

Ohio Department of Mental Health Ohio Administrative Code Rules for Community Mental Health Agencies

Amended Rules Effective July 1, 2011
Chapters 5122-26 and 5122-28

Janel M. Pequignot, Chief
Standards Development & Administrative Rules
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Rule Making Process

- Informal
 - Draft rules
- Formal
 - Filing w/ Joint Committee on Agency Rule Review
 - Public hearing
 - JCARR hearing
- Participation at any point is always welcome
 - ODMH developed Rules Webpage to encourage this and make it easier for any interested party to be involved
 - While not all feedback is incorporated, everything is reviewed and considered

January 1, 2012

- Rescind current rules and replace with new rules:
 - 5122-26-13
 - Incident Notification (Community)
 - 5122-30-16
 - Incident Notification (Residential)
 - 5122-26-16
 - Special Treatment and Safety Measures
 - 5122-26-16.1
 - Mechanical Restraint and Seclusion
 - 5122-26-16.2
 - Physical Restraint
 - 5122-28-03
 - Performance Improvement

January 1, 2012 Continued

- Rescind current rule 5122-26-16.3
 - Aversive Behavioral Interventions and Plans
- Training on new incident report & seclusion and restraint rules will occur late summer/early fall
- See Advisory at:
 - <http://mentalhealth.ohio.gov/assets/numbered-advisories/fy2011/6-fy11-3-memo-rules-changes.pdf>

5122-16-13 Incident Notification

Community Mental Health Agencies

- No change to the rule at this time.
- The Department has made a policy decision to provide immediate regulatory reduction by removing the requirement to report the following incident categories, effective July 1, 2011:
 - Attempted Suicide
 - Self-Inflicted Injury
 - Accidental Injury
 - Illness/Medical Emergency
 - Serious Bodily Injury - Unknown
 - Use of Force by Law Enforcement
 - Medication Error that does not result in permanent consumer harm, hospitalization or death
 - Adverse Drug Reaction that does not result in permanent consumer harm, hospitalization or death

5122-30-16 Incident Notification

Residential Facilities

- No change to the rule at this time.
- The Department has made a policy decision to provide immediate regulatory reduction by removing the requirement to report the following incident categories, effective July 1, 2011:
 - Accidental Injury
 - Illness/Medical Emergency
 - Serious Bodily Injury - Unknown
 - Use of Force by Law Enforcement
 - Medication Error that does not result in permanent resident harm, hospitalization or death
 - Adverse Drug Reaction that does not result in permanent resident harm, hospitalization or death

Incident Notification & WEIRS

- Incident Report instructions will be updated and available at:
 - <http://mentalhealth.ohio.gov/assets/licensure-certification/dmh-lic-015-incident-notification-instructions.pdf>
- The Web Enabled Incident Reporting System (WEIRS) will NOT be modified to reflect this policy change.
 - Is being modified to align with January 1, 2012 rule
- ODMH will update the paper form
 - <http://mentalhealth.ohio.gov/what-we-do/protect-and-monitor/licensure-and-certification/community-mental-health-agencies/index.shtml>
- Agencies and Residential Facilities can use either method to report

5122-28-03 Performance Improvement

(F) The agency shall routinely submit reports to the department regarding the status of its performance improvement process. Such reports shall be submitted no less than annually and no more than semi-annually on forms prescribed by the department.

- ODMH will continue to use this rule only to collect seclusion & restraint data
 - January 1, 2012 – reporting of this data moves under incident report rules
- Accredited agencies should follow accrediting body PI requirements

Where does Accreditation and Deemed Status Fit In?

- Deeming still exists
- If your agency has behavioral health accreditation when required by the Department, focus on your accrediting body standards
- Please be mindful that these rules are applicable to all agencies ODMH certifies, including those not subject to the accreditation requirement
- If your agency has behavioral health accreditation when required by the Department, focus on your accrediting body standards (repetition is not an error!)

Upcoming Rule Activity

- File Client Rights and Grievances Rules with Joint Committee on Agency Rule Review (JCARR)
- Post revised draft ISP rule (5122-27-05) for public comment
- Update 5122-25-03 Deemed Status and Reciprocity to reflect other rule changes
 - Also in conjunction with language in budget bill

Disclaimer

- There are other minor changes not presented today, including rule references, terminology, or other changes which are self-explanatory
- While slides include actual rule language, not all amended rule language is included
- Please review all amended rules!
 - <http://mentalhealth.ohio.gov/what-we-do/protect-and-monitor/licensure-and-certification/rules/rules-in-effect.shtml>

5122-26-03

Governing Body and Governance

AMENDED

5122-26-03 Governing body and governance

New & Revised Key Elements or Concepts

- Rule 5122-26-05 Table of Organization
 - Rescinded & incorporated into this rule
- Agency establishes leadership structure
- Identify responsibility for leadership in absence of executive director
- Time frame for review of policies is determined by accrediting body, or every five years if not accredited
- Recognizes different legal requirements re: governing body for “non not-for-profits”
 - Responsibility for governance still exists

5122-26-03 Governing body and governance

(A) Each agency shall have a ~~governing body~~ leadership structure. ~~Governing body shall have the same meaning as governing board.~~ The leadership structure shall identify who is responsible for:

(1) Governance;

(2) Agency administration, i.e. planning, management and operational activities; and

(3) Provision of clinical services.

5122-26-03 Governing body and governance

(B) Each ~~agency~~ corporation for non-profit shall have a governing body. For the purposes of this rule, governing body shall have the same meaning as governing board. The governing body shall guide, plan and support the achievement of the agency's mission, vision and goals. The governing body shall have develop written by-laws, a code of regulation, or policies for the following:

(1) Selection of members of the governing body; The composition of the governing body shall reflect the demographics of the community served.

5122-26-03 Governing body and governance

(C) The governing body shall:

(2) Provide financial oversight and ~~Approve~~ approve the annual budget and plan for services;

(3) Conduct meetings of the governing body at least quarterly, which shall include:

(a) Review ~~of the~~ an annual summary of quality assurance and risk management activities and document governing body actions taken as a result of this review; and

(b) Review ~~of~~ an annual summary of client rights activities and document governing body actions taken as a result of this review.

5122-26-03 Governing body and governance

(C) The governing body shall:

(9) Identify responsibility for leadership in the absence of the executive director;

~~(10) Review the annual service evaluation conducted according to rule 5122-28-04 of the Administrative Code;~~

(10) Establish, review and update as necessary the agency's policies, and document that this review has occurred. The policies shall be reviewed in accordance with the schedule established by the agency's national accrediting body, if applicable, or a minimum of every five years;

5122-26-03 Governing body and governance

(C) The governing body shall:

(12) Ensure that opportunity is offered for input regarding the planning, evaluation, delivery, and operation of mental health services, which shall include but not be limited to the opportunity to participate in the activities of or participate on the governing body, advisory groups, committees, or other agency bodies, to:

(b) Persons who collectively represent a wide range of community interests and demographic characteristics of the service district in categories such as race, ethnicity, ~~sex~~, primary spoken language, gender and socio-economic status;

5122-26-03 Governing body and governance

(D) A government agency shall identify its governance structure for the purpose of meeting the requirements of this rule. Each agency which is not a corporation for non-profit and therefore not subject to the provisions of paragraphs (B) and (C) of this rule shall have a written description of its governance structure, and identify whether the owner shall assume sole responsibility for the activities required in this rule, or whether the agency is governed by a governing body, board of directors, or other governance body. Agency governance shall:

(1) Provide financial oversight and develop an annual budget and plan for services;

5122-26-03 Governing body and governance

(D) Agency governance shall:

(2) At least annually:

(a) Review an summary of quality assurance and risk management activities and document governing body actions taken as a result of this review; and

(b) Review client rights activities and document governing body actions taken as a result of this review;

5122-26-03 Governing body and governance

(D) Agency governance shall:

(3) Establish duties and responsibilities of the executive director;

(4) Select the executive director;

(5) Conduct an annual review and evaluation of the executive director;

5122-26-03 Governing body and governance

(D) Agency governance shall:

(6) Identify responsibility for leadership in the absence of the executive director;

(7) Establish, review and update as necessary the agency's policies, and document that this review has occurred. The policies shall be reviewed in accordance with the schedule established by the agency's national accrediting body, if applicable, or a minimum of every five years;

(8) Ensure adequate malpractice and liability insurance protection for its corporate membership, advisory board if applicable, agency and agency staff, and review such protection annually;

5122-26-03 Governing body and governance

(D) Agency governance shall:

(9) Ensure that opportunity is offered for input regarding the planning, evaluation, delivery, and operation of mental health services, which shall include but not be limited to the opportunity to participate in the activities of or participate on the governing body, advisory groups, committees, or other agency bodies, to

(a) Persons who are receiving or have received mental health services, and their family members; and

(b) Persons who collectively represent a wide range of community interests and demographic characteristics of the surrounding community, such as race, ethnicity, primary spoken language, gender, and socio-economic status;

5122-26-03 Governing body and governance

(D) Agency governance shall:

(10) Ensure that the hours of operation for services and/or activities accommodate the needs of persons served, their families and significant others; and

(11) Ensure that all services provided and employment practices are in accordance with non-discrimination provisions of all applicable federal laws and regulations.

5122-26-03 Governing body and governance

(E) Each agency shall maintain a written table of organization or organization chart which documents the lines of responsibility of:

(1) Governing body, if applicable;

(2) Executive director;

(3) Administrative leadership; and

(4) Clinical oversight.

5122-26-05

Table of Organization

RESCINDED

5122-26-06

Human Resources Management

**RESCIND CURRENT RULE &
REPLACE WITH NEW**

5122-26-06 Human Resources Management

Some Highlights

- Rule 5122-26-07 Personnel Qualifications
 - Rescinded and incorporated into this rule
- Agency sets standards for personnel qualifications and competencies, based on job duties
- Supervision, as needed and/or required by law, is documented

5122-26-06 Human Resources Management

(A) The purpose of this rule is to ensure that each agency has a human resources management program, and develops written personnel policies and procedures which include the provisions of this rule.

(B) In addition to the definitions in rule 5122-24-01 of the Administrative Code, the following definition shall apply to this rule:

"Personnel" means any paid or unpaid person, volunteer, contract worker, student intern or other person who is a part of an agency's workforce, including but not limited to those who perform management, clinical, operations, clerical, or other functions in support of the agency's mission, vision and goals. Contract worker does not include an individual or company with whom the agency contracts to perform occasional maintenance such as lawn care, snow removal, painting, etc. Staff shall have the same meaning as personnel.

(C) Each agency shall ensure that it has the necessary staff to support the agency's mission, vision and goals, and to provide services to persons served.

5122-26-06 Human Resources Management

(D) Each agency shall ensure that its personnel policies and procedures include the following provisions:

(1) Prohibit discrimination in employment, training, job duties, compensation, evaluation, promotion, and any other term or condition of employment based on 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;

(2) Describe a formal process to express and process employee grievances;

(3) Establish recruitment and hiring practices;

5122-26-06 Human Resources Management

(D) Each agency shall ensure that its personnel policies and procedures include the following provisions:

(4) Establish skills, qualifications and competencies required for each position, based on mission of organization, services provided and characteristics and needs of population(s) served. The agency shall maintain a written job description for each position.

All personnel for whom licensure is required by law shall maintain current licensure by the appropriate body in the state of Ohio, and shall practice only within the scope of their license.

(5) Verify staff credentials, including licensure, certification or registration, education, and experience;

5122-26-06 Human Resources Management

(D) Each agency shall ensure that its personnel policies and procedures include the following provisions:

(6) Develop and maintain a staff orientation program, which shall include training on:

- (a) Employee and client safety;
- (b) Agency's mission, vision and goals;
- (c) Characteristics of the population served;
- (d) Sensitivity to cultural diversity;
- (e) Agency policies and procedures, including personnel policies, and those specific to individual job duties;
- (f) Confidentiality;
- (g) Reporting abuse and neglect; and
- (h) Client rights.

5122-26-06 Human Resources Management

(D) Each agency shall ensure that its personnel policies and procedures include the following provisions:

(7) Ensure direct service and supervisory staff participate in education and training. Training may be provided by direct supervision, attendance at conferences and workshops internal and external to the agency, on-line training, educational coursework, etc. Training shall:

- (a) Maintain or increase competency;
- (b) Include topics specific to population served; and
- (c) Ensure culturally competent provision of service.

5122-26-06 Human Resources Management

(D) Each agency shall ensure that its personnel policies and procedures include the following provisions:

(8) Ensure each staff providing direct services receives documented supervision appropriate to his/her skill level and job duties, and in accordance with the requirements of his/her license, certificate or registration, if applicable.

Supervision may be provided in individual and group sessions, including supervisor participation in treatment plan meetings.

5122-26-06 Human Resources Management

(D) Each agency shall ensure that its personnel policies and procedures include the following provisions:

(9) Evaluate staff performance at a frequency required by its accrediting body, if applicable, or for an agency without behavioral health accreditation, annually.

The agency shall establish a system and frequency for evaluating volunteers, based on job duties, scope of responsibility, and frequency of service.

(E) A copy of the written personnel policies and procedures shall be available to each employee. Employees shall be notified of changes in personnel policies and procedures.

5122-26-06 Human Resources Management

(F) Personnel files.

- (1) The agency shall maintain a person file on each staff person, who shall have access to is/her own personnel file.
- (2) Personnel files shall be stored in such a manner as to maintain the privacy of each staff person. Agency policies shall describe who shall have access to the various information contained within the file.

5122-26-06 Human Resources Management

(F)(3) Each personnel file shall include the following content:

- (a) Identifying information and emergency contacts;
- (b) Application for employment or resume;
- (c) Verification of credentials, if applicable;
- (d) Documentation of education, experience and training;
- (e) Verification of references, if required for position;
- (f) Job description;
- (g) Compensation documentation, if applicable;
- (h) Performance evaluations;
- (i) Documentation of orientation;
- (j) Documentation of on-going training, as required by position, state law and agency policy;
- (k) Commendations or awards, if applicable; and
- (l) Disciplinary actions, if applicable.

5122-26-06 Human Resources Management

(G) The agency shall have policies and written procedures for handling cases of staff neglect and abuse of persons served, and documentation that each employee has received a copy of these policies and procedures.

(H) The agency shall have a policy that appropriate disciplinary action, up to and including dismissal from employment, shall be taken regarding any employee misconduct or criminal conviction that bears a direct and substantial relationship to that employee's position.

5122-26-07

Personnel Qualifications

RESCINDED

5122-26-09

Agency Service Plan

**RESCIND CURRENT RULE AND
REPLACE WITH NEW**

5122-26-09 Agency Service Plan

(A) The purpose of this rule is to ensure that the agency plans and develops services to meet the needs of the population served.

(B) The agency shall define in writing its mission, vision and goals.

5122-26-09 Agency Service Plan

(C) The agency shall develop a written description of each service provided, which shall include:

- (1) The description of the service;
- (2) Schedule of the days the service is available, and hours of operation;
- (3) Needs and characteristics of the population served;
- (4) Goals and scope of service; and
- (5) Description of services which are offered through referral or affiliations with other providers, and the responsibilities of each agency or provider.

5122-26-09 Agency Service Plan

(D) The agency shall revise and update the service description when any of the information required in paragraph (C) of this rule changes.

(E) The agency service plan shall be available for review by persons served, their family, significant others and the public.

5122-26-12

Environment of Care and Safety

**RESCIND CURRENT RULE AND
REPLACE WITH NEW**

5122-26-12 Environment of Care and Safety

(A) The purpose of this rule is to ensure that each agency maintains a clean, safe environment which supports the provision of quality mental health services and minimizes the risk of harm to clients, staff, visitors, and others.

(B) Each agency shall designate the personnel who are responsible for implementing and oversight of the provisions of this rule.

5122-26-12 Environment of Care and Safety

(C) Each agency shall develop written policies and procedures to address emergency situations, including:

- (1) Fire, including the requirement that fire exit doors shall remain unlocked and clearly marked unless a variance has been granted by a certified authority of the division of state fire marshal of the department of commerce;
- (2) Bomb threat;
- (3) Natural disaster;
- (4) Utility outage or malfunction, e.g. a gas leak; and
- (5) Other potential threats which may be applicable based upon location, e.g. nuclear power plant leak.

5122-26-12 Environment of Care and Safety

(D) Each agency shall conduct emergency drills and evaluate the effectiveness of the drill to ascertain the need for performance improvement:

(1) Fire drills shall be conducted at least once every twelve months.

(2) The agency shall evaluate and determine the need to conduct other drills, and the frequency. This shall be included in its policies and procedures.

5122-26-12 Environment of Care and Safety

(E) Each agency shall have written policies and procedure, which incorporate any applicable local, state or federal laws for:

(1) Safe handling, storage and disposal of hazardous materials.

(2) Safe handling and disposal of infectious waste materials, including applicable specifications of the occupational health and safety administration and the Ohio department of health.

(3) Infection control, including applicable specifications of the occupational health and safety administration and the Ohio department of health.

(4) Hazardous areas of the agency.

5122-26-12 Environment of Care and Safety

(F) The agency's policies and procedures shall include the requirement that each staff receives training during orientation on the safety procedures identified in paragraphs (C), (D) and (E) of this rule. The agency shall identify in its policies and procedures the need for on-going training on each emergency or safety procedure, and the frequency of such training.

(G) Each agency shall meet local, state and federal laws regarding accessibility. Whenever it identifies a structural or other barrier which limits access to or within the building, the agency shall develop a plan to remove the barrier.

5122-26-12 Environment of Care and Safety

(H) The agency shall conduct regular safety inspections at least every six months, or more often as identified by the agency's policies and procedure or its accrediting body. Inspections shall include attention to:

- (1) Physical structure;
- (2) Electrical systems;
- (3) Heating and cooling systems;
- (4) Warning devices, e.g. exit lights, alarm systems, etc.;
- (5) Fire suppression equipment;
- (6) Lighting;
- (7) Food preparation areas, if applicable; and
- (8) Any other areas or systems as needed and identified in agency policies and procedures.

5122-26-12 Environment of Care and Safety

(I) Each agency shall ensure it obtains inspections and permits in accordance with local, state or federal laws.

(1) At a minimum, the agency shall obtain the following inspections every twelve months:

(a) Fire inspection by a certified fire authority, or where there is none available, by the division of the state fire marshal of the department of commerce, to include testing of fire alarm systems.

(b) Water supply and sewage disposal inspection for facilities in which these systems are not connected with public services to certify compliance with rules of the department of health and any other state or local regulations, rules, codes or ordinances.

5122-26-12 Environment of Care and Safety

(I) Each agency shall ensure it obtains inspections and permits in accordance with local, state or federal laws.

(2) The agency shall ensure that it obtains inspections and/or maintains current permits as required by law, if applicable:

(a) Elevator inspection.

(b) Boiler inspection.

(c) Food service.

(d) Any other as required by local, state or federal law.

5122-26-14

Infection Control

RESCINDED

5122-26-15

Medication Handling

AMENDED

5122-26-15 Medication Handling

(B) Agencies maintaining a limited stock supply of medications shall:

(1) ~~Prohibit any person other than~~ Allow only a physician or pharmacist ~~from dispensing~~ to dispense medication, although the following individuals may personally furnish samples of some medications if issued a certificate to prescribe; and

(a) Certified nurse practitioner and clinical nurse specialist in accordance with division (D) of section 4723.481 of the Revised Code; and

(b) Physician's assistant in accordance with division (A) of section 4730.43 of the Revised Code.

5122-28-04

Consumer Outcomes

**RESCIND CURRENT RULE AND
REPLACE WITH NEW**

5122-28-04 Consumer Outcomes

Notes

- If your agency has behavioral health accreditation when required by the Department, focus on your accrediting body standards for outcomes
- Measure outcomes for all clients

5122-28-04 Consumer Outcomes

(A) The purpose of this rule is to ensure that each agency collects data on consumer outcomes in order to improve its ability to provide quality mental health services.

(B) The following definition applies to this rule:

"Consumer outcomes" means indicators of health or well-being for an individual or family as measured by statements or observed characteristics of the consumer/family, not characteristics of the system. These measures provide an overall status measure with which to better understand the life situation of a consumer or family.

5122-28-04 Consumer Outcomes

(C) Each agency shall use a system to measure consumer outcomes for children, youth and adults.

(1) Data to be collected shall include:

(a) Whether treatment plan goals were met; and

(b) Satisfaction with services.

(2) The frequency of data collection shall be:

(a) Beginning of services;

(b) End of services; and

(c) At intervals as defined in agency polices.

The agency shall include attention to client population and needs in determining the appropriate intervals at which to collect data. The agency may describe different intervals based on varying population characteristics.

5122-28-04 Consumer Outcomes

(D) An agency may, but is not required to, utilize the Ohio mental health consumer outcomes system as a method of measuring consumer outcomes. Additional information may be found in the "consumer outcomes procedural manual" which is located at

<http://mentalhealth.ohio.gov/assets/consumer-outcomes/instruments/procedural-manual.pdf>.

- This is to address two mistaken beliefs by some (we still get phone calls):
 1. That ODMH still requires agencies to utilize Ohio system – not true.
 2. The an agency is not allowed to use the Ohio system – also not true.

5122-28-05

Research Activities

AMENDED

5122-28-05 Research Activities

~~(I) Research activities shall be monitored on a quarterly basis through the agency's performance improvement processes.~~

Questions

- Janel M. Pequignot, Chief, Standards Development & Administrative Rules
 - 614-466-9065
 - Janel.Pequignot@mh.ohio.gov
- ODMH Rules Webpage
 - <http://mentalhealth.ohio.gov/what-we-do/protect-and-monitor/licensure-and-certification/rules/index.shtml>