

What Are Patient and Human Rights and Responsibilities?

The Patient's Bill of Rights in Healthcare

As a result of President Clinton's Advisory Commission on Consumer Protection and Quality on the Health Care Industry (November 1997-March 1998), the Commission issued a Final Report and instructed the Health Care Financing Administration (HCFA) to strengthen protections for beneficiaries enrolled in Medicaid managed care. The Patients' Bill of Rights and Responsibilities has three goals: 1. to strengthen consumer confidence in a health care system that is fair and responsible, 2. to reaffirm the importance of a strong working relationship between patients and their care providers, and 3. to reaffirm the important role consumers play in their own health. The Commission articulated seven sets of rights:

- ◆ The Right to Information
- ◆ The Right to Choose
- ◆ Access to Emergency Services
- ◆ Being a Full Partner in Health Care Decisions
- ◆ Care Without Discrimination
- ◆ The Right to Privacy
- ◆ The Right to a Speedy Complaint Resolution

Patient Rights and Services Are Based on Human Values

Consumer (Patient) Rights and PBH's management of services are based on a set of human values. These were embodied in the vision of the N. C. State Plan, called "Blueprint for Change" November 30, 2001. That Plan said that people with mental health, developmental disabilities, and substance abuse service needs should have:

1. A meaningful say in the design and planning of the service system
2. Information about services and how to Access them
3. Easy, immediate Access to appropriate services
4. Services to prevent and resolve crises
5. Satisfaction with the quality and quantity of services
6. The opportunity to voice complaints
7. An orderly, fair and timely system of arbitration and resolution
8. Educational and employment opportunities
9. Safe and humane living conditions in communities of their choice
10. Reduced involvement with the criminal justice system
11. Opportunities to participate in community life and make choices

Consumer Rights and Responsibilities

Free speech, religious freedom, and personal liberty are fundamental American rights. Personal privacy and confidentiality of personal information also are personal rights. When people receive services/supports in the state's public system, they also have additional rights as an enrollee in an insurance plan. State rules and state and federal laws spell out what these additional rights are.

Consumer rights include, but are not limited to:

- ◆ The right to be treated with respect and due consideration, to be treated with dignity and privacy.
- ◆ The right to receive information about the organization, its services, its practitioners/providers and member rights presented in a manner appropriate to the consumer's ability to understand.
- ◆ The right to participate with practitioners/providers in making decisions regarding health care, including the right to refuse treatment.
- ◆ The right to a candid discussion with service practitioners/providers of appropriate or medically necessary treatment options for their conditions, regardless of cost or benefit coverage. Clients may need to decide among relevant treatment options, the risks, benefits, and consequences, including their right to refuse treatment and to express their preferences about future treatment decisions regardless of benefit coverage limitation.
- ◆ The right to voice complaints or appeals about the organization or the care it provides.
- ◆ The right to be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.
- ◆ The right to request and receive a copy of his or her medical record, subject to therapeutic privilege, as set forth in NC G.S. 122C-53(d) and to request that the medical record be amended or corrected in accordance with 45 C.F.R. Part 164 and the provisions of NC G.S. 122C-53(d). If the doctor or therapist determines that this would be detrimental to the physical or mental well being of the person, the person can request that the information be sent to a physician or professional of his/her choice.
- ◆ The right to participate in the development of a written person-centered treatment plan that builds on individual needs, strengths, and preferences. A treatment plan must be implemented within thirty (30) days of admission.
- ◆ The right to freedom of speech and freedom of religious expression.
- ◆ The right to equal employment and educational opportunity.
- ◆ The right to treatment in the most normal, age-appropriate and least restrictive environment possible.
- ◆ The right to take part in the development and periodic review of a treatment plan and to consent to treatment goals in it.
- ◆ The right to make recommendations regarding the organization's member rights and responsibilities policy.

The protection and promotion of recipient rights is a crucial component of the service delivery system. All consumers are assured rights by law and it is expected that practitioners/providers will respect these rights at all times and provide consumers continual education regarding their rights as well as support them in exercising their rights to the fullest extent.

North Carolina General Statutes (GS 122C 51-67) and the North Carolina Administrative Code (APSM 95-2) outline specific requirements for notification of individuals regarding their rights as well as operational policies and procedures that ensure the protection of rights. These statutes and regulations also outline the policy and operational requirements for the use and follow up of restrictive interventions and protective devices.

Civil Rights

Unless a court has declared a person incompetent, the person is entitled to all civil rights including:

- ◆ To register and vote,
- ◆ To buy or sell property, to own property,
- ◆ To sign a contract,
- ◆ To sue others who have wronged them,
- ◆ To marry or get a divorce,
- ◆ To procreate and raise children

Persons determined to be incompetent and who are assigned a court appointed guardian retain all legal and civil rights except those rights that are granted to the guardian by the court.

Consumer Responsibilities

Service recipients have a responsibility to

1. Supply information (to the extent possible) that the organization/agency and its practitioners/providers need in order to provide care.
2. Follow plans and instructions for care that have been agreed to.
3. Understand personal health problems. Tell the doctor or a nurse about any changes in personal health.
4. Participate in developing mutually agreed-upon treatment goals, to the degree possible.
5. Ask questions when care and procedures expected are not clear.

In addition, you can help insure the best outcomes by:

- ◆ Respecting the rights and property of other consumers and of program staff
- ◆ Respecting other consumers' needs for privacy
- ◆ Working on the goals of the person-centered plan or Individual Support Plan
- ◆ Keeping all the scheduled appointments that you can
- ◆ If unable to keep an appointment, canceling it at least 24 hours in advance
- ◆ Meeting financial obligations according to an established agreement
- ◆ Informing staff of any medical condition that is contagious
- ◆ Taking medications as they are prescribed.
- ◆ Telling the doctor about having unpleasant side-effects from medications, or if the medications do not seem to be working.

- ◆ Telling the doctor or therapist about disagreements with their recommendations
- ◆ Telling a doctor or therapist when/if ending treatment is desired/wanted.
- ◆ Carrying a Medicaid or other insurance card at all times
- ◆ When leaving a program, requesting a discharge plan; being sure it's understandable, and being committed to following it
- ◆ Cooperating with those involved in care.
- ◆ Being considerate of other patients and family members
- ◆ Seeking out additional support services in the community
- ◆ Inviting people who will be helpful and supportive to be included in the treatment planning
- ◆ Reading, or having read, written notices from PBH about changes in benefits, services, or practitioners/providers.

Informed Consent

A person receiving services has the right to be informed in advance of the potential risks and benefits of treatment options, including the right to refuse to take part in research studies. The person has the right to consent to or refuse any treatment unless:

- ◆ It is an emergency situation;
- ◆ The person is not a voluntary patient;
- ◆ Treatment is ordered by a court of law;
- ◆ The person is under eighteen (18) years of age, has not been emancipated, and the guardian or conservator gives permission.

The Rights noted in this Manual are based on General Statutes 122C Article 3 and the Client Rights Rules, 10 NCAC 27C, 27D, 27E, 27F (APSM 95-2). PBH reserves the right to have more restrictive policies and procedures than state and federal rules and regulations.

Are treatment Records Confidential?

The confidentiality of care and treatment is protected. Except as allowed by law and agency regulations, records and other information will not be released without written permission.

Circumstances under which PBH may be required to share information with another person or agency about the services received include:

- ◆ Your permission that we may share information with any person that is named.
- ◆ Next of kin may be informed that you are a patient, if it is in your best interest.
- ◆ With your permission, your next of kin, a family member with a legitimate role in your service, or another person whom you name, may be given other information about your care.
- ◆ A consumer advocate may review your record when assigned to work on your behalf.

- ◆ The court may order PBH to release your records.
- ◆ Our attorney may need to see your file because of legal proceedings.
- ◆ Another public agency may need to receive your files when your care is transferred.
- ◆ If you become imprisoned, we may have to share your file with prison officials.

- ◆ In an emergency another professional who is treating you may receive your records.
- ◆ A physician or other professional who referred you to our facility may receive your files.
- ◆ If we believe that you are a danger to yourself or others or if we believe that you are likely to commit a crime or that you are abusing or neglecting your children, we are responsible to share this information with law enforcement and DSS.
- ◆ Special rules may apply if you have a legal guardian appointed, are a minor, or are receiving treatment for substance abuse.

PBH may use information about an individual:

- ◆ To review the quality of care
- ◆ To provide case management or care coordination services
- ◆ For quality reviews
- ◆ To start a guardianship or involuntary commitment proceeding.

PBH can disclose to next of kin when an individual is admitted or discharged from a facility, but only if the individual has not objected.

Information can be used without consent to help in treatment, for health care operations, for emergency care, and to law enforcement officers to comply with a court order or subpoena.

Individuals have the right to request and receive a copy of their medical record unless the provider, doctor or therapist determines that this would be detrimental to physical or mental well-being. This is called “therapeutic privilege” as set forth in NC G.S. 122C-53(d) If the doctor or therapist determine that this would be detrimental to the physical or mental well being of the person, the person can request that the information be sent to a physician or professional of his/her choice.

The Network Provider shall ensure that all individuals providing services will maintain the confidentiality of any and all consumers and other information received in the course of providing services hereunder and will not discuss, transmit, or narrate in any form any Consumer information of a personal nature, medical or otherwise, except as authorized in writing by the consumer or his legally responsible person or except as otherwise permitted by applicable federal and state confidentiality laws and regulations including N.C.G.S. 122C, Article 3, which addresses confidentiality of all confidential information acquired in attending or treating a Consumer, and 42 CFR, Subchapter A, Part 2, which addresses confidentiality of records of drug and alcohol abuse patients.

A Notice of your Privacy Rights is posted on PBH’s web site: www.pbhcare.org. For a paper copy, call Access and ask for one to be mailed: 1-800-939-5911.

Rights of Minors

A minor has the right to agree to some treatments without the consent of his/her parent or guardian:

- ◆ For treatment of venereal diseases;
- ◆ For pregnancy;
- ◆ For abuse of controlled substances or alcohol; and
- ◆ For emotional disturbance.

Rights in Twenty Four Hour Facilities

Individuals who enter a 24-hour treatment facility will be given, and have explained to them, the specific rules for that facility. These rules must be given within 72 hours or within the first 3 visits to the program. These rules will cover hygiene and grooming, living environment, storage and protection of clothing and possessions, and personal funds. These rules are in Subchapter 27F of the 10A North Carolina Administrative Code, section .0100 through .0105.

Client Rights Rules in community mental health, developmental disabilities and substance abuse services are available free on the Internet at:
<http://www.dhhs.state.nc.us/mhddsas/manuals>.

Rights in Jail

Both the N.C. Statutes and the North Carolina Administrative Code set standards for jails. Each jail must have a Medical Plan that includes policies for health screening of inmates upon admission, as well as administration, dispensing and control of prescription and non-prescription medications. Jails must provide privacy during an examination and conferences with qualified medical personnel. Individuals will be observed twice an hour and four times in an hour if they have a record of making suicide attempts or are displaying erratic behavior. 10A NCAC 14J.0601; 10A NCAC 14J.1001; 1002; 14J.0101 (17); 10A NCASC 14J.0203 (8)

Admission to a Facility for Treatment on a Voluntary Basis

In North Carolina, individuals with developmental disabilities and substance abuse can be voluntarily admitted and discharged from a facility. This applies to both competent and incompetent adults. [G.S. 122C-211; 212; 232; and 241.] Competent adults may seek their own admission because they think they need it. If the facility thinks they do not have a treatment that would be a benefit or that the individual does not need treatment, the facility can elect not to admit the person. Voluntary patients must be discharged within 72 hours of their own written request [G.S. 122C-211(a)-(e), and 212(a)-c]. Incompetent adults with a mental illness or substance abuse problem may have a court appointed guardian who will act on their wishes and seek admission. They will be required to consent to the individual's treatment, and receive legal notices for them.

Competent adults may be admitted to facilities for individuals with developmental disabilities at their own request [G.S. 122C-241(a) (3)]

Seeking voluntary treatment when an individual feels the signs and symptoms and fear of losing control is usually preferable to waiting until a peace officer or relative or neighbor goes to a magistrate and lists facts to justify that an individual is dangerous to self or dangerous to others or in need of treatment in order to prevent further deterioration that would predict dangerousness. The magistrate or clerk of superior court would then issue an order to have the individual examined by a physician or psychologist. An affidavit would be filed with facts to show that the individual is imminently dangerous or already dangerous to self or others [GS. 122C-261(a)]. The clerk or magistrate then issues a custody order to a local law enforcement officer who transports the consumer to a physician or psychologist for evaluation, usually in an emergency department of a hospital. If the examiner determines that the consumer meets commitment criteria, the law enforcement officer transports the client to an inpatient facility where a second examination is conducted within 24 hrs.

Within 10 days a hearing is held in district court. If the court finds by clear, cogent and convincing evidence that the consumer meets inpatient commitment criteria, it may order commitment for up to 90 days. Then at the end of 90 days, a rehearing can be held and a second commitment order be issued for an additional period of up to 180 days. Re-hearings can be held at the end of this second commitment and annually thereafter [G.S. 122C-268, 271, 276]. Long term involuntary commitment takes control out of individuals' hands, causes them to be viewed as a dangerous person on police records, and completely interrupts the flow of their life and view of themselves. If individuals have been involuntarily committed to inpatient care in the past and have lost what they owned, lost a lease or a job, think about seeking help as soon as something is wrong. Try to go to a comprehensive provider (see K5.1) or the Facility Based Crisis Center in Kannapolis or call Access Call Center and ask for help: 1-800-939-5911.

To read about involuntary commitment of individuals to facilities for substance abuse treatment, see [G.S. 122C-281(a)]. To read about Outpatient Commitment for persons deemed mentally ill, read G.S. 122C-265.

Medical Records

If the consumer disagrees with what a physician, treating provider, clinician, case manager or care coordinator has written in their records, the consumer can write a statement from their point of view to go in the record, but the original notes will also stay in the record for twenty-five (25) years.

Concealed Weapons

If a person applies for a permit to carry a concealed weapon in North Carolina, the person must give consent for the details of mental health and substance abuse treatment and hospitalizations to be released to law enforcement.

Electronic Mail

Since there is no guarantee of adequate firewalls for electronic mail, PBH staff and contractors cannot transmit e-mail with Consumers about their personal or health matters. Consumer related information should be communicated by paper mail, face to face.

Client Rights Committees

The Client Right Assurance Committee

Each Network Provider Agency is expected to maintain a Client Rights Assurance Committee consistent with regulations outlined in North Carolina General Statute and Administrative Code. Providers are required to submit the minutes of their Client Rights Assurance Committee meetings to PBH on a quarterly basis.

The provider must have a Complaint and Grievance process to address any concerns of the Consumer and the Consumer's family related to the services provided. The provider must keep documentation on all complaints received including date received, points of complaint, and resolution information. The Provider must have a Client Rights Assurance Committee; two or three smaller providers may share a CRAC. Any unresolved concerns or complaints should be referred to PBH. The provider's Complaint and Grievance Process must be provided to all Consumers and Families of Consumers upon admission and upon request. The provider must advise Consumers and Families that they may contact PBH directly about any concerns or grievances.

The Client Rights Oversight Committee (CROC)

- ◆ The CROC has a responsibility to oversee PBH's compliance with federal and state rules regarding Consumer rights, confidentiality, complaints and the PBH CROC is made up of clients and family members and expert advisors who meet at least quarterly.
- ◆ The PBH Client Rights Oversight Committee reviews and monitors all trends in the use of restrictive interventions, abuse, neglect & exploitation, deaths and medications errors.
- ◆ The CROC also makes reports to the PBH Board of Directors, the PBH CQI Committee, and DMA/DMH.
- ◆ Consumers may submit grievances to the Client Rights Oversight Committee through the PBH Complaint and Grievance Procedure

- ◆ Consumers or Family Members of Consumers that wish to apply to serve on the Client Rights Oversight Committee may call the Office of Consumer Affairs at 704 721-7007 or 7018.

Client Rights regulations are in NCGS 122-C-51-67 and APSM 95-2 and APSM 30-1 and NCASC 27G.0504, 10A NCAC 27G.0103 and NC Council Communication Bulletin #30.