

## TO BE RESCINDED

5122:2-1-02

**Client rights and grievance procedures.**

(A) The purpose of this rule is to protect and enhance the rights of persons applying for or receiving mental health services by establishing specific rights of clients and procedures for responsive and impartial resolution of client grievances.

(B) The provisions of this rule are applicable to each contract agency and community mental health board.

(C) Definitions

(1) "Client" means an individual applying for or receiving mental health services from a board or mental health agency.

(2) "Client rights officer" means the individual designated by a mental health agency or board with responsibility for assuring compliance with the client rights and grievance procedure rule as implemented within each agency or board. For these purposes the individual holds the specific title of client rights officer.

(3) "Contract agency" means a public or private service provider with which a community mental health board enters into a contract for the delivery of mental health services. A board which is itself providing mental health services is subject to the same requirements and standards which are applicable to contract agencies, as specified in rule 5122:2-1-05 of the Administrative Code.

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

(5) "Mental health services" means any of the services, programs, or activities named and defined in rule 5122:2-1-01 of the Administrative Code. Mental health services include both direct client services and community services. Direct client services are listed and defined in paragraphs (D)(1) to (D)(10) of rule 5122:2-1-01 of the Administrative Code. Community services are listed and defined in paragraphs (D)(11) to (D)(15) of rule 5122:2-1-01 of the Administrative Code.

(D) Client rights. Except for clients receiving forensic evaluation service as defined in paragraph (D)(9) of rule 5122:2-1-01 of the Administrative Code, from a certified forensic center, each client has all of the following rights as listed in paragraphs

(D)(1) to (D)(22) of this rule. Rights of clients receiving only a forensic evaluation service from a certified forensic center are specified in paragraph (E) of this rule.

- (1) The right to be treated with consideration and respect for personal dignity, autonomy, and privacy;
- (2) The right to service in a humane setting which is the least restrictive feasible as defined in the treatment plan;
- (3) The right to be informed of one's own condition, of proposed or current services, treatment or therapies, and of the alternatives;
- (4) The right to consent to or refuse any service, treatment, or therapy upon full explanation of the expected consequences of such consent or refusal. A parent or legal guardian may consent to or refuse any service, treatment or therapy on behalf of a minor client;
- (5) The right to a current, written, individualized service plan that addresses one's own mental health, physical health, social and economic needs, and that specifies the provision of appropriate and adequate services, as available, either directly or by referral;
- (6) The right to active and informed participation in the establishment, periodic review, and reassessment of the service plan;
- (7) The right to freedom from unnecessary or excessive medication;
- (8) The right to freedom from unnecessary restraint or seclusion;
- (9) The right to participate in any appropriate and available agency service, regardless of refusal of one or more other services, treatments, or therapies, or regardless of relapse from earlier treatment in that or another service, unless there is a valid and specific necessity which precludes and/or requires the client's participation in other services. This necessity shall be explained to the client and written in the client's current service plan;
- (10) The right to be informed of and refuse any unusual or hazardous treatment procedures;
- (11) The right to be advised of and refuse observation by techniques such as one-way vision mirrors, tape recorders, televisions, movies, or photographs;

- (12) The right to have the opportunity to consult with independent treatment specialists or legal counsel, at one's own expense;
- (13) The right to confidentiality of communications and of all personally identifying information within the limitations and requirements for disclosure of various funding and/or certifying sources, state or federal statutes, unless release of information is specifically authorized by the client or parent or legal guardian of a minor client or court-appointed guardian of the person of an adult client in accordance with rule 5122:2-3-11 of the Administrative Code;
- (14) The right to have access to one's own psychiatric, medical or other treatment records, unless access to particular identified items of information is specifically restricted for that individual client for clear treatment reasons in the client's treatment plan. "Clear treatment reasons" shall be understood to mean only severe emotional damage to the client such that dangerous or self-injurious behavior is an imminent risk. The person restricting the information shall explain to the client and other persons authorized by the client the factual information about the individual client that necessitates the restriction. The restriction must be renewed at least annually to retain validity. Any person authorized by the client has unrestricted access to all information. Clients shall be informed in writing of agency policies and procedures for viewing or obtaining copies of personal records;
- (15) The right to be informed in advance of the reason(s) for discontinuance of service provision, and to be involved in planning for the consequences of that event;
- (16) The right to receive an explanation of the reasons for denial of service;
- (17) The right not to be discriminated against in the provision of service on the basis of religion, race, color, creed, sex, national origin, age, lifestyle, physical or mental handicap, developmental disability, or inability to pay;
- (18) The right to know the cost of services;
- (19) The right to be fully informed of all rights;
- (20) The right to exercise any and all rights without reprisal in any form including continued and uncompromised access to service;

- (21) The right to file a grievance; and
  - (22) The right to have oral and written instructions for filing a grievance.
- (E) Client rights. Each client receiving a forensic evaluation service from a certified forensic center has the rights specified in paragraphs (E)(1) to (E)(12) of this rule.
- (1) The right to be treated with consideration and respect for personal dignity;
  - (2) The right to be evaluated in a physical environment affording as much privacy as feasible;
  - (3) The right to service in a humane setting which is the least restrictive feasible if such setting is under the control of the forensic center;
  - (4) The right to be informed of the purpose and procedures of the evaluation service;
  - (5) The right to consent to or refuse the forensic evaluation services and to be informed of the probable consequences of refusal;
  - (6) The right to freedom from unnecessary restraint or seclusion if such restraint or seclusion is within the control of the forensic center;
  - (7) The right to be advised of and refuse observation by techniques such as one-way vision mirrors, tape recordings, televisions, movies, or photographs, unless ordered by the court, in which case the client must be informed of such technique;
  - (8) The right not to be discriminated against in the provision of service on the basis of religion, race, color, creed, sex, national origin, age, lifestyle, physical or mental handicap, developmental disability, or inability to pay;
  - (9) The right to be fully informed of all rights;
  - (10) The right to exercise any and all rights without reprisal in any form;
  - (11) The right to file a grievance;

- (12) The right to have oral and written instructions for filing a grievance including an explanation that the filing of a grievance is exclusively an administrative proceeding within the mental health system and will not affect or delay the outcome of the criminal charges.

(F) Client rights procedures

- (1) Each agency and each board which itself provides mental health services must have a written client rights policy which contains the following:
  - (a) Specification of the client rights as listed in paragraphs (D)(1) to (D)(22) and/or (E)(1) to (E)(12) of this rule;
  - (b) The name, title, location, hours of availability, and telephone number of the client rights officer with a statement of that person's responsibility to accept and oversee the process of any grievance filed by a client or other person or agency on behalf of a client; and
  - (c) Assurance that staff will explain any and all aspects of client rights and the grievance procedure upon request.
- (2) A copy of the client rights policy must be distributed to each applicant or client at the intake or next subsequent appointment in writing and orally. Each agency policy shall specify how distribution shall be accomplished, and shall include:
  - (a) Provision that in a crisis or emergency situation, the client or applicant 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 client rights policy may be delayed to a subsequent meeting; and
  - (b) Provision that clients or recipients of the type of mental health services specified as "community services" (information and referral service, consultation service, mental health education service, prevention service, training service; see paragraphs (D)(11) to (D)(15) of rule 5122:2-1-01 of the Administrative Code) may have a copy and explanation of the client rights policy upon request.
- (3) A copy of the client rights policy shall be posted in a conspicuous location in

each building operated by the agency.

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

(G) Grievance procedure

- (1) Each agency and each board which itself provides mental health services must have a written grievance procedure which provides for the following:
  - (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 client, or to the griever if other than the client, with the client'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 griever 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;
  - (g) Provision for providing, upon request, all relevant information about the grievance to one or more of the organizations specified in paragraph

(G)(1)(f) of this rule to which the grievor has initiated a complaint.

- (2) Each agency shall make provision for posting the grievance procedure in a conspicuous place and for distributing a copy of the written grievance procedure (see paragraph (G)(1) of this rule) to each applicant and each client, upon request.
- (3) Each agency shall make provision for prompt accessibility of the client rights officer to the grievor.
- (4) Each agency shall provide alternative arrangements for situations in which the client rights officer is the subject of the grievance.
- (5) Each agency shall provide that every staff person, including administrative, clerical, and support staff, has a clearly understood, specified, continuing responsibility to immediately advise any client or any other person who is articulating a concern, complaint, or grievance, about the name and availability of the agency's client rights officer and the complainant's right to file a grievance.
- (6) Each agency shall provide for the client rights officer to take all necessary steps to assure compliance with the grievance procedure.

(H) Community mental health board procedure

- (1) Each community mental health board shall assure in its community plan that each contract agency has a grievance procedure in place which meets the requirements of this rule.
- (2) Each community mental health board must establish a procedure for addressing client rights complaints. This procedure must include:
  - (a) Provision for accessing agency information relevant to the complaint;
  - (b) Provision of written copy of the board's grievance procedure to be available on request;
  - (c) Specification of time lines for a resolution of the grievance, not to exceed twenty working days from the date the grievance is filed;
  - (d) Provision for written notification and explanation of the resolution to be

provided to the client, or to the griever if other than the client, with the client's permission;

- (e) A statement regarding the option of the griever to further grieve with any or all of the following: Ohio department of mental health, Ohio legal rights service, U.S. department of health and human services. Appropriate professional licensing or regulatory boards' relevant names, addresses, and telephone numbers shall be included;
- (f) Provision for providing, upon request, relevant information about the grievance to one or more of the organizations specified in paragraph (H)(2)(e) of this rule to which the griever has initiated a complaint.

#### (I) Implementation and monitoring

- (1) Any board or any agency may accomplish its responsibilities in regard to the provisions of this rule through utilization of its own staff or board members as appropriate, or through agreement with outside staff, agencies, or organizations, except that:
  - (a) Each agency and each board must assure prompt accessibility of the client rights officer.
  - (b) The utilization of outside persons must be clearly explained to clients, applicants, and grievors.
- (2) The agency client rights officer shall assure the keeping of records of grievances received, the subject matter of the grievances, and the resolution of the grievances. The agency records shall be available for review by the community mental health board and the department of mental health upon request.
- (3) The community mental health board shall review annually the implementation of the client rights policy and grievance procedures for each of its contract agencies, and shall receive annually from each agency the client rights officer's summary of the number of grievances received, type of grievances, and resolution status of grievances.

The board shall also keep records of grievances it receives, the subject of the grievances, and the resolution of each, and shall assure the availability of these records for review by the department of mental health upon request. The board shall summarize annually its records to include number of grievances received, types of grievances, and resolution status.



- (4) The department of mental health shall periodically review the implementation of client rights policy and grievance procedures in each board area. Within one hundred eighty days of the effective date of this rule, each board and agency shall send to the department of mental health its written client rights policy and grievance procedures for approval by the department. Subsequent substantive changes to such written policy and procedures shall also be submitted to and approved by the department before enactment.

The department of mental health shall receive from each community mental health board the annual summaries provided by the agencies to the board, and the board's own annual summary. The department shall prepare and distribute an annual report of grievance summaries.

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CERTIFIED ELECTRONICALLY

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Certification

11/14/2011

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Date

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