



DMHMRSAS Office of Substance Abuse Services

Guidance Bulletin No. 2003-02

Issue Date: April 2, 2003

Title: Human Rights Regulations—Restrictions on the Use of Telephones and Visitation Privileges.

Advisory (Best Practices)

Mandate (Requirement)

RECIPIENTS:

- Community Services Boards (CSBs), Behavioral Health Authorities (BHAs), and Local Government Departments (LGDs) with Policy Advisory CSBs;
- Office of Human Rights;
- Office of Licensing.

PURPOSE:

The “Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services Human Rights Regulations” contain provisions which limit the restrictions programs may place on the use of telephones and upon visitation privileges. Based on discussions with community services board personnel and residential substance use disorder programs, the Office of Substance Abuse Services believes that these provisions may be problematic for many providers of residential substance use disorder treatment services.

Any policy or practice regarding visitors, use of telephones that is not written in accordance with the human rights regulations will require that the program must either amend their policies or practices to conform to the regulations or submit a request for a variance that meet the criteria contained in this guidance.

BACKGROUND:

The Office of Substance Abuse Services presented the guidance contained in this bulletin to the State Human Rights Committee (SHRC) on September 6, 2002. The SHRC intends to use this guidance as the framework for determining what constitutes sound therapeutic practice in residential SA programs with regard to visitation, phone usage and the qualification of staff that are necessary to limit an individual’s right to use the phone and receive visitors. This guidance articulates the standard the SHRC will use to evaluate future requests for such variances from residential SA programs.

The current provisions of the regulations pertaining to these topics are as follows:

12VAC35-115-50. Dignity.

E. Exceptions and conditions to the provider's duties.

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4. Providers may limit the use of a telephone in the following ways:
 - a. Providers may limit use to certain times and places to make sure that other individuals have equal access to the telephone and that they can eat, sleep, or participate in an activity without being disturbed.
 - b. Providers may limit use by individuals receiving services for substance use disorders, but only if sound therapeutic practice requires the restriction and the human rights advocate is notified.
 - c. Providers may limit an individual's access to the telephone if communication with another person or persons will result in demonstrable harm to the individual and is significantly impacting treatment in the judgment of a licensed physician or doctoral level psychologist. The reasons for the restriction shall be documented in the individual's service record and the human rights advocate shall be notified prior to implementation.
5. Providers may limit or supervise an individual's visitors when, in the judgment of a licensed physician or doctoral level psychologist, the visits result in demonstrable harm to the individual and significantly impact the individual's treatment; or when the visitors are suspected of bringing contraband or in any other way are threatening harm to the individual. The reasons for the restriction shall be documented in the individual's service record, and the human rights advocate shall be notified prior to implementation.

POLICY:

1. RESTRICTIONS ON TELEPHONES

As used in Part B, the word "individuals" is plural and refers to a collective group of individuals. Consequently substance use disorder providers may enact blanket rules or policies restricting the use of telephones as long as they meet sound therapeutic practice and the local human rights advocate is notified about the restriction. The rules or policies should incorporate the following

- Only residential substance use disorder programs that control access to telephones have the need to adopt restrictive policies on telephone use;
- Residential substance use disorder providers may limit telephone use for non-emergency situations to only those times when the individual is not engaged in a therapeutic process within the program;
- Providers of residential substance abuse disorder services may not restrict phone privileges for interactions with human rights advocates, or lawyers and other criminal justice agencies and organizations;

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- Providers of residential substance abuse disorder services may restrict telephone calls from or to particular individuals if they can document in the consumer's file, that demonstrable harm to the individual, which affects the treatment process, may occur.
 - For example, programs designed to serve women may document recent or current involvement in abusive relationships and may restrict phone contact with those individuals if that relationship and potential for harm is documented in the consumer's file. Waiting until an abusive partner calls the consumer may cause considerable harm to the individual, including motivating a premature departure from the program and may cause disruption with other program participants as well.

2. RESTRICTIONS ON VISITORS

The Human Rights Regulation (HRR) on visitors (E-5, listed above) has the effect of prohibiting providers of residential substance use disorder services from enacting blanket rules or policies, which limit visitors to consumers. Instead the HRR requires, that if the program wishes to restrict visitors, they must document the individual's history and current clinical readiness for interaction with the specific individual in question, jointly decided by the consumer and clinical staff and documented in the consumer's file. Further the staff member documenting these restrictions must be a licensed physician or doctoral level psychologist. In addition the local human rights advocate must be notified about these restrictions in each and every case prior to these restrictions being implemented.

If providers wish to enact blanket policies or rules that restrict visitors, **a request for variance from the SHRC will be necessary.** The following guidance for developing your policies or rules on restrictions is provided.

- Short term detoxification and stabilization programs may wish to develop blanket policies restricting visitors until the person is physically and mentally capable of receiving visitors. The policy should also require that these programs review each person's capacity to receive visitors on a daily basis and that these assessments be documented in the individual's file.
- Therapeutic communities and other long-term residential substance use disorder treatment programs may wish to develop blanket policies which restrict visitors during the orientation or induction phase or the first two weeks whichever comes first. Any restrictions thereafter, must be based on the individual's history and current clinical readiness for interaction with the specific individual in question, jointly decided by the consumer and clinical staff and documented in the consumer's file.
- Consumers may indicate specific persons whom they do not wish to receive as visitors. This must be documented by consumers in their case file.

3. STAFF QUALIFICATIONS

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The current regulations allow only physicians or doctoral level psychologists to limit an individual's access to telephones or visitors in residential substance use disorder treatment programs.

If the program does not have access to professionals with the above mentioned qualifications which have a clinical relationship with the consumer, then residential substance use disorder treatment programs may wish to develop rules or policies which stipulate that the senior staff member responsible for clinical services in that program may document restrictions on visitors and telephone privileges.

4. DOCUMENTATION

Providers of residential substance use disorder services are advised to review their current rules and policies regarding restrictions on consumer use of telephones and visitation privileges to determine if they fall within the guidance mentioned above.

If they do not, then any policy or practice regarding visitors, use of telephones and staff qualifications necessary to document restrictions that is not written in accordance with the current human rights regulations (12VAC35-115-50. Dignity, E.- 4. – 5) will require that the program must either amend their policies or practices to conform to the regulations or submit a request for a variance that meet the criteria contained in this guidance.

Once the program revises it's rules or policies to conform to the guidance, copies of the new rules or policies should be submitted to the local Human Rights Advocate for review. Providers should consult with the Human Rights Advocate for assistance with the variance application process.

SOURCES OF FURTHER INFORMATION:

Literature regarding the reasons why restrictions are placed on consumers in residential therapeutic communities may be found in De Leon, G. (2000©) *The Therapeutic Community: Theory, Model, and Method*.