage the provision of specialty mental health and substance use disorder services and supports.

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## CONTRACTUAL ARRANGEMENTS

Services

- 115 Behavioral Waiver
- State Plan [1915(i)]
- HSW, CWP & SEDW [1915(c)]
- Healthy Michigan
- Mi Child



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## CONTRACTUAL ARRANGEMENTS

### PIHP Responsibilities

PIHP shall be responsible for:

- The operation of the 1915 (i) and (c) program
- Development of the service delivery system
- Establishment of the sufficient administrative capabilities
- Complying with reporting requirements
- Complying with Code of Federal Regulations – Managed Care part

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## CONTRACTUAL ARRANGEMENTS

### CMHSP Responsibilities

The CMHSP shall be responsible for:

- development of service delivery system.
- establishment of sufficient administrative capabilities.
- complying with reporting requirements.

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## **CONTRACTUAL ARRANGEMENTS**

### CMHSP Supports and Services

#### CMHSP:

- agrees to meet priority needs as reflected in Section 208 of the Mental Health Code.
- shall ensure timely access to support and services.
- shall report its performance on the standards.
- shall locally monitor its performance and take action to improve.
- may implement medical necessity criteria.

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## **OPEN MEETINGS ACT**

(MCLA 15.261 et seq)

- An Act to require certain meetings of certain public bodies to be open to the public so that the public can personally observe the policymaking process.
- Government should not operate in secret.

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## OPEN MEETINGS ACT

What are public bodies?

- Any state or local legislative or governmental body.
- Including:
  - Board
  - Commission
  - Committee
  - Subcommittee
  - Authority or council empowered by statute, Constitution, ordinance, or resolution.

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## OPEN MEETINGS ACT

What is a meeting?

- The convening of a public body at which a quorum (which is more than half not 51%) is present for the purpose of deliberating toward or rendering a decision on public policy.
- If members of a public body constituting at least a quorum convene for purposes other than deliberating toward or rendering a decision on public policy, it is not a “meeting” under the Act (e.g., educational sessions, social gatherings).

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## OPEN MEETINGS ACT

Must meetings be posted?

- Yes. The public must have notice of all meetings of public bodies.
- The notice must always be posted at the principal office and “any other locations considered appropriate by the public body.”
- If there is no principal office, it must be posted in the office of the county clerk.



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## OPEN MEETINGS ACT

Must meetings be posted?

- A public notice must be posted ten days after the first meeting of the public body in each calendar or fiscal year stating the dates, times, and locations of its regular meetings.
- Changes in the schedule of regular meetings (date, time, or location) must be posted within three days after the meeting where the changes were made.
- Rescheduled regular meetings and special meetings must be posted at least 18 hours before the meeting.

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## OPEN MEETINGS ACT

What is a decision?

- A determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.
- Includes deliberations toward a decision.

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## OPEN MEETINGS ACT

What is a closed session?

- A meeting or part of a meeting of a public body which is closed to the public.
- A public body may only meet in a closed session for ten different purposes.
- A roll-call vote must be taken to go into closed session and the motion to go into closed session must include the purpose.

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## OPEN MEETINGS ACT

What if there is an OMA violation?

- If a public body does not comply with the provisions of the OMA, the attorney general, the county prosecutor of the county in which the public body serves, or an individual may initiate a civil suit to compel compliance or for injunctive relief.
- A civil action must be filed within 180 days after the date of the violation.

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## OPEN MEETINGS ACT

Can damages be awarded?

- Court costs and actual attorney fees may be awarded if the individual prevails in his or her action.
- If it is determined that a public official intentionally violated the Act, exemplary damages of not more than \$500 may also be awarded.



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## **OPEN MEETINGS ACT**

Are there criminal consequences?

- A public official who intentionally violates the Act is guilty of a misdemeanor and may be fined up to \$1,000.
- If that public official is convicted of intentionally violating the Act for a second time within the same term, the fine is increased to \$2,000, or he/she can be imprisoned for up to one year, or both.

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## **FREEDOM OF INFORMATION ACT**

(MCLA 15.231 et seq)

- An Act which provides public access to certain public records of public bodies.
- Persons incarcerated in state or local correctional facilities are not entitled to request information under this Act.

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## FREEDOM OF INFORMATION ACT

What is a public body?

- A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government.
- An agency, board, commission, or council in the legislative branch of the state government.

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## FREEDOM OF INFORMATION ACT

What is a public body?

- A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.
- Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.

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## FREEDOM OF INFORMATION ACT

What is a public record?

- A writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function. A public record does not include computer software.
- There are two kinds of public records ~ exempt and non-exempt from disclosure.



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## FREEDOM OF INFORMATION ACT

How do you make a FOIA request?

- Must be in writing (may be transmitted by facsimile or electronic means).
- Must be sufficiently described to enable the public body to find the public record. If not, the request can be denied.
- Direct the request to the FOIA coordinator of the public body.

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## FREEDOM OF INFORMATION ACT

How long does it take?

- The response must be made within five (5) business days AFTER receipt of the request (do not count the day of receipt).
- The public body may extend the time period for an additional 10 business days but only one (1) extension is allowed per request. This notice of extension must include the reason and the date by which the response will be provided.



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## FREEDOM OF INFORMATION ACT

How much does it cost?

- The public body can charge for the actual cost of copying public records, the actual cost of mailing the public records requested, and an administrative fee for searching, examining, reviewing, and separating exempt from non-exempt records. The public body may not charge more than the hourly wage of the lowest paid public body employee capable of retrieving the information.



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## FREEDOM OF INFORMATION ACT

How much does it cost?

- The public body can request a deposit equal to one-half of the total charge in advance if the charge is estimated to exceed \$50.00.
- The public body can require payment by the requester before actually providing the records.

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## FREEDOM OF INFORMATION ACT

What is exempt from disclosure?  
(Section 13)

- There are 25 different exemptions from disclosure.
- Most common:
  - Privacy
  - Statutory exemptions
  - Attorney~client privilege
  - Law enforcement records.

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## FREEDOM OF INFORMATION ACT

What if a request is denied?

- If a public body denies a FOIA request in part or in its entirety, the public body must explain why the request is denied and inform the requester of his or her rights under the Act.
- The most common denials are due to an insufficient description of the public record being requested and the inability to find records

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## FREEDOM OF INFORMATION ACT

What if the public body does not respond to the FOIA request?

- If a public body does not respond, it is considered a denial. If denied the requested information, an individual may:
  - Submit to the head of the public body a written appeal that specifically states the word “appeal” and identifies the reason(s) for reversal of the denial.
  - Initiate an action in Circuit Court within 180 days to compel production of the records.

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## FREEDOM OF INFORMATION ACT

Can damages be awarded?

- Reasonable attorney fees, costs, and disbursements may be awarded if the requester prevails in his or her action.
- If the Circuit Court determines that the public body has arbitrarily and capriciously violated the Act, the Court may also assess actual and compensatory damages as well as punitive damages of \$500 against the public body.

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### Other:

- HIPAA
- MIP
- Elliot Larsen Civil Rights Act
- Other...

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