

# **DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL DISABILITIES**

## **CHAPTER 82-7**

Patient Cost of Care

## **SUBJECT 82-7-1**

Patient Cost of Care

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### **82-7-1-.01 Legal Authority**

The legal authority for this chapter, unless otherwise noted, is the Patient Cost of Care Act, O.C.G.A. Title 37, Chapter-9.

Authority: O.C.G.A. §37-9-1, et seq.

### **82-7-1-.02 Applicability**

This chapter applies to any state hospital under the control of the department and any facility that provides services to individuals that is controlled by a state hospital.

Authority: O.C.G.A. §37-9-1, et seq.

### **82-7-1-.03 Organization and Purpose**

The purpose of these rules is to effect the requirements of the Patient Cost of Care Act, which mandates that the Georgia Department of Behavioral Health and Developmental Disabilities establishes standards for determining assessments for patient cost of care, determines liability thereof, makes investigations thereof, establishes billing and collection procedures, and provides for hearings, among other requirements.

Authority: O.C.G.A. §37-9-1, et seq.

### **82-7-1-.04 Definitions**

(1) 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) "Assessment" means a determination by the Department of the amount payable by the persons liable for cost of care for services rendered to an individual; such amount shall be either the full cost of care or, if applicable, the amount payable toward cost of care, determined in accordance with the requirements of O.C.G.A § 37-9-5. There shall be a rebuttable presumption that the full cost of care be imposed. This presumption shall prevail until testimony, documentation, or evidence is provided pursuant to other provisions of O.C.G.A Title 37, Chapter 9.

- (b) “Commissioner” means the Commissioner of the Georgia Department of Behavioral Health and Developmental Disabilities, or the Commissioner’s designee.
- (c) “Cost of care” means the costs incurred for the support, care, and treatment of each individual, or the per patient average of such costs as determined by the Department on the basis of the estimated current operating costs of the hospital or an identifiable part or section thereof providing such services.
- (d) “Department” means the Georgia Department of Behavioral Health and Developmental Disabilities and includes its duly authorized agents and designees.
- (e) “Hospital Chief Financial Officer” means that person appointed by DBHDD’s Chief Financial Officer or their designee to manage the administration of the Patient Cost of Care Program.
- (f) “Income,” except for individuals who are residents of other states, means that amount determined by adding to the gross income as now or hereafter defined in Georgia income tax laws, minus deductions and personal exemptions as authorized by such income tax laws, in addition to the items listed in this paragraph, if such items are not already included in gross income as defined above. For an individual who is a resident of another state, “income” means the same as above except no deductions will be made for any deductions or personal exemptions as authorized by Georgia income tax laws. The following items are to be added, respectively:
1. Any amounts received by or on behalf of the person liable for cost of care from accident insurance or workers' compensation for total or partial incapacity to work, plus the amount of any damages received by or on behalf of the person liable for cost of care, whether by suit or agreement, on account of such injuries or sickness;
  2. The net income from property acquired by gift, bequest, devise, or descent;

3. Interest upon obligations of the United States government or of this state or of a political subdivision thereof;
4. The net income from individual holdings of stock in banks and trust companies incorporated under the banking laws of this state or of the United States;
5. Retirement income, social security benefits, veterans' benefits, and any other benefits that could be applied for the support of the individual served;
6. The net income from any other assets, including but not limited to personal property, real property, mixed property, and any other property or estate wherever located and in whatever form, inclusive of any assets sold or transferred within a period of ninety (90) days prior to the date services were first rendered to the individual by a hospital.

(g)"Individual" (formerly referred to as client, consumer, and/or patient) means any person who is admitted to or who receives services from a state hospital, including any person who is admitted to or receives services from a facility operated by a state hospital.

(h)"Persons liable for cost of care" means:

1. The individual served or their estate;
2. The individual's spouse;
3. The parent or parents of any individual under eighteen (18) years of age who is served;
4. Any fiduciary or representative payee holding assets for the individual or on their behalf, including, in such person's representative capacity, the guardian, trustee, executor, or administrator of any trust, estate, inheritance, or fund in which an individual has a legal or beneficial interest;

5. Any person, if not otherwise liable, listed as the insured member of a contract, plan, or benefit to the extent that such contract, plan, or benefit provides payment of hospitalization, medical expenses, and other health care services for the individual as a covered beneficiary or dependent;
6. A stepparent or any other person residing with and providing support of an individual under eighteen (18) years of age who has not been legally adopted by such stepparent or other person, with maximum liability limited to the amount such stepparent or other individual is authorized by Georgia income tax laws to claim as a standard deduction and personal exemption for the individual receiving services; provided, however, that this limitation shall not apply to liability pursuant to other provisions of this chapter regarding hospital, health, and other medical insurance, program, or plan benefits or subrogation rights.

(i) "State hospital" means any state hospital which now or hereafter comes under the control of the Department and any facility operated in conjunction therewith. This includes facilities operated by state hospitals that are not located on state hospital grounds and that also provide care or services to individuals.

Authority: O.C.G.A. § 37-9-2

#### **82-7-1-.05 Authority to Develop Procedures**

The Commissioner hereby is empowered to delegate authority to implement these regulations, including authority to determine assessments based on the standards prescribed in these Cost of Care regulations to the DBHDD Chief Financial Officer. Each determination of assessment shall be made pursuant to procedures developed under the direction of the Commissioner in accordance with these regulations and the Patient Cost of Care Act.

Authority: O.C.G.A. §37-9-1, et seq.

### **82-7-1-.06 Care of Individuals Not Related to Payment**

Care rendered to all individuals in state hospitals and programs shall be of the same nature and quality without regard to whether the payment of any sum or sums is made for the cost of care.

Authority: O.C.G.A. § 37-9-3.

### **82-7-1-.07 Responsibility for Cost of Care**

(1) Each individual receiving services from a state hospital shall be legally responsible for and shall pay to the Department of Behavioral Health and Developmental Disabilities, the cost of their care received from a state hospital. Payments for cost of care shall be payable following the receipt of services in accordance with standards and procedures established by the Department. In the event the Department is unable to collect the assessment from the individual served, or in the event the individual's assessment is less than the full cost of care for such individual, all other persons liable for the cost of care for such individual shall pay to the Department their respective assessments as provided by O.C.G.A § 37-9-5.

(2) The Department shall develop procedures by which it shall determine all persons who are liable for the cost of care of an individual and by which it shall notify such persons of their joint and several liability and of their assessment. Such notice shall offer opportunity for any person so notified to be heard to show cause, if there be any, why such person should not be liable for payment of the assessment, as provided by O.C.G.A § 37-9-5.

Authority: O.C.G.A. §37-9-1, et seq.

## **82-7-1-.08 Requirements for Procedures to Determine and Allocate Cost of Care**

(1)The Department shall establish:

- (a)A method for determining cost of care;
- (b)A method for assessing the portion of cost of care owed by each individual;
- (c)A method for determining other persons liable for cost of care for each individual;
- (d)A method for notifying each individual (including any representative of that individual designated in accordance with GA COMP. R. & REGS § 82-5-1.07(2)) and/or persons liable for cost of care of the responsibility for assisting the Department in assessing cost of care, the assessment of the individual's cost of care, and the right to contest and appeal the assessment of the cost of care for which that person is liable.

(2)The Department's procedures shall meet the following requirements:

- (a)The procedures shall comply with the Patient Cost of Care Act, O.C.G.A. Title 37, Chapter 9.
- (b)The procedures shall ensure each individual receives appropriate care and treatment regardless of any issue related to cost of care.
- (c)The procedures shall ensure that each assessment of an individual's responsibility for cost of care will be based upon:

1. a determination that each individual has exhausted his or her eligibility and receipt of benefits under all other existing or future private, public, local, state, or federal programs or plans and;
2. upon a process by which the Department assesses and recovers the cost of an individual's care from the individual and from or any other persons or entities who may be liable for such patient's cost of care if such patient is eligible for benefits under any other program or plan.

Authority: O.C.G.A. §37-9-1, et seq.

### **82-7-1-.09 Standards for Assessments**

(1) Standards for determining assessments are based on the income, assets, insurance, and other third-party coverage or entitlements, and other circumstances of persons liable for cost of care.

(2) The Department hereby establishes the assessment for cost of care for any individual covered by a contract of insurance or other third-party reimbursement contract or entitlement as:

(a) the total amount payable under such contract or entitlement up to the total cost of care, or that portion of cost of care payable under such contract or entitlement; provided, however, that if benefits payable under such contract or entitlement are less than the total cost of care, the amounts payable by all persons liable for cost of care toward any remaining balance shall be determined by application of the standards prescribed in paragraphs (3) and (4), below; further provided, however, that:

1. amounts payable toward any remaining balance for an individual eligible under any insurance contract, plan, or benefit shall be determined in accordance with any provisions for payment stipulated by the insurance

contract, plan, or benefit as a requirement for participation in the insurance, plan, or benefit;

2. amounts payable toward any remaining balance for an individual eligible under the Medical Assistance Program (Title XIX of the Social Security Act) shall be determined in accordance with the provisions of the Georgia State Plan for Medical Assistance; and

3. amounts payable toward any remaining balance for a person eligible under the Medicare Program (Title XVIII of the Social Security Act) shall be determined in accordance with the regulations and policies of the Social Security Administration; or,

(b) the total amount payable under such contract or entitlement which exceeds total cost of care if paid in accordance with the provisions or regulations of such contract or entitlement.

(3) The Department shall develop a standard scale for determining assessments for cost of care for all individuals and other persons liable for cost of care, except as provided in paragraph (2) above, or further provided in paragraph (3) below, derived by application of the following factors:

(a) for all individuals except as provided in paragraphs (b) or (c) below:

1. poverty income guidelines published by the federal government, effective upon issuance by the Department; but effective not later than sixty (60) days following the publication date of the revised guidelines in the Federal Register;

2. total of deductions and personal exemptions allowable under Georgia Income Tax laws and regulations; except (1) no deductions or personal exemptions will be allowed to persons residing in another state, and (2) no deductions or personal exemptions will be allowed more than once in calculating assessments of the individual and other responsible parties for each individual served;

3. a graduated range of income levels in excess of the sum of (3)(a)1. and (3)(a)2. above;
4. the number of dependents as defined by Georgia Income Tax Laws and regulations, except that no dependent is to be reflected more than once in calculating assessment(s) for any one individual served;
5. a base and graduated percentage charge associated with each income level;
6. a charge in conjunction with the initial and any subsequent annual assessment associated with assets that are not exempt from Medicaid or Social Security calculations equal to five percent (5%) of accumulated non-exempt assets; except, effective January 1, 1993, for individuals hospitalized six (6) continuous months and having assets accumulated from government benefit payments, a charge associated with assets will be made as provided in paragraph (c) below;

(b)for individuals remaining in inpatient care in State Hospitals longer than three (3) continuous months but fewer than six (6) continuous months, who receive monthly benefits or funds:

1. on earned income and other income which is not paid or otherwise available to be paid on a regular monthly basis, the same factors as (3)(a)1.-5.;
2. on benefits or other funds paid or available to be paid on a regular monthly basis, even though actual payments may occur at a different interval of time:
  - (i.) total of benefits and funds received or available to be received on a monthly basis;
  - (ii.) a deduction equal to the amount of the personal needs allowance allowed individuals in state operated hospitals or

state operated facilities, in accordance with the State Medical Assistance Plan;

- (iii.) any other deduction that the Department clearly defines by published policy prior to allowing such deduction;
- (iv.) a charge in conjunction with the initial and any subsequent annual assessment associated with assets that are not exempt from Medicaid or Social Security calculations equal to five percent (5%) of accumulated non-exempt assets; except, effective January 1, 1993, for individuals hospitalized for six (6) continuous months and having assets accumulated from government benefit payments, a charge associated with assets will be made as provided in paragraph (c) below.

(c) for patients hospitalized six (6) or more continuous months and remaining in inpatient status, who have accumulated assets from government benefit payments, effective January 1, 1993:

1. a charge for full cost of care against the individual's accumulated assets which are in excess of allowed limits as those for establishing eligibility for institutionalization benefits under the State Medical Assistance Plan and which are not otherwise exempt and counted as resources of the individual under the State Medical Assistance Plan.

(4) The Department prescribes the same standard scale referenced in Paragraph (3), above, for a stepparent or other person residing with and providing support of an individual under eighteen (18) years of age who has not been legally adopted by such stepparent or other person; except, after application of the factors in paragraphs (3)(b)–(c) to derive an assessment for such individual, liability will be capped at the total amount such individual is authorized by Georgia income tax laws to claim as a standard deduction and personal exemption for the individual.

1. This provision of limited liability does not apply to hospital, health, and other medical insurance, program, or plan benefits payable toward cost of care; any benefits or funds or other entitlements for which the individual is eligible; or to any subrogation rights as provided by law.
2. The resultant standard scale shall be published in a uniform table and is hereby incorporated into these rules, and by reference, made a part thereof. Copies of the standard scale shall be available on request at each Hospital Patient Accounts Office.

Authority: O.C.G.A. §§ 37-9-2, 37-9-5, 37-9-6, 37-9-7, 37-9-8, 37-9-9.

#### **82-7-1-.10 Reassessments/Redeterminations**

- (1) The Department shall reexamine the individual's assessment periodically and adjust such assessment as hereinafter provided in accordance with changes in the ability to pay of the person liable for cost of care and in a manner that complies with the Patient Cost of Care Act. If the Department determines that the economic circumstances of a person liable for cost of care have improved to an extent justifying an increase in the assessment, any such increase shall apply only to cost of care for services rendered for the individual after the effective date of the increase in assessment. No such increase shall cause the assessment to exceed the total cost of care. The Department may not increase an assessment without affording the person liable for cost of care an opportunity for a hearing on the increase in the assessment. A person liable for cost of care may apply to the Department for a change in the assessment when the person's economic circumstances have changed sufficiently to adversely affect their future ability to pay. If an assessment for services previously rendered for an individual is being paid in accordance with a scheduled plan of payments approved by the Department, then a reduction in assessment because of a change in the economic circumstances affecting the ability to pay of the person liable for cost of care may apply to that portion of the assessment which remains unpaid as of the date of the reduction, as well as to the assessment for cost of services rendered

after the date of the reduction. However, no such reduction shall require the refund of any payments made on an assessment prior to the date of the reduction. After investigation and hearing, the Department shall act upon the application made by the person liable for cost of care. Any redetermination of the assessment pursuant to this subsection shall be subject to the requirements of O.C.G.A § 37-9-6. Notwithstanding any reexamination or corresponding adjustment of an assessment which might be afforded, each assessment shall be valid for a period of twelve (12) months from the date of the initial assessment or any reassessment thereafter. No reduction, increase, or opportunity for hearing shall be allowed after the assessment period.

(2) All assessments determined under the provisions of the Patient Cost of Care Act, and in accordance with the standards prescribed in Rule 82-7-1-.09 above, shall be subject to redetermination under any of the following circumstances:

(a) On request of any person who has been notified of liability for payment of cost of care in either their personal or representative capacity;

(b) On discovery by the Department of error, omission, or false statements which were relied upon by the Hospital Chief Financial Officer in determining assessments for cost of care;

(c) On discovery by the Department of changes in economic circumstances of any person liable for cost of care assessments; and

(d) At the end of a period not to exceed twelve (12) months from the date an assessment was originally made.

(3) Except as determined under the provisions of paragraph (2) above, no redetermination shall increase the assessment for cost of care for services received prior to such redetermination. Such redetermination may decrease assessments for care previously received if a change in

economic or other circumstances so dictates. However, no such reduction shall require the refund of any payments made on an assessment prior to the date of the reduction of the assessment.

- (4) The Department may accept payment for full cost of care if any person liable for cost of care offers such payment in lieu of declaring financial circumstances and having an assessment determined by hearing.
- (5) The Department shall adopt and comply with procedures to inform adequately individuals served and other persons liable for the cost of care of their right to hearings and of their right to request reassessments.

Authority: O.C.G.A. §§ 37-9-4, 37-9-5.

### **82-7-1-.11 Investigation of Income and Assets of Persons Liable for Cost of Care**

(1) As provided in O.C.G.A. § 37-9-7, the Department, through its duly authorized agents, has the authority to investigate or otherwise determine the income and assets of the individual served or their estate and, when necessary, the income and assets of all other persons liable for the cost of care of such individual to determine ability to pay cost of care. Furthermore, all persons liable for cost of care must provide signed consent forms to authorize an investigation to determine the income and assets of such persons to determine ability to pay cost of care. The Department shall further have the authority to contract with any person, firm, or corporation it finds necessary to provide the information appropriate for carrying out its duties under this chapter.

(2) The Department requires declarations to be filed by the individual served or other persons liable for cost of care necessary to determine the assessments required by this regulation and shall prescribe the form and content thereof. All such declarations are to be regarded as essential to carrying out the public policy of this state; any person who knowingly falsifies such declarations may be referred to law enforcement. If an individual served or other person liable for cost of care fails to provide information required by such declarations or provide signature of consent for the Department to conduct an investigation authorized by subsection (1) of this section, that failure shall create a rebuttable presumption that the individual or other persons liable for cost of care consent to and agree with the

assessment of the full cost of care, and the declaration shall contain on its face, conspicuously and in clear language, a statement to that effect.

(3) As provided in O.C.G.A. § 37-9-7, the Department, through its duly authorized agents, has access to Georgia income tax records for the purpose of obtaining necessary information to enforce this regulation. Upon the request of the Department or its duly authorized agents, the state revenue commissioner and their agents or employees shall disclose such income tax information contained in any report or return required under Georgia law as may be necessary to enforce the provisions of this chapter. Any tax information secured from the federal government by the Department of Revenue, pursuant to express provisions of § 6103 of the Internal Revenue Code, may not be disclosed by the Department of Revenue pursuant to this subsection. Any person receiving any tax information or tax returns under the authority of this subsection shall be considered either an officer or employee as those terms are used in O.C.G.A § 48-7-60(a); accordingly, any person receiving any tax information or returns under the authority of this subsection shall be subject to O.C.G.A § 48-7-61.

(4) Any evidence, records, or other information obtained by the Department or its duly authorized agents pursuant to the authority of this section is confidential and shall be used by the Department or its agents only for the purposes of enforcing this regulation and shall not be released for any purpose other than a hearing provided for by this regulation.

(5) Persons with no other documentation or evidence may sign an affidavit attesting to their indigent financial status.

(6) In addition to the use of income for determining assessments for the payment of cost of care, any other assets of a person liable for cost of care, except as provided in this regulation, shall be considered in determining an assessment and is liable to be assessed for the payment thereof. Such assets include any tangible or intangible property or any combination thereof and also include the net proceeds derived from the disposition of any such property, including any disposition of any such property which took place ninety (90) days or less prior to the date services were first rendered to the individual by a hospital. When the income of a person liable for cost of care is sufficient to determine that an assessment should be made for the total cost of care, it shall not be necessary for the Department to investigate and

determine the other assets of such person; but such investigation and determination may be made by the Department if necessary to collect the assessment from the person liable for cost of care.

(7) The following assets of a person liable for cost of care shall be exempt from subsection (6) of this section:

(a) Real property which qualifies for a homestead exemption from ad valorem taxation; and

(b) Any other real property which constitutes the principal residence of the person liable for cost of care, but which does not qualify for a homestead exemption under this subsection.

(8) Notwithstanding any other provisions of this section, as of January 1, 1993, following six (6) months of continuous inpatient hospitalization, the Department is expressly authorized to levy an assessment for the full cost of care against the assets of all individuals having assets accumulated from government benefit payments in excess of amounts allowed by the eligibility resource limit for institutionalized residents established by Title XIX of the Social Security Act of 1935, as amended, and regulations promulgated pursuant thereto, until said assets are reduced to a level which would establish resource eligibility under such program for the individual served; provided, however, that the assets listed in § 82-7-1-.09 shall be exempt from such assessment if said assets would also be an excluded resource under eligibility criteria of Title XIX of the federal Social Security Act. Following April 13, 1992, the Department shall provide notice regarding the provisions of this subsection to individuals and family members or other appropriate persons who may be affected by the provisions of this subsection.

(9) Nothing in this regulation shall be construed to supersede the provisions of the Revised Georgia Trust Code of 2010, O.C.G.A Title 53, Chapter 12.

Authority: O.C.G.A. § 37-9-7.

### **82-7-1-.12 Sources of Payment of Cost of Care**

(1) Notwithstanding any other provisions of law, the Department is not required to expend public funds for the purpose of providing support,

care, and treatment covered under this regulation to any individual until such individual has exhausted the individual's eligibility and receipt of benefits under all other existing or future private, public, local, state, or federal programs or plans.

- (2) Before the Department expends public funds for an individual's cost of care, the Department may assess and recover the cost of an individual's care from the individual served or other persons liable for such individual's cost of care if such individual is eligible for benefits under any other program or plan.

Authority. O.C.G.A. § 37-9-9.

### **82-7-1-.13 Administrative Hearing Procedures**

- (1) Hearings shall be conducted by the Office of State Administrative Hearings ("OSAH") after referral of any request for a hearing to OSAH.
- (2) On request of a party affected by an assessment for cost of care to challenge the assessment, the Hospital receiving such a request will forward the request to the department's legal office so that an OSAH Form 1 may be filed.
- (3) DBHDD Legal Services may attempt to resolve the issue with the person requesting a hearing prior to forwarding an OSAH Form 1 to OSAH. The department shall develop policies and procedures that set forth the manner such a request is handled. If the matter is not resolved informally, the department's legal office will file the OSAH Form 1 with OSAH.

Authority: O.C.G.A. § 37-9-10.

### **82-7-1-.14 Actions for Collection**

The Department shall bill persons liable for cost of care for the amount due on their assessments in the same manner as other debts and accounts. No bill shall be payable unless it contains the dates of service for which the costs billed therein were incurred. The Department is authorized to maintain in the name of the Department and the State of Georgia any action at law or equity in any court of this state or any other state which may be necessary to collect such sums.

Authority: O.C.G.A. § 37-9-11.

### **82-7-1-.15 Severability**

If any rule, sentence, clause or phrase of any of the rules and regulations in this Chapter may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining rules or portions thereof. The remaining rules or portions thereof shall remain in full force and effect as if such rule or portions thereof so determined, declared or adjudicated invalid or unconstitutional were not originally part of these rules.

Authority: O.C.G.A. §§ 37-1-23, 37-1-40, 37-1-41, 37-3-2, 37-4-3, 37-7-2, 37-9-13.