

# NORTH COUNTRY COMMUNITY MENTAL HEALTH ADMINISTRATIVE MANUAL

**CHAPTER:** Chapter Five  
**SECTION:** Section One  
**POLICY NAME:** Recipient Rights Policy  
**EFFECTIVE DATE:** April 3, 2003

**PURPOSE:**

To protect the rights of recipients of North Country Community Mental Health services and to ensure compliance with Chapter Seven of the Michigan Mental Health Code.

**APPLICATION:**

All North Country Community Mental Health direct service programs and contracted direct service providers.

**POLICY:**

It is the policy of North Country Community Mental Health Board to provide community based treatment in an environment that protects and enhances the rights of all service recipients.

I. Confidentiality, Use and Disclosure

A. Purpose

To establish guidelines regarding confidentiality of Protected Health Information.

B. Definition

Confidential Information: means all information in the record of a consumer, any information acquired in the course of providing mental health services to the consumer, and the following:

- Information acquired in diagnostic interviews or examinations;
- Results and interpretations of tests ordered by a mental health professional;
- Progress notes or other entries by mental health professionals concerning the consumer's condition or progress.

Privileged communication is defined as a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, or to another person while the other person is participating in the examination, diagnosis, or treatment or a communication made privileged under other applicable state or federal law. All physical records belong to the North Country Community Mental Health Board. The information contained in the records belongs to the recipient. It shall be kept confidential, and may be disclosed outside the community mental health program only under the circumstances set forth in this section.

By written authorization of the recipient, empowered guardian, or parent of a minor. Informed consent is based on the following:

- Competency-the ability to rationally understand what is proposed.
- Knowledge- adequate information of benefits and/or risks to permit an informed decision.
- Voluntariness-no element of coercion, fraud, or deceit.

C. Policy

It is the policy of the board that all Confidential Information created or acquired in the course of providing services, shall be kept confidential in accordance with Section 748 of

Act 258, Michigan Public Acts of 1974, Part 7 of the Administrative Rules of the Michigan Department of Community Health, 42 CFR, and requirements of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)..

D. Procedures

1. When requested, information shall be disclosed:
  - a. pursuant to orders or subpoenas of court of record, or subpoenas of the legislature, unless the information is made privileged by some provision of law.
  - b. to a prosecuting attorney as necessary for him to participate in a proceeding governed by this act.
  - c. to an attorney for the recipient, with the authorization of the recipient, the recipient's guardian with authority to give authorization, or the parent with legal and physical custody of a minor recipient.
  - d. when necessary to comply with another provision of law.
  - e. to the Department of Community Health when the information is necessary in order for the department to discharge a responsibility placed upon it by law.
  - f. to the office of the auditor general when the information is necessary for that office to discharge its constitutional responsibility. Audit teams from the Office of the Auditor General shall sign an agreement pledging to protect the confidentiality of consumer record information prior to conducting an agency audit. Copies of the signed agreement shall be kept on file by the agency. If necessary for the audit staff to assure appropriateness of a mental health service or to confirm financial data by actually contacting the consumer of such service, the audit staff shall furnish the agency with the names of the individuals to be contacted so that the agency may determine if mailing a written request for information to the consumer's residence would be detrimental to the consumer's treatment relationship. If written contact is not recommended, the agency shall arrange for the audit staff to obtain the required information through a telephone or personal contact at the agency.
  - g. to a surviving spouse, or if none, to the individual(s) most closely related to the deceased consumer, to apply for and receive benefits, but only if the spouse or closest relative has been designated the personal representative or has a court order.
  - h. If there is a compelling need for mental health records or information to determine whether child abuse or child neglect has occurred or to take action to protect a minor where there may be a substantial risk of harm and upon request from the FIA caseworker or administrator directly involved in the investigation the mental health professional will review all mental health records and information to determine if there are mental health records which are pertinent to that investigation. The mental health professional will, within 14 days after receipt of the request, release those pertinent mental health records and information to the caseworker or administrator directly involved in the child abuse or neglect investigation. (PA 258 of 1974, MCL 330.1748, Sec. 748a)
  - i. to a non-custodial parent when records or information is requested by the non-custodial parent pursuant to the Child Custody Act of 1970, Section 722.30.
2. Information may be disclosed to providers of mental health services, to the recipient, or to any individual or agency if consent has been obtained from the recipient, the recipient's guardian with authority to consent, parent with legal custody of a minor, or court approved personal representative or executor of the estate of a deceased recipient.
3. For case record entries made subsequent to the effective date of the amendatory act that added section 100a, (03/28/96) information made confidential by this section shall be disclosed to an adult consumer, upon the consumer's request, if the consumer does not have a guardian and has not been adjudicated legally

incompetent. Release is done as expeditiously as possible but in no event later than the earlier of 30 days of the request or prior to release from treatment.

4. Information may be disclosed at the discretion of the holder of the record:
  - a. as necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation, provided that the person who is the subject of the information can be identified only when such identification is essential in order to achieve the purpose, but in no event when the subject of the information is likely to be harmed by the identification.
  - b. to providers of mental or other health services, or a public agency when there is a compelling need for disclosure based upon a substantial probability of harm to the recipient, or others.
  - c. the agency shall assure that all discretionary disclosures of information have been reviewed and that there is no disclosure of information, or inspection, or sampling, of information and/or records when detriment or harm would come to a recipient.
5. Except as otherwise provided for in Sec. 748 (4), the Executive Director may delay releasing information unless it is to be disclosed pursuant to order or subpoena of a court or legislature for non-privileged information, to a prosecutor as necessary for participation in a proceeding pursuant to the act, to a recipient's attorney with the recipient's consent, or the attorney for a minor, to the auditor general, or pursuant to law which required disclosure if:
  - a. there is substantial and documented reason to believe disclosure would be detrimental to the recipient or others.
  - b. the recipient, legally empowered guardian, or parents of a minor requests that the information is not to be released, or declines consent. Information shall be released to the attorney of a recipient if the recipient has consented.
  - c. the Executive Director shall review the request and make a determination within 3 business days if the record is on-site or 10 business days if the record is off-site whether the disclosure would be detrimental to the recipients or others.
  - d. any decision not to disclose information may be appealed to the NCCMH RRO by the person seeking disclosure.
  - e. the holder of the record shall not decline to disclose information if a recipient, or empowered representative has consented, except for a documented reason. If a holder declines to disclose a determination will be made as to whether part of the information can be released without detriment.
  - f. a prosecutor may be given either privileged or non privileged information if it contains information relating to names of witnesses to acts which support the criteria for involuntary admission, information relevant to alternatives to admission to a hospital or facility, and other information designated in the policies of a governing body.
6. Privileged communications shall not be disclosed in civil, criminal legislative or administrative cases or proceedings except for the following reasons:
  - a. Recipient has waived this privilege.
  - b. The privileged communication is relevant to a physical or mental condition of the recipient, which has been introduced as an element of his claim or defense in a civil or administrative proceeding.
  - c. The privileged communication is relevant to a matter under consideration in a proceeding governed by Public Act 258 of 1974, as amended, including determination of legal competence, or the need for a guardian, but only if the recipient was informed that any communications could be used in such a proceeding.
  - d. in civil or criminal actions against a psychiatrist, psychologist, or social worker for malpractice.
  - e. When the communications were made during an examination ordered by the court, with the recipient given prior knowledge that any communications would not

be privileged, but only with respect to the particular purpose of the ordered examination.

- f. Physicians and psychologists shall be notified before the submittal of records to a court, when those records contain privileged information.
7. Any staff member must immediately report to the Executive Director information provided by a recipient that reveals that substantial or serious physical harm may come to the recipient or another person in the near future. The Executive Director shall follow the standards as set forth in the Mental Health Code Sections 748 and 946.
8. A record shall be kept of all disclosures and shall include:
  - a. Information released.
  - b. To whom it was released.
  - c. The purpose of the release and how disclosure satisfied the purpose.
  - d. The subsection of Section 748 of the Michigan Mental Health Code, or other state law, under which the disclosure was made.
9. A summary of Section 748 shall be made part of each recipient file.
10. Upon receipt of a properly executed and procedurally correct request for information, the Agency shall provide copies of that record. The Agency may impose a reasonable charge for copies according to the nature of the request and the ability to pay. A recipient will not be denied a reasonable request due to inability to pay. An individual may appeal any charge to the Rights Office, Executive Director, or Mental Health Board.
11. A recipient, guardian, or parent of a minor recipient, after having gained access to records, may challenge the accuracy, completeness, timeliness, or relevance of factual information in that record. That individual will be allowed to insert into the record a statement correcting or amending the information at issue and this will become a part of the recipient record.
12. If required by federal law, the agency shall grant a representative of the protection and advocacy system access to the records of all of the following:
  - a. A recipient, if the recipient, the recipient's guardian with authority to consent, or a minor recipient's parent with legal and physical custody has consented to access.
  - b. A recipient, including a recipient who has died or whose whereabouts are unknown, if all of the following apply:
    - i. Because of mental or physical condition, the recipient is unable to consent to the access.
    - ii. The recipient does not have a guardian or other legal representative, or the recipient's guardian is the state.
    - iii. The protection and advocacy system has received a complaint on behalf of the recipient or has probable cause to believe based on monitoring or other evidence that the recipient has been subject to abuse or neglect.
  - c. A recipient who has a guardian or other legal representative if all of the following apply:
    - i. A complaint has been received by the protection and advocacy system or there is probable cause to believe the health or safety of the recipient is in serious and immediate jeopardy.
    - ii. Upon receipt of the name and address of the recipient's legal representative, the protection and advocacy system has contacted the representative and offered assistance in resolving the situation.
    - iii. The representative has failed or refused to act on behalf of the recipient.
13. The agency, when authorized to release information for clinical purposes by the recipient or the recipient's guardian, or parent of a minor recipient, shall release a copy of the entire medical and clinical record to the provider of mental health services. The entire record includes information made part of the record from outside agencies.

14. The records, data and knowledge collected for or by individuals or committees assigned a peer review function (including the review function under section 143a(1) of the Code) are confidential, are used only for the purpose of peer review, are not public records, and are not subject to court subpoena.

## II. Informed Consent

### A. Purpose

To establish guidelines for determination of whether an applicant for mental health services is capable of giving, or refusing to give informed consent.

### B. Definitions

1. Applicant: a person who has applied for, but is not yet accepted for services from the agency.
2. Consent: written informed consent on the part of the applicant/recipient, empowered guardian, or parent of a minor. Informed consent has the following three requirements:
  - a. Competency: An individual shall be presumed to be legally competent. This presumption may be rebutted only by a court appointment of a guardian or exercise by a court of guardianship powers and only to the extent of the scope and duration of the guardianship. An individual shall be presumed legally competent regarding matters that are not within the scope and authority of the guardianship.
  - b. Knowledge: To consent, a recipient or legal representative must have basic information about the procedure, risks, other related consequences, and other relevant information. The standard governing required disclosure by a doctor is what a reasonable recipient needs to know in order to make an informed decision.
  - c. Comprehension. An individual must be able to understand what the personal implications of providing consent will be based upon the information provided under (b).
  - d. Voluntariness: An individual must have free choice without the intervention of any element of force, fraud, deceit, or other ulterior forms of constraint or coercion. The recipient or recipient's guardian may withdraw consent at any time.
3. Empowered Guardian: a person designated by the county probate court as a guardian with the specific authority to give consent.
4. Recipient: a person the agency has accepted for service.

### C. Policy

It is the policy of the board that a determination be made upon application for mental health services as to whether an individual is capable of giving or refusing to give informed consent. An individual applying for services shall be presumed to be legally competent if he or she does not have a guardian. An individual with a limited guardian will be presumed to be legally competent in all areas that are not specifically identified as being under the control or scope of the guardian. An evaluation of the ability to give consent shall precede any filing of a petition for guardianship. All recipients and recipient's guardians will be informed of their right to withdraw consent.

### D. Procedure

At intake and/or subsequent to the review of past mental health records, the clinician, or I-team shall make a determination of the capacity and competency of the individual receiving services. This evaluation shall be consistent with current medical and/or clinical standards. Any evaluation suggesting that the individual receiving services lacks competency shall cause the clinician and/or I-team to request a full psychological exam

which may lead to a petition of guardianship, or exploration of other methods of securing informed consent.

E. Services To Minors

1. A minor, 14 years of age or older, may request and receive mental health services and a mental health professional may provide such services on an out-patient basis without the consent or knowledge of the minor's parents, guardian, or other person in loco parentis.
2. The services provided to such a minor shall not include pregnancy termination referral nor the prescription, or administration, of psychotropic drugs.
3. The minor's parents, guardian, or other person in loco parentis shall not be informed of such services without the consent of the minor unless the treating professional determines (including documentation with justification) a compelling need for disclosure based upon the substantiated probability of harm to the minor recipient or another.
4. Should such a disclosure (noted at 3 above) be determined to be appropriate, the minor will be notified by the treating professional prior to disclosure.
5. The services to a minor, 14 years of age or older, without the consent of parent, guardian, or other person in loco parentis, shall be limited to not more than 12 sessions or 4 months per request. After this period of time, the treating professional shall terminate services or, with the consent of the minor, notify the parent, guardian, or person in loco parentis of the minor's desire to continue treatment and secure proper consent from that adult to provide further out-patient services.

III. Recipient's Right to Access

A. Purpose

To establish guidelines regarding access to written materials and the viewing of television, movies, videos, or listening to the radio.

B. Policy

It is the policy of the board that recipients shall not be prevented from acquiring at their own expense any written or printed materials, movies, or recordings. In residential settings recipients may view any television program, listen to radio programs, recordings, or movies available at the site. This shall not be limited for reasons of, or similar to, censorship.

It is the policy of the board that restrictions or limitations may be imposed if documented in the written plan of service. These must include justification, but only for reasons authorized by the Mental Health Code and Department of Mental Health Administrative Rules. Any restrictions or limitations will be removed when not essential for treatment purposes.

It is the policy of the board that any denial, or limitation of right to access may be appealed to the Board Rights Officer; this shall not entitle access over the objection of a legal guardian, or prohibition by law. This right shall not entitle a minor recipient access over the objection of a parent, guardian, or prohibition of law.

C. Procedure

1. Any restrictions to written materials, television, radio, and/or movies (or other information delivery sources) shall be appropriately documented, justified, and made part of a properly developed treatment plan.
2. Prior to placement, the responsible case manager shall determine the recipient interest in receiving written, audio, and visual communications, including a daily

newspaper; and shall ascertain whether the residential placement adequately addresses and/or provides for such interests.

3. A recipient shall not be placed in a residence that does not normally provide appropriate access without the arrangement for recipient desired access by the responsible case manager.
4. Any residential setting with restrictions on access as part of the house rules shall make those restrictions known to both recipient and case manager prior to placement, and the subsequent placement shall be subject to recipient consent to those house rules.
5. Should a minor desire to have access to materials specifically denied by a parent or guardian, the case manager shall be permitted to request the parent or guardian revoke such a restriction if they believe it is in the best treatment interest of the recipient.
6. CMH staff and contract residential staff shall inform the resident of their right to appeal any restrictions and/or its expiration date on access to the CMH Rights Officer or Agency Director.

#### IV. Rights Regarding Sterilization, Abortion, and Contraception

- A. Purpose  
To establish guidelines whereby staff may provide notice and information to recipients, guardians, or parents of minor recipients, regarding sterilization, abortion, and contraception.

- B. Policy  
It is the policy of the board that staff shall provide notice of the availability of information regarding sterilization, abortion, or contraception to recipients at the time of their initial assessment for services and annually thereafter. Notice to the recipient, guardian or parent of a minor recipient will also include a statement that mental health services are not contingent upon receiving family planning services.

It is the policy of the board that staff may provide, upon request of the recipient, guardian or parent of a minor recipient, information regarding sterilization, abortion, or contraception; including information given in an objective manner as to where these services may be obtained.

It is the policy of the board that these services are not provided by the board, nor any of its employees.

It is the policy of the board that mental health services are not dependent upon acceptance or denial of any family planning services.

#### V. Fingerprinting, Photography, Audio-Video Taping and Use of 1-way Glass

- A. Purpose  
To establish guidelines for the fingerprinting, photographing and taping, and observation for clinical reasons, of recipients.

- B. Application  
The North Country Community Mental Health Services Board, its committees, and all employees, either direct or contractual.

- C. Policy  
It is the policy of the board that written informed consent be obtained from a recipient, parent of a minor, or empowered guardian prior to any photographing or recording of

recipients for education or training purposes. Prior to photographing or recording recipients, they will be informed of the purpose, duration of use, agency methods of safekeeping, including confidentiality considerations. When these materials are no longer needed, they will either be returned to the individual, or destroyed.

**D. Procedure**

1. All requests for recipient photographing, audio and/or videotaping shall be accompanied by a specific description of that educational or training activity. Such education and training shall be limited to:
  - CMH and contract agency staff development
  - Board training activities
  - Community education/information
  - Other activities as administratively approved and as described above.
2. The agency shall not use fingerprints and/or photographs for the purposes of recipient identification, service provision, research, or to determine the name of the recipient.
3. The treatment team shall regularly review (not less than annually) their need for photo and/or video and audio retention. They shall provide justification and secure releases/consents, as necessary and appropriate.
4. All photos and/or videos and audio tapes of a confidential nature shall be maintained in a secure location, accessible only to authorized staff.
5. All recipients shall have the right to object to any and all photographing audio or videotaping; including agency sponsored community events where photos may be taken for social and/or personal purposes. A recipient may withdraw consent at any time.
6. Any use of 1-way glass for purposes of viewing or services provision shall be dependent on prior clinical justification, provision of information to the recipient, parent, or guardian, and the receipt of proper consent. A refusal of consent will not adversely impact on the provision of services.

**VI. Use of Restraints (see also BM/HR Procedures) and Use of Psychotropic Medications**

- A.** "Restraint" means the use of a physical device to restrict an individual's movement. Restraint does not include the use of a device primarily intended to provide anatomical support. (Section 330.1700, (I), MMHC 1996.)
- B.** Mechanical, Physical or Material Restraints administered by another individual to a recipient to restrict the activity of the recipient requires application and monitoring by specialized personnel, and shall be prohibited in ALL NCCMH programs and/or residential sites, and any contracted homes. Any identified need for the use of "restraints" shall be evaluated in an appropriate environment, e.g. inpatient facility or hospital.

Physical intervention techniques, which might be construed as restraint may be used when deemed necessary for the health and safety of a recipient, and has been approved by the physician, the behavior management /human rights team which includes the recipient rights officer, and the recipient/guardian.

In emergencies, when the person is at risk of eminent danger to self or others, physical intervention may be implemented by staff trained to provide those interventions. Upon alleviation of the eminent danger the staff person will review the emergency and the interventions used with the Medical Director/Designee and inform the guardian of the implementation. The RRO/Advisor will review the situation and the implementation of physical intervention techniques on the next working day. In emergency situations where trained staff are not available, 911 will be utilized with notification provided to the on-call nurse.

C. Use of Psychotropic Medications

“Psychotropic Medications” are defined as any medication administered for the treatment or amelioration of disorders of thought, mood, or behavior.

1. Medication shall not be used as a punishment; for the convenience of staff, nor as a substitute for other appropriate treatment.
2. Medication shall only be administered per physician's orders.
3. Medications shall not be used at levels that interfere with the recipient's habilitation program.
4. When medication is used as a behavioral control, it must be accompanied by a suitable behavioral modification program to deal with the primary problem.
5. Medications must be reviewed and evaluated on a regular basis by the physician as indicated in the clinical record. Medication used for behavioral control will have an accompanying medication reduction plan approved by the physician and the BM/HR Team.
6. When psychotropic medications are administered the medication name, doses and frequency of dosing will be recorded in the intervention plan and on the Medication Flow Sheet by the prescribing physician.
7. Prior to administration of medication the attending physician will obtain written informed consent from the recipient, guardian or parent in the case of a minor. The Consent for Medication will comply with the NCCMH Procedure for Medication Consents. Medication will not be administered prior to obtaining the Consent for Medication unless administration is necessary to prevent physical harm or injury to the recipient or others as determined by the attending physician and documented in the clinical record, or by Court order. Initial administration of psychotropic medications may not be extended beyond 48 hours unless there is consent.
8. Administration and the safe termination of psychotropic medications will comply with established federal standards and the standards of the medical community and shall be as short as possible and at the lowest dosage possible that is therapeutically effective.
9. Medication errors and adverse reactions to medications shall be reported and documented in the recipient's clinical record.
10. All recipients stabilized on medication will be evaluated directly by a psychiatrist at least every 3 months.
11. The frequency and duration of medication will be based on recipient's need and not on administrative or fiscal considerations.
12. If a recipient is unable to administer their own medications the physician will ensure that medication is administered by or under the supervision of personnel who are qualified and trained in medication administration.
13. At time of discharge or leave only medications authorized by a physician in writing are to be given and in an adequate supply until the recipient can become established with another provider.

D. Seclusion

Seclusion means the temporary placement of a recipient in a room, alone, where egress is prevented by any means. Seclusion is not allowed in the board policies. Individuals who would require seclusion will be referred to a more restrictive setting after all other methods of behavioral intervention have been exhausted. Contractual providers of inpatient services shall submit their restraint and seclusion policies to the CMH rights officer for review, as well as provide evidence of compliance with appropriate licensing standards.

VII. Freedom of Movement

- A. An individual's freedom of movement shall not be restricted, nor shall they be moved to a more restrictive setting except to prevent injury to self or others, provide required mental health services, or to prevent substantial property damage.
- B. Freedom of movement may be restricted in residential settings if it is part of the residential sites general policies, and is explained to recipients prior to placement and a notation made in the file of the explanation.
- C. When an individual's freedom of movement is restricted or limited the following information must be included in the individual's plan of service:
  - 1. justification of the limitations
  - 2. authorization of the limitations
  - 3. termination of the limitations
  - 4. review date of the limitations
  - 5. notation of explanation of the limitations to the recipient or empowered guardian
  - 6. individuals may appeal limitations to the recipient rights officer or the director
- D. Individuals have the right to receive services in the least restrictive setting, and to have unimpeded access to vocational, social, and recreational activities and areas and to have any limitations placed upon their freedom of movement removed when the circumstances which justified those limitations cease to exist.
- E. Any limitations on freedom of movement may be appealed to the Rights Officer, the Director of Community Mental Health, or the Director of the Department of Community Health.

#### VIII. Working Residents

- A. The labor of a recipient whether therapeutic or not shall require the approval and consent of the recipient or legally empowered guardian and the supports coordinator. Recipient labor shall all be voluntary. Approval shall not be withheld unless reasons explaining why the labor is inconsistent with the plan of service are stated in the case record. Disapproval by the supports coordinator can be reversed by the director of North Country Community Mental Health or their designee.
- B. A recipient's right to compensation shall be protected by the agency when performing labor which results in economic benefit to another person, or the agency.
- C. Recipients shall be compensated for their labors in accordance with current state and local laws and the State Department of Labor.
- D. Recipients in a residential setting need not be compensated for self-care and personal domiciliary activities when they are a part of the individual's plan of service. However, when a resident is paid for work performed for the home or other service provider, one-half of that compensation shall be exempt from collection for payment of mental health services provided.
- E. Participation in occupational training or work experience shall be documented in the recipient's plan of service.
- F. Residents working in excess of six hours per day will gain approval.

#### IX. Communication and Visitation in Residential Settings

- A. Immediate family, guardians, and friends of residents are permitted to visit a resident at any reasonable hour without prior notice provided such visitation does not infringe on the privacy of other residents.
- B. Parent/guardians are permitted access to all parts of the home except where they would infringe on the privacy of other residents.
- C. A resident is entitled to visits with persons of his/her choice unless that person is specifically denied permission from visiting.
- D. In order to preclude an individual from visiting or communicating with a resident the following must occur:
  - 1. Written documentation in the resident's plan of service that the visitor would have a detrimental effect physically and/or mentally on the resident.
  - 2. The statement must include that the limitation is the minimum restriction essential to preserving the resident's welfare.
  - 3. It must have an expiration date, or date of review.
 This statement must be signed by the following:
  - 1. Residential Services Supervisor
  - 2. Resident or empowered guardian
  - 3. Supports coordinator
  - 4. North Country Community Mental Health Director or designee
- E. Visitation with friends and family away from the residential setting are encouraged. Leaves for more than 24 hours shall be approved by the supports coordinator and resident or guardian. Residential staff will note and enter into the resident's record his/her condition upon leaving the setting and upon return.

X. Communication and Visitation Rights of Recipients in Residential Settings

The board, either directly or through contract, shall provide to all residents, unless otherwise restricted, the following:

- A. Telephone Calls
  - 1. Telephones should be reasonable accessible.
  - 2. Telephone usage funds shall be provided in reasonable amounts to residents who are unable to procure such funds.
  - 3. Reasonable times and places may be established, and if established, shall be in writing and posted in each living unit of a residential program.
  - 4. Any further limitations must be justified in the resident's individual place of service. Documentation shall be included that describes attempts that have been made to avoid such restrictions as well as what actions will be taken as part of the plan to ameliorate or eliminate the need for the restrictions in the future.
  - 5. A limitation shall not apply between a resident and an attorney or a court, or with other individuals if the communication involves matters that are or may be the subject of legal inquiry.
- B. Visits
  - 1. Each facility shall make space for visits available.
  - 2. Reasonable times and places may be established, and if established, they shall be in writing and posted in each living unit of a residential program.
  - 3. A resident shall be allowed to see their mental health professional at any reasonable time.
  - 4. Any further limitations must be justified in the resident's individual plan of service. Documentation shall be included that describes attempts that have been made to avoid such restrictions as well as what actions will be taken as part of the plan to ameliorate or eliminate the need for the restrictions in the future.

5. A limitation shall not apply between a resident and an attorney or a court, or with other individuals if the communication involves matters that are or may be the subject of legal inquiry.
- C. Mail
1. Correspondence can be conveniently and confidentially received and mailed. A daily pickup and deposit of mail shall be provided.
  2. Writing materials and postage shall be provided in reasonable amounts to residents who are unable to procure such items.
  3. Instances of opening or destruction of mail by staff shall be documented, with justification, in the resident's record.
  4. Any further limitations must be justified in the resident's individual plan of service. Documentation shall be included that describes attempts that have been made to avoid such restrictions as well as what actions will be taken as part of the plan to ameliorate or eliminate the need for the restrictions in the future.
  5. A limitation shall not apply between a resident and an attorney or a court, or with other individuals if the communication involves matters that are or may be the subject of legal inquiry.
- D. Limitations on communication rights can only be for the following purposes:
1. It is essential to prevent harm to the recipient, or others
  2. There is reason to believe that the mail contains items excluded by agency policy, or limited by the recipient's plan of service
  3. It is essential to prevent the recipient from violating the law
  4. It is essential to prevent future harassment of an individual by the recipient (this individual would have been previously harassed by the recipient and requested in writing prevention of harassment. More specific criteria for this is listed in the Administrative Rules (R330.7329.5a-e)
- E. For all limitations noted in agency policy and procedure the following are required:
1. The limitation is the minimum essential to achieve the purposes proposed
  2. The limitation is supported by documentation establishing the justification, evidence, expiration date, and preceding similar limitation noted at E above (more specific details regarding documentation are found in Administrative Rule R330.7239.6b.i-v).
  3. Approval of facility director or designee.
- F. Sealed mail, calls to or from, and visits from a recipient's private physician, or a mental health professional, a court, a recipient's attorney, or other person when the communication involves matters which are or may be the subject of legal inquiry shall not be limited except that non-emergency visits of a private physician, or a mental health professional may be limited to reasonable times. A time is considered reasonable is the visit does not seriously tax the effective functioning of the facility. Legal inquiry includes any matter concerning civil, criminal, or administrative law.
- G. Recipients shall be promptly informed of any limitations on communications. Upon request a recipient shall be informed of the purpose of any limitation, the persons or entities involved, and any additional information deemed appropriate.
- H. Limitations are subject to administrative appeal. A recipient may contest the justification, extent, or duration of any limitation.
- I. Limitations shall be reviewed in conjunction with other reviews of the content of a written plan of service.
- XI. Access to Personal Property and Funds
- A. It is the policy of the board that recipients in residential settings shall have access to personal property and funds in accordance with the residential facilities rules and that any rules describing the exclusion of personal property are written and posted in the Residence.
  - B. The individual in charge of the plan of services for a resident may limit access if the limitation is essential to prevent theft, loss, or destruction of the property, unless a waiver is signed by

the resident; or in order to prevent the resident from physically harming himself, herself, or others. Items subject to specific exclusion include those listed in XIIC1 (a). An individual may appeal any limitation to the Recipient Rights Officer and/or the director.

- C. The supervisor of the residential setting shall provide:
  - 1. A receipt to the resident and/or an individual chosen by them. All personal property in the possession of a residential setting shall be returned to the recipient upon their leaving.
  - 2. Ready access to personal funds held for a resident
  - 3. Justification for any delay of resident access to funds or property for any property or funds taken for safekeeping.
  - 4. Reasonable access to held personal property for the purposes of inspection.
  - 5. A resident, parent, guardian the opportunity to sign a waiver regarding an actual, or proposed, limitation to access property imposed for the prevention of theft, loss, or destruction of same.

## XII. Search Procedure

Any searches will take place only with proper justification, and with a minimum of two staff persons present, and consistent with agency procedure on resident searches.

- A. Purpose  
To describe the method, and manner, in which CMH staff, or contractually obligated residential services staff, may conduct a search of a recipient/resident's personal space or property.
- B. Application  
This procedure shall apply to all CMH staff and contractually obligated service providers.
- C. Procedure
  - 1. A search of a recipient/resident's personal space or property may only be conducted when such a search is authorized in the recipient/ resident's plan of service or that individual is believed to have in their possession, any of the following contraband:
    - a. Illegal drugs, weapons, explosives
    - b. Other items which could pose an identifiable threat to the individual or others
    - c. Items specifically excluded by virtue of a properly developed treatment plan; by house rules, or by FIA Licensing rules.
  - 2. The following conditions apply to all searches:
    - a. The reason for conducting the search shall be clearly documented in both home and CMH record.
    - b. The reason for initiating the search.
    - c. The names of the individuals performing and witnessing the search.
    - d. The results of the search, including a description of the property seized.
  - 3. The search of space or property shall be conducted in the presence of the resident/recipient (unless he or she declines to be present) and an individual not employed by the residential service provider.
  - 4. A recipient/resident shall be able to appeal the request for a search of space or property to the CMH Rights Officer, or the Agency Director.

## XIII. Religious Worship and Treatment by Spiritual Means

- A. Purpose  
To establish guidelines allowing for religious freedom with regard to worship, religious activities and practices, and treatment by spiritual means.

B. Policy

It is the policy of the board that services provided by or under contract are done in a non-discriminatory fashion with regard to a recipient's religious preference. It is the policy of the board that recipients are allowed access to religious services, worship, and practice of their choice without discrimination. It is the policy of the board that recipients shall be permitted treatment by spiritual means in the same manner as they would have contact with a private mental health professional and upon the request of the recipient or empowered guardian in accordance with DCH Administrative Rules, Section 330.7135 (in the same manner as they would access other community services).

C. A resident of an NCCMH or contractual residential service shall be permitted to access treatment by spiritual means—at their own expense and without impediment—at their request.

Treatment by spiritual means shall be considered any discipline, or school of thought, upon which a resident wishes to rely to aid physical or mental recovery. This treatment shall also include the viewing of visual materials, personal listening to audio materials, or maintenance of symbolic objects in the resident's personal areas. This also includes the right to refuse medications if the receipt of spiritual treatment predates the current allegation of mental illness or disability, and there is no court order mandating such treatment, and the recipient is not imminently dangerous to self or others.

The right to treatment by spiritual means includes the resident's right to object to other treatment based on those spiritual grounds; however, this does not include

1. The right to object to treatment approved by the properly appointed guardian, or court.
2. The right to object to treatment when the resident is presently dangerous to self, or others; and treatment is necessary to prevent physical injury.
3. The right to use mechanical devices or organic compounds which are physically harmful.
4. The right to engage in activities prohibited by law.

When a recipient, parent of a minor recipient, or guardian refuses medication or other treatment deemed necessary by NCCMH, there shall be an appeal made to a court prior to implementing such medication or treatment. Any denial of a resident's right to treatment by spiritual means shall be justified by the Executive Director in writing to the person and agency making the request and filed in the recipient's clinical record. The recipient and agency may appeal this denial through the agency treatment plan appeal process.

XIV. Service To Individuals Affected by Physical Barriers

It is the policy of the board that services shall be provided to individuals affected by physical barriers in all North Country Community Mental Health Programs. All North Country Community Mental Health Facilities shall be free of any obstacles to physically challenged recipients. Facilities shall have ramps, wide doorways, adequate rest rooms, and other features that ensure accessibility by all individuals. In the event of an obstacle, service will be provided in an accessible location. It is the policy of the board that a plan is developed to eliminate any identified physical barriers that impede total accessibility to services.

XV. Abuse and Neglect Policy and Reporting Procedure

A. Purpose

To establish an agency policy regarding the definitions of abuse and neglect and establish reporting procedures.

B. Application

This policy shall apply to all staff of NCCMH and their contracting agencies and the protections afforded by this policy shall apply to all recipients of the agency.

- C. Policy  
It is the policy of the Board that all staff and all contractual agencies and personnel, who witness, discover, or are notified of suspected abuse or neglect comply with all legally mandated reporting procedures both internal and external. The RRO will initiate an investigation immediately on any complaint of abuse or neglect. Any substantiated abuse or neglect will result in disciplinary action up to and including termination of employment. Should CMH staff or provider personnel fail to report suspected violations of rights, appropriate administrative action will be taken.
- D. Definitions
1. Abuse (General) is a non-accidental action, incident, or behavior (verbal or nonverbal) that results in physical or emotional harm to an agency recipient, or is detrimental to the recipient's care, treatment, or general well being. Examples include, but are not limited to:
    - a. Acts of commission
      - i. Physically striking or assaulting a recipient
      - ii. Speaking harshly or rudely to a recipient
      - iii. Ridiculing, coercing, or threatening a recipient
    - b. Acts of omission
      - i. Causing physical or emotional harm or injuries to a recipient because of unauthorized absence of staff, such as leaving the recipient unattended when attendance is part of the treatment plan.
  2. Class I Abuse means a non-accidental act or provocation of another to act by an employee, volunteer, or agent or a provider that caused or contributed to the death, or sexual abuse of, or serious physical harm to a recipient.
  3. Class II Abuse means any of the following:
    - a. A non-accidental act or provocation of another to act by an employee, volunteer, or agent or a provider that caused or contributed to non-serious physical harm to a recipient.
    - b. The use of unreasonable force on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm.
    - c. Any action or provocation of another to act by an employee, volunteer, or agent of a provider that causes or contributes to emotional harm to a recipient.
    - d. An action taken on behalf of a recipient by a provider who assumes the recipient is incompetent, despite the fact that a guardian has not been appointed, that results in substantial economic, material, or emotional harm to the recipient.
    - e. Any misappropriations of recipient's funds.
  4. Class III Abuse means the use of language or other means of communication by an employee, volunteer, or agent of a provider to degrade, threaten, or sexually harass a recipient.
  5. Class I Neglect means either of the following:
    - a. Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to serious physical harm to a recipient.
    - b. The failure to report abuse or neglect of a recipient when the abuse or neglect results in the death of, or serious physical harm, to the recipient.
  6. Class II Neglect means either of the following:
    - a. Act of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives,

- procedures or individual plan of service that cause or contribute to non serious physical harm or emotional harm to a recipient.
- b. The failure to report abuse or neglect of a recipient when the abuse or neglect results in non-serious harm to the recipient.
7. Class III Neglect means either of the following:
- a. Act of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures or individual plan of service that either placed or could have placed a recipient at risk of physical harm.
  - b. The failure to report abuse or neglect of a recipient when the abuse or neglect places a recipient at risk of serious or non-serious harm.
8. Sexual Abuse means any sexual contact or sexual penetration, as defined in section 520a (k) and (1) of Act No. 328 of the Public Acts of 1931, as amended, being 750.520a (k) and (1) of the Michigan Compiled Laws, involving and employee, volunteer, or agent of a provider and a recipient.

Sexual Abuse includes the intentional touching of the victim's intimate parts, or the intentional touching of the clothing covering the immediate area of the victim's intimate parts, if that touching can reasonably be construed as being for the purpose of sexual arousal, or gratification. Sexual abuse includes, but is not limited to:

- a. Sexual contact between staff, both direct and contractual, and recipients.
- b. Recipient to recipient contact when one of the participants is forced, or otherwise coerced into actual or intended sexual contact.
- c. Any sexual conduct involving a minor or legally vulnerable individual.
- d. Any sexual conduct that can be reasonably construed as criminal sexual conduct.
- e. Any sexual harassment, sexual advances, or requests for sexual favors from a recipient, or other conduct or communication of a sexual nature as defined in title VII of the Civil Rights Act of 1991.

#### E. The Reporting of Abuse

- 1. All agency staff, both direct and contractual, who witness, discover, or are notified of an incident of abuse and/or neglect shall cause a report, internal to this agency, to be made; that report must, at least, be routed to the appropriate supervisor, the recipient rights officer, and the director of the agency as soon as possible, but never later than the end of the shift on which the incident occurred.
- 2. All agency staff, both direct and contractual, who have reasonable cause to believe that a child or vulnerable individual is subject to abuse, exploitation, or neglect shall make immediately, by telephone or otherwise, an oral report, of the suspected child abuse or neglect to the department. Within 72 hours after making the oral report, the reporting person shall file a written report. The written report shall contain the name of the child or vulnerable adult and a description of the abuse or neglect. In the case of a child, if possible, the report shall contain the names and addresses of the child's parents, the child's guardian, the persons with whom the child resides, and the child's age. In the case of a vulnerable adult, if possible, the report shall contain the adult's age and the names and addresses of the adult's guardian or next of kin, and of the persons with whom the adult resides, including their relationship to the adult. The report shall contain other information available to the reporting person that might establish the cause of the abuse or neglect, and the manner in which the abuse or neglect occurred. The written report shall be mailed or otherwise transmitted to the county family independence agency of the county in which the child or vulnerable adult

suspected of being abused or neglected is found.. [References: Adult Protective Services Act PA 519 and Child Protection Law PA 238 as amended]

3. All agency staff, both direct and contractual, who have reasonable cause suspect otherwise, an oral report of the suspected criminal abuse to the law enforcement agency for the county or city in which the criminal abuse is suspected to have occurred or to the state police. Within 72 hours after making the oral report, the reporting individual shall file a written report with the law enforcement agency to which the oral report was made, and with the chief administrator of the facility or agency responsible for the recipient. The written report shall contain the name of the recipient and a description of the criminal abuse and other information available to the reporting individual that might establish the cause of the criminal abuse and the manner in which it occurred. The report shall become a part of the recipient's clinical record. Before the report becomes part of the recipient's clinical record, the names of the reporting individual and the individual accused of committing the criminal abuse, if contained in the report, shall be deleted.
4. The supervisors of each unit of service and the supervisors of each contractual location shall be responsible for assuring the prompt reporting of abuse and for all compliance with necessary documentation.

XVI. Rights to Written Plan of Services (see NCCMH Assessment)

- A. The agency shall assure that a person centered planning process is used to develop a written individual plan of services in partnership with the recipient. A preliminary individualized plan of service shall be developed within 7 days of commencement of service provision, or if an individual is hospitalized, before discharge or release. The plan shall consist of a treatment plan, a support plan, or both and shall establish meaningful and measurable goals with the recipient. The IPS will include assessments of the recipient's need for food, shelter, clothing, health care, employment opportunities where appropriate, educational opportunities where appropriate, legal services and recreation. (See NCCMH PCP Policy and Procedures) The assessment shall include the identification of any restrictions/limitations of the recipient's rights and includes documentation describing attempts to avoid such restrictions as well as what action shall be taken to ameliorate or eliminate the need for restrictions in the future. The IPS shall be kept current and shall be reviewed at least annually or more often if indicated in the plan.
- B. If a recipient is not satisfied with their IPS, the recipient or their guardian, or the parent of a minor recipient, may make a request for review to the designated individual in charge of implementing the plan. A review shall be completed within 30 days and shall be carried out in a manner consistent with agency procedure. If the party requesting a review desires the presence of another individual at any time during the planning process, that request shall be honored unless:
  1. The presence of that individual would constitute a substantial risk of emotional or physical harm to the recipient, or
  2. The presence of that individual would constitute a substantial disruption of the planning process.
- C. The exclusion of any individual from the IPS process shall be justified and documented in the case record. An individual excluded from the IPS process may appeal that exclusion to either the rights officer or agency director.
- D. A change in type of treatment shall be appropriately justified and made part of a treatment plan, and may be reviewed as noted in B above. The justification for such a change shall be reviewed with the recipient, guardian, or parent of a minor. The recipient shall be

informed when ready for change, release, discharge, or when maximum benefit is received.

- E. Family members are provided an opportunity to request and receive general educational information about the nature of disorders, medications, and their side effects, available support services, advocacy and support groups, financial assistance and coping strategies.

#### XVII. Right to Suitable Services; Setting, Choice, and Appeal

All recipients shall receive mental health services suited to their condition, based on agency procedures for intake, assessment, and treatment. They shall have a right to all evaluations and examinations deemed appropriate by generally accepted clinical standards. Those services shall be provided in a safe, sanitary, least restrictive setting that is appropriate and available, and in a humane environment. All recipients of the agency have the right to be treated with dignity and respect.

If an applicant for service has been denied services, the individual, their guardian, or the parents of a minor applicant may request a second opinion of the executive director. The director shall secure the second opinion from a physician, licensed psychologist, RN, MSW, or master's level psychologist. If that second opinion determines that the applicant has a serious mental illness, serious emotional disturbance, or developmental disability, or is experiencing an emergency situation or urgent situation (as defined by the Mental Health Code), the CMH services program shall direct services to that applicant.

If the preadmission screening unit of CMH denies hospitalization to an individual requesting hospitalization, that individual may request a second opinion from the executive director. The director shall arrange for an additional evaluation by a psychiatrist, or other physician, or licensed psychologist within 3 days excluding Sundays and holidays. If the conclusion of the second opinion is different from the conclusion of the preadmission screening unit, the director, in conjunction with the medical director, shall make a decision based on all clinical information available. The decision reached shall be confirmed in writing to the requestor and signed by the Executive Director and the Medical Director. If an individual is assessed and found not clinically suitable for hospitalization, the screening unit shall provide appropriate referral services.

An individual accepted for service shall be given a choice of physician or other mental health professional within the limits of available staff of the CMH program, or service provider under contract with the Board. An individual may appeal any denial of choice, first to the program supervisor and then to the CMH executive director, in addition to their right of complaint.

It is the policy of NCCMH that any recipient or his/her guardian or parent in the case of a minor has the right to submit a grievance reference the recipient's access to or satisfaction with services and supports. (Reference NCCMH Local Grievance Policy and Procedure 1-26-99)

#### XVIII. The Right to Advocacy

- A. **POLICY:**  
It is the policy of the board that recipients shall be provided the names, address and phone numbers of advocates to help the recipient in obtaining services and removing barriers to meeting the recipient's needs.
- B. **PROCEDURES:**  
All NCCMH staff will have available for recipients a listing of advocates to help them in obtaining needed services and removing barriers to meeting their needs. Additionally, each waiting room will have a poster listing advocate agencies/individuals.

XIX. Family

A. POLICY:

It is the policy of the board that family members of recipients shall be treated with dignity and respect in the same manner that such dignity and respect is provided to recipients of the agency. They shall be given an opportunity to provide information to the agency treatment team. They shall be provided an opportunity to request and receive educational information about the nature of disorders, medications and their side effects, support services in the agency and community (including advocacy and personal support groups), coping strategies, and the availability of financial assistance.

B. PROCEDURES:

1. All direct and contractual staff must be continually aware that discussions with family members about specific service provision and treatment issues may be subject to prior consent from either the recipient, parent of a minor, or legal guardian.
2. Staff are directed to seek counsel from unit supervisors, administration, and the Rights Office regarding contact/discussions with family members which requires:
  - a. ongoing communication with family and without specific recipient consent
  - b. balancing family objectives with expressed recipient objectives.
  - c. balancing justified and documented treatment needs/goals with family goals.

C. In all cases family members will be offered information and referral services without delay in a courteous and professional manner.

**REFERENCE:** PA 258, as amended by PA 290 and SB 1048  
PA 238 as amended  
PA 519 as amended  
Act No. 497 of PA of 1998  
FIA-1163-P  
Supplement to No. 9 to the 1987 DCH Administrative Rules, July 1998  
Comprehensive Accreditation Manual for Managed Behavioral Health Care, Section RI

**REVISED:** January 1, 2005

**APPROVED:** Board Approval on: May 19, 2005

\_\_\_\_\_  
Director's Signature

\_\_\_\_\_  
Date