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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 ~~officer~~advocate" means the residential facility staff~~, or staff of an affiliating agency in a type 2 and type 3 facility,~~ , or a representative of the state long-term care ombudsman program, with responsibility for implementing the grievance procedure.

~~(4)~~ (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.~~

(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 youth can understand and which allows for reasonable accommodation for youth 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 and photo 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.

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~~(2)~~ (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.

~~(3)~~ (4) The right to file a grievance.

~~(4)~~ (5) The right to be treated all times with courtesy and respect, and with consideration for personal dignity, autonomy and privacy.

~~(5)~~ (6) The right to receive services in the least restrictive, feasible environment.

~~(6)~~ (7) The right to receive humane services in a clean, safe, comfortable, welcoming, stable and supportive environment.

~~(7)~~ (8) The right to reasonable protection from physical, sexual and emotional abuse, and exploitation.

~~(8)~~ (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.

~~(9)~~ (10) The right to be free from restraint or seclusion unless there is imminent risk of physical harm to self or others.

~~(10)~~ (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 common areas, which does not include bathrooms or sleeping areas.

~~(11)~~ (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.

~~(12)~~ (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.

~~(13)~~ (14) The right to be informed of one's own condition.

~~(14)~~ (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.

~~(15)~~ (16) The right to practice a religion of his or her choice or to abstain from the practice of religion.

~~(16)~~ (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.

~~(17)~~ (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.

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~~(18)~~ (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.

~~(19)~~ (20) The right not to be locked out of the facility at any time.

~~(20)~~ (21) The right of adult residents not to be locked in the facility at any time for any reason.

~~(21)~~ (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.

~~(22)~~ (23) The right to consult with an independent treatment specialist or legal counsel at one's own expense.

~~(23)~~ (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.

~~(24)~~ (25) The right to meet with staff from the Ohio department of mental health and addiction services in private.

~~(25)~~ (26) The right not to be deprived of any legal rights solely by reason of residence in the facility.

~~(26)~~ (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.

~~(27)~~ (28) The right of an adult resident to manage his/her own financial affairs, and to possess a reasonable sum of money.

~~(28)~~ (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.

~~(29)~~ (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.

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~~(30)~~ (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 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.0

(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;

~~(d)~~ (c) Disability rights Ohio; or,

~~(e)~~ (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

~~(C)~~ (C) ~~Each resident shall have the following twenty-five rights which are the same as or similar to those that are described in rule 5122-26-18 of the Administrative Code for an individual receiving mental health services from a community mental health agency, as well as the additional rights listed in paragraph (D) of this rule:~~

~~(1)~~ (1) ~~Each person who accesses mental health services is informed of these rights:~~

~~(a)~~ (a) ~~The right to be informed within twenty-four hours of admission of the rights described in this rule, and to request a written copy of these rights;~~

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

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

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

~~(a)~~ (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)~~ (b) ~~The right to receive humane services;~~

~~(c)~~ (c) ~~The right to participate in any appropriate and available service that is consistent with an individual service 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;~~

~~(d)~~ (d) ~~The right to reasonable assistance in the least restrictive setting; and~~

~~(e)~~ (e) ~~The right to reasonable protection from physical, sexual and emotional abuse, or harassment.~~

~~(3)~~ (3) ~~Development of service plans in type 1 and type 2 facilities:~~

~~(a)~~ (a) ~~The right to a current individualized service plan (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)~~ (b) ~~The right to actively participate in annual and periodic ISP reviews with the staff including services necessary upon discharge.~~

~~(4)~~ (4) ~~Declining or consenting to services:~~

~~(a)~~ (a) ~~The right to give full informed consent to services prior to commencement and the right to decline services absent an emergency;~~

~~(b)~~ (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 a facility from using closed-circuit monitoring to observe seclusion rooms or common areas, which does not include resident bedrooms and bathrooms; and~~

~~(c)~~ (c) ~~The right to decline any hazardous procedures.~~

~~(5)~~ (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)~~ (6) ~~Privacy:~~

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

~~(7)~~ (7) ~~Confidentiality:~~

~~(a)~~ (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)~~ (b) ~~The right to be informed of the circumstances under which the facility 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)~~ (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)~~ (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.~~

~~(10)~~ (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)~~ (11) ~~Outside opinions:~~

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

~~(12)~~ (12) ~~No conflicts of interest:~~

~~No residential facility employee may be a person's guardian or representative if the person is currently receiving services from said facility.~~

~~(13)~~ (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 resident for clear treatment reasons in the resident's treatment plan. If access is restricted, the treatment plan shall also include a goal to remove the restriction.~~

~~(14)~~ (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)~~ (15) ~~The right to receive an explanation of the reasons for denial of service.~~

~~(D)~~ (D) ~~In addition to the rights listed in paragraph (D) of this rule, each consumer residing in a residential facility shall have the following sixteen rights:~~

~~(1)~~ (1) ~~Each consumer of mental health services are informed of these rights:~~

~~(a)~~ (a) ~~The right to receive humane services in to a comfortable, welcoming, stable and supportive environment; and~~

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~~(b)~~ (b) ~~The right to retain personal property and possessions, including a reasonable sum of money, consistent with the person's health, safety, service plan and developmental age;~~

~~(c)~~ (c) ~~The right to reside in a 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;~~

~~(d)~~ (d) ~~The right to receive thirty days prior notice for termination of residency in type 2 and 3 residential facilities except in an emergency; and~~

~~(e)~~ (e) ~~The right to vacate the facility at any time, except that the responsibility to pay for incurred costs of room and board shall continue unless appropriate notification has been provided to the facility concerning the termination of the residential agreement.~~

~~(2)~~ (2) ~~Development of service plans:~~

~~The right to formulate advance directives, submit them to residential staff, and rely on practitioners to follow them when within the parameters of the law.~~

~~(3)~~ (3) ~~Labor of patients:~~

~~The right to not be compelled to perform labor which involves the operation, support, or maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditional upon the performance of such labor.~~

~~(4)~~ (4) ~~Declining or consenting to services:~~

~~(a)~~ (a) ~~The right to consent to or refuse the provision of any individual personal care activity and/or mental health services in a type 1 and type 2 facility;~~

~~(b)~~ (b) ~~The right to refuse consent for major aversive interventions; and~~

~~(c)~~ (c) ~~The right to decline medication, except in a type 1 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.~~

~~(5)~~ (5) ~~Privacy, dignity, free exercise of worship and social interaction:~~

~~The right to enjoy freedom of thought, conscience, and religion; including religious worship within the facility, and services or sacred texts that are within the reasonable capacity of the facility to supply, provided that no resident shall be coerced into engaging in any religious activities.~~

~~(6)~~ (6) ~~Private conversation, and access to phone, mail and visitors:~~

~~(a)~~ (a) ~~The right of an adult to reasonable privacy and the freedom to meet with visitors, guests, or inspectors, and make and/or receive phone calls; or~~

~~(b)~~ (b) ~~The right of a minor in a type 1 or type 2 facility to meet with surveyors, and the right to communicate with family, guardian, custodian, friends and significant others outside the facility in accordance with the minor's individualized service plan;~~

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~~(c)~~ (c) ~~The right of an adult to write or receive uncensored, unopened correspondence subject to the facility's rules regarding contraband; or~~

~~(d)~~ (d) ~~The right of a minor in a type 1 or type 2 facility to send or receive mail subject to the facility's rules regarding contraband and directives from the parent or legal custodian, when such rules and directives do not conflict with federal postal regulation.~~

~~(e)~~ (e) ~~The right to communicate freely with and be visited at reasonable times by private counsel or personnel of the legal rights service and, unless prior court restriction has been obtained, to communicate freely with and be visited at reasonable times by a personal physician or psychologist;~~

~~(f)~~ (f) ~~The right to communicate freely with others, unless specifically restricted in the resident of a type 1 facility's treatment plan for reasons that advance the person's goals, including, without limitation, the following:~~

~~(i)~~ (i) ~~The right to receive visitors at reasonable times; and~~

~~(ii)~~ (ii) ~~The right to have reasonable access to telephones to make and receive confidential calls, including a reasonable number of free calls if unable to pay for them and assistance in calling if requested and needed; and~~

~~(g)~~ (g) ~~The right to have ready access to letter writing materials, including a reasonable number of stamps without cost if unable to pay for them, and to mail and receive unopened correspondence and assistance in writing if requested and needed subject to the facility's rules regarding contraband.~~

~~(7)~~ (7) ~~Notification to family or physician:~~

~~The right to have a physician, family member, or representative of the resident's choice notified promptly upon admission to a facility.~~

~~(E)~~ (E) ~~Resident rights procedures.~~

~~(1)~~ (1) ~~Each facility must have a written resident rights policy which contains the following:~~

~~(a)~~ (a) ~~Specification of the resident rights as listed in paragraphs (C) and (D) of this rule;~~

~~(b)~~ (b) ~~Assurance that staff will explain any and all aspects of resident rights and the grievance procedure upon request.~~

~~(2)~~ (2) ~~Each agency policy shall specify how explanation of client rights shall be accomplished, and shall include provision that in a crisis or emergency situation, the resident 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 resident rights policy may be delayed to a subsequent meeting.~~

~~(3)~~ (3) ~~A copy of the resident rights policy shall be posted in a conspicuous location accessible to residents and the public. It shall also include the name, title, location, hours of availability, and telephone number of the resident rights officer with a statement of that person's responsibility to accept and oversee the process of any grievance filed by a resident or other person or agency on behalf of a resident.~~

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

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~~(F)~~ (F) ~~Grievance procedure.~~

~~(1)~~ (1) ~~Each type 1 facility must have a written grievance procedure which provides for the following, or in a type 2 and type 3 facility the method for implementing the following shall be specified in the affiliation agreement:~~

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

~~(d)~~ (d) ~~A specification that written notification and explanation of the resolution will be provided to the resident, or to the griever if other than the resident, with the resident's permission;~~

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

~~(f)~~ (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)~~ (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.~~

~~(2)~~ (2) ~~Each facility shall make provision for posting the grievance procedure in a conspicuous location accessible to residents and the public, and for distributing a copy of the written grievance procedure to each resident, upon request.~~

~~(3)~~ (3) ~~Each facility shall make provision for prompt accessibility of the resident rights officer to the griever.~~

~~(4)~~ (4) ~~Each facility shall provide alternative arrangements for situations in which the resident rights officer is the subject of the grievance.~~

~~(5)~~ (5) ~~Each facility shall provide that every staff person, including administrative, clerical, and support staff, has a clearly understood, specified, continuing responsibility to immediately advise any resident or any other person who is articulating a concern, complaint, or grievance, about the name and availability of the resident rights officer and the complainant's right to file a grievance.~~

~~(6)~~ (6) ~~Each type 1 facility shall provide for the resident rights officer to take all necessary steps to assure compliance with the grievance procedure.~~