
Title	Northern Lakes CMHA Policies
Part 106	Supports and Services – NLCMHA Provided and Contract
Subpart J	Mental Health Code Protected Recipient Rights
Policy No.	106.1009
Subject	Personal Property, Search and Seizure Rights (RR)

Applicability

Policy applies to all Northern Lakes CMHA 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 have elected to adopt and adhere to Northern Lakes CMHA policies and procedures pertaining to Recipient Rights under the terms of its Participating Provider Agreement.

Policy

Northern Lakes CMHA and its contracted providers shall protect a recipient's right to receive, possess, and use personal property and to be free from unreasonable searches and seizures as guaranteed by the United States Constitution (4th and 14th Amendments), the Michigan State Constitution of 1963 (Article 11, Section 11), the Michigan Mental Health Code (PA 258 of 1974, MCL 330.1728), and the Michigan Department of Health and Human Services Administrative Rules (R 330.7009).

STANDARDS:

A. PERSONAL PROPERTY IN GENERAL

All recipients have the right to receive, possess, and use his or her personal property. A workforce member of Northern Lakes CMHA or a contract provider shall not infringe upon this right except in the circumstances and under the conditions allowed by this policy.

B. DEFINITIONS

1. "Contraband" is any item prohibited possession by a recipient by this policy or the recipient's individual plan of service.
2. "Personal Property" is a thing or things owned by or lawfully belonging to a recipient including but not limited to the recipient's clothing, money, papers, or other effects and possessions.

2. "Reasonable cause" is a belief based on facts or circumstances that a recipient has contraband on his or her person or has concealed contraband within areas containing his or her personal property.
3. "Search" is a physical inspection for contraband conducted by authorized workforce member.

There are three types of **allowable searches**:

- a. Package/Container: Any search of packages intended for delivery to a recipient or of a container for transport of the recipient's possessions (e.g., purse, backpack, etc.)
- b. Area: Any search of areas containing personal property of a recipient (e.g., room, wardrobe, bed, drawers).
- c. Pat Down: Any search of a recipient that does not require removal of clothing other than a coat of jacket. This search consists of requesting the recipient to reveal any item on his or her person followed by physically patting outside areas of clothing.

The following types of searches are **prohibited**:

- a. Strip Search: Any search of a recipient and/or recipient's clothing which requires the recipient to remove or alter the position of clothing, which reveals his or her body.
- b. Body cavity search: Either a visual search or a manual internal inspection of body cavities for prohibited materials (contraband).

C. PERSONAL PROPERTY IN RESIDENTIAL SETTINGS

1. Protection

- a. Each Residential provider shall establish and follow procedures designed to protect the personal property of a resident from theft, loss, or destruction.

2. Storage

- a. Each Residential provider shall provide a reasonable amount of storage space to each resident for his or her clothing and other personal property.
- b. A resident shall be permitted to inspect and/or access any personal property placed in storage at any reasonable time.

3. Restrictions or Limitations

A resident's right to receive, possess, and use personal property may be limited or restricted by a residential provider only in compliance with this policy as specified below:

- a. A residential provider may exclude particular types of items from a resident's possession at a facility. Any exclusions shall be officially adopted in writing and posted in a place or places in the facility conspicuous to residents. Notice of these exclusions shall be provided to the recipient or his/her legal representative prior to admission.

Excluded property, i.e., contraband, includes but is not limited to:

- i. Illegal drugs;
 - ii. Other drugs, whether prescribed or not, unless possession of the drug is authorized by a physician;
 - iii. Weapons, including firearms, knives, and explosives;
 - iv. Other items that pose an identifiable risk of physical harm to a recipient or others at the facility.
- b. The right of a resident to receive, possess, and use personal property may be further limited only when authorized in the resident's Individual Plan of Service (IPOS) after review and approval by a Behavior Treatment Committee, and only if each limitation is essential for one (1) of the following purposes:
- i. In order to prevent theft, loss, or destruction of the property, unless a waiver is signed by the resident: OR
 - ii. In order to prevent the resident from physically harming himself, herself, or others.

If a limitation of a recipient's right to receive, possess, or use his or personal property is determined essential for one of the two reasons listed above, a continuum of individualized, least restrictive interventions shall be utilized. Any Behavior Treatment Plan incorporated into a recipient's IPOS that limits or restricts the recipient's personal property must include documentation of all of the following:

- i. The type, scope and duration of the restriction or limitation; and
- ii. The clinical and legal justification for the restriction or limitation; and
- iii. A description of 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
- iv. How the restriction or limitation is being used in connection with the recipient's goals and objectives; and

- v. 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
 - vi. 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.
- c. Each instance of a restriction or limitation of a recipient's personal property shall be promptly noted in the recipient's record by the workforce member, including the justification for the restriction of limitation.
 - d. A limitation of personal property shall not exceed the justification either in scope or duration.
 - e. A limitation of personal property shall be removed when the circumstance that justified its adoption ceases to exist.
 - f. A receipt shall be given to a resident and an individual designated by the resident for any of his or her personal property taken into the possession of the residential provider.
 - g. Any personal property in the possession of the residential provider shall be returned to the resident at the time he or she is discharged.

D. PERSONAL PROPERTY IN SUPPORTED INDEPENDENT LIVING ARRANGEMENTS

Exclusions of property adopted in a Supported Independent Living arrangement shall be included in the recipient's landlord-tenant agreement and in compliance with the Title 8 of the Federal Fair Housing Act, 42 U.S.C., and the Michigan Persons With Disabilities Civil Rights Act, Act 220 of 1976.

E. PERSONAL PROPERTY IN ALL OTHER SERVICE SETTINGS

A provider of mental health programs such as an Outpatient Clinic, Prevocational Workshop, Clubhouse, or Drop-in Center may establish rules that exclude the receipt, possession, or use of a recipient's personal property on the program's premises with the following conditions:

1. Only property that a recipient is prohibited by law from possessing may be excluded from the program's premises.
2. Any rules excluding property from the program's premises must be in writing and consented to by the recipient or his or her legally empowered representative upon admission to the program.

F. FREEDOM FROM UNREASONABLE SEARCH AND SEIZURE:

All recipients have a Constitutional right to be free from unreasonable searches and seizures:

1. A search of a resident's person, property, or living area may only be conducted in compliance with the procedures section of this policy when there is reasonable cause, as defined by this policy, to believe that a recipient may be in possession of items made contraband by a facility or excluded in a recipient's Individual Plan of Service.
2. A workforce member may not enter or search a recipient's private residence, dwelling, room, or other domicile without the prior permission of the recipient, except when the provider is also the landlord of the recipient in a Supported Independent Living arrangement and when the provider has lawful justification to do so under the terms of a landlord-tenant agreement.
3. Searches and seizures, when allowed by this policy, are emergency procedures for the purpose of preventing physical injury to a recipient or others, and are not treatment.
4. Searches and seizures shall be conducted in a manner that promotes a recipient's dignity, privacy, and recovery, rather than through a "law and order" approach.
5. When contraband is seized from a recipient during a search, the identity of the recipient may not be disclosed except:
 - a. With the consent of the recipient, or his/her legally empowered representative, and identifying information is to another individual or agency under the authority of Section 330.1748(6) of the Mental Health Code; or
 - b. Without consent, to public agencies, including law enforcement or other mental health or medical providers, when there is a compelling reason to disclose the information based on a substantial probability of harm to the recipient or others under the authority of Section 330.748(7)(c) of the Mental Health Code.

NOTE: There is no "duty to report" to law enforcement that illegal drugs, weapons, or other excluded items have been seized from a recipient. In most cases it would be expected that there no longer exists any probability of harm to the recipient or others after an excluded item has been seized.

Northern Lakes CMHA will seek to obtain agreements with law enforcement agencies within our service area for the confidential pick up and disposal of any illegal drugs or weapons seized from a recipient during a search in order to reduce the likelihood of the criminalization of behaviors that result from co-occurring disorders (see procedures section).

6. The clinical workforce member responsible for the recipient's treatment and/or support plan shall, in a timely manner subsequent to the implementation of search and seizure procedures, assess, review, and modify the recipient's individual plan of services as may be appropriate to determine what, if any, strategies need to be put in place in an effort to attempt to assure the safety of the recipient and others.

7. Any of the recipient's legal personal property seized during a search shall be returned to the recipient upon discharge from a facility.

G. CONFLICT RESOLUTION AND COMPLAINT MECHANISMS:

1. Every effort shall be made through the Person-Centered Planning process to resolve individual and/or group concerns regarding limitations or restrictions of personal property rights and the right to free from unreasonable search and seizure.
2. A recipient may appeal a limitation or restriction of these rights by requesting a review of his or her IPOS and/or by filing a Recipient Rights Complaint.

Procedures

SEARCH AND SEIZURE PROCEDURES:

1. A search of a resident's person, living area, or property may be conducted after a request has been made to the recipient and he or she has refused to voluntarily surrender contraband items that the provider has reasonable cause to believe are in the recipient's possession.
2. Searches of a recipient's PROPERTY AND/OR LIVING AREA shall be conducted by at least two workforce members, both of whom shall wear protective gloves. The recipient shall be informed in advance and shall be present during the search unless he or she declines. If the recipient declines to be present, documentation of this shall be placed in the recipient's record.
3. Searches of a recipient's PERSON shall be conducted by at least 2 workforce members, one of whom shall be of the same sex as the recipient. Both workforce members shall wear protective gloves.
4. The circumstances surrounding the search shall be entered into the recipient's record and shall include all of the following:
 - a. The reason for initiating the search,
 - b. The names of the workforce members performing and witnessing the search,
 - c. The results of the search, including a description of all property seized,
 - d. Any disclosure of confidential information.
5. If there is reasonable cause to believe that a recipient has inserted or ingested something that could cause physical harm to the recipient, workforce members shall take the recipient to the emergency room, regardless if there is reasonable cause to believe that the item is contraband.

6. If illegal drugs or other substances that reasonably appear to be illegal drugs are seized during a search, workforce member shall contact the provider supervisor or designee who shall immediately contact law enforcement to request pick up and disposal of the illegal drugs/substances. Workforce member shall not identify the recipient from whom the drugs were seized under the authority of Section 330.1748 of the Michigan Mental Health.
7. If weapons, including firearms or illegal knives are seized during a search, workforce member shall contact the provider supervisor or designee who shall immediately contact law enforcement to request pick up and removal of the weapon. Workforce member shall not identify the recipient from whom the weapon was received under the authority of Section 330.1748 of the Mental Health Code.
8. If workforce member encounter what appears to be an explosive device during a search, workforce member are not to touch the device. All recipients and workforce member shall immediately be evacuated and law enforcement contacted to assess the situation. Workforce member shall not identify the recipient in whose room the device is located under the authority of Section 330.1748 of the Mental Health Code.
9. A receipt shall be given to a recipient for any contraband items taken into the possession of the facility during a search.

See Also: MDHHS Technical Requirement for Behavior Treatment Plan Review Committees, Final July 28, 2008, Attachment to CMHSP and Medicaid Contracts

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