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| <b>Title</b>      | <b>Northern Lakes CMH Policies</b>                         |
| <b>Part 106</b>   | <b>Supports and Services – NLCMH Provided and Contract</b> |
| <b>Subpart J</b>  | <b>Mental Health Code Protected Recipient Rights</b>       |
| <b>Policy No.</b> | <b>106.1005</b>  |
| <b>Subject</b>    | <b>Communication Rights (RR)</b>                           |

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## **Applicability**

Policy applies to all NLCMH activities, operations and sites and to all Workforce Members except members of the governing body. Policy also applies to any Network Provider and its employees, volunteers, or agents that has elected to adopt and adhere to NLCMH policies and procedures pertaining to Recipient Rights under the terms of its Participating Provider Agreement.

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## **Policy**

Northern Lakes CMH and its contracted providers shall assure that a recipient's civil rights to freedom of expression and association are honored and preserved (United States Constitution, 1<sup>st</sup> Amendment, and Constitution of Michigan of 1963, Articles 3 and 5).

Recipients receiving mental health services in residential settings are specifically entitled to additional communication rights, including the right to unimpeded, private and uncensored communication with others by mail and telephone, and to visit with persons of his or her choice. Limitations on a resident's communication rights may only be placed on residents in the circumstances and under the conditions set forth by the Michigan Mental Health Code (PA 258 of 1974, MCL 330.1726) and this policy.

### STANDARDS

#### **FREEDOM OF EXPRESSION AND ASSOCIATION:**

1. A provider shall not restrict the legal speech, writing, or other communication of a recipient under any circumstances.
2. A provider shall not restrict a recipient's right to associate with others except with the consent of a recipient's legal guardian or the parent with legal custody of a minor recipient, and only within the scope of the guardian's legal authority. A guardian of an adult recipient does not have the authority to limit a recipient's freedom of association except in rare circumstances such as when the individual's life is in immediate jeopardy. Providers shall consult with the Director of the Office of Recipient Rights if a guardian requests a restriction of a recipient's right to associate with others.

**COMMUNICATION RIGHTS OF RECIPIENTS RECEIVING RESIDENTIAL SERVICES:**

Providers of residential services shall implement the rights of residents to unimpeded, private, and uncensored communication by doing the following:

A. MAIL:

1. Ensure that correspondence can be conveniently and confidentially received and mailed.
2. Provide for distribution and pickup of mail each day mail is delivered by the postal service.
3. Provide writing materials and postage in reasonable amounts to residents who are unable to procure such items. Each facility shall determine and establish in written procedures, and agreed to upon admission to the facility, what constitutes "reasonable" amounts of these items.

B. TELEPHONE:

1. Make telephones reasonably accessible and private for outgoing and incoming calls.
2. If times and places are established for the use of telephones these shall be reasonable, be clearly described in writing, consented to at admission, and posted conspicuously in each living unit of a residential program.
3. Provide telephone usage funds in reasonable amounts to residents who are unable to pay for such calls to persons of their choice.
4. Each facility shall determine and establish in written procedures, and agreed to upon admission to the facility, what constitutes "reasonable" times, places, and amounts of funds provided for telephone use.

C. VISITS:

1. Make space for private visits available to residents and their guests.
2. If times and places are established for visits these shall be reasonable, be clearly described in writing, consented to at admission, and posted conspicuously in each living unit of a residential program.
3. A "reasonable person" standard will be applied when assessing the privacy of times and locations established by the facility for visits.

D. LIMITATIONS OF MAIL, TELEPHONE, OR VISITS:

1. The right of a resident to communicate by mail or telephone or to receive visitors shall not be further limited except as authorized in the resident's Individual Plan of Services with the informed consent of the recipient or his/her legally empowered representative. Each limitation must be essential for one of the following reasons:
  - a. To prevent physical or emotional harm to the resident or others, or
  - b. To prevent a violation of law.
3. A limitation placed upon the communication rights of a resident shall **not** apply between a resident and an attorney or a court, or other individuals if the communication involves matters that are or may be the subject of legal inquiry, including any communication with attorneys, courts, law enforcement, or the Office of Recipient Rights.
4. Any mail received by a resident shall be considered the personal property of the recipient and limitations on this right may only be implemented in accordance with Northern Lakes CMH policy and procedures respecting property rights. In the event a limitation is imposed within a resident's individual plan of services that authorizes the opening and/or destruction of a resident's mail the resident shall be given an opportunity to witness each instance when this occurs.
5. A limitation on a resident's right to receive phone calls based on an assertion of telephone harassment requires a written statement from the person claiming the resident is harassing them and substantiated proof that this has occurred.
6. In the event a limitation is imposed that authorizes staff monitoring of a resident's telephone calls or visits, assurances will be made that the privacy of the resident is honored for all calls and visits not within the scope of the limitation.
7. If the resident does not agree with the proposed limitation, planning should occur with regard to the suitability of the placement of the recipient and alternatives should be explored through a person-centered planning process to assure the recipient's safety and needs for adequate supports.
8. Any plan that places limitations on a resident's right to mail, telephone use or visits shall include the following:
  - a. The type, scope and duration of the restriction or limitation; and
  - b. The clinical and legal justification for the restriction or limitation; and
  - c. A description attempts that have been made to avoid the restriction or limitation, assuring that it is the least restrictive intervention that is appropriate and available; and
  - d. How the restriction or limitation is being used in connection with the recipient's goals and objectives; and

- e. The end-date of the restriction or limitation, or when not foreseeable, a description of what actions will be taken as part of the plan to ameliorate or eliminate the need for the restriction or limitation in the future; and
  - f. Instructions to the implementing provider(s) that each instance of the restriction or limitation will be documented in the recipient's record with a plan for data collection and review of progress.
9. A restriction or limitation adopted under the authority of the above conditions shall be removed when the circumstance that justified its adoption ceases to exist.
10. Each instance of a restriction or limitation adopted under the authority of the conditions listed above, the date it expires, and justification for its adoption shall be promptly noted in the recipient's record. A restriction or limitation shall not exceed the justification either in scope or duration.

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## Procedures

None.

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**Review Dates:**  
June 5, 2009  
May 14, 2010

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August 31, 2010