

## TO BE RESCINDED

5122-26-18

**Client rights and grievance procedure, and abuse.**

(A) Each agency shall develop policies and procedures regarding staff neglect and abuse of persons served including, but not limited to, the following requirements:

- (1) Each allegation of neglect and/or abuse by agency staff of a person served, regardless of the source, shall be investigated. The written results of an investigation into an allegation of neglect and/or abuse of persons served shall be reviewed by the executive director of the agency. The agency shall keep documentation of the findings of the investigation and of actions taken as a result of the investigation.
- (2) The agency shall report any allegation of staff neglect or abuse to the community mental health board within twenty-four hours of the event occurring and shall communicate the results of the investigation to the community mental health board.
- (3) In situations that involve child abuse or adult abuse, any notification required by law shall be made to the appropriate authorities.

(B) Each agency shall have written policies and procedures that are consistent with state law and with the Ohio department of health's and the department's guidelines regarding rights of persons served, such as persons with human immunodeficiency virus ("HIV").

(C) Each agency shall develop a policy on the rights of persons receiving services and a grievance policy for those persons according to relevant federal, state, and local statutes. The following definitions are in addition to or supersede the definitions in rule 5122-24-01 of the Administrative Code:

- (1) "Client" means an individual applying for or receiving mental health services from a board or mental health agency.
- (2) "Client rights specialist " 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) "Reasonable" means a standard for what is fair and appropriate under usual and ordinary circumstances.
- (6) "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.

(D) Client rights.

Except for clients receiving forensic evaluation service as defined in rule 5122-29-07 of the Administrative Code, from a certified forensic center, each client has all of the following twenty-five rights as listed in paragraphs (D)(1) to (D) (15) 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) All who access mental health services are informed of these rights:
  - (a) The right to be informed of the rights described in this rule prior to consent to proceed with services, and the right to request a written copy of these rights;
  - (b) The right to receive information in language and terms appropriate for the person's understanding; 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 (ISP), 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, inhumane treatment, assault, or battery by any other person.
- (3) Development of service plans:
- (a) The right to a current 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 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 any service including medication prior to commencement and the right to decline services including medication 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 an agency from using closed-circuit monitoring to observe seclusion rooms or common areas, which does not include 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 agency 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 an agency 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 have a grievance reviewed through a grievance process, including the right to appeal a decision.

(9) Non-discrimination:

The right to receive services and participate in activities free of discrimination on the basis of 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 agency employee may be a person's guardian or representative if the person is currently receiving services from said facility.

(13) 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. If access is restricted, the treatment plan shall also include a goal to remove the restriction.

(14) 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.

(15) The right to receive an explanation of the reasons for denial of service.

(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, or other audio and visual technology, unless ordered by the court, in which case the client must be informed of such technique. This right does not prohibit an agency from using closed-circuit monitoring to observe seclusion rooms or common areas, which does not include bathrooms;
  - (8) The right not to be discriminated against in the provision of service 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;
  - (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; and
  - (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 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)(15) and/or (E)(1) to (E)(12) of this rule; and
    - (b) Assurance that staff will explain any and all aspects of client rights and the grievance procedure upon request.
  - (2) Each agency policy shall specify how explanation of client rights 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. Full verbal explanation of the client rights policy may be delayed to a subsequent meeting; and

- (b) Provision that clients or recipients of information and referral service, consultation service, mental health education service, and prevention service as described in Chapter 5122-29 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 an area of each building operated by the agency that is accessible to clients and the public. It shall also include 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
- (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 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 grievor 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 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 agency shall make provision for posting the grievance procedure in a conspicuous place and for distributing a copy of the written grievance procedure 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) Implementation and monitoring.

- (1) An 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 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, and shall prepare an annual summary for review by agency governance in accordance with rule 5122-26-03 of the Administrative Code. The annual summary shall include the number of grievances received, type of grievances, and resolution status of grievances, and shall be forwarded to the mental health board. The agency records shall be available for review by the community mental health board and the department of mental health upon request.
- (3) Each agency shall maintain a client rights policy and grievance procedure that is approved by the department of mental health. Subsequent substantive changes to such written policy and procedure shall also be submitted to and approved by the department before enactment.

Effective: 04/01/2016

Five Year Review (FYR) Dates: 06/29/2015

CERTIFIED ELECTRONICALLY

---

Certification

12/17/2015

---

Date

Promulgated Under: 119.03  
Statutory Authority: 5119.36  
Rule Amplifies: 5119.36  
Prior Effective Dates: 5-10-1979, 1-1-1991, 3/1/2012