

Rules and Regulations of Department of Human Resources:
Mental Health, Developmental Disabilities, and Addictive Diseases

Chapter 290-4-9
Client's Rights

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Chapter 290-4-9 can be found on the Rules and Regulations by Secretary of State website:

http://rules.sos.state.ga.us/cgi-bin/page.cgi?g=DEPARTMENT_OF_HUMAN_SERVICES%2FMENTAL_HEALTH_DEVELOPMENTAL_DISABILITIES_AND_ADDICTIVE_DISEASES%2FCLIENTS_RIGHTS%2Findex.html&d=1

290-4-9-.01 Purpose, Implementation, and Definitions.

(1) Purpose. The purpose of these regulations is to safeguard the rights of persons treated pursuant to O.C.G.A. Chapters 37-3, 37-4, 37-5, and 37-7.

(2) Applicability. These regulations shall apply to all area community mental health, mental retardation and substance abuse programs, as defined in O.C.G.A. Chapters 37-2, 37-5, and 26-5, which are operated by the Boards of Health or Community Service Boards or funded through contracts with the Boards of Health, the Regional Boards, the Community Service Boards, or the Department of Human Resources, including licensed Personal Care Homes which are under contract with the Department, Boards of Health, Regional Boards or Community Service Boards to receive clients who have mental illness, mental retardation, or are substance abusers. These regulations shall in general apply to all persons served in such programs without regard to the type or source of entry into the program. When the client is a minor or an adult with a legally appointed guardian, the regulations are applicable to that parent or guardian, with certain exceptions, as specifically stated in various parts of the regulations. For persons being served by virtue of a court order related to a criminal matter, the regulations are applicable to the extent that they do not violate the provisions of the order nor the need to provide for the safety of the individual or of others.

(3) Implementation. Each Mental Health, Mental Retardation, and Substance Abuse Program shall instruct each staff member in the contents of these regulations. Each Program shall also provide, at the beginning of each client's treatment, the client or his parent or guardian, if applicable, a written summary of the rights and remedies contained in these regulations and their applicability to him. Insofar as is possible, notifications shall be done in such a manner commensurate with the individual's abilities and capabilities of comprehension and understanding and shall be documented in the client's record. Further, prior to the restriction of any client's rights (as permitted in these regulations), a staff member shall again inform the client, or his parent or guardian if applicable, of his right to administrative complaint of that restriction, except in cases where the client's condition makes this impractical, and in such cases the client shall be informed at the time when his condition permits.

(4) Definitions. Unless a different meaning is required by the context, the following terms as used in these regulations shall have the meanings hereinafter set forth:

(a) "Abuse" means any unjustifiable intentional or grossly negligent act, exploitation or series of acts, or omission of acts by a staff member which causes physical or mental injury, or endangers the safety of a client, including but not limited to verbal abuse, assault or battery, failure to provide treatment or care, or sexual harassment;

(b) "Care" means diagnostic services; therapeutic services, including the administration of drugs; habilitation; and any other service for the treatment or habilitation of an individual pursuant to O.C.G.A. Chapters 37-2, 37-4, 37-5, and 26-5;

(c) "Chief Medical Officer" means the physician designated by the Program Director with overall responsibility for client treatment or habilitation at the facility receiving the client;

(d) "Client" means any person who receives treatment or habilitation for alcohol or drug abuse, mental illness, or mental retardation pursuant to O.C.G.A. Chapters 37-2, 37-4, 37-5, and 26-5 or any person accepted for evaluation;

(e) "Court" means, in the case of an individual who is 17 years of age or older, the

probate court for the county of residence of the client or the county in which such client is found, and, in the case of an individual who is under the age of 17 years, the juvenile court for the county of residence of the client or the county in which such client is found;

(f) "Department" means the Georgia Department of Human Resources and includes its duly authorized agents and designees;

(g) "Director" means the Director of the Division of Mental Health, Mental Retardation and Substance Abuse of the Department of Human Resources;

(h) "Division" means the Division of Mental Health, Mental Retardation and Substance Abuse of the Department of Human Resources;

(i) "Guardian" means an individual appointed as provided by law to be legally responsible for the person of an adult or of a minor. Whenever the word "client" is used in these regulations, a guardian is entitled to exercise the client's rights on behalf of his ward;

(j) "Individualized Service/Program Plan"

1. "Individualized Service/Program Plan": An organized statement of the proposed treatment/habilitation process to guide the service provider and client throughout the duration of service at the Program.

2. Each plan shall clearly include but is not limited to:

(i) A statement of the goals or desired outcomes, based upon and related to a proper evaluation of the nature of the specific problem and the specific needs of the client, which can be reasonably expected to be achieved;

(ii) The kinds of services to be provided to obtain these goals and the frequency of services;

(iii) Identification of professional personnel who planned these services, including appropriate medical or other professional involvement by a physician;

(iv) Documentation of client involvement and, if applicable, the client's accordance with the individualized service/program plan;

(v) Compliance with the Program's written Quality Improvement Plan;

(k) "Mental Health, Mental Retardation and Substance Abuse Program (Program)" shall mean an organized program for the care and treatment of persons with mental illness, mental retardation, or individuals with an alcohol or drug dependence or addiction operated by a County Board of Health or Community Service Board or funded through contracts with a County Board of Health, Regional Board, Community Service Board or the Department of Human Resources.

(l) "Mental Health, Mental Retardation and Substance Abuse Program Director" shall mean the Director of a Mental Health, Mental Retardation and Substance Abuse Program.

(m) "Physical Restraint" means any mechanical device used to restrict a person's physical movement, except for those devices which are applied for protection from accidental injury or required for the medical treatment of the client's physical condition or for supportive or corrective needs of the client. These latter devices used in such situations must be authorized and applied in compliance with the Program's policies and procedures. The use of such devices shall be documented in the client's record;

(n) "Physician" means any person duly authorized to practice medicine in this State pursuant to O.C.G.A. Chapter 43-34;

(o) "Psychologist" means any person duly authorized to practice applied psychology in this State pursuant to O.C.G.A. Chapter 43-39.

(p) "Professional staff" means staff members who are psychiatrists, psychiatric nurses, physicians, social workers, clinical chaplains, psychologists, or persons who have met Division requirements for Mental Health Professional Equivalency or Mental Retardation Professional.

(q) "Quality Improvement Plan" means a written description of a clearly defined, organized program that is designed to promote quality client care through peer review and ongoing objective and systematic assessment of client care and the correction of identified problems. The plan describes the authority and responsibilities of program staff responsible for review of client's rights, mechanisms for choosing representatives from individuals served or their representatives, and individuals not otherwise affiliated with the program to serve on the Quality Improvement Clients' Rights Subcommittee;

(r) "Regional Executive Director/Designee" means the person with overall responsibility for the Mental Health, Mental Retardation and Substance Abuse Services.

(s) "Representative" means the person appointed, pursuant to section 290-4-9-.02(1)(h) of these regulations, to receive notices;

(t) "Staff member" means, for the purpose of Chapter 290-4-9 only, any person who is an employee, independent contractor, or other agent of the Department or of a County Board of Health, Regional Board or Community Service Board who provides services to persons with mental illness, mental retardation, or who are substance abusers. The use of "Staff member" in these regulations for such persons shall in no way alter the legal relationship of such persons and the Department, or subject the Department to any liability to which it is not otherwise subject;

(u) "Time-out" means a behavior modification procedure whereby a person is removed from the environment, or stimuli within the environment, which reinforces the undesired behavior which needs to be modified, and to an unlocked area where the client's movement is not restrained.

Authority O.C.G.A. Sec. 37-1-23; Chap. 37-2; 37-3, Article 6; 37-4, Article 5; 37-7, Article 6; 37-8, Article 3; 37-5; 26-5. **History.** Original Rule entitled "Purpose, Implementation and Definitions" was filed on January 9, 1987; effective January 29, 1987. **Repealed:** New Rule of same title adopted. F. Aug. 18, 1994; eff. Sept. 16, 1994, as specified by the Agency.

290-4-9-.02 Treatment or Habilitation.

(1) Appropriateness.

(a) General. Each client shall receive care that is suited to his needs in the least restrictive environment available offering appropriate care and treatment or habilitation. All clients have the right to a humane treatment or habilitation environment that affords reasonable protection from harm, exploitation or coercion. No client, whether voluntary or involuntary, shall be deprived of any civil, political, personal, or property rights or to be considered legally incompetent for any purpose without due process of law. Temporary restriction or denial of a client's rights may occur only when specific justification is documented, per these regulations. Protection of the client's well-being shall be of primary concern to all staff under all circumstances.

(b) Individual Service/Program Plans.

1. The development of an individualized service/program plan shall be governed as follows:

(i) Each client shall be evaluated and assessed by the staff as soon as possible after admission but within the time limits contained in the Community Service Board's Quality Improvement Plan or Division/Department minimum requirements, as appropriate.

(ii) Each individualized service/program plan shall be reviewed at regular intervals as specified in the Community Service Board's Quality Improvement Plan or Division/Department minimum requirements, as appropriate, to determine the client's progress toward the stated goals and to determine whether the plan should be modified because of the client's present condition. These reviews should be based upon relevant progress notes in the client's record and upon other related information.

(c) Receipt of Service (Day Services).

1. Each client shall have the right to receive prompt treatment services on a voluntary, confidential basis including:

(i) The right to care despite inability to pay;

(ii) The right to receive services in the least restrictive environment available;

(iii) The right to review and obtain copies of his service record, unless determined by the physician or such other staff as designated by the governing authority to be responsible for the client's treatment or habilitation to be contraindicated. Such determination shall be noted in the client's records along with the specific reason for any denial. A determination that a client may not review or obtain copies of his record shall expire after 30 days. Upon any new request after expiration, a new determination must be made and documented in the client's record. After any denial of his right to review or obtain copies of his record, a client may file a complaint under the procedures outlined in 290-4-9-.04. A client who is permitted to obtain copies of his record may be required to pay a reasonable fee to cover the costs of such copies.

(iv) The right to a written individualized service/program plan;

(v) The right to be involved in, to the extent possible, his own plan of care;

(vi) The right to refuse service, unless it is determined by a physician or licensed psychologist that the client is unable to care for himself, dangerous to himself or others, or mandated by a court.

(d) Receipt of Service (Residential Services).

1. Each client shall have the right to retain his own personal effects, clothing, and money.

2. Each client shall have the right to converse privately, have convenient and reasonable access to the telephone and mails, and to see visitors, except if denial is necessary for treatment or habilitation, as documented in the client's record by a physician or licensed psychologist.

3. Each client shall have the right to exercise the civil, political, personal, and property rights to which he is entitled.

4. Each client shall have the right to pursuit of employment, education, and religious expression.

(e) Restriction of any client's rights:

1. A client's rights may be restricted/denied only on a temporary basis and in order to protect the health and safety of the client or others;

2. If restriction, abridgement, or denial of a client's rights are instituted, other than those pursuant to 290-4-9-.02(1)(c)1.(iii) of these regulations, the nature, extent and reason shall be entered in the client's record as a written order approved by a physician or licensed psychologist. Review of such restriction will occur in the approved treatment or habilitation review process. Any continuing denial or restriction shall be reviewed every 15 calendar days and shall be entered into the client's treatment or habilitation record. Such restriction, abridgement, denial of a right must be reviewed by the staff responsible for review of client rights as specified in the Program's Quality Improvement Plan.

(f) Physical Restraints and Time-out Utilization.

1. Physical restraints shall not be used in any program governed by these rules and regulations; provided, however, that emergency receiving, evaluating and treatment facilities may use restraints in accordance with Rules and Regulations for Patients' Rights, Chapter 290-4-6. For the purposes of this subsection, those devices which restrain movement, but are applied for the protection of accidental injury or required for medical treatment of the client's physical condition or for supportive or corrective needs of the client, shall not be considered physical restraints. However, such devices used in such situations must be authorized and applied in compliance with the Program's policy and procedures. The use of such devices shall be a part of the client's Individual Service/Program Plan.

2. Time-out procedures shall be used solely for the purpose of providing effective treatment and protecting the safety of the client and other persons and shall not be used as punishment or for the convenience of staff. It shall be documented in the client's record, prior to the use of time-out procedures, that less restrictive methods of modifying the problem behavior have been systematically tried and found to be ineffective.

3. The use of time-out shall be governed as follows:

(i) Every use of time-out shall be under the supervision and observation of the Program's professional staff and limited to no more than 15 minutes per episode.

(ii) Every use of time-out shall be conducted in a unlocked well lighted, heated or cooled, ventilated area with a means of observation available. The area(s) to be used for time-out shall be identified in the Program's policy and procedure for time-out utilization.

(iii) Every use of time-out shall be documented in the client's record. Such documentation shall include but is not limited to:

(I) the reasons and justification for time-out utilization;

(II) the signature of the person authorizing the time-out.

(g) Medications.

1. The attending physician is responsible for assuring, and documenting in the client's record, that the benefits, side effects, and risks of psychotropic medication are explained to the individual, commensurate with the individual's abilities of comprehension and understanding.
2. All medications shall be administered or prescribed solely for the purpose of providing effective treatment or habilitation and/or protecting the safety of the client and other persons and shall not be used as punishment or for the convenience of staff.
3. If not judicially declared incompetent, all adults shall give signed consent to the administration of medication. If an adult client has been judicially determined to be incompetent to give signed consent or to make decisions of a similar nature, signed consent to the administration of medication shall be obtained from the client's guardian with capacity to make such decision. If the client is a minor, such signed consent shall be obtained from the minor's parent or legal guardian.
4. Only in cases of emergency, where the physician determines that immediate intervention is necessary to prevent the death of or serious consequences to a client and where delay in obtaining signed consent would be unsafe for the client or others then immediate essential intervention may be administered without the consent of the client or other person. In such emergency cases, a record of the determination of the physician shall be entered into the client's record, and this will be the prior consent for such intervention. An attempt to expeditiously resolve the emergency situation must then be demonstrated.

(h) Participation of representatives for persons ordered to receive involuntary outpatient treatment at a mental health center on an outpatient basis is governed by the Rules of the Department of Human Resources Rule 290-4-6-.02(3).

Authority O.C.G.A. Chap. 37-2; 37-3, Article 6; 37-4, Article 5; 37-7, Article 6; 37-8, Article 2; 37-5; 26-5.

History. Original Rule entitled "Treatment of Habilitation" was filed on January 9, 1987; effective January 29, 1987. **Repealed:** New Rule of same title adopted. F. Aug. 18, 1994; eff. Sept. 16, 1994, as specified by the Agency.

290-4-9-.03 Treatment or Habilitation Environment.

(1) General. The individual dignity of each client shall be respected at all times and upon all occasions. The provision of all services shall be offered in an environment, which is designed to assure the health and safety of all clients.

(2) Abuse and Sexual Activity.

(a) Abuse of any client is prohibited. A staff member shall use force only if necessary to prevent a client from threatening imminent harm or committing harm to himself or others. Such force as may be needed to prevent a client from threatening imminent harm or committing harm to self, staff, or others shall not constitute abuse. An incident report of such activity shall be filed with the Program Director and with the Clients' Rights program staff.

(b) No staff member shall engage in any sort of sexual activity with any client, or allow sexual activity between or among clients while the client remains under the care or supervision within a program operated or contracted by a County Board of Health, Regional Board, Community Service Board or the Department.

(c) No staff member shall abuse any client through physical or verbal attack, exploitation, or coercion.

(d) A staff member who witnesses an incident of such abuse or sexual activity shall report the incident to the Program Director within 24 hours, and to the Program Clients' Rights staff as specified in the Program's Quality Improvement Plan as soon as possible, which staff shall notify the Personal Advocacy Unit of the Division within 5 working days.

Upon receiving such a report, the Program Clients' Rights Subcommittee shall assist the reporting staff or the client (or his guardian or parent, if applicable) in initiating a complaint pursuant to Section 290-4-9-.04 of these regulations. If the Program Director has reasonable cause to believe that the incident constitutes criminal conduct, he shall notify the Regional Executive Director. If the Regional Executive Director concurs, he shall report the incident to the appropriate law enforcement agency. A staff member who fails to comply with the applicable requirements of this Section 290-4-9-.03(2) shall be subject to adverse action in accordance with personnel procedures of the Department or the governing authority.

(e) If a staff member of a program has reasonable cause to believe that a parent or caretaker of a minor has inflicted physical injuries other than by accident, has neglected, exploited sexually or assaulted the child, then the staff member shall notify the program's director or his delegate who in turn shall report the allegation to the appropriate County Department of Family and Children Services by telephone, as soon as possible, followed by a written report. The report shall include the names of the parent(s) or caretaker(s), the name of the client, his age, nature and extent of injuries including evidence of previous injuries and other pertinent information on the cause of injury and the identity of the perpetrator. Abuse or neglect of adult clients shall be reported in accordance with the provisions of O.C.G.A. 30-5-1 through 30-5-8.

Authority O.C.G.A. Chap. 37-2; 37-3, Article 6, Part 2; 37-4, Article 4, Part 2; 37-7, Article 6, Part 2; 37-8, Article 2; 37-5; 26-5; Secs. 19-7-5; 30-5-1, et seq. **History.** Original Rule entitled "Treatment of Habilitation Environment" was filed on January 9, 1987; effective January 29, 1987. **Repealed:** New Rule of same title adopted. F. Aug. 18, 1994; eff. Sept. 16, 1994, as specified by the Agency.

290-4-9-.04 Remedies for Violations.

(1) Complaint Procedures. Any client (or his guardian or parent of a minor client, if applicable) or his representative or any staff member may file a complaint alleging that a client's rights under these regulations or other applicable law have been violated by staff members or persons under their control. Such complaints shall be governed by the procedure established in this Section 290-4-9-.04. A person who considers filing such a complaint is encouraged to resolve the matter informally by discussing it first with the staff members or other persons involved or Program Clients' Rights staff as specified in the Program's Quality Improvement Plan. The client is not required to use the procedures established by this Section 290-4-9-.04 in lieu of other available remedies, including the right to directly contact the Personal Advocacy Unit at the Division of Mental Health and Mental Retardation and Substance Abuse or to submit a written complaint to the Regional Executive Director or Program Director or Governor's Advisory Council as provided in O.C.G.A. Chapter 37-2-4.

(a) General. In order to ensure that such internal quality improvement investigations and monitoring activities are completed fully and in an in-depth manner, to encourage candid evaluations, and to ensure that adequate corrective action is taken in all cases, review actions taken and documentation made in furtherance of this Section 290-4-9-.04 shall remain confidential.

(b) Client complaint procedures in Programs funded directly or indirectly by the Department shall be governed as follows:

1. Each Program Director shall appoint a Clients' Rights Subcommittee to review the rights of the clients receiving services from programs contracted by the Department, a Regional Board, or a Community Service Board either directly or indirectly. The Clients' Rights Subcommittee functions as a part of the program's ongoing quality improvement program, as described in the Program's Quality Improvement Plan.

(i) The Clients' Rights Subcommittee staff is chosen from those staff responsible for the Program's Quality Improvement peer review system; and is a subcommittee of the Quality Improvement Committee. Members shall be composed primarily of professional staff and shall also include a service consumer or his representative or person not otherwise affiliated with the program.

(ii) The Clients' Rights Subcommittee shall have the authority to investigate complaints, use whatever means are available and appropriate to resolve complaints, and consult with Program management on the development of policies and procedures to safeguard the rights of clients served in the Program.

(iii) The Quality Improvement Clients' Rights Subcommittees in the Programs conduct their activities under the auspices of the Program Quality Improvement Committee, and all reports will be channeled through the Quality Improvement Committee to the appropriate Program Director/designee for appropriate corrective action. A copy of all reports will also be channeled to the Division Quality Improvement Committee through the Division Personal Advocacy Unit.

(2) First Step.

(a) The complaint shall be filed with the Clients' Rights Subcommittee of the client's Program, and it may be filed on a form provided by the Program. If the client states the complaint orally, specific assistance should be given in proceeding with the complaint

and completing the form. Complaints may be made by telephone to clients' rights staff persons, who will complete the form. Staff members whose alleged conduct gave rise to the complaint may be informed of the complaint.

(b) As soon as possible, but within seven working days after the complaint is filed, the Clients' Rights Subcommittee shall investigate the complaint, resolve it if possible, complete a disposition report, and file it with the Quality Improvement Committee's records. If after interviewing the complainant, however, it is found that the complaint does not state an allegation that, if true, would constitute a violation of these regulations or other applicable law, the complaint may be rejected in writing. In cases of such rejection, the original of the rejection notice shall be filed in the Quality Improvement Committee's records, and a copy shall be sent to the complainant. In all investigated complaints, the staff shall employ the investigatory method deemed most suitable to determine the facts. This method may include, but is not limited to, personal interviews, telephone calls, review of documents, and correspondence. The Quality Improvement Committee and its designees shall have access to all files, documents, records, and personnel of the Program deemed by the Committee to be relevant to its investigation. The Committee shall resolve the complaint through mediation and conciliation whenever possible. The client whose rights are alleged to have been violated or someone in his behalf may appear before the committee.

(c) The Program's Quality Improvement Committee shall complete a brief disposition report on each investigated complaint and forward it to the Program Director for approval. The report shall state the parties involved, the gist of the complaint, and whether the complaint was resolved or not. The original report shall be filed on forms provided by the Division in the Committee records, and a copy shall be sent to the Regional Executive Director, the Director of the Program, and to the Division Quality Improvement Committee through the Personal Advocacy Unit. The complainant shall be notified of the action taken by the Committee.

(3) Second Step.

(a) If the complaint is rejected or is not resolved by the Committee to the satisfaction of the client (or his guardian or parent of a minor client, if applicable) or the complainant, either the client (or his guardian or parent of a minor client, if applicable) or the complainant may file with the Program Director a written request for a review of the complaint. The request shall be filed no later than 15 working days after the person filing the request receives a copy of the rejection notice or the disposition report of the Committee, which report includes notice of the necessity to file for review within 15 working days. The Program Director may reject the request in writing without a review if either the complaint or the request for review is not filed in a timely fashion, or if the complaint does not state an allegation that, if true, would constitute a violation of these regulations or other applicable law. The original of the rejection shall be filed in the Program Director's records, and a copy shall be sent to the complainant and to the Regional Executive Director. In all other cases, the Program Director shall designate a staff member who is a member of the Quality Improvement Committee and has no connection with the complaint to conduct a review of the complaint.

(b) The person conducting the review of the complaint shall review all reports and documents which were utilized in Section 290-4-9-.04(2). In addition, the reviewer may

interview any person who may have information related to the complaint. The complainant, shall be given an opportunity to discuss the complaint directly with the reviewer and present any information relevant to the complaint. Any staff member(s) whose alleged conduct gave rise to the complaint shall also be given an opportunity to discuss the complaint with the reviewer and present any information relevant to the complaint. This review process is designed to be an informal process and not a formal hearing. The reviewer shall document his findings. The review shall be completed as soon as possible, but within 10 working days after the request for review is filed.

(c) Within five working days after the conclusion of the review, the reviewer shall submit to the Program Director a written report of the review. The report shall contain a list of the pertinent provisions of these regulations or other applicable law, and a recommendation for disposition. Within three working days after receiving the reviewer's report, the Program Director shall issue a written decision disposing of the complaint. The Program Director's decision, in addition to the disposition, may incorporate by reference those lists contained in the reviewers report. In this decision, the Program Director may accept, reject, or modify the reviewer's recommendation, or he may return the case to the reviewer for further proceedings. If the Program Director returns the case to the reviewer, the Program Director shall specify the matters to be addressed in the further proceedings and shall specify the period within which those proceedings shall be concluded. In no event shall the period for completing the further proceedings, including the reviewer's submission of an additional report to the Program Director and the Program Director's issuance of a decision, exceed 10 working days. The original of the Program Director's decision shall be filed on forms provided by the Division in the Program Director's records, and a copy shall be sent to the Regional Executive Director, to the complainant, and the Division Quality Improvement Committee through the Division Personal Advocacy Unit.

(4) Third Step.

(a) The client (or his guardian or parent of minor client, if applicable) or the complainant may appeal the Program Director's rejection or other decision by filing a written request for review with the Regional Executive Director or his/her designee. The request for review shall be filed no later than 10 working days after the person filing the request receives a copy of the Program Director's rejection or other decision. Upon the filing of such a request, the Program Director shall be notified, and the Program Director shall immediately transmit to the Regional Executive Director a copy of the Program Director's rejection or decision, together with a copy of the reviewer's recommendations, the Program Director's decision, and other documents utilized in the review, if any.

(b) Within 10 working days of the filing of the request for review the Regional Executive Director, or his/her designee, shall issue a decision disposing of the appeal. The Regional Executive Director may reject the request in writing without a review if either the complaint or the request for review is not filed in a timely fashion, or if the complaint does not state an allegation that, if true, would constitute a violation of these regulations or other applicable law. The original of the rejection shall be filed in the Regional Executive Director's records and a copy sent to the complainant. In all other cases, the Regional Executive Director shall review the pertinent facts, reports, and reviews which were in Section 290-4-9-.04(2) and 290-4-9-.04(3), and issue a written decision disposing

of the complaint. The original of the Regional Executive Director's decision shall be filed on forms provided by the Division in the Regional Executive Director's records, and a copy shall be sent to the complainant and to the Division Quality Improvement Committee through the Division Personal Advocacy Unit.

(5) Fourth Step.

(a) The client (or his guardian or parent of a minor client, if applicable) or the complainant may appeal the Regional Executive Director's rejection or other decision by filing a written request for review with the Director of the Division of Mental Health, Mental Retardation and Substance Abuse. The request for review shall be filed no later than 10 working days after the person filing the request receives a copy of the Regional Executive Director's rejection or other decision. Upon the filing of such a request, the Regional Executive Director shall be notified, and the Regional Executive Director shall immediately transmit to the Director a copy of the Regional Executive Director's rejection or decision, together with a copy of the previous reviewer's recommendations, the Program Director's decision, and other documents utilized in the review, if any.

(b) Within 10 working days of the filing of the request for review; the Director or his designee shall issue a decision disposing of the appeal. This decision of the Director or his designee shall be based upon a review of the request for review and the documents forwarded by the Regional Executive Director; no evidentiary hearing shall be conducted by the Director or his designee. In the decision, the Director or his designee, may affirm, reverse, or modify the Regional Executive Director's rejection or other decision, or he may return the case to the Regional Executive Director for further proceedings. If the Director or his designee returns the case to the Regional Executive Director, the Director or his designee shall specify the matters to be addressed in the further proceedings and shall specify the period within which those proceedings shall be concluded. In no event shall the period for completing the further proceedings, including the reviewer's submission of an additional report, the Regional Executive Director's issuance of another rejection or other decision, and the Director's or his designee's issuance of a decision, exceed 14 working days. The original of the Director's or his designee's decision shall be filed in the Director's records, and copies shall be sent to the Regional Executive Director and to the complainant. The decision of the Director shall be final.

(6) General Provisions.

(a) Whenever the Program's Clients' Rights staff or the Division's Personal Advocacy Unit becomes aware of a situation that appears to require immediate action to protect the welfare and safety of any client, the Program's Clients' Rights staff or the Personal Advocacy Unit shall immediately notify the nearest available staff member with authority to correct the situation.

(b) In any situation that requires immediate action to protect a client's welfare or safety, the Regional Executive Director may be notified instead. If adequate corrective action is not taken by that staff member, the Clients' Rights staff or the Personal Advocacy Unit shall immediately notify the Regional Executive Director, or, if necessary, the Division Director or the Commissioner of the Department.

(c) No person shall be subject to any form of discipline or reprisal solely because he has sought a remedy through or participated in the procedures established by this Section 290-4-9-.04.

(d) Obstruction of the investigation or disposition of a complaint by any person shall be reported to the Program Director, who shall take action to eliminate the obstruction. Staff members are subject to adverse action for engaging in such obstruction, in accordance with personnel procedures of the Department or the personnel procedures of the governing authority.

(e) Time limits designated in this Section 290-4-9-.04 may be extended by the decision maker at each step for good cause only.

(f) This complaint procedure does not replace or invalidate any other Department policy or procedure pertaining to reporting requirements, disciplinary matters, or the like.

(g) Staff members who are involved in a complaint shall not be involved in the processing of that complaint.

Authority O.C.G.A. Chap. 37-2; Secs. 37-1-20; 37-1-22; 37-3-149; 37-4-109; 37-7-149. **History.** Original Rule entitled "Remedies for Violations" was filed on January 9, 1987; effective January 29, 1987.

Repealed: New Rule of same title adopted. F. Aug. 18, 1994; eff. Sept. 16, 1994, as specified by the Agency.

290-4-9-.05 Confidentiality.

(1) A service record for each client shall be maintained. The record shall include data pertaining to admission and such other information as may be required under regulations and standards of the Department. The service record shall not be a public record and no part of it shall be released except:

- (a) Service records of clients treated for alcohol and drug abuse shall be maintained in accordance with Volume 42 of the Code of Federal Regulations 42, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records," as now or hereafter amended. Volume 42 of the Code of Federal Regulations Part 2 and O.C.G.A. 37-7-166 control the disclosure provisions for clients treated for alcohol and drug abuse;
- (b) When the chief medical officer of the Program where the record is kept deems it essential for continued treatment or habilitation, a copy of the record or parts thereof may be released upon consent of the client to physicians or licensed applied psychologists when and as necessary for the treatment of or habilitation of the client;
- (c) A copy of the record may be released to any person or entity as designated in writing by the client or, if appropriate, the parent of a minor, the legal guardian of an adult or minor, or a person to whom legal custody of a minor patient has been given by order of a court;
- (d) When a client is admitted to a Program, a copy of the record or information contained in the record from another facility, community program, or a private practitioner may be released to the admitting Program. When the service/program plan of a client involves transfer of that client to another Program or hospital, a copy of the record or information contained in the record may be released to that Program or hospital;
- (e) A copy of the record or any part thereof may be disclosed to any employee or staff member of the Program when it is necessary for the proper treatment of the client;
- (f) A copy of the record shall be released to the client's attorney if the attorney so requests and the client, or the client's legal guardian, consents to the release;
- (g) In a bona fide medical emergency, as determined by a physician treating the client, the chief medical officer may release a copy of the record to the treating physician or to the client's psychologist;
- (h) The record shall be produced by the entity having custody thereof at any hearing held under O.C.G.A. Chapters 37-1, 37-3, 37-4, 37-5, or 37-7 at the request of the client, the client's legal guardian, or the client's attorney;
- (i) A copy of the record shall be produced in response to a valid subpoena or order of any court of competent jurisdiction, except for matters privileged under the laws of this State; provided, however, that disclosure of alcohol abuse or drug abuse client information shall be produced in response to a court order issued by a court of competent jurisdiction pursuant to a full and fair show cause hearing;
- (j) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of a criminal investigation may be informed whether a person with mental illness or mental retardation is or has been a client in a Program as well as the client's current address, if known; provided, however, that disclosure of alcohol abuse or drug abuse client information is not authorized by this paragraph.
- (k) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of investigating the commission of a crime on the premises of a Program or

against Program personnel or a threat to commit such a crime may be informed as to the circumstances of the incident, including whether the individual allegedly committing or threatening to commit a crime is or has been a client in the Program, and the name, address, and last known whereabouts of any alleged client perpetrator.

(2) Any disclosure authorized by this section or any unauthorized disclosure of confidential or privileged client information or communication shall not in any way abridge or destroy the confidential or privileged character thereof, except for the purpose for which such authorized disclosure is made. Any person making a disclosure authorized by this section shall not be liable to the client or any other person notwithstanding any contrary provision of O.C.G.A. Section 24-9, Article 2, as now or hereafter amended.

Authority O.C.G.A. Chap. 37-2; Secs. 37-1-53; 37-3-166 through 168; 37-4-125 through 127; 37-7-166 through 168; 37-8-50. **History.** Original Rule entitled "Confidentiality" was filed on January 9, 1987; effective January 29, 1987. **Repealed:** New Rule of same title adopted. F. Aug. 18, 1994; eff. Sept. 16, 1994, as specified by the Agency.

290-4-9-.06 Notification of Rights.

In addition to the provision of these Regulations Paragraph 290-4-9-.01(3), each Program shall display a notice in a prominent place of the availability and accessibility of these regulations Chapter 290-4-9 at each appropriate service site.

Authority O.C.G.A. Chap. 37-2; Secs. 37-1-23; 37-3-2; 37-4-3; 37-7-2. **History.** Original Rule entitled "Notification of Rights" was filed on January 9, 1987; effective January 29, 1987. **Repealed:** New Rule of same title adopted. F. Aug. 18, 1994; eff. Sept. 16, 1994, as specified by the Agency.