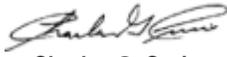


	Mental Health and Substance Abuse Services Bulletin Office Of Client Services Bulletin		
	COMMONWEALTH OF PENNSYLVANIA * DEPARTMENT OF PUBLIC WELFARE		
Issue Date: August 10, 2001	Effective Date: July 20, 2001	Number: SMH-01-03	
Subject Procedures for Client Rights, Grievances and Appeals	By  Charles G. Curie Deputy Secretary for Mental Health and Substance Abuse Services	By  Eyeta J. Dogun Director, Office of Client Services	

SCOPE:

State Mental Hospitals
 South Mountain Restoration Center

PURPOSE:

This bulletin provides a procedure for the resolution of alleged patient rights violations for persons receiving care in state operated mental health facilities.

BACKGROUND:

Persons who are receiving treatment in State Mental Hospitals and the Restoration Center have rights guaranteed to them by statute and regulation. These rights are specified in Title 55, PA Code, Section 5100.54, which provides a procedure for resolution of those complaints.

The cited regulation does not address the independent advocacy systems established at the hospitals in recent years. While the hospitals may incorporate the independent advocacy systems into their processes, it should be understood that the patient/client has the option to choose how he or she wishes to resolve a concern, whether it be by an informal complaint process, an advocacy process, a grievance process, or through legal channels.

The cited regulation also does not provide a uniform process for the resolution of alleged rights violations when the decision is appealed. The following procedures are to assist resolution of complaints and give the complainant and other interested parties notice of the procedures used during appeal proceedings.

The processes described below are not intended to permit committees or individuals to override treatment decisions made by persons who are authorized or licensed to provide treatment. The procedures are designed to address conditions at the facilities that impact on quality of life issues. Although the committees described below cannot overturn a substantive treatment decision by a treatment team, they may inquire concerning the propriety of procedures used to reach the decision.

REGULATION INTERPRETATION:

A. Grievance Procedures:

1. Any client, or person helping them, may initiate a complaint to the treatment team or other appropriate person, orally or in writing, concerning the exercise of the patient's rights or the quality of services and treatment at the facility.
2. In order to assure that clients' complaints, problems or concerns are reviewed, addressed and resolved, each State Mental Hospital and the Restoration Center shall develop and maintain an internal grievance and Appeal procedure.
3. The facility shall be responsible for:
 - a. Informing all clients, families, client representatives/advocates, and staff, of procedures to be

followed to lodge and resolve complaints.

- b. Developing an informal procedure for:
 - i. receiving and resolving complaints, problems or concerns expressed by clients to individuals involved in the complaint or treatment team members, and;
 - ii. documenting the complaint and the proposed solution in the clinical record.
- c. Developing a formal procedure for documenting, reporting, and tracking client complaints, problems or concerns that are unresolved through informal methods. The formal procedure should include, at least:
 - i. identification of the individual(s) to whom complaints should be submitted (i.e., treatment team members, advocates or other appropriate persons) including identification of alternate contact people when the primary person(s) is not on duty;
 - ii. identification of how a complaint is to be processed. This procedure should address how a client may involve a client representative or advocate if they choose. This procedure should also address how written notification of the decision is to be given to the complainant;
 - iii. identification of time frames for resolving and documenting complaints (within 48 hours after the complaint has been lodged);
 - iv. identification of how complaints, problems, or concerns will be documented, reviewed, and tracked to identify trends (i.e., use of the facility's Human Rights Committee to review data and identify training needs, etc.). Sample draft forms are attached for use as guidelines (see Appendix A: Grievance and Complaint Form; and Appendix B: Grievance Investigation and Decision Form). However, as stated in A.I., individuals should not be required to use a specific form to file a complaint.
4. A decision rendered on the complaint at the formal procedure level may be appealed in writing to the facility CEO or designee by the client or persons assisting the client. Grounds for appeal can be as simple as basic disagreement by the client with the initial decision or with the client's consent, those assisting the client. No appeal can be filed by an interested party over the client's objection.

B. First Level Appeal:

1. If a client, or persons the client has designated to assist them, chooses to appeal the decision rendered at the formal grievance procedure level, a written appeal must be submitted to the CEO within ten (10) working days of the decision rendered at the formal grievance level.
2. The CEO, upon receipt of the written request for appeal, shall convene a Standing Rights Review Committee to conduct a first level appeal hearing. The CEO shall determine the size of the Standing Rights Review Committee and shall appoint and remove committee members.
 - a. Composition of the committee will include equal representation of facility staff and persons from the community not employed by the facility. The committee's community members should be nominated by the widest array of consumer, family and advocacy organizations within each facility's service area, as well as any other group or individual who wishes to nominate a participant. The term of appointment to the committee will be established by the CEO.
 - b. The committee will select a chairperson prior to beginning any proceedings.
 - c. A quorum may conduct a hearing as long as 50% or more of the members in attendance represent the community. A quorum shall be defined as the number of members required to be present to conduct the hearing. This number shall be determined by the CEO.
3. Notification of the date, time and place of the appeal hearing will be given by the committee chairperson to the complainant/client and other interested parties identified by the complainant and/or determined from review of the complaint. Notification will include at least the treatment team leader or other appropriate person (such as the person who received the original complaint).
4. The first level appeal hearing will be conducted as follows:
 - a. The hearing will be held promptly to allow sufficient time for a decision to be rendered within ten (10) days of the CEO's notification of the appeal. Time limits may be waived for a specific time period with the written consent of the complainant.
 - b. The hearing shall be informal without strict adherence to the rules of evidence. The proceedings of the hearing shall be recorded by a method agreed to by both parties and this shall be considered a sufficient record of the proceedings. If the parties cannot agree, the committee shall determine the method of recording.
 - c. The chairperson shall administer an oral affirmation to "tell the truth regarding the subject at hand" to witnesses appearing before the committee.
 - d. The complainant/client has the right to be present at the appeal hearing and shall be informed of his or her right to assistance from the person of his or her choice, including legal counsel, for the presentation of the complaint. At the client's request, facility staff shall assist the client to secure representation. If legal representation is requested, the client will be advised that the facility will not

be responsible for the cost.

- e. The hearing shall be closed except to the complainant/client, his or her advocate or chosen assistant (including legal counsel) and involved staff. Other persons may be present if the committee believes that their presence will expedite the hearing process. Upon objection to the presence of other persons by any party, the hearing shall be closed unless those persons are called to testify. Objections to the presence of other persons may be overruled by a majority of the committee.
- f. The committee will request the appearance of employee witnesses through the CEO. The CEO or designee shall direct the attendance of employees whose appearance is requested by the committee. If the committee's findings lead to an inquiry of possible abuse/neglect or other malfeasance, staff who may be subject to disciplinary action will have rights to bargaining unit union representation at that time. Procedures for conducting an abuse investigation will be implemented by the facility. If the hearing is held outside of an employee's regular working hours, issues of compensation shall be decided between the employee and the CEO, or designee, in accordance with Commonwealth labor practices.
- g. The chairperson shall conduct the hearing in an orderly fashion, control the conduct of the participants of the hearing, and limit repetitive and abusive questioning. If the committee determines the need for more extensive participation of the complainant and/or other parties, committee members will be permitted to ask additional questions that directly address the issue at hand, and to call further witnesses.
- h. The committee members will take an active role in the hearing and may independently investigate and/or question any and all witnesses during the hearing concerning the allegations of the complaint and concerning any related issues. Documentation from the client record may be released to committee members in accordance with Mental Health Bulletin 99-86-26 Confidentiality Provisions for Members of Patients Rights Committees of State Mental Hospitals.
- i. The complainant, persons chosen to assist him or her, and parties who are the subject of the complaint may ask questions, present testimony, review records of hearings, and call witnesses concerning the allegations of the complaint.
- j. The deliberations of the committee in reaching a majority decision shall be closed.
- k. The decision of the committee shall be in writing. A copy of the decision shall be forwarded to the complainant, his or her chosen assistant or advocate, and the CEO of the facility within ten (10) working days of the appeal's finalization. The decision must address with specificity all issues raised in the appeal and the original complaint, and must include specific recommendations, as appropriate. If a majority decision cannot be reached by the committee, a second level appeal procedure shall be instituted by the committee chairperson by notifying the complainant, his or her chosen representative or advocate and the CEO of the facility.
- l. The CEO is responsible for implementation of the decision reached by the committee. The CEO shall distribute the decision of the committee to interested parties within the facility upon whom the decision impacts, through the supervisory chain of command.
- m. Any complainant, or persons the client has designated to assist him or her, or the facility CEO may appeal the decision of the Standing Rights Review Committee using the second level appeal process. Barring a second level Appeal by the CEO, the client or his or her chosen representative (with the client's consent) may institute a second level appeal if the facility fails to implement the decision of the Standing Rights Review Committee within thirty (30) days. If either the complainant or the CEO disagree with the decision of the committee, the second level appeal, directed by the Secretary's Standing Rights Appeal Committee, must be made within ten (10) working days of the decision of the Rights Review Committee, and must set forth, in writing, objections to the decision of the first level appeal. The record of the proceedings and any other pertinent information and material shall be forwarded to the Secretary's Standing Rights Appeal Committee within ten (10) working days of the first level appeal decision. Time limits for committee action may be waived with the complainant's written consent for a specific time approved by the complainant. The waiver of time limits for committee action does not apply to the time limit set forth for a further appeal.

C. Second Level Appeal:

- 1. Second level appeals shall be submitted in writing to the Secretary of Public Welfare within ten (10) working days of the first level appeal decision. The second level appeal must set forth the specific objections to the previous decision. Information about the initial grievance, the initial decision, the first level appeal, the record of proceedings from the first level appeal and the first level appeal decision, must be made available. If the complainant is unable to submit the necessary information, the facility shall assist in doing so.
- 2. The Secretary of Public Welfare, or designee, will establish the Secretary's Standing Rights Appeal Committee for a second level appeal hearing.
- 3. The Secretary, at his or her discretion, may appoint or remove members of the Standing Rights Appeal Committee.
 - a. The term of appointment to the committee will be determined by the Secretary.
 - b. The maximum size of the committee will be ten (10), but no less than six (6). At least one member

will be from the Office of Client Services, Division of Client Rights. Two members will be from OMHSAS. Two members will be from the Community in the geographical area where the appeal is being held. The remaining members may be from any appropriate agency or resource. Committee members will designate an alternate in the event they are unable to participate. If an alternate participates in a particular second level appeal, that alternate will remain an active participant until that appeal is completed. Community members may be nominated by consumer, family and advocacy organizations, the Office of Client Services, Division of Client Rights, or by other groups or individuals who wish to place a name in nomination. Department employees may be nominated by the Deputy Secretary for OMHSAS or OHMSAS Bureau Directors. This includes any Department employee who wishes his or her name to be placed in nomination and who has experience and knowledge of mental health treatment.

- c. The Secretary will issue the names, phone numbers, mailing addresses and affiliations of the Standing Rights Appeal Committee members in writing to the Office of Client Services, Division of Client Rights and any additional appropriate advocates or advocacy organizations.
 - d. The Deputy Secretary for OMHSAS will forward the membership information to the Director of the Bureau of Hospital Operations.
4. The Secretary shall direct the Division of Client Rights of the Office of Client Services to convene the Standing Rights Appeal Committee using members from the geographic area appropriate to the appeal source. The Rights Appeal Committee shall be convened within fifteen (15) working days of a second level appeal request. The size of the committee shall be determined by the Division of Client Rights of the Office of Client Services.
 5. A staff person from the Client Rights Division of the Office of Client Services will chair the Second Level Appeals Committee. Division of Client Rights will send a receipt of acknowledgement to the complainant as soon as the appeal is received. As soon as possible, the Division of Client Rights will inform the complainant, in writing, the date the committee will convene.
 6. The Rights Appeal Committee shall review the second level appeal together with all supporting documentation within ten (10) working days of receipt of the second level appeal. If the committee determines that additional testimony or other records must be obtained, a hearing date will be set and the complainant, his or her chosen representative and the facility CEO notified. If employee testimony is required, the employee will be entitled to have bargaining unit union representation at the second level appeal hearing. The amount of time required for second level appeal deliberations will be dependent on the need for additional information or hearings required to gather the facts in the case. If the appeal process extends over thirty (30) days, the Division of Client Rights will send the Secretary a progress report. The committee shall follow the procedures outlined for first level appeals (reference paragraphs B.4.b through B.4.j).
 7. The recommendation of the Rights Appeal Committee shall be in writing and shall represent the majority opinion of the committee. Any committee member who dissents from the recommendation of the committee majority may write a dissenting opinion, which will be included in the recommendation submitted to the Secretary.
 8. The recommendation(s) of the Second Level Appeal Committee shall be forwarded to the Secretary, who shall issue a decision based on the Committee's recommendation(s).
 9. The Secretary will send the decision and record of the proceedings through the Deputy Secretary for OMHSAS to the Bureau of Hospital Operations Director. The Bureau of Hospital Operations Director will, in turn, forward the decision and record of proceedings to the appropriate facility CEO.

Nothing in this bulletin shall be construed as precluding a client from instituting appropriate legal proceedings.

OTHER RELATED BULLETINS:

- OMH-92-07 - Policy and Guidelines for Insuring the Protection of Human Rights (Patient Rights), May 5, 1992.
- 99-86-26 - Confidentiality Provisions for Members of Patient Rights Committees of State Mental Hospitals, July 14, 1986.
- OMH-92-14 - Patient Abuse Investigations Investigator's Resource Manual.
- SMH-91-02 - Access to State Mental Hospitals and Restoration Center By employees of PP & A and its Legal Counsel.

Appendix A - Grievance Complaint (PDF 35 KB)

Appendix B - Grievance Investigation And Decision (PDF 34 KB)

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

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