

5122-30-22

Resident rights and grievance procedure for class one facilities.

(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 advocate" means the residential facility staff , or a representative of the state long-term care ombudsman program, with responsibility for implementing the grievance procedure.

(C) Each facility shall have the following:

(1) Written resident rights policy that lists all of the resident rights identified in this rule;

(2) Written resident grievance procedure, written in a manner that residents can understand and which allows for reasonable accommodation for residents with disabilities;

(3) Policy for maintaining for at least three years from resolution, records of resident grievances that include, at a minimum, the following:

(a) Copy of the grievance;

(b) Documentation reflecting process used and resolution/remedy of the grievance; and,

(c) Documentation, if applicable, of extenuating circumstances for extending the time period for resolving the grievance beyond twenty-one calendar days.

(D) Posting of resident rights.

The resident rights policy, the grievance procedure, and the name of the resident rights advocate shall be posted in a conspicuous location that is readily accessible to all residents.

(E) Each resident has all of the following rights.

- (1) The right to be verbally informed of all resident rights in language and terms appropriate for the resident's understanding, prior to or at the time of residency, absent a crisis or emergency.
- (2) The right to request a written copy of all resident rights and the grievance procedure.
- (3) The right to exercise one's own rights without reprisal, except that no right extends so far as to supersede health and safety considerations.
- (4) The right to file a grievance.
- (5) The right to be treated all times with courtesy and respect, and with consideration for personal dignity, autonomy and privacy.
- (6) The right to receive services in the least restrictive, feasible environment.
- (7) The right to receive humane services in a clean, safe, comfortable, welcoming, stable and supportive environment.
- (8) The right to reasonable protection from physical, sexual and emotional abuse, and exploitation.
- (9) The right to freedom from unnecessary or excessive medication, and the right to decline medication, except a class one 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.
- (10) The right to be free from restraint or seclusion unless there is imminent risk of physical harm to self or others.
- (11) The right to be advised and the right to refuse observation by others and by techniques such as one-way vision mirrors, tape recorders, video recorders, television, movies, photographs or other audio and visual technology. This right does not prohibit a facility from using closed-circuit monitoring to observe seclusion rooms or other areas in the facility, bathrooms or sleeping areas, or other areas where privacy is reasonably expected, e.g. a medical examination room.
- (12) The right to confidentiality of communications and personal identifying information within the limitations and requirements for disclosure of resident information under state and federal laws and regulations.
- (13) The right to have access to one's own record unless access to certain information is restricted for clear treatment reasons. If access is restricted, a treatment/service plan shall include the reason for the restriction, a goal to

remove the restriction, and the treatment/service being offered to remove the restriction.

- (14) The right to be informed of one's own condition.
- (15) The right not to be discriminated against on the basis of race, ethnicity, age, color, religion, gender, national origin, sexual orientation, physical or mental disability, developmental disability, genetic information, human immunodeficiency virus status, or in any manner prohibited by local, state or federal laws.
- (16) The right to practice a religion of his or her choice or to abstain from the practice of religion.
- (17) The right to be informed in writing of the rates charged by the facility as well as any additional charges, and to receive thirty days' notice in writing of any change in the rates and charges.
- (18) The right to reside in a class one residential facility, as available and appropriate to the type of care or services that the facility is licensed to provide, regardless of previous residency, unless there is a valid and specific necessity which precludes such residency. This necessity shall be documented and explained to the prospective resident.
- (19) The right to continued residency unless the facility is no longer able to meet the resident's care needs; the resident presents a documented danger to other residents, staff or visitors; or the monthly charges have not been paid for more than thirty days.
- (20) The right not to be locked out of the facility at any time.
- (21) The right of adult residents not to be locked in the facility at any time for any reason.
- (22) The right to consent to or refuse treatment or services, or if the resident has a legal custodian, the right to have the legal custodian make decisions about treatment and services for the resident.
- (23) The right to consult with an independent treatment specialist or legal counsel at one's own expense.
- (24) The right to communicate freely with and be visited without staff present at reasonable times by private counsel and, unless prior court restriction has been obtained, to communicate freely with and be visited at reasonable times by a personal physician, psychologist or other health care providers, except that employees of a board, a provider, personnel of the Ohio protection and advocacy system, or representatives of the state long-term-ombudsman

program may visit at any time when permitted by the Revised Code.

The right to communicate includes receiving written communications, which may be opened and inspected by facility staff in the presence of the resident recipient so long as the communication is then not read by the staff and given immediately to the resident.

(25) The right to meet with staff from the Ohio department of mental health and addiction services in private.

(26) The right not to be deprived of any legal rights solely by reason of residence in the facility.

(27) The right to personal property and possessions:

(a) The right of an adult resident to retain personal property and possessions.

(b) The right of a child resident to personal property and possessions in accordance with one's health and safety considerations, and developmental age, and as permitted by his/her parent or guardian.

(28) The right of an adult resident to manage his/her own financial affairs, and to possess a reasonable sum of money.

(29) The right to use the common areas of the facility.

Adult residents shall have right of access to common areas at all times.

Children and adolescent residents shall have the right of access to common areas in accordance with the facility's program schedule.

(30) The right to engage in or refrain from engaging in activities:

(a) The right of an adult to engage in or refrain from engaging in cultural, social or community activities of the resident's own choosing in the facility and in the community.

(b) The right of a child or adolescent to access cultural and social activities.

(31) The right to meet or communicate with family or guardians, and visitors and guests:

(a) The right of an adult:

(i) To reasonable privacy and the freedom to meet with visitors and guests at reasonable hours.

(ii) To make and/or receive confidential phone calls, including free local calls.

(iii) To write or receive uncensored, unopened correspondence subject to the facility's rules regarding contraband.

(b) The right of a minor:

(i) To visitors and to communicate with family, guardian, custodian, friends and significant others outside the facility in accordance with instructions from the minor's parent or legal guardian.

(ii) To write or receive mail subject to the facility's rules regarding contraband and directives from the parent or legal guardian, when such rules and directives do not conflict with federal postal regulations.

(32) The right to be free from conflicts of interest; no residential facility employee may be a resident's guardian, custodian, or representative.

(F) Provision of client rights.

(1) The provider shall explain and maintain documentation in the resident's record an explanation of rights to each person served prior to or when beginning residency.

(2) In a crisis or emergency situation, the provider may verbally advise the resident of at least the immediately pertinent rights only, such as the right to consent to or to refuse the offered treatment and the consequences of that agreement or refusal. Full verbal explanation of the resident rights policy shall be provided at the first appropriate occasion, based upon the resident's functioning.

(3) Explanations of rights shall be in a manner appropriate for the person's understanding.

(G) All staff shall be trained on and follow the resident rights policy and resident grievance procedure. There shall be documentation in each employee's personnel file, including contract staff, volunteers and student interns that each staff member has received a copy of the resident rights policy and the resident grievance procedure and has agreed to abide by them.

(H) The resident rights advocate, or designee, shall:

(1) Be promptly accessible; and,

(2) Have their name, title, location, hours of availability, and telephone number included with the posting of resident rights as required by paragraph (D) of this rule.

(I) The resident grievance procedure shall have provisions for at least the following:

(1) Statement to whom the resident is to give the grievance;

(2) Designation of staff who will be available to assist a resident in filing of a grievance;

(3) Requirement that the grievance must be put into writing; the grievance may be made verbally and the resident rights advocate shall be responsible for preparing a written text of the grievance;

(4) Requirement that the written grievance must be dated and signed by the resident, the individual filing the grievance on behalf of the resident, or have an attestation by the resident rights advocate that the written grievance is a true and accurate representation of the resident's grievance;

Grievances may not be made anonymously, but grievance procedure shall provide method for confidential submission of grievance. Resident rights advocate shall keep such submissions and subsequent investigations confidential.

(5) Requirement that the grievance include, if available, the date, approximate time, description of the incident and names of individuals involved in the incident or situation being grieved;

(6) Statement that the program will make a resolution decision on the grievance within twenty-one business days of receipt of the grievance. Any extenuating circumstances indicating that this time period will need to be extended must be documented in the grievance file and written notification given to the resident;

(7) Statement that a resident has the option to file a grievance with outside organizations, that include, but are not limited to, the following, with the mailing address and telephone numbers for each stated:

(a) Applicable board for residents receiving mental health services;

(b) Ohio department of mental health and addiction services;

(c) Disability rights Ohio; or,

(d) U.S. department of health and human services, civil rights regional office

in Chicago.

(8) Requirement that a written acknowledgment of receipt of the grievance be provided to each grievant. Such acknowledgment shall be provided within three business days from receipt of the grievance. The written acknowledgment shall include, but not be limited to, the following:

(a) Date grievance was received;

(b) Summary of grievance;

(c) Overview of grievance investigation process;

(d) Timetable for completion of investigation and notification of resolution;
and,

(e) Treatment provider contact name, address and telephone number

Replaces: 5122-30-22

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 5119.34
Rule Amplifies: 5119.34
Prior Effective Dates: 5/10/1979, 5/1/1981, 1/1/2000, 8/1/2002, 3/1/2012