

**DEPARTMENT OF BEHAVIORAL HEALTH AND
DEVELOPMENTAL DISABILITIES**

CHAPTER 82-5

Patient's Rights

SUBJECT 82-5-1

Patient's Rights

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These rules are adopted and published pursuant to the Official Code of Georgia Annotated (O.C.G.A.) Title 37, Chapters 3, 4, and 7.

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

82-5-1-.02 Purpose, Implementation, and Definitions.

- (1) Purpose. The Purpose of these regulations is to safeguard the rights of persons treated pursuant to the Official Code of Georgia Annotated (O.C.G.A.) Chapters 37-3, 37-4 and 37-7.
- (2) Applicability. These regulations set forth rights of individuals served in hospitals and intermediate care facilities for individuals with intellectual disabilities that are owned and operated by the Department.
 - (a) When the individual is a minor or an adult with a legally appointed guardian, the regulations are applicable to that person with certain exceptions as specifically stated in various parts of the regulations. These variations are noted in the text of the regulations.
 - (b) 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 or conflict with the provisions of the order or the need to provide for the safety of the individual or of others.
- (3) Implementation. Each facility shall instruct each staff member in the contents of these regulations. Each facility also, at the beginning of each individual's treatment, shall notify the individual or the individual's parent or guardian, if applicable, of the rights and remedies contained in these regulations and of their applicability to the individual. Notifications shall be done in a manner commensurate with the individual's abilities and capabilities of comprehension and understanding.
- (4) Definitions. Unless a different meaning is required by the context, the following terms used in these regulations shall have the meanings hereinafter set forth:
 - (a) "Chief Medical Officer" means the physician designated by the chief administrative officer of the facility with overall responsibility for individual treatment at any facility receiving individuals pursuant to O.C.G.A. Chapters 37-3 or 37-7, or their designee. Where individuals are receiving treatment under the provisions of O.C.G.A. Chapter 37-4, this term shall include the term "Regional Hospital Administrator" when applicable.
 - (b) "Court," with the exception of references in these regulations to courts presiding over criminal cases in which an individual has been found incompetent to stand trial or not

guilty by reason of insanity, 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 individual or the county in which such individual is found. In the case of an individual who is under the age 17 years, it means the juvenile court for the county of residence of the individual or the county in which such individual is found.

- (c) "Department" means the Georgia Department of Behavioral Health and Developmental Disabilities and includes its duly authorized agents and designees.
- (d) "Facility" means any State-owned or State-operated Hospital and any State-owned or State-operated Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID).
- (e) "Guardian" means a person appointed by a Court under O.C.G.A. Title 29 to act on behalf of an individual who has been judicially determined to lack sufficient capacity to make or communicate significant responsible decisions concerning his or her health or safety.
- (f) "Individual" means any person with mental illness who receives treatment in a facility pursuant to O.C.G.A. Chapter 37-3 and any person with a substance use disorder who receives treatment in a facility pursuant to O.C.G.A. Chapter 37-7. It also includes any person with an intellectual or developmental disability who receives habilitation in a facility pursuant to O.C.G.A. Chapter 37-4. "Individual" also includes a person for whom treatment or habilitation is sought. "Individual" also includes those who receive such services pursuant to a Court Order in a criminal case, including persons who are committed to a facility after having been found incompetent to stand trial or not guilty by reason of insanity.
- (g) "Individualized service plan" (ISP; also referred to as "Individual Recovery Plan" or IRP) means a plan that is developed during an individual's stay in a facility, and that includes specific elements based on the reason for the individual's stay, as follows:
 - 1. If the individual's stay in the facility is pursuant to O.C.G.A. Chapter 37-3 (i.e. related to mental illness as contemplated by that Chapter) or Chapter 37-7 (i.e. related to substance use as contemplated by that Chapter), the ISP must be specifically tailored to the individual's treatment needs, and shall clearly include the following:
 - (i) A statement of treatment goals or objectives, based upon and related to a proper evaluation, which can be reasonably achieved within a designated time interval;

- (ii) Treatment methods and procedures to be used to obtain these goals, which methods and procedures are related to these goals and which include a specific prognosis for achieving these goals;
 - (iii) Identification of the types of professional personnel who will carry out the treatment and procedures, including appropriate medical or other professional involvement by a physician or other health professional properly qualified to fulfill legal requirements mandated under State and Federal law;
 - (iv) Documentation of the individual's involvement and, if applicable, the individual's acceptance of and/or adherence to the service plan; and
 - (v) A statement attesting that the chief medical officer or Regional Hospital Administrator, or that person's designee if such designee is a physician appointed in writing, has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive available environment possible, closest to the individual's home community.
2. The ISP also includes the corresponding individualized program plan for an individual's stay in a facility pursuant to O.C.G.A. Chapter 37-4 (i.e. related to habilitation for intellectual/developmental disabilities as contemplated by that Chapter). Such an ISP shall be updated on a continuing basis, and shall include, at a minimum, the following elements:
- (i) A statement of the nature of the specific problems and the specific needs of the individual;
 - (ii) A statement of the least restrictive setting available and conditions necessary to achieve the purposes of habilitation based upon the needs of the individual;
 - (iii) A description of intermediate and long-range goals with the projected timetable for their attainment;
 - (iv) A description of the proposed program, facility, or department(s) responsible for involvement with the individual to attain these goals;
 - (v) An explanation of criteria for acceptance or rejection of other alternative settings for habilitation; and
 - (vi) Proposed criteria for release to less restrictive settings for habilitation.
- (h) "Intermediate Care Facility for Individuals with Intellectual Disabilities" means a facility in which only individuals served pursuant to O.C.G.A. Chapter 37-4 are served.

- (i) "Physician" means any person duly authorized to practice medicine in this State pursuant to O.C.G.A. Chapter 43-34 and, unless otherwise noted in these regulations, an Advanced Practice Registered Nurse or Physician Assistant practicing under the direction or supervision of a practicing Physician.
- (j) "Regional Hospital Administrator" means the chief administrative officer who has overall management responsibility at any facility receiving individuals pursuant to O.C.G.A. Chapters 37-3, 37-4, and 37-7, or an individual appointed as the designee of such Regional Hospital Administrator.
- (k) "Representative" means the person appointed pursuant to O.C.G.A. Title 37, Chapters 37-3, 37-4, or 37-7 to receive notices and perform other actions authorized by O.C.G.A. Title 37, Chapters 3, 4, and 7.
- (l) "Staff member" or "staff" means any person who is an employee, independent contractor, or other agent of the Department or of a facility. The use of "staff member" in these regulations for such persons shall in no way alter the legal relationship between such persons and the Department or subject the Department to any liability to which it is not otherwise subject.
- (m) "Treatment" means care; diagnostic services; therapeutic services, including the administration of medications; and any other service for the treatment or habilitation of an individual. It includes such services, as well as social service care, vocational rehabilitation, and career counseling. It also includes habilitation of an individual pursuant to O.C.G.A. Chapter 37-4.

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

82-5-1-.03 Treatment.

(1) Appropriateness.

- (a) General. Each individual shall receive care and treatment that is suited to the individual's needs in the least restrictive environment available offering appropriate care and treatment.

(b) Individual Service Plans.

1. The examination of individuals shall be governed as follows:

- (i) For individuals being treated pursuant to O.C.G.A. Chapters 37-7 and 37-3, each individual shall be assessed by the staff as soon as possible after admission, but within the time limits contained within O.C.G.A. Chapters 37-7 and 37-3, or 48 hours, whichever comes first;

- (ii) Admissions to facilities may no longer take place under O.C.G.A. Chapter 37-4.

2. The development of an individualized service plan shall be governed as follows:

- (i) For persons being treated in a hospital pursuant to O.C.G.A. Chapters 37-7 and 37-3, staff shall develop an individualized service plan for each individual as soon after the initial assessment as practicable, but within the time limits contained within O.C.G.A. Chapters 37-7 and 37-3 or 10 days, whichever comes first;
- (ii) Admissions to facilities may no longer take place under O.C.G.A. Chapter 37-4.

3. Each individualized service plan shall be reviewed at regular intervals to determine the individual's progress toward the stated goals and objectives of the plan and to determine whether the plan should be modified because of the individual's present condition. These reviews should be based upon relevant progress notes in the individual's clinical record and upon other related information. Information from the individual and other sources, including family members, should be obtained and utilized where feasible. Reviews should be conducted as required by applicable standards such as those required by Medicare, Medicaid, and the Joint Commission.

(c) Physical Restraints, and Seclusion.

- 1. Seclusion may not be used with individuals who are served by a DBHDD ICF/IID facility. Use of physical restraints in a DBHDD ICF/IID must comply with the requirements of the State Operations Manual of the Centers for Medicare and Medicaid Services, Appendix J; relevant federal regulations; and O.C.G.A. § 37-4-124.
- 2. Other use of seclusion or restraint under these regulations shall only be accomplished in a manner that complies with the requirements of the State Operations Manual of the Centers for Medicare and Medicaid Services, Appendix A; relevant federal regulations; O.C.G.A. § 37-3-165; and O.C.G.A. § 37-7-165.
- 3. "Time-out" means a situation in which an individual is placed in a room from which egress is prevented. This definition applies only for an individual admitted pursuant to Chapter 37-4. A time-out is permitted only if all of the following conditions are met:
 - (i) the placement is a part of an approved systematic time-out (emergency placement of an individual into a time-out room is not allowed under these regulations); and

- (ii) the individual is under the direct, constant visual supervision of designated staff; and
 - (iii) the door to the room is held shut by staff, or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged.
4. The Department shall establish and maintain policies that set forth the manner in which Department staff will comply with these requirements.

(2) Participation of Individual.

- (a) Access to information. Each individual and the individual's guardian (if applicable and not prohibited by law), or in the case of a minor individual the individual and the individual's parent(s) (unless prohibited by law), shall:
- 1. have the right to review the individual's own medical records subject to conditions in § 82-5-1-.06(3) of these regulations, the right to be told their diagnosis, and the right to be consulted and informed about the treatment recommendation and any risk involved;
 - 2. have the right to be fully informed about the individual's medication, including its side effects and available treatment alternatives; such disclosures shall be made unless the disclosure to the individual is determined by the chief medical officer, the Regional Hospital Administrator, or the individual's treating physician to be detrimental to the individual's physical or mental health and unless a notation to that effect is made part of the individual's record; and
 - 3. have the right to be so informed about matters related to the individual's treatment or habilitation, as required or allowed under these regulations, to the fullest extent possible in a manner that is commensurate with the individual's, guardian's, and/or parent's abilities of comprehension and understanding; such information shall not be withheld from a guardian or parent of a minor child in cases in which disclosure is to be made to that person.
- (b) Consent to Medical Treatment and Involuntary Administration of Psychotropic Medication. The Department shall recognize the personal physical integrity of all individuals and their rights to consent to or refuse medical treatment.
- 1. No treatment of any kind shall be administered by the Department to an individual if that individual refuses the treatment prior to the treatment, except that:
 - (i) Psychotropic medication may be administered without the consent of the individual or other person where a physician determines that refusal

would be unsafe to the individual or others. If the individual continues to refuse medication after such initial emergency treatment, a concurring opinion from a second physician must be obtained before medication can be continued without the individual's consent. Additionally:

- (I) All psychotropic medications shall be used solely for the purposes of providing effective treatment and protecting the safety of the individual and other persons and shall not be used as punishment or for the convenience of staff; and
 - (II) The Department shall establish and maintain policies that set forth the manner in which Department staff may administer psychotropic medication in compliance with state and federal law in cases where and individual does not consent to administration of such medication.
- (ii) For an adult individual who has been judicially determined to be incompetent to give consent or make decisions of a similar nature, consent for treatment shall be obtained from the individual's guardian with capacity to make such decisions, provided the individual does not refuse to consent to medical treatment; however, nothing in this subsection should be construed as to abridge any rights of an individual 18 years of age or over to refuse to consent to medical treatment as to his own person. If the individual is a minor, consent shall be obtained from the minor's parent or guardian.
 - (iii) In the absence of a guardian of an adult, if there is a determination in the medical record by a licensed physician after the physician has personally examined an adult that the adult lacks sufficient understanding or capacity to make significant responsible decisions regarding his or her medical treatment or the ability to communicate by any means such decisions, consent shall be obtained from a surrogate who is authorized under Georgia law to consent to such treatment.
 - (iv) When treatment is being provided by an outside provider, the responsibility for determining capacity of the individual to consent, and subsequently obtaining consent, lies with the outside provider.
 - (v) When the treatment for which consent is sought is not standard psychiatric treatment, the consent obtained from the persons listed in this section shall not be sufficient to authorize the treatment unless court approval is also obtained after a hearing. Standard psychiatric treatment shall not include insulin coma or psychosurgery.
 - (vi) In cases of grave emergency where the medical staff of the facility determines that immediate surgical or other intervention is necessary to

prevent serious physical consequences or death, and where delay in obtaining consent would create a grave danger to the physical health of the individual as determined by at least two physicians, then essential surgery or other intervention may be administered without the consent of the individual or other person. In such cases, a record of the determination of the physicians shall be entered into the medical records of the individual and this will be the prior consent for such surgery or other intervention. Such consent shall be valid notwithstanding the type of admission of the individual, and it shall also be valid whether the individual has been adjudicated incapacitated pursuant to O.C.G.A. Title 29. Actual notice of any action taken pursuant to this section shall be given to the individual and the spouse, next of kin, attorney, guardian, or representative of the individual as soon as practicable.

(3) Participation of Representative.

- (a) Two representatives shall be appointed for each individual whose rights are the subject of these regulations. If two representatives cannot be located, a guardian ad litem shall be requested from the Court by the relevant facility. Appointments shall be made in accordance with Rule .07 of this Chapter.
- (b) The Department shall establish and maintain policies that set forth the rights and responsibilities of representatives and of individuals with regard to their representatives in a manner that complies with O.C.G.A. Title 37, Chapters 3, 4, and 7.

(4) Private Physician.

- (a) If an individual is able to secure the services of a private physician who is not on the medical staff of the facility, the individual shall have the right to have that physician visit the individual at the inpatient facility. The individual or the individual's guardian, parent, or other surrogate, if applicable, shall sign a written form indicating the name, telephone, and address of the private physician and requesting that the physician be allowed to make such visits. Thereafter, the private physician shall be allowed to visit the individual at the inpatient facility at any reasonable time, and subject only to other reasonable regulations. The staff shall require the private physician to produce proper identification and proof of current certification as a physician upon the initial visit and thereafter as necessary. The private physician shall be provided a private area in which to examine and consult with the individual. Upon the individual's written authorization, the private physician shall be allowed to examine the individual's clinical record.
- (b) As such an examination by a private clinician is required by law, a private clinician who examines an individual in a facility of the Department under this provision is not required to be credentialed by the facility where the examination takes place.

Authority: O.C.G.A. §§ 37-1-23, 37-1-40, 37-1-41, 37-3-2, 37-4-3, 37-7-2, 37-3-43, 37-7-43, 37-3-85, 37-4-44, 37-7-85, 37-4-124, 37-3-165, 37-7-165, 37-3-162, 37-4-122, 37-7-162, 37-3-167, 37-4-126, 37-7-167, 37-3-163, 37-4-123, 37-7-163, 31-9-1 et seq., 37-3-147, 37-4-107, 37-7-147.

82-5-1-.04 Treatment Environment.

(1) General.

- (a) The dignity of each individual shall be respected at all times and upon all occasions, including any occasion on which the individual is taken into custody, detained, or transported. Except where required under conditions of extreme urgency, those procedures, facilities, vehicles and restraining devices normally used for criminals or those accused of crime shall not be used in connection with individual, to the extent that this is under the Department's control.

(2) Abuse, Neglect, and Sexual Activity.

- (a) Abuse or neglect of any individual is prohibited. A staff member may use only such force as is necessary to restrain and secure an individual threatening imminent harm, or committing harm, to himself or others, and may use only such force as is necessary to prevent an involuntary individual from leaving a facility. Such necessary force shall not constitute abuse. For the purpose of this section, an involuntary individual is one who is being treated involuntarily, or who is being examined or evaluated to determine the need for involuntary treatment, or who is the subject of a petition and certificate seeking involuntary treatment.
- (b) No staff member shall engage in any sort of sexual activity with any individual.
- (c) The Department shall establish and maintain policies requiring incident management. All incidents are to be immediately reported in accordance with Department policy by staff who witness an incident of abuse or sexual activity. A staff member who fails to comply with the applicable requirements of this Section shall be subject to adverse action in accordance with personnel procedures of the Department or the governing authority.

(3) Personal Effects.

- (a) An individual's right to the individual's personal effects shall be respected. Each individual admitted to or treated in a facility must be provided with individual storage space for the individual's belongings as space permits. An individual's right to retain the individual's personal property may be restricted for the following reasons:

1. To protect the health or safety of the individual or others;
 2. To prevent the individual from using an item that would interfere with the orderly operation of the facility;
 3. To protect the individual's valuable property when there is substantial risk that it will be lost or stolen; or
 4. Where the property constitutes contraband.
- (b) Each facility shall encourage and assist each individual to provide for the safekeeping of the individual's money in bank accounts, and the safekeeping of the individual's other valuables in safe places maintained by the facility.
- (c) Whenever an individual's personal property is retained by the facility, a detailed notation listing the items retained by the facility shall be made in the individual's record. In addition, the individual shall be provided with a receipt if the individual so requests.
- (d) At the time an individual is discharged, or as agreed to by the facility and the individual, all money and personal effects placed in the facility's custody shall be returned, except where possession of a certain item by an individual would be illegal.
- (e) No staff member shall be responsible for the loss of or damage to an individual's property where reasonable efforts to assure the safety of that property have been made.
- (f) An individual's personal effects may not be examined or searched after the individual's admission unless the individual (or the individual's guardian or parent, if applicable) consents to the search, or unless the chief medical officer or Regional Hospital Administrator, upon personal knowledge or information provided by staff members or other reliable persons, determines there is reasonable cause for believing the individual has an item or items that may be dangerous or whose possession is illegal. If a search is deemed necessary, the reasons for it must be recorded in the individual's record along with the date, time, and result of the search. The individual has a right to be present at any search and told the reason for the search, except when such search is deemed urgent for safety reasons and the individual or resident is not immediately available. Nothing in this section shall prevent the facility from making an inventory of items in the individual's possession at the time of their admission or from assisting the individual, as required by the individual's condition, in the care and upkeep of the individual's belongings. This section does not apply to locations in a facility where there is no reasonable expectation of privacy or upon return of an individual to a facility or to a unit of a facility.

(4) Communications and Visits.

(a) Mail. Receiving and sending mail shall be governed as follows for individuals being treated on an inpatient basis in a hospital pursuant to O.C.G.A. Chapters 37-7, 37-3 and 37-4.

1. Each individual shall be allowed to receive and send sealed, unopened correspondence, and no individual's correspondence shall be opened, delayed, held or censored by the facility, except under the following conditions:

(i) If there are reasonable grounds to believe that incoming mail contains items or substances which may be dangerous to the individual or others, the chief medical officer or Regional Hospital Administrator may direct reasonable examination of such mail and disposal of items or substances found therein. All writings must be presented to the individual within 24 hours of inspection. A requirement that an individual open a package or letter in the presence of staff does not, where staff do not read any writings contained in the package or letter, constitute an examination for purposes of this regulation.

(ii) The Chief Medical Officer or Regional Hospital Administrator may apply to the court for a temporary order to restrict outgoing mail. The court, upon a showing of probable cause that such mail is dangerous to the individual or others, may grant a temporary restriction of the individual's mail privileges, provided that within 5 days after the issuance of such temporary order, the court holds a hearing to determine whether an order of restriction for an extended time shall issue.

(I) In no event shall mail be restricted pursuant to such temporary order for more than 5 days.

(II) If the court determines the individual's outgoing mail is dangerous to the individual or others, it may order the mail restricted for a period not to exceed 30 days.

(III) The court order may be renewed as necessary for periods not to exceed 30 days, with a new hearing to take place each time.

(IV) The chief medical officer or Regional Hospital Administrator of the facility shall restrict communication as provided in the court order.

(iii) Any restriction of incoming or outgoing mail under this section shall not exceed a period of 5 days, except that such restriction may be renewed by the chief medical officer or Regional Hospital Administrator for a period not to exceed 5 days, provided that such

renewal periods in the aggregate shall not exceed the period specified in the court order when outgoing mail is restricted pursuant to such order. Prior to a renewal, the chief medical officer or Regional Hospital Administrator shall make a new determination that such mail continues to be dangerous to the individual or others.

- (iv) Correspondence of the individual with the individual's attorney shall not be restricted under this Section, nor shall correspondence to an individual from a public official be restricted under this section.
- (v) Each time an individual's incoming or outgoing mail is examined, written notice of the examination, and notice of the right to a full and fair hearing within 5 days after a temporary court order, shall be served on the individual and the individual's representatives as provided in § 82-5-1-.07 of these regulations. An individual (other than an individual whose status is involuntary) may waive in writing such notice to the individual's representatives. In addition, the circumstances surrounding the examination of any mail shall be recorded in the individual's clinical record. Each facility shall maintain policies that encourage the individuals' exercise of the individual's communication rights, including supply to indigent individuals of writing materials and postage in reasonable amounts.

(b) Telephone calls.

1. Each individual has the right to make reasonable use of telephones. To assure this right, each facility shall:
 - (i) Maintain locations for calling (including pay telephones where feasible) which allow for privacy;
 - (ii) Supply indigent individuals with funds or access to telephones for making a reasonable number of calls; and
 - (iii) Prohibit any monitoring of individual calls without consent from the individual except pursuant to a court order. A requirement that staff dial a particular number for an individual does not constitute monitoring of an individual's calls for purposes of this regulation.
2. The facility may place reasonable restrictions, such as those relating to the distance, time, length, and frequency of calls, upon the use of telephones by all individuals generally. In addition, reasonable restrictions may be placed upon an individual's use of telephones under the following conditions:

- (i) The restriction must be required by the type of seriousness of the individual's mental condition and must be ordered by the individual's attending physician;
 - (ii) The type and extent of the restriction, along with the specific reason for the restriction must be stated in the order; and
 - (iii) The order shall expire automatically 24 hours after it is given, unless it is terminated sooner, but additional 24-hour orders may be given according to the same procedure as that required for the original order.
 - 3. The individual may consent in writing to restrictions to the use of the telephones.
 - 4. Telephone communication of an individual with their attorney or private physician shall not be restricted in accordance with §§ 82-5-1-.04(4)(b)2(i), (iii).
- (c) Visitation. Visitation shall be governed as follows for individuals being treated on an individual basis in a hospital pursuant to O.C.G.A. Chapters 37-7, 37-3, and 37-4.
- 1. Each individual admitted to a facility has the right to receive visitors daily or to refuse in writing to receive any visitors or particular visitors. Privacy, to the extent that it is possible, should be provided.
 - 2. The facility may place reasonable restrictions, such as those relating to time and place, upon visitation by persons outside the facility for all individuals generally. Visiting hours shall be set for at least 4 hours daily, 2 hours of which shall be after 6 p.m. In addition, reasonable restrictions may be placed upon an individual's right of visitation under the following conditions:
 - (i) The restriction must be required by the type of seriousness of the individual's mental or physical condition and must be ordered by the individual's attending physician;
 - (ii) The type and extent of the restriction, along with the specific reasons for the restriction, must be stated in the order; and
 - (iii) The order shall expire automatically 24 hours after it is given, unless it is terminated sooner, but additional 24-hour orders may be given according to the same procedure as that required for the original order.
 - 3. The individual may consent in writing to restrictions on visitation.
 - 4. Visitation by an individual's attorney or private physician shall not be restricted in accordance with §§ 82-5-1-.04(4)(c)2(i), (iii).

5. The right to visitation does not establish the right to a visit by a person whose presence at the facility has been prohibited by the facility.

(d) Other.

1. Each individual admitted to a facility shall have the right to regular social interaction with others, including persons of the opposite sex, subject only to the provisions of § 82-5-1-.03(1)(c) of these regulations (seclusion) and to other reasonable regulations, such as those relating to time and place.
2. Each individual admitted to a facility shall have the right to attend religious services, but no individual may be compelled to attend such services. The individual should be assisted in the observance of the individual's religion to the extent possible.

Authority: O.C.G.A. §§ 37-1-23, 37-1-40, 37-1-41, 37-3-2, 37-4-3, 37-7-2, 37-3-162, 37-4-122, 37-7-162, 37-3-160, 37-4-120, 37-7-160, 37-3-165, 37-4-124, 37-7-165, 37-3-143, 37-4-103, 37-7-143, 37-3-142, 37-4-102, 37-7-142.

82-5-1-.05 Personal Affairs.

(1) General. No individual, whether voluntary or involuntary, shall be deprived of any civil, political, personal, or property rights or be considered legally incompetent for any purpose without due process of law. Hospital staff may exercise clinically-informed discretion in deciding whether to assist an individual in exercising these rights. These rights include, but are not limited to:

- (a) The right to dispose of property;
- (b) The right to execute legal instruments;
- (c) The right to make purchases;
- (d) The right to enter into contractual relationships;
- (e) The right to register and vote;
- (f) The right to marry and to obtain a separation, divorce, or annulment;
- (g) The right to hold a driver's license; and
- (h) The right to make a will.

(2) Legal Counsel.

- (a) Each individual admitted to a facility has the right to secure legal counsel to represent the individual in the individual's personal affairs during the individual's hospitalization. The individual should be assisted by staff members to the extent possible in securing legal counsel.
 - 1. If the individual can afford legal counsel, the individual may secure counsel at the individual's own expense.
 - 2. If the individual needs legal counsel for the individual's personal affairs but cannot afford such counsel, the individual may contact the local legal aid service for assistance.
 - 3. Each facility shall post on every treatment unit the name, address, and telephone number of local lawyer referral services and local agencies which provide legal services to indigent persons.
- (b) The securing of legal counsel for an individual at hearings concerning the individual's committal or treatment is not governed by these regulations.
- (c) Each individual admitted to a facility shall have the right to have the individual's legal counsel visit the individual at the facility. The individual (or the individual's guardian or parent, if applicable) or the attorney shall provide the facility with the attorney's name, telephone number, and address. The staff shall require the attorney to produce proper identification and proof of current certification as an attorney upon the initial visit and thereafter as necessary. The attorney shall be allowed to visit the individual at the facility at any reasonable time, and subject to other reasonable regulations. The attorney shall be provided a private area in which to consult with the individual.
- (d) Upon the individual's written authorization, the attorney shall be allowed to examine the individual's clinical record and shall also be allowed to interview staff who have treated the individual. However, an attorney for matters relating to the individual's presence at the facility by virtue of Title 37 or by virtue of a Court Order in a criminal case may view the individual's record during the period of the attorney's representation of the individual on such matters.

(3) Voting.

- (a) Each individual admitted to a facility who is entitled to vote shall be given the right to vote in primary, special, and general elections and in referenda.
- (b) The Regional Hospital Administrator of each facility, or their designee, shall:

1. At least 30 days prior to a national or statewide election, post notice of the election in each hospital treatment unit;
2. Notify individuals 18 years old and over of their right to register to vote, to obtain absentee ballots, and to cast ballots; and the notification shall be conducted to allow sufficient time for voter registration and acquisition of absentee ballots;
3. When clinically suitable and if staffing of the facility permits, allow residents to leave the premises to exercise voting privileges or to register to vote, and require personnel, where available, to accompany residents; otherwise voting by absentee ballot is sufficient;
4. Make arrangements with state and local officials to provide for voter registration and casting of ballots by interested individuals; and
5. Assist election officials in determining an individual's place of residence for voting purposes.

(4) Employment Outside Facility.

- (a) Each facility shall encourage and assist an individual in securing suitable employment outside the facility, if the individual wishes to be so employed and if such employment will aid in the individual's treatment. The training of individuals for gainful employment shall also be encouraged through appropriate resources and referrals.
- (b) All wages and benefits earned by employment outside the facility shall belong solely to the individual.

(5) Attorney's Access.

- (a) An attorney representing an individual in a matter relating to the individual's hospitalization shall have the right to visit and consult with the individual at the facility in accordance with § 82-5-1-.05(2)(c) of these regulations.
- (b) At reasonable times, and subject to the notification and identification provisions of § 82-5-1-.05(2)(c) of these regulations, the individual's attorney for hospitalization matters shall have the right to interview the physician and staff members who attended or are now attending the individual, and the right to have the individual's records interpreted by them.
- (c) The chief medical officer or Regional Hospital Administrator of each facility shall establish reasonable policies to make available to the individual's attorney all information not otherwise privileged in the possession of the facility which the attorney requires to advise and represent the individual concerning matters relating to

the individual's presence at the facility by virtue of O.C.G.A. Title 37 or by virtue of a court order in a criminal case.

Authority: O.C.G.A. §§ 37-1-23, 37-1-40, 37-1-41, 37-3-2, 37-4-3, 37-7-2, 37-3-140, 37-4-100, 37-7-140, 37-3-141, 37-4-101, 37- 37-7-141, 37-3-166, 37-3-168, 37-4-125, 37-4-127, 37-7-166, 37-7-168, 37-3-144, 37-4-104, 37-7-144.

82-5-1-.06 Clinical Records.

(1) Contents.

- (a) A clinical record shall be maintained at each facility for each individual treated at that facility, containing protected health information of the individual. The record shall contain information on all matters relating to the admission, care, treatment, discharge, and legal status of the individual, and shall include all medical and legal documents relating to the individual. The record shall not contain peer review or administrative documents such as incident reports and investigations of incidents or complaints. The record specifically shall contain at least the following: progress notes; documents describing or arising from the individual's history; the results of all psychiatric, psychological, and physical examinations; individualized service plans; evaluations other than evaluations developed at the direction of a court that is assessing an individual's competence or responsibility under O.C.G.A. Title 17, Chapter 7, which are not to be maintained in the medical record; orders for treatment; orders for physical restraints, seclusion, and other restrictions permitted by these regulations or other applicable law; clinical documentation of accidents and incidents and of follow-up care provided; court orders establishing guardianship of the individual if applicable; advance directives of the individual if possible; and court orders and other court documents received by the facility. When clinical records or parts of clinical records are released as provided in this section, copies of the clinical record should be released. If the record is electronic, a tangible copy may be produced as legally sufficient for purposes of disclosures, except as otherwise provided in this section. The name(s) or other identifying information of other individuals who are receiving or formerly received treatment or services may not be recorded in an individual's clinical record. The initials of another individual may be recorded if necessary.

(2) Confidentiality.

- (a) The Department shall create and enact policies that implement the rules relating to confidentiality contained in HIPAA and in federal substance abuse confidentiality laws and regulations. Staff shall comply with applicable confidentiality provisions established by Georgia law.

(3) Examination by individual.

- (a) Every individual currently or formerly admitted to a facility shall have the right to examine all clinical records kept in that individual's name by the Department or the

facility where the individual is or was hospitalized or treated; provided, however, that if the individual is currently admitted to the facility, the individual shall not have the right to examine such clinical records if:

1. The disclosure of such records to the individual is determined, by the chief medical officer or Regional Hospital Administrator or the individual's attending physician or psychologist, to be detrimental to the individual's physical or mental health; and
 2. A notation to that effect is made in the individual's record.
- (b) Each facility shall assist individuals in reviewing their own records but may establish reasonable limitations, such as those relating to time, place, and frequency, upon such review.

(4) Correction by individual.

- (a) Every individual currently or formerly admitted to a facility shall have the right to request that any inaccurate information found in the individual's clinical record be corrected. A request from an individual currently admitted to a facility shall be made in writing to the person in charge of records at the facility or to another person designated by the superintendent. That person will consult the appropriate staff at the facility if needed. If the request is made orally to a staff member, that staff member will assist the individual in making the request to the appropriate person.
- (b) Upon receipt of a request for correction of the record of an individual currently or formerly admitted to the facility, the person in charge of records at the facility or the person so designated shall within 5 days:
 1. Make the requested correction, and provide the individual with a copy of the corrected record; or
 2. Notify the individual, in writing, of the inability to obtain amendment of the record and the reason therefore, and notify the individual that he may file a complaint regarding this refusal in accordance with § 82-5-1-.08(1) of these regulations; such notification shall be complete upon mailing.
- (c) If amendments are made to the records of an individual currently or formerly admitted to a facility, they should be added to the record and the original record should be preserved.

(5) Copies.

- (a) It is the policy of the Department to provide routine information to the general public in compliance with the Georgia Open Records Act or DBHDD policy regarding medical records.
- (b) Fees charged for copying services in State facilities shall comply with policies set by the Department.
- (c) Waiver or reduction of fees may be granted where such action is in the public interest or when based on an individual's ability to pay.
- (d) Staff members shall assist the individual in the selection of records for copying purposes. A policy of full disclosure and assistance shall be followed, while waste in copying practices is to be discouraged.

Authority: O.C.G.A. §§ 37-1-23, 37-1-40, 37-1-41, 37-3-2, 37-4-3, 37-7-2, 37-3-166, 37-4-125, 37-7-166, 37-3-167, 37-4-126, 37-7-167.

82-5-1-.07 Notice; Representatives and Guardians Ad Litem.

(1) Notice.

- (a) To individual: Any time that notice is required to be given to an individual by these regulations or other applicable law, the date on which the notice is given shall be entered in the individual's clinical record. If the individual is unable to read or comprehend a notice sufficiently, a reasonable effort shall be made to explain the notice to them.
- (b) To representatives: At any time that notice is required to be given to an individual's representatives, the notice shall be served on those persons designated in accordance with § 82-5-1-.07(2) of these regulations. The individual's guardian ad litem shall likewise be served. Unless otherwise provided, notice may be served in person or by first class mail. When notice is served by mail, a record shall be made of the date of mailing and shall be placed in the individual's clinical record. Service shall be complete upon mailing to the last known mailing address.
- (c) Judicial orders. At any time a court enters an order affecting an individual pursuant to these regulations or other applicable law and serves said order on the Department, a copy of that order shall be served on the individual and the individual's representative as provided in subparagraphs (a) and (b) of this subsection, unless the order contains an accompanying certificate that such service has already been made.

(2) Representatives and Guardians Ad Litem.

- (a) Selection. At the time an individual is admitted to a facility, the names and addresses of at least two representatives shall be entered in the individual's clinical record. The individual has the right to designate one representative.
1. If the individual designates one representative, the facility shall designate the second, who shall be selected from the following persons in the order of listing: the individual's legal guardian, spouse, an adult child, parent, attorney, adult next of kin, or adult friend.
 2. If the individual does not exercise the individual's right to designate one representative, the facility shall designate both of the individual's representatives, in accordance with the following rules.
 - (i) One of the representatives shall be selected from the following persons in the order of listing: the individual's legal guardian, spouse, an adult child, parent, attorney, adult next of kin, or adult friend.
 - (ii) The second representative shall be selected from the same list without regard to the order of listing, but shall not be the person who signed the petition allowed under the provisions of O.C.G.A. Chapters 37-3, 37-4, and 37-7.
 3. If the facility is unable to secure at least two representatives after diligent search, or if an agency or agent of the State of Georgia is the guardian of the individual, that fact shall be entered in the individual's record and the facility shall apply to the court in the county of the individual's residence for the appointment of a guardian ad litem, which shall not be the Department.
 4. On application of any person or on its own motion, the court may also appoint a guardian ad litem for an individual for whom representatives have been named whenever the appointment of a guardian ad litem is deemed necessary for protection of the individual's rights. Such guardian ad litem shall act as the representative of the individual on whom notice is to be served under the applicable provision of law and shall have the powers granted to representatives by those provisions.
- (b) Powers.
1. Representatives shall have the power to receive the notices required to be sent to them by these regulations and other applicable law, and the power to consult with the facility staff to the extent allowed by law and policy.
 2. Guardians ad litem shall have the power to receive the notices required to be sent to them by these regulations or other applicable law. The guardian ad litem's power shall accord with the limited purpose stated in the order of the court, and

the guardian ad litem's appointment shall expire automatically after 90 days or after a lesser time stated in the order. The responsibility of the guardian ad litem shall not extend beyond the specific purpose of the appointment, and the authority of the guardian ad litem will not generally extend to acting on behalf of the individual with regard to matters such as consent for placement or medical treatment.

Authority: O.C.G.A. §§ 37-1-23, 37-1-40, 37-1-41, 37-3-2, 37-4-3, 37-7-2, 37-3-147, 37-4-107, 37-7-147, 37-3-164, 37-4-44, 37-7-164.

82-5-1-.08 Remedies for Violations.

(1) Complaint Procedures.

Any individual (or the individual's guardian or parent of a minor individual, if applicable) or the individual's representative or any staff member may file a complaint alleging that an individual's rights under these regulations or other applicable law have been violated by staff members or persons under their control. 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, with the Personal Advocate, with a member of the Human Rights Committee, or similar mechanism. Such complaints, when arising, shall be governed by policy established and maintained by the Department in a manner that is consistent with the standards set forth in this section. Such policy shall establish procedures consistent with the following:

- (a) The Department shall establish and maintain policies that set forth procedures by which individuals may file complaints relating to individuals' rights. The Department shall establish and maintain multiple means by which all individuals are notified of the ways they may file a complaint.
 1. Each facility that is subject to these regulations shall appoint a Personal Advocate whose responsibilities will include involvement with the Complaint process as set forth in these regulations and as set forth in Department policy.
 2. Each facility that is subject to these regulations shall establish and maintain a Human Rights Committee, at least two members of which shall not be employees of the facility. The responsibilities of the Human Rights Committee shall include review of the manner in which the facility addresses complaints that are the subject of this regulation.
- (b) The Department shall establish policies that set forth the manner and timeframe in which a disinterested staff member, designated by position, investigates each unresolved complaint, as well as timeframes in which each complaint investigation must be completed and the manner in which the conclusion of the investigator is delivered to the individual.

- (c) The Department shall establish policies that set forth the manner and timeframe in which an individual may appeal the conclusion of the investigator. Any such appeal must be reviewed by a disinterested staff member, appointed by the Regional Hospital Administrator, who is qualified by training and experience to review such an appeal. Policy shall set forth timeframes during which evaluation of any such appeal must be completed and the manner in which the conclusion of the reviewer will be delivered to the individual. The Regional Hospital Administrator must approve the resolution of the appeal before it is provided to the individual.
- (d) The Department shall establish policies that set forth the manner and timeframe in which an individual may appeal to the Commissioner the resolution an initial appeal. Any such appeal must be reviewed by a disinterested DBHDD staff member appointed by the Commissioner who is qualified by training and experience to review such an appeal. Policy shall set forth timeframes during which evaluation of any such appeal must be completed and the manner in which the conclusion of the staff member who has reviewed the appeal will be delivered to the individual. The Commissioner or the Commissioner's designee must approve the resolution of the appeal to the Commissioner before the resolution is provided to the individual.
- (e) No appeal under this regulation is subject to judicial review.
- (f) The individual is not required to use the procedure established by this section in lieu of other available legal remedies.

(2) General Provisions.

- (a) Whenever the Human Rights Committee or the Personal Advocate becomes aware of a situation that appears to require immediate action to protect the welfare and safety of any individual, the Committee or the Personal Advocate shall immediately notify the nearest available staff member with authority to correct the situation. In any situation that requires immediate action to protect an individual's welfare or safety, the Regional Hospital Administrator may be notified instead. If adequate corrective action is not taken by that staff member, the Committee or the Personal Advocate shall immediately notify the Regional Hospital Administrator, or if necessary, the Director or the Commissioner of the Department.
- (b) No person shall be subject to any form of discipline or reprisal solely because they sought a remedy through, or participated in, the procedures established by this section.
- (c) Obstruction of the investigation or disposition of a complaint by any person shall be reported to the Regional Hospital Administrator, who shall take action to eliminate the obstruction. Staff members are subject to adverse action in accordance with personnel procedures of the Department for engaging in such obstruction.
- (d) This complaint procedure does not replace or invalidate any other Department policy or procedure pertaining to reporting requirements, disciplinary matters, or the like.

- (e) Staff members who are involved in a complaint shall not be involved in processing that complaint.

(3) Judicial Supervision.

- (a) Any individual (or the individual's guardian or parent of a minor individual, if applicable) or the individual's representative may file a petition in the appropriate court alleging that:

1. The individual is being unjustly denied a right or privilege granted by these regulations or other applicable law; or
2. A procedure authorized by these regulations or other applicable law is being abused; or
3. The individual objects to the treatment being administered to the individual.

- (b) Upon the filing of such a petition, the court shall have the authority to conduct a judicial inquiry and to issue appropriate orders to correct any abuse of these regulations or other applicable law. The individual, the individual's representatives, or the individual's attorney may appeal any such order of the probate court or of the court's hearing officer to the superior court of the county in which the proceeding was held, and may appeal any such order of the Juvenile Court to the Court of Appeals and to the Supreme Court.

- (c) At any time and without notice, a person detained by a facility, or a relative or friend on behalf of such person, may petition as provided by law for a writ of habeas corpus to question the cause and legality of detention and to request any court of competent jurisdiction on its own initiative to issue a writ of release. In the case of any such petition for the release of a person detained in a facility pursuant to a court order under O.C.G.A. § 17-7-130 or O.C.G.A. § 17-7-131, a copy of the petition, along with proper certificate of service, shall also be served upon the presiding judge of the court ordering such detention and the prosecuting attorney for such court; service may be made by certified mail, return receipt requested.

- (4) Medication Prior to Hearings. The individual has a right to appear and testify at hearings free from any side effects or adverse effects of medication as is reasonably possible. The individual's attorney, if any, should be informed of any medication the individual is receiving at the time of the hearing.

Authority: O.C.G.A. §§ 37-1-23, 37-1-40, 37-1-41, 37-3-2, 37-4-3, 37-7-2, 37-3-149, 37-4-109, 37-7-149, 37-3-148, 37-4-108, 37-7-148.

82-5-1-.09. Severability.

In the event that 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 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.