

5122-30-22

Resident rights and grievance procedure.

(A) The operator shall be responsible for assuring the compliance by the facility with all resident rights. Facility violations of resident rights shall be regarded as sufficient cause to institute proceedings to deny or revoke the facility's license.

(B) In addition to the definitions appearing in rule 5122-30-03 of the Administrative Code, the following definitions apply to this rule:

(1) "Grievance" means a written complaint initiated either verbally or in writing by a resident or by any other person or agency on behalf of a resident regarding denial or abuse of any resident's rights.

(2) "Reasonable" means a standard for what is fair and appropriate under usual and ordinary circumstances.

(3) "Resident rights officer" means the facility staff, or staff of an affiliating agency in a type 2 and type 3 facility, with responsibility for implementing the grievance procedure.

(4) "Services" means the complete array of professional interventions designed to help a person achieve improvements in mental health such as counseling, individual or group therapy, education, community psychiatric supportive treatment, assessment, diagnosis, treatment planning and goal setting, clinical review, psychopharmacology, discharge planning, professionally-led support, etc.

(C) Each resident shall have the following twenty-five rights which are the same as or similar to those that are described in rule 5122-26-18 of the Administrative Code for an individual receiving mental health services from a community mental health center, as well as the additional rights listed in paragraph (D) of this rule:

(1) Each person who accesses mental health services is informed of these rights:

(a) The right to be fully informed of all rights orally and in writing within twenty-four hours of admission;

(b) The right to receive information in a culturally and linguistically competent format; and

(c) The right to be fully informed of the cost of services.

(2) Services are appropriate and respectful of personal liberty:

(a) The right to be treated with consideration, respect for personal dignity, autonomy, and privacy, and within the parameters of relevant sections of the Ohio Revised Code and the Ohio Administrative Code;

(b) The right to receive humane services:

(c) The right to participate in any appropriate and available service that is consistent with an individual service plan, regardless of the refusal of any other service, unless that service is a necessity for clear treatment reasons and requires the person's participation;

(d) The right to reasonable assistance in the least restrictive setting; and

(e) The right to reasonable protection from physical, sexual and emotional abuse, or harassment.

(3) Development of service plans in type 1 and type 2 facilities:

(a) The right to a current individualized service plan (ISP) that addresses the needs and responsibilities of an individual that specifies the provision of appropriate and adequate services, as available, either directly or by referral; and

(b) The right to actively participate in annual and periodic ISP reviews with the staff including services necessary upon discharge.

(4) Declining or consenting to services:

(a) The right to give full informed consent to services prior to commencement and the right to decline services absent an emergency;

(b) The right to be advised of and refuse observation by techniques such as one-way vision mirrors, tape recorders, televisions, movies, or photographs, or other audio and visual technology. This right does not prohibit a facility from using closed-circuit monitoring to observe seclusion rooms or common areas, which does not include resident bedrooms and bathrooms; and

(c) The right to decline any hazardous procedures.

(5) Restraint, seclusion or intrusive procedures:

The right to be free from restraint or seclusion unless there is imminent risk of physical harm to self or others.

(6) Privacy:

The right to reasonable privacy and freedom from excessive intrusion by visitors, guests, and non-facility surveyors, contractors, construction crews or others.

(7) Confidentiality:

(a) The right to confidentiality unless a release or exchange of information is authorized and the right to request to restrict treatment information being shared; and

(b) The right to be informed of the circumstances under which the facility is authorized or intends to release, or has released, confidential information without written consent for the purposes of continuity of care as permitted by division (A)(7) of section 5122.31 of the Revised Code

(8) Grievances:

The right to have the grievance procedure explained orally and in writing; the right to file a grievance with assistance if requested; and the right to due process through the grievance process including the right to appeal a decision.

(9) Non-discrimination:

The right to receive services free of discrimination on the basis of race, ethnicity, age, color, religion, gender, national origin, sexual orientation, physical or mental handicap, developmental disability, genetic information, human immunodeficiency virus status, or in any manner prohibited by local, state or federal laws

(10) No reprisal for exercising rights:

The right to exercise rights without reprisal in any form including the ability to continue services with uncompromised access. No right extends so far as to supersede health and safety considerations.

(11) Outside opinions:

The right to have the opportunity to consult with independent specialists or legal counsel at one's own expense.

(12) No conflicts of interest:

No residential facility employee may be a person's guardian or representative if the person is currently receiving services from said facility.

(D) In addition to the rights listed in paragraph (D) of this rule, each consumer residing in a residential facility shall have the following sixteen rights:

(1) Each consumer of mental health services are informed of these rights:

(a) The right to receive humane services in to a comfortable, welcoming, stable and supportive environment; and

(b) The right to retain personal property and possessions, including a reasonable sum of money, consistent with the person's health, safety, service plan and developmental age.

(2) Development of service plans:

The right to formulate advance directives, submit them to residential staff, and rely on practitioners to follow them when within the parameters of the law.

(3) Labor of patients:

The right to not be compelled to perform labor which involves the operation, support, or maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditional upon the performance of such labor.

(4) Declining or consenting to services:

(a) The right to consent to or refuse the provision of any individual personal care activity and/or mental health services in a type 1 and type 2 facility;

(b) The right to refuse consent for major aversive interventions; and

(c) The right to decline medication, except in a type 1 facility which employs staff authorized by the Ohio Revised Code to administer medication and when there is imminent risk of physical harm to self or others.

(5) Privacy, dignity, free exercise of worship and social interaction:

The right to enjoy freedom of thought, conscience, and religion; including religious worship within the facility, and services or sacred texts that are within the reasonable capacity of the facility to supply, provided that no resident shall be coerced into engaging in any religious activities.

(6) Private conversation, and access to phone, mail and visitors:

(a) The right of an adult to reasonable privacy and the freedom to meet with visitors, guests, or inspectors, and make and/or receive phone calls; or

(b) The right of a minor in a type 1 or type 2 facility to meet with surveyors, and the right to communicate with family, guardian, custodian, friends

and significant others outside the facility in accordance with the minor's individualized service plan;

(c) The right of an adult to write or receive uncensored, unopened correspondence subject to the facility's rules regarding contraband; or

(d) The right of a minor in a type 1 or type 2 facility to send or receive mail subject to the facility's rules regarding contraband and directives from the parent or legal custodian, when such rules and directives do not conflict with federal postal regulation.

(e) The right to communicate freely with and be visited at reasonable times by private counsel or personnel of the legal rights service and, unless prior court restriction has been obtained, to communicate freely with and be visited at reasonable times by a personal physician or psychologist;

(f) The right to communicate freely with others, unless specifically restricted in the resident of a type 1 facility's treatment plan for reasons that advance the person's goals, including, without limitation, the following:

(i) The right to receive visitors at reasonable times; and

(ii) The right to have reasonable access to telephones to make and receive confidential calls, including a reasonable number of free calls if unable to pay for them and assistance in calling if requested and needed; and

(g) The right to have ready access to letter writing materials, including a reasonable number of stamps without cost if unable to pay for them, and to mail and receive unopened correspondence and assistance in writing if requested and needed subject to the facility's rules regarding contraband.

(7) Notification to family or physician:

The right to have a physician, family member, or representative of the resident's choice notified promptly upon admission to a facility.

(E) Resident rights procedures.

(1) Each facility must have a written resident rights policy which contains the following:

(a) Specification of the resident rights as listed in paragraphs (C) and (D) of this rule;

(b) The name, title, location, hours of availability, and telephone number of the resident rights officer with a statement of that person's responsibility to accept and oversee the process of any grievance filed by a resident or other person or agency on behalf of a resident; and

(c) Assurance that staff will explain any and all aspects of resident rights and the grievance procedure upon request.

(2) A copy of the resident rights policy must be distributed in writing and orally to each resident at admission. Each facility policy shall specify how distribution shall be accomplished, and shall include provision that in a crisis or emergency situation, the resident shall be verbally advised of at least the immediately pertinent rights, such as the right to consent to or to refuse the offered treatment and the consequences of that agreement or refusal. Written copy and full verbal explanation of the resident rights policy may be delayed to a subsequent meeting.

(3) A copy of the resident rights policy shall be posted in a conspicuous location accessible to residents and the public.

(4) Each facility shall provide that every staff person, including administrative and support staff, is familiar with all specific client rights and the grievance procedure.

(F) Grievance procedure.

(1) Each type 1 facility must have a written grievance procedure which provides for the following, or in a type 2 and type 3 facility the method for implementing the following shall be specified in the affiliation agreement:

(a) Assistance in filing the grievance if needed by the griever, investigation of the grievance on behalf of the griever, and agency representation for the griever at the agency hearing on the grievance if desired by the griever. The grievance procedure shall clearly specify the name, title, location, hours of availability, and telephone number of the person(s) designated to provide the above activities;

(b) An explanation of the process from the original filing of the grievance to the final resolution, which shall include reasonable opportunity for the griever and/or his designated representative to be heard by an impartial decision-maker;

(c) A specification of time lines for resolving the grievance not to exceed twenty working days from the date of filing the grievance;

(d) A specification that written notification and explanation of the resolution

will be provided to the resident, or to the grievor if other than the resident, with the resident's permission;

- (e) Opportunity to file a grievance within a reasonable period of time from the date the grievance occurred;
 - (f) A statement regarding the option of the grievor to initiate a complaint with any or all of several outside entities, specifically the community mental health board, the Ohio department of mental health, the Ohio legal rights service, the U.S. department of health and human services, and appropriate professional licensing or regulatory associations. The relevant addresses and telephone numbers shall be included; and
 - (g) Provision for providing, upon request, all relevant information about the grievance to one or more of the organizations specified in this paragraph to which the grievor has initiated a complaint.
- (2) Each facility shall make provision for posting the grievance procedure in a conspicuous location accessible to residents and the public, and for distributing a copy of the written grievance procedure to each resident, upon request.
 - (3) Each facility shall make provision for prompt accessibility of the resident rights officer to the grievor.
 - (4) Each facility shall provide alternative arrangements for situations in which the resident rights officer is the subject of the grievance.
 - (5) Each facility shall provide that every staff person, including administrative, clerical, and support staff, has a clearly understood, specified, continuing responsibility to immediately advise any resident or any other person who is articulating a concern, complaint, or grievance, about the name and availability of the resident rights officer and the complainant's right to file a grievance.
 - (6) Each type 1 facility shall provide for the resident rights officer to take all necessary steps to assure compliance with the grievance procedure.

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