

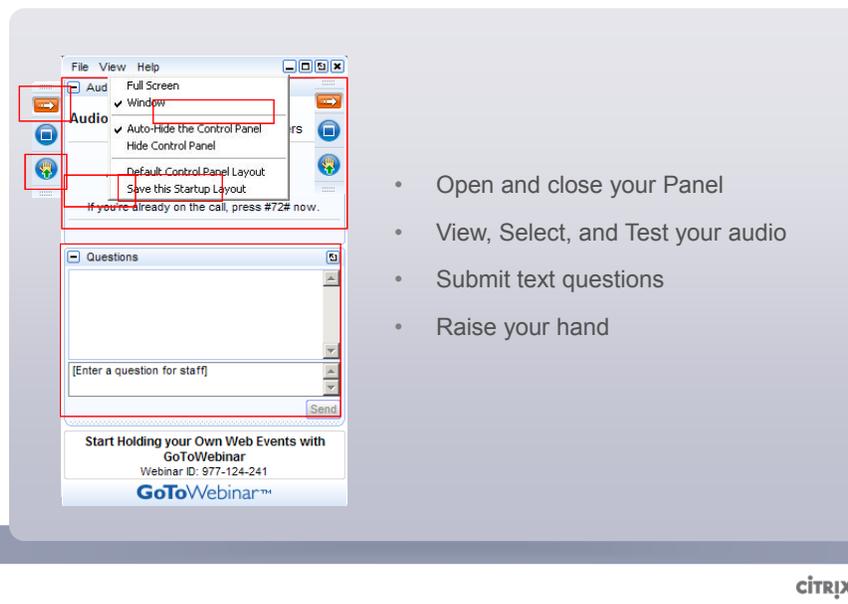
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Ohio Department of Mental Health

Patient Rights, Participation and Education
5122-14-11



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Webinar CE Objectives

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

1. Implement a patient rights policy that protects personal liberties and supports recovery.
2. Understand the importance of a patient rights policy that promotes respect, dignity, and informed choice for patients receiving mental health services.
3. Develop a patient 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

Ohio Administrative Code 5122-14-11 Purpose of Rule

(A) The purpose of this rule is to:

- (1) Require written policies and procedures for patient rights including a grievance procedure, and requirement of a patient rights advocate;
- (2) Require policies and procedures about family and patient communication, patient abuse or denial of patient rights; and
- (3) Require written policies and procedures regarding how patients are educated about and involved in their care or services and in care decisions.

Applicability

(B) The provisions of this rule are applicable to each inpatient psychiatric service provider licensed by the department.

Definitions

(C) In addition to the definitions appearing in rule 5122-14-01 of the Administrative Code, the following definitions apply to this rule:

(1) "Client rights specialist" means the individual designated by the inpatient psychiatric service provider with responsibility for assuring compliance with the patient rights and grievance procedure rule.

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

Definitions (Continued)

(C) In addition to the definitions appearing in rule 5122-14-01 of the Administrative Code, the following definitions apply to this rule:

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

(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.

5122-14-11 (D) Patient Rights

(D) Each patient shall have the following twenty-two 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 center, as well as the additional rights listed in paragraph (E) of this rule:

- The rights in this paragraph also align with (same or similar) the rights in paragraph (C) of rule 5122-30-22, *Resident Rights and Grievance Procedure*, for ODMH licensed residential facilities
- There are 24, not 22 rights.

Informed of Rights

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

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

Informed of Rights

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

- (c) The right to request to speak to a financial counselor.
 - Residential and community consumers have the right to know the cost of services

Appropriate and Respect Personal Liberty

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

- (a) The right to be treated in a safe treatment environment, with respect for personal dignity, autonomy and privacy, in accordance with existing federal, state and local laws and regulations;
- (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 or emotional abuse or harassment.

Treatment Plans

(D)(3) Development of service/treatment plans:

(a) The right to a current individualized service/treatment plan (ISP/ITP) 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/ITP reviews with the staff including services necessary upon discharge.

Consent & Restraint/Seclusion

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

The right to give full informed consent to services prior to commencement and the right to decline services absent an emergency.

(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.

Privacy

(D)(6) Privacy:

- (a) The right to reasonable privacy and freedom from excessive intrusion by visitors, guests and non-hospital surveyors, contractors, construction crews or others; and
- (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 recording technology. This right does not prohibit a hospital from using closed-circuit monitoring to observe seclusion rooms or common areas, which does not include patient bedrooms and bathrooms.

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 the hospital 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 inpatient psychiatric service provider 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.

5122-14-10 (E)

(E) In addition to the rights listed in paragraph (D) of this rule, each consumer residing in an inpatient psychiatric hospital shall have the following sixteen rights:

- Align with (same or similar) the rights in paragraph (D) of rule 5122-30-22, *Resident Rights and Grievance Procedure*, for ODMH licensed residential facilities.

Informed of Rights

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

- (a) The right to receive humane services in a comfortable, welcoming, stable and supportive environment; and
- (b) The right to retain personal property and possessions, including a reasonable sum of money, consistent with the person's health, safety, service/treatment plan and developmental age;

Advance Directives & Labor

(E)(2) Development of service/treatment plans:

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

(E)(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.

Decline or Consent to Services

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

(a) The right to consent to or refuse the provision of any individual personal care activity and/or mental health services/treatment interventions; and

Decline or Consent to Services

(Medication)

(E)(4)(b) The right, when on voluntary admission status, to decline medication, unless there is imminent risk of physical harm to self or others; or

(E)(4)(c) The right when hospitalized by order of a probate or criminal court to decline medication unless there is imminent risk of harm to self or others, or through an order by the committing court, except that involuntary medication is not permitted, unless there is imminent risk of harm to self or others, for persons admitted for a competency evaluation under division (G)(3) of section 2945.371 of the Revised Code or admitted for sanity evaluation under division (G)(4) of section 2945.371 of the Revised Code. The inpatient psychiatric service provider shall provide the opportunity for informed consent.

Privacy, Dignity, Worship, Social Interaction

(E)(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.

Private Conversation & Access to Phone, Mail & Visitors

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

(a) 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;

Private Conversation & Access to Phone, Mail & Visitors (continued)

(E)(6)(b) The right to communicate freely with others, unless specifically restricted in the patient's service/treatment plan for reasons that advance the person's goals, including, without limitation, the following:

(E)(6)(b)(i) The right of an adult to reasonable privacy and freedom to meet with visitors, guests, or surveyors, make and/or receive phone calls; or the right of a minor to meet with inspectors, and the right to communicate with family, guardian, custodian, friends & significant others outside the hospital in accordance with the minor's individualized service/treatment plan;

Private Conversation & Access to Phone, Mail & Visitors (continued)

(E)(6)(b) The right to communicate freely with others, unless specifically restricted in the patient's service/treatment plan for reasons that advance the person's goals, including, without limitation, the following:

(E)(6)(b)(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. The right of a minor to make phone calls shall be in accordance with the minor's individualized service/treatment plan; and

Access to Mail (continued) and Notification

(E)(6)(c) 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 hospital's rules regarding contraband. The right of a minor to send or receive mail shall also be subject to directives from the parent or legal custodian when such directives do not conflict with federal postal regulations.

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

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

Patient Rights Advocate

(F) Each inpatient psychiatric service provider shall provide a patient right advocate(s) to safeguard patient rights. The client rights specialist or a designee(s) shall:

➤ “Patient rights advocate” = “client rights specialist”

(1) Be appropriately trained and knowledgeable in the fundamental human, civil, constitutional and statutory rights of psychiatric patients including the role of the Ohio legal rights service;

Patient Rights Advocate Responsibilities

(F)(2) Ensure that the patient, and as appropriate, the patient's family members, significant others, and the patient's legal guardian, are informed about patient rights, in understandable terms, upon admission, and throughout the hospital stay. Treatment staff shall also work with patient to assist them in understanding and exercising patient rights. For any person who is involuntarily detained, the inpatient psychiatric service provider shall, immediately upon being taken into custody, inform the person orally and in writing of his/her rights described in division (C) of section 5122.05 of the Revised Code;

ORC 5122.05 (C)

(C) Any person who is involuntarily detained in a hospital or otherwise is in custody under this chapter, immediately upon being taken into custody, shall be informed and provided with a written statement that the person may do any of the following:

(1) Immediately make a reasonable number of telephone calls or use other reasonable means to contact an attorney, a licensed physician, or a licensed clinical psychologist, to contact any other person or persons to secure representation by counsel, or to obtain medical or psychological assistance, and be provided assistance in making calls if the assistance is needed and requested;

ORC 5122.05 (C) (continued)

(C) Any person who is involuntarily detained in a hospital or otherwise is in custody under this chapter, immediately upon being taken into custody, shall be informed and provided with a written statement that the person may do any of the following:

(2) Retain counsel & have independent expert evaluation of the person's mental condition &, if the person is unable to obtain an attorney or independent expert evaluation, be represented by court-appointed counsel or have independent expert evaluation of the person's mental condition, or both, at public expense if the person is indigent;

(3) Have a hearing to determine whether or not the person is a mentally ill person subject to hospitalization by court order.

Patient Rights Advocate Responsibilities

(F)(3) Be accessible in person during normal business hours, and during evenings, weekends, and holidays as needed for advocacy issues. The name, title, location, hours of availability, and telephone number shall be available to the patient, the patient's legal guardian if any, and the patient's family and significant others, at all times;

Patient Rights Advocate Responsibilities

(F)(4) Assist and support patients, their family members, and significant others in exercising their legal rights and representing themselves in resolving complaints. This shall include providing copies of the inpatient psychiatric service provider's policies and procedures relevant to patient rights and grievances upon request, and assistance with the grievance procedure. This shall also include assistance in obtaining services of the Ohio legal rights service in accordance with sections 5123.60 to 5123.604 of the Revised Code, and assistance in obtaining access to or services of outside agencies or resources upon request;

Patient Rights Advocate Responsibilities

(F)(5) Not be a member of the patient's treatment team and not have clinical management or care responsibility for the patient for whom he or she is acting as the patient rights advocate; and

(F)(6) Maintain a log available for department review of patient grievances, including all allegations of denial of patient rights as identified.

Patient Rights

(G) Each inpatient psychiatric service provider shall ensure that its staff members are knowledgeable about patient rights and referral of patients to the patient rights advocate.

(H) Each inpatient psychiatric service provider shall ensure that patients and families of patients participate in an advisory capacity related to programming and relevant policies and procedures.

Patient Rights

(I) Each inpatient psychiatric service provider shall ensure that patient and family education is an interdisciplinary and coordinated process, as appropriate to the patient's treatment plan, consistent with patient confidentiality and documented in the medical record. Education shall incorporate appropriate members of the treatment team, types of materials, methods of teaching, community educational resources, and special devices, interpreters, or other aids to meet specialized needs.

Informed Consent for Medication & Interventions

(J) Each inpatient psychiatric service provider shall obtain the informed consent of a patient and/or when appropriate, a guardian, for all prescribed medications that have been ordered, except in an emergency, and for those medical interventions as referenced in and in accordance with section 5122.271 (A) of the Revised Code.

- [ORC 5122.271 Interventions: Surgery, Convulsive therapy; Major aversive interventions; Sterilizations; Any unusually hazardous treatment procedures; Psycho-surgery.](#)

Informed Consent for Medication & Interventions (continued)

(J)(1) Each inpatient psychiatric service provider shall ensure that the patient and legal guardian, when legally appropriate, receives written and/or oral information in a language and format that may be standardized and that is understandable to the person receiving it.

(J)(1)(a) Information shall include the anticipated benefits and side effects of the intervention, including the anticipated results of not receiving the intervention, and of alternatives to the intervention

Informed Consent for Medication & Interventions (continued)

(J)(1)(b) Persons served shall be given the opportunity to ask questions, seek additional information and provide input before the intervention or medication is administered/dispensed.

(J)(1)(c) Documentation shall be kept in the patient's medical record regarding the patient's participation in this process, including the patient's response, objections, and decisions regarding the medication or medical intervention. Such documentation may be accomplished through a notation from an appropriate professional staff person, signature of patient and/or guardian, or other mechanism.

Informed Consent for Medication

(J)(2) For purposes of informed consent specific to medication, each psychiatric inpatient service provider shall ensure that the patient and parent or legal guardian when legally appropriate receives written and/or oral information from a physician, registered nurse and/or registered pharmacist.

Questions?

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