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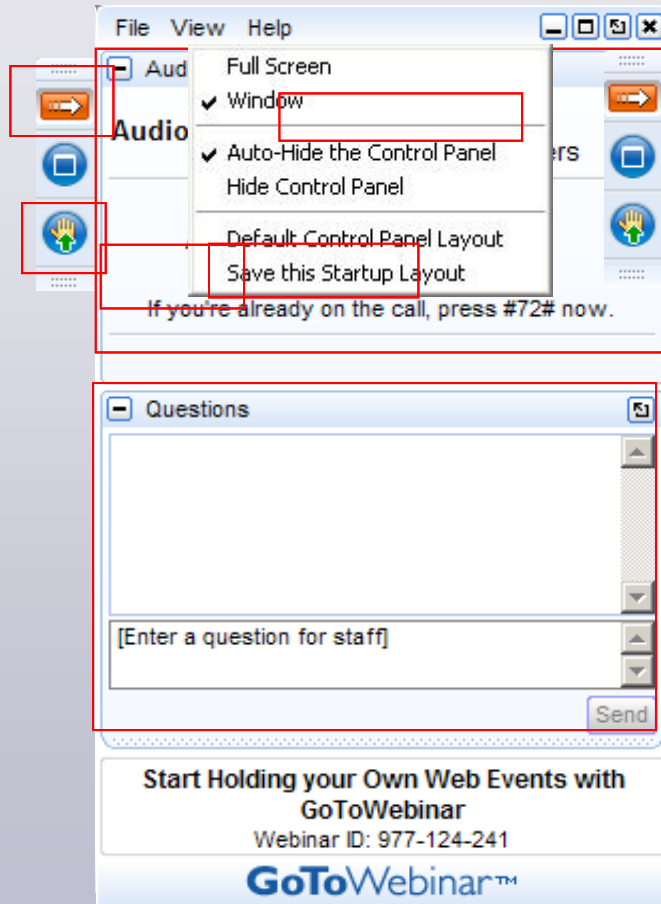
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Ohio Department of Mental Health

Client Rights and Grievance Procedure, and Abuse

5122-26-18

&

Board Client Rights and Grievance Procedure

5122:2-1-02

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Webinar CE Objectives

By the end of the webinar, participants will be able to:

1. Implement a client rights policy that protects personal liberties and supports recovery.
2. Understand the importance of a client rights policy that promotes respect, dignity, and informed choice for individuals receiving mental health service.
3. Develop a client rights and complaint process that allows individuals to freely exercise all rights.

History

- ODMH's multiple sets of client rights rules administered by the community mental health agencies, private psychiatric inpatient units, and ODMH licensed residential facilities were seen as confusing for persons seeking mental health services, especially for those who move from one treatment setting to another.
- In early 2008 a workgroup was formed to look at consolidating these rights documents. This group included members from relevant stakeholder groups, consumers, and family members.

Approach

- In July 2008 a survey was sent to those who receive, support and provide mental health services to determine if people would support an initiative and learn what rights were most important
- In July 2009 a second survey was sent out to Providers, Boards, and Consumer Operated Service Directors

Compiled survey results:

2008:

- 900 of the 1282 survey respondents (70%) said they would support a single Consumer Bill of Rights Document

2009:

- 144 of the 171 survey respondents (84%) said they would support a single Consumer Bill of Rights Document

Approach (Continued)

Reviewed Client Rights Documents from numerous groups

- * District of Columbia & Texas MH services
- * President's Advisory Commission on Consumer Protection & Quality
- * Title V Section 501 of MH Systems Act, 42 U.S.C. 9501
- * Ohio MR/DD
- * Recovery for Trauma Survivors
- * National Accreditation Organizations
- * Ohio Revised Code and 4 sets of administrative rules
- * Designed "Client Rights Crosswalk" to align national and state clients rights

Intended Outcomes

- To revise and consolidate current mental health rights into one set of culturally appropriate, understandable and recovery focused rights for individuals receiving services from organizations operated, licensed or certified by ODMH
 - * Consumers and Families- To improve individuals' ability to know, understand, and assert their rights and decisions that impact their lives by creating a more understandable and efficient rights process.
 - * Providers and Boards- To reduce regulatory burden and increase efficiencies

FAQ

- Is this rule covered under deemed status for an agency with appropriate behavioral health accreditation granted deemed by ODMH?
 - Yes. ODMH will continue to follow up on alleged violations of client rights when indicated.

Abuse and Neglect Policies & Procedures - 5122-26-18

Effective 3/1/2012

(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.

Abuse and Neglect (continued)

(A)(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.

(A)(3) In situations that involve child abuse or adult abuse, any notification required by law shall be made to the appropriate authorities.

Policies and Procedures

(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").

Agency Policy

(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.

Definitions

(C) 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.

Definitions (continued)

(C) The following definitions are in addition to or supersede the definitions in rule 5122-24-01 of the Administrative Code:

(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.

Definitions (continued)

(C) The following definitions are in addition to or supersede the definitions in rule 5122-24-01 of the Administrative Code:

(C)(5) "Reasonable" means a standard for what is fair and appropriate under usual and ordinary circumstances.

(C)(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.

Client Rights

(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.

- Paragraph (D) of this rule aligns with (same or similar) 5122-14-11 (D) - private psychiatric hospital patient rights, and 5122-30-22 (C) - residential facility resident rights.

Informed of Rights

(D)(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;

➤ Inpatient hospital and residential facility rules require individual is informed within 24 hours of admission.

(b) The right to receive information in language and terms appropriate for the person's understanding; and

Informed of Rights

(D)(1) All who access mental health services are informed of these rights:

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

- Inpatient hospital rules require individual is informed of right to speak with financial counselor.

Appropriate and Respect Personal Liberty

(D)(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/treatment 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;

Appropriate and Respect Personal Liberty (continued)

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

(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.

Service Plans

(D)(3) Development of service/treatment 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.

Consent

(D)(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.

Restraint/Seclusion & Privacy

(D)(5) Restraint or seclusion.

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

(D)(6) Privacy:

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

Confidentiality

(D)(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.

ORC 5122.31 (A)(7)

ORC 5122.31(A)(7) “That hospitals within the department, other institutions and facilities within the department, hospitals licensed by the department under section 5119.20 of the Revised Code, and community mental health agencies may exchange psychiatric records and other pertinent information with payers and other providers of treatment and health services if the purpose of the exchange is to facilitate continuity of care for a patient;”

ORC 5122.31 Resources

- Provider FAQs
 - <http://mentalhealth.ohio.gov/assets/client-rights/info-exchange-memo-faq-2010.pdf>
- Consumer FAQs
 - <http://mentalhealth.ohio.gov/assets/client-rights/info-exchange-memo-faq-2010.pdf>
- Consumer Brochure
 - <http://mentalhealth.ohio.gov/assets/client-rights/continuity-of-care-brochure.pdf>

Grievances & Non-Discrimination

(D)(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 the grievance process, including the right to appeal a decision.

(D)(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.

Reprisal, Outside Opinion

(D)(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.

(D)(11) Outside opinions:

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

Conflict of Interest & Access to Records

(D)(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.

(D)(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 patient for clear treatment reasons in the patient's treatment plan. If access is restricted, the treatment plan shall also include a goal to remove the restriction.

Discontinuing/Denying Service

(D)(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.

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

Client Rights-Forensic Evaluations

(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;

Client Rights-Forensic Evaluations

(continued)

(E)(4) The right to be informed of the purpose and procedures of the evaluation service;

(E)(5) The right to consent to or refuse the forensic evaluation services and to be informed of the probable consequences of refusal;

(E)(6) The right to freedom from unnecessary restraint or seclusion if such restraint or seclusion is within the control of the forensic center;

Client Rights-Forensic Evaluations

(continued)

(E)(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;

(E)(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;

Client Rights-Forensic Evaluations

(continued)

(E)(9) The right to be fully informed of all rights;

(E)(10) The right to exercise any and all rights without reprisal in any form;

(E)(11) The right to file a grievance; and

(E)(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.

Client Rights Procedures

(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.

Client Rights Procedures (continued)

(F)(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.

Client Rights Procedures (continued)

(F)(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.

(F)(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.

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 5122-26-18 6 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;

Grievance Procedure (continued)

(G)(1)(b) An explanation of the process from the original filing of the grievance to the final resolution, which shall include reasonable opportunity for the grievor and/or his designated representative to be heard by an impartial decision-maker;

(G)(1)(c) A specification of time lines for resolving the grievance not to exceed twenty working days from the date of filing the grievance;

(G)(1)(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;

Grievance Procedure (continued)

(G)(1)(e) Opportunity to file a grievance within a reasonable period of time from the date the grievance occurred;

(G)(1)(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; and

(G)(1)(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 griever has initiated a complaint.

Grievance Procedure (continued)

(G)(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.

(G)(3) Each agency shall make provision for prompt accessibility of the client rights officer to the griever.

(G)(4) Each agency shall provide alternative arrangements for situations in which the client rights officer is the subject of the grievance.

Grievance Procedure (continued)

(G)(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.

(G)(6) Each agency shall provide for the client rights officer to take all necessary steps to assure compliance with the grievance procedure.

Implementation and Monitoring

(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.

Implementation and Monitoring

(continued)

(H)(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.

Implementation and Monitoring

(continued)

(H)(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.

Board Client Rights and Grievance Procedure

5122:2-1-02

Effective 3/1/2012



Purpose

(A) The purpose of this rule is to describe the role and responsibilities of community mental health boards in the client rights and grievance procedures.

- Previously this rule included the list of rights for community mental health agency consumers. Those rights are now contained in OAC 5122-26-18.

Applicability

(B) The provisions of this rule are applicable to each community mental health board. In addition, the provisions of rule 5122-26-18 of the Administrative Code are also applicable to each community mental health board which itself provides mental health services when permitted to do so in accordance with division (A)(8)(b) of section 340.03 of the Ohio Revised Code.

Definitions

(C) Definitions.

(1) "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.

Definitions (continued)

(C)(2) "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.

Definitions (continued)

(C)(3) "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.

(C)(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.

Board Procedure

(D) 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 rule 5122-26-18 of the Administrative Code. Each community mental health board shall recognize that, for an agency accredited and granted deemed status by the Ohio department of mental health in accordance with rule 5122-25-03 of the Administrative Code, the requirements of rule 5122-26-18 of the Administrative Code are met by agency conformance to its accrediting body standards.

- This does not remove board authority to investigate alleged client (or resident) rights violations, or follow up on a grievance submitted to the board.

Board Procedure for Addressing Client Rights Complaints

(D)(2) Each community mental health board must establish a procedure for addressing client rights complaints, including, when applicable, complaints initiated in accordance with rule 5122-30-22 of the Administrative Code on behalf of a resident of a residential facility. 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;

Board Procedure for Addressing Client Rights Complaints (continued)

(D)(2)(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)(2)(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;

Board Procedure for Addressing Client Rights Complaints (continued)

(D)(2)(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; and

(D)(2)(f) Provision for providing, upon request, relevant information about the grievance to one or more of the organizations specified in this paragraph to which the griever has initiated a complaint.

Board Implementation & Monitoring

(E)(1) Any board may accomplish its responsibilities in regard to the provisions of this rule and rule 5122-26-18 of the Administrative Code through utilization of its own staff or board members as appropriate, or through agreement with outside staff, agencies, or organizations, except that:

(a) 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.

Board Implementation & Monitoring (continued)

(E)(2) The community mental health 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.

Board Implementation & Monitoring (continued)

(E)(3) The department of mental health may periodically review the implementation of client rights policy and grievance procedures in each board area. Each board 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 be submitted to and approved by the department before enactment.

Questions?

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