# 14 - 191 DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

CHAPTER 1 ESTABLISHMENT AND FUNCTIONING OF HUMAN RIGHTS COMMITTEES

I. STATEMENT OF INTENT

It is the intent of this rule to assure the highest level of respect for the dignity, and the legal and human rights of clients served In Intermediate Care Facilities for the Mentally Retarded run by the Department of Mental Health and Mental Retardation. The Department is responsible [DHS Reg. subsection 6 (E)] for assuring the establishment of and continuation of a qualified and fully functioning Human Rights Committee to serve every client residing in an Intermediate Care Facility foe the Mentally Retarded.

II. DEFINITIONS

A. Appointing authority - For purposes of this rule, the appointing authority shall be the commissioner of the Department of Mental Health and Mental Retardation.

B. At Risk - At risk situations are those in which a client is recognized to be at greater than normal jeopardy (the jeopardy an average citizen experiences to day-to-day living) when taking into consideration the client's mental and physical condition.

C. Aversive behavior modification programs - An aversive behavior modification program is a program designed to involve the use of noxious or painful stimuli or one which manipulates or limits a client's capability to exercise fully his basic rights, as enumerated in the Rights of Mentally Retarded Persons (34-B MRSA subsection 5601 et seq.).

D. Experimentation -- The Term "experimentation", for purposes of this rule, shall include the use of any non-FDA approved drug or the use of any drug which has not been approved by the FDA for its currently contemplated usage. In addition, experimentation shall mean the use of any procedure which has not been fully accepted by national professional organizations representing the discipline with primary responsibility for the development and implementation of the proposed procedures.

E. Investigate - Investigate, for purposes of this rule, shall mean the review and monitoring functions specified in Section VII Section VIII and Section IX of this rule.

F. Medications used as restraint - Any medication prescribed for the purpose of omitting an individual's volitional movement or subduing an Individual shall' be considered medication used as a restraint. In addition, any drug which has as a major side effect, this restraining characteristic may be considered as a medication used as a restraint.

G. Medications used as behavior modifiers - Any medication prescribed for the purpose of modifying a client's behavior, and which medication is not medically Indicated as a drug of treatment for a special medical condition such as seizure control. shall be deemed medication used as a restraint.

H. Restraint - Restraint, for purposes of this rule, shall be defined as any mechanical device, medication, or environmental enclosure which is designed to inhibit the free movement of a client. In a11 cases, restraints shall be designed to impose the least possible restriction for the client consistent with the purpose of the restraint. Totally enclosed cribs, barred enclosures, and physically restraining interventions shall be considered restraints.

III. LEGAL BASIS

This rule is developed in conformance with and recognition of federal mandates in the Developmental Disabilities Assistance and Hill of Rights Act (42USC600 et seq.) which require that agencies serving developmentally disabled clients "shall develop standards which are designed to assure the most favorable possible outcomes for those served" and that those "standards are, at least equivalent to those standards applicable to intermediate care facilities for the mentally retarded, as appropriate, considering the size and service delivery arrangements of those agencies" (39 Federal Register Part 11 January 17, 1974). Maine State Law empowers the Department of Human Services to license ICFs/MR (22 MRSA subsection 1811). Acting on Its mandate to license ICFs/MR, the Department of Human Services has promulgated regulations governing the licensing and functioning of ICFs/MR. (DHS Bureau of Medical Services ­Chapter 118 - Regulations Governing the Licensing and Functioning of ICFs for the Mentally Retarded, July 1, 1980). Those regulations require in pertinent part [DHS Regs. Page 34 - 6(E)] that the governing body of the home shall establish a Human Rights Committee to assure the protection of the resident and resident's rights. Those regulations further state (DHS Regs. Page 32 6(D)(19)] that "all alleged instances of mistreatment, neglect or abuse shall be reported... to ... the rights committee ... and there shall be a written report documenting... thorough and prompt investigation" with findings stated.

Furthermore, the Department of Mental Health and Mental Retardation has entered into a consent judgment In a right to treatment suit for the mentally retarded Wuori v Concannon No. 75-80-P CD. Me. July 14, 1978). it is the policy of the Department that all clients receiving services as a result of this class action suit can receive aversive conditioning treatment only after positive reinforcement and other less drastic alternatives have been tried and failed and the aversive conditioning program has received the approval of a three-person committee consisting of one member of the Consumer Advisory Board, the client's advocate and a representative of the Bureau of Mental Retardation.

IV. ESTABLISHMENT AND CONTINUATION OF HUMAN RIGHTS COMMITTEE

The appointing authority shall assure that each Intermediate Care Facility for the Mentally Retarded run by the Department of Mental Health and Mental Retardation shall have a standing Human Rights Committee or that clients residing in such a facility run by the Department shall have access to a standing Human Rights Committee which may be established jointly by the heads of more than one program, provided that the number, geographical separateness or programmatic diversity of the programs is not so great as to limit the effectiveness of the committee in meeting the requirements herein set forth.

V. MEMBERSHIP

Each Human Rights Committee shall be composed, minimally, of at least six members, including one governing board member, one direct contact staff member, one relative of a resident, two impartial community citizens with no personal involvement in the operation of the facility and one physician or allied health professional who has specialized training and is involved in the delivery of medical and health services. The Committee's size may be Increased. as needed. by adding additional community members. The responsible regional or institutional advocate representing the Office of Advocacy shall serve as a non-voting consultant to the Human Rights Committee.

VI. APPOINTMENT

Members of the Human Rights Committees shall be appointed by the Commissioner for terms of three years and individual members may be reappointed for up to three terms. In making the initial appointments, the Commissioner shall make appointments for one-third of each Committee's membership for terms of one year, two years and three years respectively. After the initial appointments are made, each Committee shall thereafter make nominations annually to the Commissioner of persons to fill that Committee's expiring terms.

No fewer than two-thirds of the membership of each Committee shall be appointed from such nominations made by each Committee to the Commissioner.

VII ROLE OF HUMAN RIGHTS COMMITTEES

It is the role of Human Rights Committees to monitor and assure the rights and dignity of clients served by the facility for which the Human Rights Committee has responsibility. More specifically, each Human Rights Committee shall review and monitor aversive behavior modification programs, research, experimentation, medications used as a restraint, and medications used as behavior modifiers. It should be noted that 34-B MRSA subsection 5605 (8) D. requires a full review, at least every six months, of the drug regimen of each mentally retarded resident in a residential facility. These reviews shall be made available to the Human Rights Committee to assist it in carrying out its functions. In addition, Human Rights Committees shall receive notice of all complaints and may review all investigations conducted in that facility regarding allegations of abuse, mistreatment, neglect: or exploitation of a. client. The Committee may review and comment on institutional, facility, Bureau or Departmental policies affecting the rights and dignity of clients served and may recommend, attend and critique any training or informational activities carried out by the appointing authority designed to foster greater understanding of and adherence to standards regarding clients' rights and dignity. The Human Rights Committee may also review, comment upon. or monitor other activities carried on within the facility for which they are responsible.

VIII FUNCTIONING OF HUMAN RIGHTS COMMITTEES

Each member of a Human Rights Committee should strive to resolve concerns regarding client care at the lowest possible administrative level. Each Human Rights Committee shall. as required by law (34-B MRSA subsection 5606), report any allegations of abuse, mistreatment, neglect, exploitation, or the dental of a tight of a mentally retarded person to the Office of Advocacy, the Attorney General's office, and to the appointing authority. This report shall be made within 24 hours in any instance where the safety or well-being of an individual or group of clients is at Issue, the Human Rights Committee Is expected to contact. Initially, the Individual with direct responsibility for addressing the particular problem being presented. Should a situation , arise such that the Human Rights Committee is unable to obtain satisfactory revolution of a concern, the department staff involved with the Committee at that level should assist the Committee in bringing its concern to the attention of the next most senior Individual with responsibility for that area of concern. The Human Rights Committee responsible for a facility shall receive copies of any finding or decision relating to the use of aversive behavior modification procedures reviewed by the Consumer Advisory Board Behavior Modification Review Committee. Human Rights Committees shall determine the specific functioning of the Committee in such areas as frequency of meetings, attendance requirements, recordkeeping, on-site review, and other areas of general committee functioning including the appointment of a Committee chairperson. The power and authority of Human Rights Committees Is contingent upon an open and honest relationship between those empowered to carry out the care and treatment of clients and those empowered to review and monitor the adequacy and appropriateness of that treatment.

IX. RESPONSIBILITIES OF THE APPOINTING AUTHORITY TO HUMAN RIGHTS COMMITTEES The appointing authority shall:

A. review and approve the by-laws, or constitution of each Human Rights Committee;

B. assure that Human Rights Committee members are provided access to any available information needed by the Human Rights Committee In performance of its duties and responsibilities;

C. instruct all Department staff to cooperate fully with the Human Rights Committee in meeting the mandates of the Committee;

D. allow Human Rights Committee members access to the facility for which they are responsible and to the staff of that facility and to the clients of that facility in a manner sufficient to allow the Committee to carry out its functions, and,

E. assure that each volunteer member of the Human Rights Committee shall be reimbursed for the expenses incurred in carrying out their mandated duties as a member of the Human Rights Committee. In addition, the appointing authority and all agents of the appointing authority shall work toward mutually acceptable resolution of all concerns raised by the Human Rights Committee or individual members of that Human Rights Committee.

X. RESPONSIBILITY OF HUMAN RIGHTS COMMITTEES

Each Human Rights Committee and each member of a Human Rights Committee shall abide by all the statutory and regulatory provisions regarding the confidentiality of client records and information. Except as to the release of Information to the Commissioner, the Attorney General, the Office of Advocacy of the Department, or as provided in 34-B MRSA subsection 1207 (1984), in no instance shall identifiable client information be released outside of the Human Rights Committee without prior permission of a legally responsible party. Each Human Rights Committee shall develop, and shall forward to the appointing authority for his review and approval, the written by-laws and/or constitution of the Human Rights Committee. In addition, it is the responsibility of each Human Rights Committee to maintain written records of the functioning of the Committee and to forward copies of such records and any correspondence relating to the functions of the Human Rights Committee to the appointing authority.

These rules govern the establishment and functioning of human rights committees of Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) operated by the Department of Mental Health and Mental Retardation.

AUTHORITY 34-B MRSA Section 1203 (3).

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