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CHAPTER 5100. MENTAL HEALTH PROCEDURES

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Authority

The provisions of this Chapter 5100 issued under sections 107—116 of the Mental Health Procedures Act (50 P. S. §§ 7107—7116); and the Mental Health and Mental Retardation Act of 1996 (50 P. S. §§ 4101— 4704), unless otherwise noted.

Source

The provisions of this Chapter 5100 adopted January 26, 1979, effective January 27, 1979, 9 Pa.B. 315; amended October 12, 1979, effective October 13, 1979, 9 Pa.B. 3460.

Cross References

This chapter cited in 55 Pa. Code § 1151.31 (relating to participation requirements); 55 Pa. Code § 5300.1 (relating to accreditation); 55 Pa. Code § 5300.2 (relating to not Nationally accredited or certified); and 55 Pa. Code § 5320.22 (relating to governing body).

GENERAL PROVISIONS

§ 5100.1. Legal base.

The legal base for this chapter is section 112 of the Mental Health Procedures Act (50 P. S. § 7112), section 201 of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4201), and section 1021 of the Public Welfare Code (62 P. S. § 1021).

§ 5100.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Act—The Mental Health Procedures Act (50 P. S. §§ 7101—7503).

Administrator—The person appointed to carry out the duties specified in section 305 of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4305).

Agency—An instrumentality of the United States, its departments and agencies, including the Veterans' Administration.

Approved facility—A facility as defined by section 103 of the act (50 P. S. § 7103) which meets the standards of this chapter and other applicable Department regulations or obtains an exemption in writing from the Department under section 105 of the act (50 P. S. § 7105).

Behaviorial consent—A demonstrated willingness by the patient to remain voluntarily in the facility based upon a general understanding of the nature of the usual treatment, possible restraints upon free activity, and daily life within the facility. A general understanding may be shown by a finding that a person in treatment has participated in scheduled activities and does not protest continued participation.

County of residence—The county wherein the person had a legal residence prior to being admitted or committed to an approved facility for treatment.

Designated facility—The approved facility named by the county administrator as a provider of one or more specific services. A facility so designated, either on a general basis or on a case by case basis must be identified in the county annual plan. The administrator shall address the public's need to know where and how they can obtain services under the act.

Director—The administrative head of a facility, including a superintendent or his designee.

Director of treatment team—A physician or licensed clinical psychologist designated by the facility director to assure that each patient receives treatment under the act and this chapter and that the facility's treatment responsibility to the patient, as defined in this chapter, the Mental Health/Mental Retardation Act of 1966 and the act, are discharged. The director of the treatment team is responsible for implementing and reviewing the individualized treatment plan, for participating in the coordination of service delivery between other service providers, and for insuring that the unique skills and knowledge of each team member are utilized. The director of the treatment team is responsible for encouraging the person in treatment to become increasingly involved in decisions regarding the treatment planning process.

Expert in the field of mental health—A mental health professional whose training, experience and demonstrated achievements clearly exceed the minimum standards required for recognition as a professional in his discipline, and whose broad-based skills and knowledge in his specific areas of specialty are recognized by the members of his profession to be at the highest level.

Health professional in mental health—A person who by years of education, training, and experience in mental health settings has achieved professional recognition and standing as defined by their respective discipline, including, but not limited to medicine, social work, psychology, nursing, occupational therapy, recreational therapy, and vocational rehabilitation; and who has obtained if applicable, licensure, registration, or certification.

Inpatient treatment—All treatment that requires full-time or part-time residence in a facility as defined in section 103 of the act (50 P. S. § 7103).

Involuntary emergency examination—The physical and mental evaluation by a physician of an individual taken to a facility under section 302 of the act (50 P. S. § 7302).

Involuntary emergency treatment—The treatment provided to an individual taken to a facility under section 302 of the act (50 P. S. § 7302). Such treatment in the absence of the individual's consent, shall be limited to that treatment which is necessary to protect the life or health, or both, of the individual or to control behavior by the individual which is likely to result in physical injury to others.

Least restrictive alternate—The least restrictive placement or status available and appropriate to meet the needs of the patient and includes both restrictions on personal liberty and the proximity of the treatment facility to the person's natural environment. This concept stresses the importance of helping each person in need of services to seek those services voluntarily. The degree of restriction or the degree of separation from the natural environment is dependent upon both the severity of the person's dysfunction and his strengths and resources to function in that environment. The range of treatment alternatives, stemming from the patient's natural environment, through supportive services to 24-hour hospitalization, must be considered in light of the person's capability of handling daily tasks and stress and the need, if any, for varying degrees of support or supervision.

Licensed clinical psychologist—A psychologist licensed under the act of March 23, 1972 (P. L. 136, No. 52) (63 P. S. §§ 1201—1215) who holds a doctoral degree from an accredited university and is duly trained and experienced in the delivery of direct preventive assessment and therapeutic intervention services to individuals whose growth, adjustment, or functioning is actually impaired or is demonstrably at risk of impairment.

Mental illness—Those disorders listed in the applicable APA Diagnostic and Statistical Manual; provided however, that mental retardation, alcoholism, drug dependence and senility do not, in and of themselves, constitute mental illness. The presence of these conditions however, does not preclude mental illness.

Mental Health and Mental Retardation Act of 1966—The act of October 20, 1966 (P. L. 96, No. 3) (50 P. S. §§ 4101—4704).

Peace officer—Any person who by virtue of his office of public employment is vested by law with a duty to maintain public order, to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or any person on active State duty under section 311 of The Military Code of 1949 (51 P. S. § 1-311). Prison wardens and guards shall be considered peace officers for purposes of the act.

Physician—A person licensed to practice medicine or osteopathy in this Commonwealth.

Preliminary evaluation—The initial assessment or evaluation of the physical and mental condition of an individual; it may be conducted without substantiation by formal testing procedures. The evaluation includes an assessment of the person's specific physical, psychological, developmental, familial, educational or vocational, social, and environmental needs in order to determine the adequacy, of the person's logic, judgment, insight, and self control to responsibly meet his needs.

Qualified mental health personnel—A person employed in the fields of mental health care, treatment or rehabilitation whose experience, training, and supervision is commensurate with his assigned tasks and who has not yet met the criteria of his own profession for recognition as a health professional. Such persons shall work in programs which are under the direction of mental health professionals.

Treatment plan—An individualized plan of treatment as defined in section 107 of the act (50 P. S. § 7107), which imposes the least restrictive alternative consistent with affording the person adequate and appropriate treatment for his condition.

Treatment team—An interdisciplinary team of at least three persons appointed by the facility director, composed of mental health professionals, health professionals and other persons who may be relevant to the patient's treatment. At least one member of the team shall be a physician. The treatment team shall formulate and review an individualized treatment plan for every person who is in treatment under the act. The treatment team shall consult with appropriate professionals regarding the inclusion in the treatment plan of specific modalities not within the training or experience of the members of the treatment team.

Cross References

This section cited in 55 Pa. Code § 5100.71 (relating to voluntary examination and treatment).

§ 5100.3. Statement of policy.

(a) The act establishes procedures for the treatment of mentally ill persons. The procedures are to be applied consistently with the principles of due process to make voluntary and involuntary treatment available where the need is great and where the absence of treatment could result in serious harm to the mentally ill person or to others. The act and the Mental Health and Mental Retardation Act of 1966, set forth the Commonwealth's policy and procedures regarding the provision of mental health services. This chapter implements and supplements the act and the Mental Health and Mental Retardation Act of 1966, and are to be read together with the applicable provisions of the act and the Mental Health and Mental Retardation Act of 1966.

(b) It is the policy of the Commonwealth to seek to assure that adequate treatment is available with the least restrictions necessary to meet each client's

needs. While this policy remains a shared responsibility between State, county, and facility personnel, the accountability for recommending the transfer to the least restrictive alternatives available remains a responsibility of those directing treatment. Adequate treatment provided in an individual's own community or as close as possible to his own home shall be preferred.

(c) Persons who are mentally retarded, senile, alcoholic or drug dependent shall be afforded mental health examination or treatment if they are also diagnosed as mentally ill, or if there is a reasonable probability that upon examination such diagnosis will be established.

(d) Persons in treatment under the act shall be afforded necessary diagnostic or treatment procedures as defined in their treatment plan for conditions of mental retardation, senility, alcohol, or drug abuse when it is determined that the absence of such procedures will be detrimental to the progress of the person accomplishing the goals of treatment.

§ 5100.4. Scope.

(a) This chapter applies to all involuntary treatment of mentally ill persons, whether inpatient or outpatient, and for all voluntary inpatient treatment of mentally ill persons.

(b) Persons 70 years of age or older who have been continuously hospitalized in a State-operated facility for at least 10 years and who are chronically disabled shall not be subject to the procedures of the act.

(1) The Department extends the protections of §§ 5100.11, 5100.13—5100.16, 5100.31—5100.39 and 5100.51—5100.56 to these persons.

(2) The Department may continue to provide all necessary treatment to such persons regardless of their ability to freely give rational informed consent except when such a person protests treatment or residence at a State operated facility.

(3) Persons described in this subsection may become subject to involuntary treatment when the person protests and criteria for involuntary treatment are met.

TREATMENT

§ 5100.11. Adequate treatment.

(a) Adequate treatment provided by an approved facility shall be designed on an individual basis under the relevant statutes, regulations, and professional standards to promote the recovery from mental illness.

(b) Treatment provided on an inpatient, outpatient or partial hospitalization basis shall reflect the needs of the individual both independently and in light of the community resources, family or friends available to lend support and assis-

tance to the person while in treatment. These resources shall be considered in determining the adequacy of the least restrictive setting appropriate to his treatment.

(c) The adequacy of an individual's treatment may also be reviewed through mechanisms of peer review and utilization review.

(d) Involuntary treatment, voluntary outpatient treatment funded at least in part with public moneys or voluntary inpatient treatment is not adequate treatment unless it is provided in or at an approved facility or by an agency of the United States.

Cross References

This section cited in 55 Pa. Code § 5100.4 (relating to scope); and 55 Pa. Code § 5320.22 (relating to governing body).

§ 5100.12. Treatment facilities.

(a) The Department, through the Deputy Secretary of Mental Health, will approve facilities under section 105 of the act (50 P. S. § 7105). Designation of appropriate approved facilities within the county shall be made by the county administrator for those patients using mental health/mental retardation (MH/MR) funds. All other patients may use any approved facility.

(b) All mental health facilities providing or planning to provide involuntary treatment or voluntary treatment shall be approved annually by the Department by application to the Deputy Secretary of Mental Health.

(c) Inpatient facilities treating persons who are either enrolled in or who are about to be enrolled in a county mental health program shall notify the appropriate administrator of the proposed discharge plan as early as possible. The facility shall encourage interagency cooperation in developing predischarge planning.

(d) Chapters 4210 and 5300 (relating to description of services and service areas; and private psychiatric hospital) shall be interpreted consistently with this chapter.

(e) Facilities requesting an exemption from approval standards shall submit a written request to the Deputy Secretary of Mental Health. Each request shall state the compelling reasons why an exemption should be granted and the duration of such exemption.

(f) The administrator shall publicly designate which approved facilities are available to provide involuntary emergency examinations, involuntary treatment or voluntary treatment funded in whole or in part by MH/MR funds.

§ 5100.13. Responsibility for formulation and review of treatment plan.

(a) The director of the treatment team shall assure that staff trained and experienced in the use of the modalities proposed in the treatment plan participate in its development, implementation and review.

(b) The director of the treatment team shall be responsible for:

- (1) Insuring that the person in treatment is encouraged to become increasingly involved in the treatment planning process.
- (2) Implementing and reviewing the individualized treatment plan and participating in the coordination of service delivery with other service providers.
- (3) Insuring that the unique skills and knowledge of each team member are utilized and that specialty consultants are utilized when needed.
- (c) Although a treatment team must be under the direction of either a physician or a licensed clinical psychologist, specific treatment modalities may be under the direction of other mental health professionals when they are specifically trained to administer or direct such modalities.

Cross References

This section cited in 55 Pa. Code § 5100.4 (relating to scope); and 55 Pa. Code § 5320.22 (relating to governing body).

§ 5100.14. Appeal.

- (a) Each facility shall have a clearly defined appeal system through which any patient who wishes to voice objections concerning his treatment shall be heard and have objections determined.
- (b) Each facility shall monitor the appeal system to see that it works properly and records shall be maintained for review for certification and licensure and for Departmental review in order to investigate any complaint.
- (c) All patients shall be advised of such system and be encouraged to use it when they believe their treatment plan is not necessary or appropriate to their needs.

Cross References

This section cited in 55 Pa. Code § 5100.4 (relating to scope).

§ 5100.15. Contents of treatment plan.

- (a) A comprehensive individualized plan of treatment shall:
 - (1) Be formulated to the extent feasible, with the consultation of the patient. When appropriate to the patient's age, or with the patient's consent, his family, personal guardian, or appropriate other persons should be consulted about the plan.
 - (2) Be based upon diagnostic evaluation which includes examination of the medical, psychological, social, cultural, behavioral, familial, educational, vocational, and developmental aspects of the patient's situation.
 - (3) Set forth treatment objectives and prescribe an integrated program of therapies, activities, experiences, and appropriate education designed to meet these objectives.
 - (4) Result from the collaborative recommendation of the patient's interdisciplinary treatment team.

- (5) Be maintained and updated with progress notes, and be retained in the patient's medical record on a form developed by the facility and approved by the Deputy Secretary of Mental Health, as part of the licensing approval process.
- (b) The treatment plan shall indicate what less restrictive alternatives were considered and why they were not utilized. If the plan provides for restraints, the basis for the necessity for such restraints must be stated in the plan under Chapter 13 (relating to use of restraints in treating patients/residents).
- (c) Individual treatment plans shall be written in terms easily explainable to the lay person and a copy of the current treatment plan shall be available for review by the person in treatment.
- (d) When the most appropriate form of treatment for the individual is not available or is too expensive to be feasible, that fact shall be noted on the treatment plan form.

Cross References

This section cited in 55 Pa. Code § 5100.4 (relating to scope); and 55 Pa. Code § 5100.75 (relating to physical examination and formulation of individualized treatment plan).

§ 5100.16. Review and periodic reexamination.

- (a) At least once every 30 days, every person in treatment under the act shall have his treatment plan reviewed. This review shall be based upon section 108(a) of the act (50 P. S. § 7108(a)). A report of the review and findings shall be summarized in the patient's clinical record.
- (b) The decisions and redispotion required by section 108(b) of the act, based upon such reexamination and review, shall be recorded in the patient's clinical record as either a progress note or in any other appropriate form acceptable to the agency's records committee.
- (c) Such record shall include information required by section 108(c) of the act.

Cross References

This section cited in 55 Pa. Code § 5100.4 (relating to scope); and 55 Pa. Code § 5320.52 (relating to review and periodic reexamination).

MENTAL HEALTH REVIEW OFFICER AND PROCEEDINGS

§ 5100.21. Proceedings.

- (a) The county administrator shall inform the Deputy Secretary of Mental Health of the appointment of mental health review officers. If no review officer is appointed, then the administrator should inform the Department of the judge who hears and determines commitments under the act. The Department will inform the mental health review officers and courts of new policies, procedures,

and interpretations relating to the act and the provision of mental health services and will make available training to aid them in carrying out their duties.

(b) A mental health review officer, unless specifically authorized by the court having jurisdiction over the person, shall not reduce the conditions of security of a person committed under section 401 of the act (50 P. S. § 7401).

(c) The administrator's office shall assist petitioners with the preparation of the commitment petitions, applications, and request for certification for persons not already subject to involuntary treatment.

(d) The administrator shall designate representatives to issue warrants for involuntary emergency commitments.

(e) The administrator shall coordinate, when designated by the court, all hearings and file all applications and certifications under the act.

(f) Notwithstanding any other provision of the act, no judge or mental health review officer shall specify to the treatment team the adoption of any treatment technique, modality, or drug therapy.

§ 5100.22. Consultation and education.

The administrator shall, in discharging his duties under the Mental Health and Mental Retardation Act of 1966, provide the court or mental health review officer with:

- (1) Education and training regarding principles and practices of mental health services.
- (2) Administrative consultation regarding the nature and availability of approved and designated mental health facilities and services.
- (3) Case consultation if so ordered by the court or mental health review officer.

§ 5100.23. Written application, petitions, statements and certifications.

(a) Written application, petitions, statements and certifications required under this chapter shall be made upon forms issued or approved by the Department.

(b) The forms listed in § 5100.41 (relating to forms) have been issued by the Department, and their use is mandated. No substitute for such forms is permitted without prior written authorization of the Deputy Secretary of Mental Health.

(c) Other forms required under this chapter may be developed by the administrator or the facility, but are subject to the approval of the Department.

(d) Unsworn falsification—all statements written under all applications, petitions and certifications required under the act on Departmentally issued or approved forms MH 781, 783, 784, 785, 786 and 787, shall contain the following notice—old forms may be utilized until the supply is exhausted:

ANY PERSON WHO KNOWINGLY PROVIDES ANY FALSE INFORMATION WHEN COMPLETING THIS FORM MAY BE SUBJECT TO PROSECUTION.

(e) When a person is admitted for voluntary treatment and only when no part of his treatment is provided with public funds, the new voluntary admission Form MH-788 may be used. This form will be identical to Form MH-781 with the exception that the notice concerning the penalty for giving false information will be deleted. Until form MH-788 is printed and distributed, existing Form MH-781 may be utilized for this group of persons. Each facility may make the necessary deletion on Form MH-781 to conform with section 110(c) of the act (50 P. S. § 7110(c)).

(f) Submission to county administrator:

(1) Except as set forth in paragraphs (2)—(5), Forms MH 781, 783, 784, 785, 786 and 787, shall be provided to the administrator under section 110 of the act (50 P. S. § 7110).

(2) No Form MH-788 need be provided to the administrator on behalf of a patient admitted for voluntary treatment when reimbursement for treatment provided the patient will not include public monies. This shall not affect in any way the applicability to such patients of the rights and procedures afforded voluntary patients by the act and this chapter. For admission to a State facility forms must be provided to the administrator.

(3) The administrator shall review all applications, petitions, statements and certifications provided to the administrator's office to determine whether the services needed are available and to assure a continuity of care.

(4) The administrator may designate a place other than his office for filing of the forms mentioned in this section.

(5) Mental health facilities shall file such statistical reports of activities and services required by the act and the Mental Health and Mental Retardation Act of 1966 as the Department from time to time may require, so long as the data does not identify individual patients.

CONFIDENTIALITY OF MENTAL HEALTH RECORDS

§ 5100.31. Scope and policy.

(a) This chapter applies to records of persons seeking, receiving or having received mental health services from any facility as defined in section 103 of the act (50 P. S. § 7103).

(b) Persons seeking or receiving services from a mental health facility are entitled to do so with the expectation that information about them will be treated with respect and confidentiality by those providing services. Confidentiality between providers of services and their clients is necessary to develop the trust and confidence important for therapeutic intervention. While full confidentiality cannot be guaranteed to everyone as a result of Federal and State statutes which require disclosure of information for specific purposes, it remains incumbent upon service providers to inform each current client/patient of the specific limits upon confidentiality which affect his treatment when these limits become appli-

cable. When facilities are required by Federal or State statutes or by order of a court to release information regarding a discharged patient, a good faith effort shall be made to notify the person by certified mail to the last known address.

(c) As used in this chapter, “records” includes, but is not limited to, all written clinical information, observations and reports or fiscal documents, relating to a prospective, present or past, client or patient, which are required or authorized to be prepared by the act or by the Mental Health and Mental Retardation Act of 1966. This includes any central file of client/patient records and reports which are required to be maintained by the Department’s regulations or other statutes and regulations regarding service content for mental health programs. Every therapist who reports objective findings must carefully consider the impact of placing in the records statements made privately in therapy sessions.

(d) Nothing in this chapter shall limit the facility’s obligation to attempt to obtain social history and other records necessary to properly treat an involuntarily committed patient, or to obtain information on financial resources or insurance coverage necessary to determine the liability for services rendered.

(e) This section applies to all records regarding present or former patients of mental health facilities, including records relating to services provided under previous mental health acts.

(f) Records of a person receiving mental health services are the property of the hospital or facility in which the person is or has received services. The person who is or was receiving services shall exercise control over the release of information contained in his record except as limited by § 5100.32 (relating to nonconsensual release of information), and be provided with access to the records except to the limitations under § 5100.33 (relating to patient’s access to records and control over release of records).

(g) The presence or absence of a person currently involuntarily committed at a mental health facility is not to be considered a record within the meaning of subsection (c) and such information may be released at the discretion of the director of a facility in response to legitimate inquiries from governmental agencies or when it is clearly in the patient’s best interest to do so.

(h) No document which was a public record prior to the person’s treatment shall become confidential by its inclusion in the facility’s records.

(i) When information and observations regarding clients or patients are not made part of a record, there remains a duty and obligation for staff to respect the patient’s privacy and confidentiality by acting ethically and responsibly in using or discussing such information.

Cross References

This section cited in 55 Pa. Code § 3800.20 (relating to confidentiality of records); 55 Pa. Code § 5100.4 (relating to scope); 55 Pa. Code § 5100.33 (relating to patient’s access to records and control over release of records); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.26 (relating to records); 55 Pa. Code § 5210.56 (relating to other applicable regula-

tions); 55 Pa. Code § 5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code § 5230.17 (relating to confidentiality); and 55 Pa. Code § 5320.26 (relating to confidentiality).

§ 5100.32. Nonconsensual release of information.

(a) Records concerning persons receiving or having received treatment shall be kept confidential and shall not be released nor their content disclosed without the consent of a person given under § 5100.34 (relating to consensual release to third parties), except that relevant portions or summaries may be released or copied as follows:

(1) To those actively engaged in treating the individual, or to persons at other facilities, including professional treatment staff of State Correctional Institutions and county prisons, when the person is being referred to that facility and a summary or portion of the record is necessary to provide for continuity of proper care and treatment.

(2) To third party payors, both those operated and financed in whole or in part by any governmental agency and their agents or intermediaries, or those who are identified as payor or copayor for services and who require information to verify that services were actually provided. Information to be released without consent or court order under this subsection is limited to the staff names, the dates, types and costs of therapies or services, and a short description of the general purpose of each treatment session or service.

(3) To reviewers and inspectors, including the Joint Commission on the Accreditation of Hospitals (JCAH) and Commonwealth licensure or certification, when necessary to obtain certification as an eligible provider of services.

(4) To those participating in PSRO or Utilization Reviews.

(5) To the administrator, under his duties under applicable statutes and regulations.

(6) To a court or mental health review officer, in the course of legal proceedings authorized by the act or this chapter.

(7) In response to a court order, when production of the documents is ordered by a court under § 5100.35(b) (relating to release to courts).

(8) To appropriate Departmental personnel § 5100.38 (relating to child or patient abuse).

(9) In response to an emergency medical situation when release of information is necessary to prevent serious risk of bodily harm or death. Only specific information pertinent to the relief of the emergency may be released on a nonconsensual basis.

(10) To parents or guardians and others when necessary to obtain consent to medical treatment.

(11) To attorneys assigned to represent the subject of a commitment hearing.

(b) Current patients or clients or the parents of patients under the age of 14 shall be notified of the specific conditions under which information may be released without their consent.

(c) Information made available under this section shall be limited to that information relevant and necessary to the purpose for which the information is sought. The information may not, without the patient's consent, be released to additional persons or entities, or used for additional purposes. Requests for information and the action taken should be recorded in the patient's records.

Notes of Decisions

Duty to Report

Mental healthcare workers do not have an affirmative duty to investigate and report possible crimes involving their patients. *Hennessey v. Santiago*, 708 A.2d 1269 (Pa. Super. 1998).

Release of Information in Response to Medical Emergency

Regulations which provide for the nonconsensual release of confidential information when release is necessary to prevent harm or death in response to medical emergency may include situations wherein a psychiatric patient's threats to harm a third party are disclosed. *Ms. B. v. Montgomery County Emergency Service*, 799 F.Supp. 534 (E.D. Pa. 1992), affirmed, 989 F.2d 488 (3d Cir. Pa. 1993); cert. denied, 510 U. S. 860, 126 L. Ed. 2d 133, 114 S. Ct. 174 (U. S. 1993).

Cross References

This section cited in 55 Pa. Code § 3800.20 (relating to confidentiality of records); 55 Pa. Code § 5100.4 (relating to scope); 55 Pa. Code § 5100.31 (relating to scope and policy); 55 Pa. Code § 5100.34 (relating to consensual release to third parties); 55 Pa. Code § 5100.90a (relating to State mental hospital admission of involuntarily committed individuals—statement of policy); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.26 (relating to records); 55 Pa. Code § 5210.56 (relating to other applicable regulations); 55 Pa. Code § 5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code § 5230.17 (relating to confidentiality); and 55 Pa. Code § 5320.26 (relating to confidentiality).

§ 5100.33. Patient's access to records and control over release of records.

(a) When a client/patient, 14 years of age or older, understands the nature of documents to be released and the purpose of releasing them, he shall control release of his records. For a client who lacks this understanding, any person chosen by the patient may exercise this right if found by the director to be acting in the patient's best interest. In the event that the client/patient is deceased, control over release of records may be exercised by the client's/patient's chosen executor, administrator or other personal representative of his estate, or, if there is no chosen personal representative, by a person otherwise empowered by court order to exercise control over the records. In the event that the client/patient is less than 14 years of age or has been adjudicated legally incompetent, control over release of the client's/patient's records may be exercised by a parent or guardian of the client/patient respectively.

(b) The term “access” when used in this section refers to physical examination of the record, but does not include nor imply physical possession of the records themselves or a copy thereof except as provided in this chapter.

(c) A person who has received or is receiving treatment may request access to his record, and shall be denied such access to limited portions of the record only:

(1) Upon documentation by the treatment team leader, it is determined by the director that disclosure of specific information concerning treatment will constitute a substantial detriment to the patient’s treatment.

(2) When disclosure of specific information will reveal the identity of persons or breach the trust or confidentiality of persons who have provided information upon an agreement to maintain their confidentiality.

(d) A patient may obtain access to his records through the facility, or in the case of those records kept by the county administrator, through the physician or mental health professional designated by the administrator. Any third parties who are granted access to records may discuss this information with the patient only insofar as necessary to represent the patient in legal proceedings or other matters for which records have been released. Discussion of records with patients should be part of the therapeutic process and is not to be undertaken by other than mental health professionals.

(e) The limitations in subsection (c) are applicable to parents, guardians, and others who may control access over records as described in subsection (a) except that the possibility of substantial detriment to the parent, guardian, or other person may also be considered.

(f) If a person wishes to enter a written reaction qualifying or rebutting information in their records which they believe to be erroneous or misleading, they shall have the right to prepare such statement for inclusion as part of their record. The patient’s written reaction shall accompany all released records.

(g) The director of the treatment team or the facility director may require that a mental health professional, who is a member of the treatment team, and who has reviewed the record in advance, be present when the patient or other person examines the record to aid in the interpretation of documents in the record. If the records pertain to a former patient, an appropriate mental health professional may be designated by the facility director.

(h) Access to presentence reports, which may be part of the persons’ records, is governed Pa.R.Crim.P. No. 1404 (relating to disclosure of reports), and the patient may have access to these records only upon order of the sentencing judge. Any conditions of confidentiality imposed by the sentencing judge must be complied with. Similarly, parole and probation reports shall be released or access to them given only in accordance with 37 Pa. Code Part II (relating to Board of Probation and Parole).

(i) If a person is denied access to all or part of his record, this fact and the basis for the denial shall be noted in the person’s record.

(j) When records or information have been forwarded from one agency to another agency, the receiving agency may not refuse the client or patient access to the records received except in accordance with subsection (c). Records

received from other agencies become part of the client/patient's active record and are subject to the controls exercised over them by the client, patient, or those with authority over records as defined in § 5100.31 (relating to scope and policy).

Notes of Decisions

Patient access to whatever record was made of commitment hearing, in the form it exists, is a minimal requirement to comport with procedural due process. *In re S.O.*, 492 A.2d 727 (Pa. Super. 1985).

Cross References

This section cited in 55 Pa. Code § 3800.20 (relating to confidentiality of records); 55 Pa. Code § 5100.4 (relating to scope); 55 Pa. Code § 5100.31 (relating to scope and policy); 55 Pa. Code § 5100.34 (relating to consensual release to third parties); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.26 (relating to records); 55 Pa. Code § 5210.56 (relating to other applicable regulations); 55 Pa. Code § 5221.52 (relating to notice of confidentiality and non-discrimination); 55 Pa. Code § 5230.17 (relating to confidentiality); and 55 Pa. Code § 5320.26 (relating to confidentiality).

§ 5100.34. Consensual release to third parties.

(a) Access to records, as defined in § 5100.33(b) (relating to patient's access to records and control over release of records) will be granted to persons other than the patient upon written consent of the client/patient. With the consent, copies of excerpts or a summary of a record may be provided to specific persons at the discretion of the director. If copies of excerpts or summaries are provided, a charge may be made against the patient or person receiving the record for the cost of making the copies. The facility may require payment for the copies in advance.

(b) When a patient designates a third party as either a payor or copayor for mental health services, this designation carries with it his consent to release information to representatives of that payor which is necessary to establish reimbursement eligibility. Unless otherwise consented to by the patient, information released to the third-party payors shall be limited to that necessary to establish the claims for which reimbursement is sought.

(c) Clients, patients, or other persons consenting to release of records are to be informed of their right, subject to § 5100.33 to inspect material to be released.

(d) When records are released or disclosed under § 5100.32 (relating to non-consensual release of information) or subsections (a) and (b) the written or oral disclosure shall be accompanied by a written statement which reads as follows:

“This information has been disclosed to you from records whose confidentiality is protected by State statute. State regulations limit your right to make any further disclosure of this information without prior written consent of the person to whom it pertains.”

(e) The limitation in subsection (d) does not prohibit the re-release of information in accordance with § 5100.32.

(f) Each facility shall prepare a form for use in the voluntary release of records which shall meet the following requirements:

- (1) A time limit on its validity which shows starting and ending dates.
- (2) Identification of the agency or person to whom the records are to be released.
- (3) A statement of the specific purposes for which the released records are to be used.
- (4) A statement identifying the specific relevant and timely information to be released.
- (5) A place for the signature of the client/patient or parent or guardian and the date, following a statement that the person understands the nature of his release.
- (6) A place for the signature of a staff person obtaining the consent of the client/patient or parent or guardian and the date.
- (7) A place to record a verbal consent to release of information given by a person physically unable to provide a signature and a place for the signatures of two responsible persons who witnessed that the person understood the nature of the release and freely gave his verbal consent.
- (8) Indication that the consent is revocable at the written request of the person giving consent, or oral request as in paragraph (7).
- (g) A mental health facility receiving a request for information from a governmental agency may accept that agency's release of information form if signed by the patient/client or the person legally responsible for the control of information unless the patient has specifically expressed opposition to that agency receiving information.

Cross References

This section cited in 55 Pa. Code § 3800.20 (relating to confidentiality of records); 55 Pa. Code § 5100.4 (relating to scope); 55 Pa. Code § 5100.32 (relating to nonconsensual release of information); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.26 (relating to records); 55 Pa. Code § 5210.56 (relating to other applicable regulations); 55 Pa. Code § 5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code § 5230.17 (relating to confidentiality); and 55 Pa. Code § 5320.26 (relating to confidentiality).

§ 5100.35. Release to courts.

- (a) Each facility director shall designate one or more persons as a records officer, who shall maintain the confidentiality of client/patient records in accordance with this chapter.
- (b) Records shall comply with the following:
 - (1) Whenever a client/patient's records are subpoenaed or otherwise made subject to discovery proceedings in a court proceeding, other than proceedings authorized by the act, and the patient/client has not consented or does not consent to release of the records, no records should be released in the absence of an additional order of court.
 - (2) The records officer, or his designee, is to inform the court either in writing or in person that, under statute and regulations, the records are confidential and cannot be released without an order of the court. Neither the records

officer nor the facility director has any further duty to oppose a subpoena beyond stating to the the court that the records are confidential and cannot be released without an order of the court; however, nothing in this section shall be construed as authorizing such a court order.

(3) If it is known that a patient has a current attorney of record for the given proceedings, that attorney shall be informed of the request of subpoena, if not already served with a copy, and shall be expected to represent and protect the client/patient's interests in the confidentiality of the records. The person whose record has been subpoenaed shall be notified of such action if they are currently receiving services and their whereabouts are known, unless served with a copy of the subpoena. Those currently in treatment shall also be advised that they may wish to obtain an attorney to represent their interests. In the case of persons no longer receiving services, the facility shall send this notification by certified mail to the last known address.

(c) If a present or former patient sues a person or organization providing services subject to the act in connection with said patient's care, custody, evaluation or treatment, or in connection with an incident related thereto, defense counsel for said service provider shall have such access to the present or former patient's records as such counsel deems necessary in preparing a defense. Counsel receiving such records shall maintain their confidentiality and shall limit the disclosure of the contents thereof to those items they deem necessary to allow counsel to prepare and present a proper defense.

(d) All employees of a facility shall be informed of the rules and regulations regarding confidentiality of records and shall also be informed that violation of them could potentially subject them to civil or criminal liability. Training for employees regarding confidentiality remains the responsibility of the facility director.

Notes of Decisions

Release Appropriate

Information in defendant's treatment records which had been the subject of earlier newspaper articles and had been discussed without objection in deposition was a rational and admissible source for the jury to consider in determining the harm caused to plaintiff's reputation which was brought about by the emotional and mental stress under which defendant wrote articles with underlying hatred for plaintiff and plaintiff's pursuit of prosecution of defendant for wiretapping. It was beyond argument that defendant's mental and emotional problems had become so familiar in the public domain that the additional notice of certain medical records had no impact and was harmless evidence in this case. *Sprague v. Walter*, 656 A.2d 890 (Pa. Super. 1995); appeal denied 623 A.2d 336 (Pa. 1996).

Cross References

This section cited in 55 Pa. Code § 3800.20 (relating to confidentiality of records); 55 Pa. Code § 5100.4 (relating to scope); 55 Pa. Code § 5100.32 (relating to nonconsensual release of information); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.26 (relating to records); 55 Pa. Code § 5210.56 (relating to other applicable regulations); 55 Pa. Code § 5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code § 5230.17 (relating to confidentiality); and 55 Pa. Code § 5320.26 (relating to confidentiality).

§ 5100.36. Departmental access to records and data collection.

(a) Notwithstanding any part of this chapter to the contrary, employees of the Department shall not be denied access to any patient records where such access is necessary and appropriate for the employee's proper performance of his duties. The facility director shall make such decision, and shall be responsible for limiting access to those portions which are relevant to the request.

(b) Any conflict as to access by an employee to patient records at State hospitals shall be resolved by the Regional Commissioner of Mental Health.

(c) Collection and analysis of clinical or statistical data by the Department, the administrator, or the facility for administrative or research purposes may be undertaken as long as the report or paper prepared from the data does not identify any individual patient without his consent.

Cross References

This section cited in 55 Pa. Code § 3800.20 (relating to confidentiality of records); 55 Pa. Code § 5100.4 (relating to scope); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.26 (relating to records); 55 Pa. Code § 5210.56 (relating to other applicable regulations); 55 Pa. Code § 5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code § 5230.17 (relating to confidentiality); and 55 Pa. Code § 5320.26 (relating to confidentiality).

§ 5100.37. Records relating to drug and alcohol abuse or dependence.

Whenever information in a patient's records relates to drug or alcohol abuse or dependency, as defined in 71 P.S. § 1690.102, those specific portions of the patient's records are subject to the confidentiality provisions of section 8(c) of the Pennsylvania Drug and Alcohol Abuse Control Act (71 P.S. § 1690.108(c)), and the regulations promulgated thereunder, 4 Pa. Code § 255.5 (relating to projects and coordinating bodies; disclosure of client-oriented information).

Cross References

This section cited in 55 Pa. Code § 3800.20 (relating to confidentiality of records); 55 Pa. Code § 5100.4 (relating to scope); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.26 (relating to records); 55 Pa. Code § 5210.56 (relating to other applicable regulations); 55 Pa. Code § 5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code § 5230.17 (relating to confidentiality); and 55 Pa. Code § 5320.26 (relating to confidentiality).

§ 5100.38. Child or patient abuse.

Nothing in this chapter shall conflict with the mandatory statutory or regulatory requirements of reporting suspected or discovered child abuse or patient abuse. Whenever a conflict exists between the reporting requirements of the Child Protective Services Act (11 P.S. §§ 2201—2224), and the confidentiality of mental health records, the reporting requirements shall govern.

Cross References

This section cited in 55 Pa. Code § 3800.20 (relating to confidentiality of records); 55 Pa. Code § 5100.4 (relating to scope); 55 Pa. Code § 5100.32 (relating to nonconsensual release of information); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.26 (relating to records); 55 Pa. Code § 5210.56 (relating to other applicable regulations); 55 Pa. Code § 5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code § 5230.17 (relating to confidentiality); and 55 Pa. Code § 5320.26 (relating to confidentiality).

§ 5100.39. Release of records.

Under 42 Pa.C.S. §§ 8721—8725 (relating to availability of otherwise confidential information), records which are otherwise confidential may be made available to certain investigating bodies upon order of a judge of the Commonwealth Court.

Cross References

This section cited in 55 Pa. Code § 3800.20 (relating to confidentiality of records); 55 Pa. Code § 5100.4 (relating to scope); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.26 (relating to records); 55 Pa. Code § 5210.56 (relating to other applicable regulations); 55 Pa. Code § 5221.52 (relating to notice of confidentiality and nondiscrimination); 55 Pa. Code § 5230.17 (relating to confidentiality); and 55 Pa. Code § 5320.26 (relating to confidentiality).

FORMS**§ 5100.41. Forms.**

(a) *Reference.* All references to article or section numbers in the title of the forms issued by the Department refer to articles or section numbers of the act.

(b) *Forms.* Forms adopted by the Department as published in prior regulations may be amended to conform with the act by pen and ink changes until new forms are available:

MH 781. Consent for Voluntary Inpatient Treatment (Article II).

MH 781-A. Initial Evaluation.

MH 781-B. Explanation of Voluntary Admission Rights (Adult).

MH 781-C. Explanation of Voluntary Admission Rights (Minor between 14 and 18 years of age).

MH 781-D. Explanation of Voluntary Admission Rights (Minor under 14 years of age).

MH 781-E. Notification of Admission of Child (For parents or guardians of minor 14-18 years old).

MH 781-F. Request to Withdraw from Treatment.

MH 781-X. Request for Voluntary Admission of Person Charged with Crime or Serving Sentence.

MH 781-Y. Consent for Voluntary In-patient Treatment of Person Charged With Crime or Serving Sentence.

MH 781-Z. Explanation of Admission of Person Charged With Crime or Serving Sentence.

MH 782. Patient's Bill of Rights.

MH 783. Application for Involuntary Emergency Examination and Treatment.

MH 783-A. Explanation of Rights under Emergency Involuntary Treatment.

MH 783-B. Explanation of Warrant.

MH 784. Application for Extended Involuntary Treatment (section 303).

MH 784-A. Notice of Intent to File or Petition for Extended Involuntary Treatment and Explanation of Rights.

MH 785. Petition for Involuntary Treatment.

MH 785-A. Notice of Intent to File a Petition for Extended Involuntary Treatment and Explanation of Rights.

MH 785-B. Notice of a Hearing on Petition for Involuntary Treatment and Explanation of Rights.

MH 786. Petition for Involuntary Treatment—Through the Criminal Justice System.

MH 786-A. Notice of Intent to File a Petition for (Extended) Involuntary Treatment at a Mental Health Facility and Explanation of Rights.

MH 787. Petition for Commitment for Involuntary Treatment After Finding of Incompetence to Stand Trial Where Severe Mental Disability is Not Present.

MH/MR 50. Patient Consent to Transfer.

(c) Forms amended in this chapter include:

MH-781-X

MH-788

Cross References

This section cited in 55 Pa. Code § 5100.23 (relating to written application, petitions, statements and certifications).

PATIENT RIGHTS

§ 5100.51. Preservation of rights.

Persons subject to treatment under this chapter shall retain all civil rights that have not been specifically curtailed by separate judicial or administrative determination by the appropriate legal authority.

Cross References

This section cited in 55 Pa. Code § 5100.4 (relating to scope); 55 Pa. Code § 5200.32 (relating to treatment policies and procedures); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.56 (relating to other applicable regulations); 55 Pa. Code § 5320.22 (relating to governing body); and 55 Pa. Code § 5320.45 (relating to staff orientation and training).

5100-22

§ 5100.52. Statement of principle.

(a) *Facilities.* Upon voluntary or involuntary admission to an inpatient facility, each patient shall be given a copy of the summary statement of the Bill of Rights, contained in § 5100.53 (relating to bill of rights for patients), Form MH-782, or the patient rights pamphlet (PWPE # 605), published by the Department entitled *You Have a Right to be Treated with Dignity and Respect*. Appended to each of these documents shall be the names, addresses, and telephone numbers of legal and other available advocacy services. Assistance in contacting a legal or other advocate shall be provided by the facility to each patient upon request. The rights contained therein shall be explained to the extent feasible to persons who cannot read or understand them. Within 72 hours of admission, the Manual of Rights, set forth in § 5100.54 (relating to manual of rights for persons in treatment), or the Patient Rights Handbook (PWPE # 606), entitled *Your Rights Are Assured*, shall be made available or given to each patient, and the rights contained therein shall be explained to the extent feasible to persons who cannot read or understand them. Additionally, a copy of either the Manual of Rights or the Patient Rights Handbook (PWPE # 606) entitled *Your Rights Are Assured*, shall be made available for each patient access in each patient living area.

(b) *Current patients.* All current patients shall be given a copy of either the Manual of Rights, or Patient Rights Handbook entitled *Your Rights Are Assured* (PWPE # 606), as in subsection (a). Existing supplies of previously printed forms and manuals may be utilized.

(c) *Manual of rights.* Upon request, a complete copy of the Manual of Rights shall be made available to the family, guardian, attorney, and other interested parties.

Cross References

This section cited in 55 Pa. Code § 5100.4 (relating to scope); 55 Pa. Code § 5200.32 (relating to treatment policies and procedures); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.56 (relating to other applicable regulations); 55 Pa. Code § 5320.22 (relating to governing body); 55 Pa. Code § 5320.33 (relating to resident/provider contract; information on resident rights); and 55 Pa. Code § 5320.45 (relating to staff orientation and training).

§ 5100.53. Bill of rights for patients.

The following is the bill of rights for patients:

5100-23

(398679) No. 542 Jan. 20

BILL OF RIGHTS**YOU HAVE A RIGHT TO BE TREATED WITH DIGNITY AND RESPECT****YOU SHALL RETAIN ALL CIVIL RIGHTS THAT HAVE NOT BEEN SPECIFICALLY CURTAILED BY ORDER OF COURT**

You have the right to unrestricted and private communication inside and outside this facility including the following rights:

- a. To a peaceful assembly and to join with other patients to organize a body of or participate in patient government when patient government has been determined to be feasible by the facility.
 - b. To be assisted by any advocate of your choice in the assertion of your rights and to see a lawyer in private at any time.
 - c. To make complaints and to have your complaints heard and adjudicated promptly.
 - d. To receive visitors of your own choice at reasonable hours unless your treatment team has determined in advance that a visitor or visitors would seriously interfere with your or others' treatment or welfare.
 - e. To receive and send unopened letters and to have outgoing letters stamped and mailed. Incoming mail may be examined for good reason in your presence for contraband. Contraband means specific property which entails a threat to your health and welfare or to the hospital community.
 - f. To have access to telephone designated for patient use.
2. You have the right to practice the religion of your choice or to abstain from religious practices.
 3. You have the right to keep and to use personal possessions, unless it has been determined that specific personal property is contraband. The reasons for imposing any limitation and its scope must be clearly defined, recorded and explained to you. You have the right to sell any personal article you made and keep the proceeds from its sale.
 4. You have the right to handle your personal affairs including making contracts, holding a driver's license or professional license, marrying, or obtaining a divorce and writing a will.
 5. You have the right to participate in the development and review of your treatment plan.
 6. You have the right to receive treatment in the least restrictive setting within the facility necessary to accomplish the treatment goals.
 7. You have the right to be discharged from the facility as soon as you no longer need care and treatment.
 8. You have the right not to be subjected to any harsh or unusual treatment.
 9. If you have been involuntarily committed in accordance with civil court proceedings, and you are not receiving treatment, and you are not dangerous to

yourself or others, and you can survive safely in the community, you have the right to be discharged from the facility.

10. You have a right to be paid for any work you do which benefits the operation and maintenance of the facility in accordance with existing Federal wage and hour regulations.

Cross References

This section cited in 55 Pa. Code § 5100.4 (relating to scope); 55 Pa. Code § 5200.32 (relating to treatment policies and procedures); 55 Pa. Code § 5100.52 (relating to statement of principle); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.56 (relating to other applicable regulations); 55 Pa. Code § 5320.22 (relating to governing body); and 55 Pa. Code § 5320.45 (relating to staff orientation and training).

§ 5100.54. Manual of rights for persons in treatment.

The following is the manual of rights for persons in treatment:

Article I: *The Right to Communicate*

Statement of Principle

1. Right to Information
2. Right to Assistance
3. Right to an Attorney
4. Right to Have Visitors
5. Right to Send and Receive Letters
6. Right to Use Telephones

Article II: *The Right of Religious Freedom*

Statement of Principle

1. Right to Refuse Medication
2. Right to Diets Based on Religious or Ethical Consideration
3. Right to Abstain from Religious Practices

Article III: *The Right to Handle Your Personal Affairs*

Article IV: *The Right to a Humane Physical and Psychological Environment*

Article V: *The Right to Treatment*

Statement of Principle

1. Individualized Treatment Plan
2. Discharge

Article VI: *Permissible, Restricted and Prohibited Treatment Procedures*

Statement of Principle

1. Permissible Procedures
2. Restricted Procedures
3. Prohibited Procedures

Article VII: *Grievance and Appeal Procedures*

Statement of Principle

1. Grievance Procedures
2. First Level Appeal
3. Second Level Appeal

ARTICLE I**THE RIGHT TO COMMUNICATE**

Statement of Principle.

(a) Every patient has the right and shall be encouraged to communicate freely and privately with others within the facility and in the community at large, as described below. This is based upon the firm belief that meaningful communications are essential to a successful course of treatment. These rights may be suspended or restricted for a limited period by the treating physician only when reasonable cause exists to believe that failure to suspend communications will result in a substantial risk of serious and immediate harm to the patient or others, or that a crime is being committed. The physician shall fully explain any suspensions or restrictions of these rights to the patient and document the reasons for the restriction in the patient's record. Suspension or restrictions shall be reviewed and documented every 48 hours until the risk of serious and immediate harm is reduced.

(b) Every patient shall have the right to make complaints and offer suggestions to the director, or his designee, regarding the operation of the facility, and may meet with other patients to discuss their concerns with facility administrators. Complaints and suggestions shall be heard and decided promptly.

1. Right to Information.

(a) Every patient has the right to be informed of his rights and responsibilities while in treatment, and those house rules and regulations of the facility which affect his treatment.

(b) Every patient has the right to be informed of diagnostic and treatment procedures, their risks and their costs, that are available to him and which would aid in his recovery from mental illness. Patients have the right to be informed of the reasons and factors involved in recommending a procedure of choice.

(c) Every patient has the right to be informed of the nature of material about to be released to others (or obtained) when he is requested to sign a release of information.

2. Right to Assistance.

(a) Every patient shall have the right to the assistance of an independent person not a member of his treatment team to resolve a problem raised by the patient.

(b) Each non-State facility shall designate one or more persons either on a volunteer or staff basis as needed to help patients in this manner.

(c) State facilities shall designate one or more staff to aid patients, and these persons shall be accessible during regular working hours.

(d) Every State facility shall advise and educate all patients about the availability and services of this program.

(e) These persons will be responsible for assisting or supporting the patient in meeting with the appropriate person to discuss the problem and possible solution. They shall maintain a confidential file of requests for service and subsequent actions taken. The file shall be open to review only by the facility director or the patient's Attorney and shall be filed with the patient's clinical record upon discharge. They have no authority to directly resolve problems but may report his or her findings directly to the facility director.

3. Right to an Attorney.

(a) Every patient has the right to retain an attorney of his choice to assist the patient in asserting his rights to treatment or release or to aid the patient in any other matter.

(b) The facility will provide patients with referral information and other non-monetary assistance to enable patients to implement this right. The names, addresses and telephone numbers of legal services and other available advocates in this area shall be given to all patients.

(c) Every patient has the right to see or telephone his attorney in private at any reasonable time, regardless of visiting hours.

4. Right to Have Visitors.

(a) Every patient has the right to receive visitors of his own choice daily, within established visiting hours, in a setting of reasonable privacy conducive to free and open conversation unless a visitor or visitors are determined to seriously interfere with a patient's treatment or welfare.

(b) Established visiting hours shall attempt to meet the needs of individual patients and visitors, and may be waived to the extent feasible to accommodate special circumstances or the needs of individual patients.

5. Right to Send and Receive Letters.

(a) Every patient has the right to send unopened mail. Reasonable amounts of such mail shall be stamped free of charge if sufficient personal funds are not available.

(b) Writing materials shall be made available to patients on a daily basis and an opportunity provided for writing letters and other communications. Reasonable assistance shall be provided upon request, if feasible.

(c) Incoming mail may be opened only when there is reason to suspect it contains contraband, and in the presence of the patient unless dangerous or infeasible in the light of the patient's condition. Contraband is specific property, the possession or use of which is illegal or entails a substantial threat to the health and welfare of the patient or the hospital community.

(d) Whenever mail is opened on suspicion of contraband, an identification of the person opening the mail, a statement of the facts constituting good cause, and the results of the opening including disposition shall be noted in the patient's record.

(e) A patient's mail, whether incoming or outgoing, shall not be read under any circumstances, unless at the patient's request.

6. Right to Use Telephones.

(a) Every patient has the right to make telephone calls at his own expense, at reasonable times, using telephones designated for patient or public use. The facility shall take steps to provide sufficient telephones.

(b) In cases of personal emergency, when alternative methods of communication are impractical, every patient shall have the right to make reasonable local and long distance phone calls, free of charge. These calls shall be subject to reimbursement if the patient has sufficient funds to pay for the call. The director of the facility, or his delegate, shall determine what constitutes personal emergency.

ARTICLE II THE RIGHT TO RELIGIOUS FREEDOM

Statement of Principle.

Every patient has the right to follow and practice his religion. Substantiated ethical convictions held independently of a belief in any religion shall be accorded the same respect as religious belief. The facility shall provide reasonable assistance to enable a patient to effect this right.

The exercise of these rights may be limited only if it poses a serious threat to the freedom or welfare of others, or a serious danger to the patient.

1. Right to Refuse Medication.

Any patient who holds a substantiated belief in the power of spiritual healing shall not be compelled to take medication, provided the patient is intellectually capable of understanding the impact of such refusal and of deciding to refuse medication.

2. Right to Diets Based on Religious Considerations.

The patient's right to independently comply with his or her dietary regimen shall not be interfered with by the facility unless unfeasible or unless there is serious danger to a person's health.

3. Right to Abstain from Religious Practices.

No patient shall be required to be pressured directly or indirectly to participate in religious practices. No patient shall be compelled to accept visitation from a clergyman or minister of any religion.

ARTICLE III
THE RIGHT TO HANDLE
YOUR PERSONAL AFFAIRS

Statement of Principle.

Every patient retains all civil rights not specifically curtailed by an order of a court or other body empowered to take such action.

(a) Every patient has the right to handle his personal affairs. Admission or commitment to a mental health facility does not by itself, prevent a patient from holding a driver's license or professional license, from marrying or obtaining a divorce, from voting or writing a will, or exercising other civil and personal rights; nor is the patient guaranteed the ability to exercise any of these rights.

(b) Every patient has the right to purchase, keep, and use personal possessions. This right may be limited only when the possession or use of specific property is illegal or creates a substantial threat to the health or welfare of the patient or others. The reasons for imposing any limitations on the exercise of this right and the scope of such limitation shall be clearly explained to the patient and placed in the patient's record.

(c) Every patient has the right to sell or retain any product or crop he makes, or grows on facility property. Money received from these activities shall not be used to pay the costs of any patient's care and treatment.

(d) A patient shall not be deemed incompetent to manage his own affairs solely by reason of admission or commitment to a mental health facility.

A court finding of incompetency may not be extended beyond the specific scope of the court order.

ARTICLE IV
RIGHT TO A HUMANE PHYSICAL
AND PSYCHOLOGICAL ENVIRONMENT

Statement of Principle.

Every patient has the right to reside and be treated in a setting which preserves and promotes his physical and psychological dignity.

(a) Every patient has the right to be treated humanely and with consideration by all staff members. Any grossly negligent or intentional conduct of staff which causes or may cause emotional or physical harm to a patient is a violation of this right.

(b) Every patient has the right to assistance in developing a physical appearance which promotes a positive self image. This includes the following:

(1) The right to keep and wear his own clothing, unless there are reasonable grounds to believe such clothing or specific items constitute a substantial threat to the health or safety of the patient or others.

(2) Clothing provided by the facility shall be neat, clean, appropriate to the season and to the extent possible, consistent with the patient's personal preference. This clothing shall enable the patient to make a customary appearance within the community.

(3) The right to purchase, keep, and use customary cosmetic, hygiene, and grooming articles or services unless there are reasonable grounds to believe specific articles constitute a substantial threat to the health or safety of the patient or others.

(4) Basic customary cosmetic, hygiene, and grooming articles or services shall be provided by the facility for patients who need them but cannot afford them. Patients shall be given reasonable assistance as needed in utilizing cosmetic, hygiene, and grooming articles and services.

(c) Every residential patient shall be furnished with a comfortable bed and bedding, adequate change of linen, a closet or locker for personal belongings, and a bedside cabinet. Every patient, at his or her own risk, shall be allowed to keep and display appropriate personal belongings and to add personal touches to his room or living area.

(d) Every patient has the right to a nutritionally adequate diet and every patient has the right to eat or to be fed under supervision, in the dining room or area in the relaxed atmosphere, and to use normal eating implements, unless contra-indicated by the patient's conduct or course of treatment.

(e) Every patient has the right to bathroom facilities which provide privacy for personal hygiene and meet Departmental standards for health, safety, and cleanliness.

(f) Every patient has the right to therapeutic and daily living activities held in settings that approximate noninstitutional living. Dining, recreational, vocational, and other activities shall where possible and appropriate be conducted on a basis which provides interaction between male and female patients.

ARTICLE V

RIGHT TO TREATMENT

Statement of Principle.

Every patient has the right to receive treatment designed to aid and promote his recovery from mental illness. This treatment shall, whenever possible, be in or near the patient's home community, and shall be in the least restrictive setting available to provide adequate treatment or to meet the conditions of security imposed by a court.

1. Individual Treatment Plan.

(a) Every patient has the right to an individualized treatment plan, appropriate to his needs, setting forth the objectives, goals, activities, experiences, and therapies designed to promote recovery.

(b) The plan shall be developed within 72 hours of admission or commitment. It shall be revised whenever necessary and reviewed at least every 30 days.

(c) Every patient has the right to participate to the extent feasible in the development of his treatment plan. The plan shall be written in terms understandable by lay persons and shall be explained to the patient. A copy of the treatment plan shall be made available for the patient's review.

2. Discharge.

Every patient has the right to be discharged as soon as care and treatment is no longer necessary. Every patient has the right to all of the available treatment modalities appropriate to his or her needs which promote recovery and discharge. Treatment shall also include the appropriate post-discharge rehabilitative services available in the community.

ARTICLE VI PERMISSIBLE SPECIALIZED AND PROHIBITED TREATMENT PROCEDURES

Statement of Principle.

Every patient shall only receive approved treatment procedures in accordance with Departmental regulations. This treatment shall be described in his individual treatment plan and shall be explained to the patient.

1. Permissible Procedures.

(a) All patients may in an emergency, be required to accept the minimal sufficient diagnostic procedures and treatment necessary to alleviate the emergency.

(b) Patients committed pursuant to sections 303, 304 or 305 of the act (50 P. S. §§ 4303, 4304, and 4305), may also be required to accept routine medical, psychiatric, psychological, and educational programs conforming to departmental regulations and the patient's individualized treatment plan.

(c) Any patient committed for examination by court may be required to accept the minimal diagnostic procedures necessary to determine the patient's mental condition.

(d) Any patient in treatment on a voluntary basis may agree to participate in any and all approved treatment methods as described in his individualized treatment plan. Any voluntary patient may also refuse to participate in any aspect of his individualized treatment plan and may request a review of the proposed treatment. Refusal to accept a reviewed and approved treatment may be cause for discharge.

2. Specialized Procedures.

(a) No patient shall be subject to the withholding of privileges, nor to any system of rewards, except as part of an individualized treatment plan.

(b) Electro-convulsive or other therapy, experimental treatments involving any risk to the patient, or aversion therapy shall not be prescribed unless:

(1) The patient's treatment team has documented in the patient's record that all reasonable and less intensive treatment modalities have been considered; that the treatment represents the most effective therapy for the patient at that time; and that the patient has been given a full explanation of the nature and duration of the proposed treatment and why the treatment team is recommending the treatment; and that the patient has been told that he or she has the right to accept or refuse the proposed treatment and that if he consents, has the right to revoke his consent for any reason at any time prior to or between treatments.

(2) The treatment was recommended by qualified staff members trained and experienced in the treatment procedure and has been approved by the facility administrator if an M.D. or, if not, by the clinical director after review by the appropriate committee.

(3) The patient has given written informed consent to the specific proposed treatment. In the alternative, oral informed consent is sufficient where that consent is witnessed by two persons not part of the patient's treatment team. In either case, such consent shall be limited to a specified number of maximum treatments over a specific period of time and shall be revocable at any time before or between treatments. Such withdrawal of consent may be immediately effective.

(4) If a patient's treatment team determines that the patient could benefit from one of those specified treatments but also believes that the patient does not have the capacity to give informed consent to the treatment, a court order shall be obtained authorizing the recommended treatment before such treatment may be administered to the patient.

(c) No patient shall be subject to chemical, physical, or psychological restraints, including seclusion, other than in accordance to the Department's regulations applicable to State Mental Health Facilities or, in case of community facilities, the policy and procedures for seclusion and restraint approved by its medical staff and governing body. A copy of the applicable regulations shall be made available to patients upon request.

(d) No patient shall be the subject of any research, unless conducted in strict compliance with Federal regulations on the protection of human subjects. Patients considered for research approved by the facility shall receive and understand a full explanation of the nature of the research, the expected benefit, and the potential risk involved. Copies of the Federal regulations shall be made available to patients involved in, or considering becoming involved in, research or their advocates. Patient research conducted in State facilities or funded by State monies requires prior approval of the Deputy Secretary of Mental Health.

3. Prohibited Procedures.

Psychosurgery, removal of organs for the purpose of transplantation, and sterilization, shall not be performed at a State-operated mental hospital.

ARTICLE VII
GRIEVANCE AND APPEAL
PROCEDURES

Statement of Principle.

To insure that these rights are safeguarded and that disputes concerning their rights and others are resolved promptly and fairly, patients must have the right to lodge grievances and appeals when informal methods of resolving disputes are unsuccessful. Each facility shall have a grievance and appeal system in effect. Every patient shall be informed of the grievance and appeal system and shall be encouraged to utilize it when informal methods of resolving complaints are unsuccessful.

1. Grievance Procedure.

(a) Any patient, or those helping him, may initiate a complaint orally or in writing, concerning the exercise of these rights or the quality of services and treatment at the facility. The complaint shall be presented as soon as possible to the treatment team leader or other appropriate person.

(b) Every patient shall have the right to the assistance of an independent person and witnesses in presenting his complaint.

(c) The treatment team leader, administrative supervisor, or their designees receiving the complaint shall investigate the complaint and make every effort to resolve it. Based upon this investigation, a decision shall be rendered in writing as soon as possible but within 48 hours after the filing of the complaint. Complaints shall be decided by persons not directly involved in the circumstances leading to the grievance.

(d) The patient shall be given a copy of the complaint and final decision and a copy shall be filed in the patient's record.

2. First Level Appeal.

(a) Any patient, or those helping him, may appeal the grievance decision within 10 working days of the decision. State-operated facilities shall follow the procedures set forth in this part. Non-State operated facilities shall have in effect a fair and impartial appeal procedure, which shall be reviewed by the county administrator.

(b) In a State-operated facility, standing Rights Review Committee composed equally of facility staff and persons from the community not affiliated with the facility shall hear the appeal and render a written decision within 10 working days of the date of the appeal. Staff members shall be appointed by the facility director. Until such time as the committee is in effect, the appeal shall be heard by a hearing examiner appointed by the regional deputy secretary. If the grievance requires immediate action, the appeal shall be heard and decided as soon as possible.

(c) The patient shall be given prompt notice of the date set for the appeal and shall be informed of his right to be represented by counsel.

(d) Hearings shall be informal, without strict adherence to the rules of evidence. A sufficient record of the hearing shall be made.

(e) A copy of the decision shall be given to the patient, the facility director, and filed in the patient's chart.

3. Second Level Appeal.

(a) Any patient in a State facility, those helping him, or the facility director, may appeal the decision of the hearing examiner or Rights Review Committee within 10 working days of the decision. The appeal must set forth the specific objections to the decision.

(b) The Secretary of Public Welfare shall establish a standing Rights Appeal Committee composed equally of Department and community personnel. Within 5 working days of receipt of a second level request, the Committee shall review the decision of the Rights Review Committee and may seek any additional information it deems necessary.

(c) The patient shall be given prompt notice of the date set for the appeal and shall be informed of his or her right to be represented by counsel.

(d) Reviews shall be informal. A sufficient record of the hearing shall be made.

(e) The Committee shall submit a recommendation to the Secretary of Public Welfare within 10 working days of its receipt of the second level appeal request. The Secretary will review the findings and recommendations by the Committee and will issue a decision.

(f) Nothing in this section shall be construed as precluding a patient from instituting appropriate legal proceedings.

Cross References

This section cited in 55 Pa. Code § 5100.4 (relating to scope); 55 Pa. Code § 5200.32 (relating to treatment policies and procedures); 55 Pa. Code § 5100.52 (relating to statement of principle); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.56 (relating to other applicable regulations); 55 Pa. Code § 5320.22 (relating to governing body); and 55 Pa. Code § 5320.45 (relating to staff orientation and training).

§ 5100.55. Notification of rights.

Upon receipt of a person for treatment the facility shall advise the individual of his rights, and obtain when feasible a written acknowledgement by the person that his rights affecting their treatment were explained. In the event that conditions prevent such acknowledgement or understanding, the process of notification shall be recorded by the person designated and confirmed by a witness.

Cross References

This section cited in 55 Pa. Code § 5100.4 (relating to scope); 55 Pa. Code § 5200.32 (relating to treatment policies and procedures); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.56 (relating to other applicable regulations); 55 Pa. Code § 5320.22 (relating to governing body); and 55 Pa. Code § 5320.45 (relating to staff orientation and training).

§ 5100.56. Existing regulations.

(a) Existing regulations regarding treatment facilities and procedures continue in force to guide facilities and providers in protecting the rights of persons in treatment.

(b) It shall be the responsibility of the administrator in utilizing facilities to assure that procedures for affecting and protecting the rights of persons in treatment are developed and followed.

Cross References

This section cited in 55 Pa. Code § 5100.4 (relating to scope); 55 Pa. Code § 5200.32 (relating to treatment policies and procedures); 55 Pa. Code § 5200.47 (relating to other applicable regulations); 55 Pa. Code § 5210.56 (relating to other applicable regulations); 55 Pa. Code § 5320.22 (relating to governing body); and 55 Pa. Code § 5320.45 (relating to staff orientation and training).

CONTINUITY OF CARE**§ 5100.61. Continuity of care.**

(a) When a person in treatment under the act moves into or out of a State-operated mental health facility, the county administrator responsible for the person's continuity of care shall take such actions to ensure that the person receives available services as needed. In taking such actions, the administrator shall consider the person's plans to utilize private resources.

(b) Whenever a person is considered for discharge from treatment at a State facility, the director shall take steps to assure that the appropriate county administrator's office is involved in predischarge planning before the discharge. The degree of involvement by the county may be based upon the person's plans to utilize private resources.

(c) Upon discharge, the county administrator receiving the referral shall take the necessary steps to arrange for the available mental health treatment services as defined in application statutes.

(d) When a person referred for service refuses to cooperate with the county administrator after discharge, such person shall be evaluated for alternative services before the case can be closed. Such evaluations should be as clinically thorough as possible. There should be documentation of repeated efforts at re-involving the person in voluntary treatment if treatment has been recommended and of the decisions regarding the appropriateness of commitment proceedings.

VOLUNTARY TREATMENT**§ 5100.71. Voluntary examination and treatment.**

(a) Persons 14 years of age or older may seek voluntary inpatient treatment if they substantially understand the nature of such treatment and the treatment setting. Parents or guardians who decide to seek voluntary inpatient treatment for persons under 14 years of age may do so only in accordance with the act and applications regulations.

(b) The test of a person's substantial understanding for inpatient treatment is met if the person gives consent to the information and explanations outlined in section 203 of the act (50 P.S. § 4203).

(c) Behavioral consent, as defined in § 5100.2 (relating to definitions) shall be sufficient consent for persons presently receiving treatment at a facility to remain at that facility and to participate in treatment which is explained to him. Behavioral consent shall be documented under § 5100.73 (relating to explanation and consent to inpatient treatment). Behavioral consent shall not be relied upon for admission to or transfer from a facility.

§ 5100.72. Applications.

(a) Written application for voluntary inpatient treatment shall be made upon Form MH-781, issued by the Department.

(b) A State-operated facility shall not accept an application for voluntary inpatient treatment for persons not currently in the facility unless:

(1) There is concurrence on an individual case basis given by the administrator.

(2) There is a preexisting agreement of waiver approved by the Deputy Secretary of Mental Health between the State facility and the Administrator which designates that facility as the only provider of inpatient services of the county program.

(3) There is a preexisting letter of agreement approved by the Deputy Secretary of Mental Health between the State facility and the Administrator which designates the State facility as:

(i) A substitute provider of inpatient services on a temporary basis when an emergency need arises and there are no other appropriate approved facilities available; or

(ii) A provider of specialized forensic inpatient services when a need for security arises.

(4) Such letter of agreement shall define the nature of security to be available and the responsibilities of both the State facility and the administrator.

(c) When application is made to an approved facility, the director of the facility shall:

(1) Be responsible for insuring that a preliminary evaluation of the applicant is conducted in order to establish the necessity and appropriateness of out-

patient services or partial hospitalization or inpatient hospitalization service for the individual applicant. The preliminary evaluation shall be done in the least restrictive setting possible. The results of the preliminary evaluation shall be set forth on Form MH-781-A issued by the Department.

(2) Promptly notify the administrator if the applicant's treatment will involve mental health/mental retardation (MH/MR) funding.

(d) When application is made to the administrator:

(1) The administrator shall designate an approved facility which shall conduct a preliminary evaluation of the applicant in order to establish the necessity and appropriateness of outpatient services or partial hospitalization service or inpatient hospitalization for the individual applicant.

(2) The designated facility shall immediately upon its completion of the preliminary evaluation, notify the administrator of its finding and recommendations.

(3) Upon receipt of the report, the administrator shall review the report and when necessary, designate an approved appropriate facility for the recommended treatment of the individual applicant.

§ 5100.73. Explanation and consent to inpatient treatment.

(a) In order to assure that a person substantially understands the nature of voluntary inpatient treatment, an explanation shall be made to him of the findings of the preliminary evaluation and the proposed treatment and goals. An explanation of planned diagnostic and treatment procedures, including the medications, restraints or restrictions which may be utilized shall be given in terms understandable by the person seeking services.

(b) Each applicant shall be provided with a copy of the Patient's Bill of Rights, Form MH-782 or the Patient's Rights Pamphlet, PWPE #605 entitled *You Have a Right To Be Treated With Dignity and Respect*. Consent shall be obtained by use of Form MH-781 B, C or D.

(c) In the event that the consent of the applicant is given but cannot be obtained in writing, a statement on a form approved by the Department documenting that the applicant acknowledged the explanation given indicated his or her consent shall be signed by the person presenting the information and at least one witness. This statement shall be made part of the patient's record.

(d) Staff of a facility, in arranging to convert a person's legal status from involuntary treatment under civil commitment to voluntary treatment under Article II of the act (50 P. S. §§ 7201—7207), shall explain to the patient that he, by converting to voluntary status, is agreeing to remain in treatment for 72 hours after giving proper notice of his intent to withdraw from treatment. A patient's refusal to agree to remaining in treatment for this 72-hour period may be considered as sufficient grounds to deny the conversion and seek a new commitment. The conversion process for persons in involuntary treatment who are under crimi-

nal jurisdiction shall be arranged in accordance with the steps outlined in section 407 of the act (50 P. S. § 7407), and this chapter.

Cross References

This section cited in 55 Pa. Code § 5100.71 (relating to voluntary examination and treatment).

§ 5100.74. Notice to parents regarding voluntary inpatient treatment of minors.

(a) A notice to parents, guardian, or person standing in *loco parentis* of the patient age 14 to 18 of acceptance for treatment shall be given by telephone when possible, and also by delivery of Form MH-781 issued by the Department. The notice shall include an explanation of the proposed treatment and the right to be heard upon the filing of an objection.

(b) Whenever the director of the facility is unable to determine the whereabouts of the parents, guardian, or person standing in *loco parentis*, he shall take such action as he deems appropriate, including notifying appropriate child welfare agencies.

(c) In the event that a parent, guardian, or person standing in *loco parentis* objects to the voluntary examination and treatment, he may file an objection in writing with the director of the facility or the administrator, who shall arrange for a hearing under the act.

§ 5100.75. Physical examination and formulation of individualized treatment plan.

(a) Upon completion of the preliminary evaluation and acceptance of a person for voluntary inpatient examination or treatment, the facility shall provide or arrange for a physical examination immediately, unless one has immediately been conducted as part of the preliminary evaluation that is acceptable to the facility.

(b) A preliminary treatment plan, based upon the preliminary examination, may be used initially and shall be revised under § 5100.15 (relating to contents of treatment plan), at the earliest opportunity.

§ 5100.76. Notice of withdrawal.

(a) Upon request to any clinical employe of the treating facility, a person 14 years of age or older seeking release from voluntary treatment shall be immediately provided with Form MH-781-F issued by the Department. Unless otherwise indicated in the patient's record, the treatment team leader shall be notified of each request to withdraw. An adequate supply of Form MH781-F shall be available in all treatment and living areas of the facility.

(b) The person receiving a signed Form MH 781-F from a patient shall immediately examine the patient's record to determine whether the patient has previously agreed to remain in treatment for a specified period not to exceed 72 hours after having given written notice of intent to withdraw from involuntary

treatment. If no such consent has been given, the patient may immediately withdraw from treatment unless an application for emergency involuntary treatment is executed under section 302 of the act (50 P. S. § 7302), and the patient is advised accordingly.

(c) If consent to remain in treatment had been given, the person examining the record shall notify the patient and a member of the treatment team or their designee, who shall be available at all times. The treating facility may delay release of such person for a period not exceeding that specified if the treatment team or its designee has reason to believe that:

(1) The individual is severely mentally disabled and a petition for involuntary treatment under section 302 of the act (50 P. S. § 7302), is to be filed before the end of the specified time period; or

(2) Immediate release would be medically dangerous to the health of the individual.

(d) The patient need not be released until determinations in subsections (b) and (c) can be rationally made and until the treatment team leader or designee has had an opportunity to talk with the patient.

(e) When release of an individual from voluntary treatment is delayed, the individual shall be informed of the circumstances justifying the delay for the specified period of time. The circumstances shall also be set forth in writing and made part of the patient's record. Treatment shall be provided during this period only with consent or as necessary to treat an emergency.

(f) Rules relating to delayed release apply to release of persons under the age of 14 who are admitted under a delayed release admission.

(g) The director of the facility shall notify the administrator of the withdrawal of any publicly funded person from voluntary treatment as soon as possible after receiving notice from the person of his intent to withdraw from treatment. The director of a State medical health facility shall designate staff to make a continuity of care referral to the appropriate administrator and to participate in the development of follow-up plans for persons withdrawing from involuntary treatment.

(h) A person who is a voluntary admission from a prison or jail shall not be discharged upon his request. If the facility concurs with the person's request to withdraw from treatment:

(1) Nonemergency or nonconsensual treatment shall be suspended.

(2) The person may be detained for the reasonable time necessary for the correctional facility to arrange for the person's transportation. Normally, transportation should be arranged and completed within 72 hours of the request to withdraw from treatment.

Cross References

This section cited in 55 Pa. Code § 13.8 (relating to seclusion).

§ 5100.77. Discharge from voluntary inpatient treatment.

(a) In the event that the treatment team determines that continued voluntary inpatient treatment is not indicated, the treatment team shall discharge the patient with an appropriate post-discharge plan. If public funds are or will be involved, the director shall notify the administrator as early as feasible of the discharge plan. All persons being discharged from a State operated mental health facility shall be referred to the administrator per section 116 of the act (50 P. S. § 7116).

(b) In the event that any patient in voluntary inpatient treatment is unwilling to accept or cooperate with his individualized treatment plan, the treatment team shall advise the director of the facility of such fact. The director of the facility or designee shall review the circumstances including the availabilities of reasonable alternative treatment plans, and determine whether discharge is appropriate.

(c) When the director of the facility determines that the unwillingness of the patient to accept or cooperate with the individualized treatment plan, or reasonable alternative treatment plans, makes continued voluntary inpatient treatment inappropriate, he or she shall advise the patient of the voluntary nature of the treatment and the patient's right to withdraw.

(d) In the event that the patient continues to fail to accept or cooperate with the individualized treatment plan or reasonable alternative treatment plan, and fails to withdraw from voluntary inpatient treatment, the director of the facility shall advise the patient, and if public funds are involved, the Administrator, of his determination that discharge or commitment may be appropriate.

§ 5100.78. Transfer of persons in voluntary treatment.

(a) A transfer initiated by the patient in voluntary treatment, his family, a facility director, or county administrator, under the act shall only be to approved facilities and with use of Form MH-60.

(b) Each person 14 years of age or older, or the parent, guardian, or person standing in *loco parentis* of a person under 14 years of age who is in voluntary treatment and is considered for transfer from one facility to another, shall be informed about the prospective treatment setting and modalities before giving written consent. For a person 14 to 17 years of age, notice of the proposed transfer shall be sent to the person's parents indicating their right to object by requesting a hearing. When the transfer will result either in placing the person in a more restrictive setting, or in placing greater restrictions upon the person, these facts shall be explicitly explained to the person and his parents prior to obtaining a consent. Written consent shall be obtained prior to the release of any records for the purpose of planning or effecting a transfer.

(c) All necessary actions required to effect a voluntary transfer remain the responsibility of the patient in voluntary treatment, or his relatives, or both, and the releasing and accepting facilities unless there are requirements or conditions for authorization imposed by a county administrator or by order of court.

(d) Transfers of persons in voluntary treatment from State operated mental health facilities to another State may be arranged by the patient or his relatives, or both, by discharge and admission procedures of the respective facilities, or if necessary, a transfer may be made through the Interstate Compact Officer after consent has been obtained under subsection (b).

(e) Except for persons admitted to voluntary treatment under section 401 of the act (50 P. S. § 7401), transfers of persons in voluntary treatment to State operated mental health facilities from another State through the patient's own resources or through the Interstate Compact may be made after the consent in subsection (b) has been obtained.

(f) For purposes of this section and § 5100.90 (relating to transfer of persons in involuntary treatment), a State mental hospital or private psychiatric hospital shall be considered a single facility, except that those distinct parts of State mental hospitals designated as either forensic units or intermediate care units shall be considered a distinct facility.

INVOLUNTARY TREATMENT

§ 5100.81. Involuntary examination and treatment.

(a) A person may be subject to an involuntary examination only at facilities approved and designated for that purpose by the administrator.

(b) No facility shall be designated unless it has an approved plan to comply with section 302(c)(2) of the act (50 P. S. § 7302(c)(2)), and this chapter. The plan shall be jointly developed by the administrator and facility director, utilizing available county resources.

(c) The administrator, at least on an annual basis, shall advise the public, through notice in one newspaper of general circulation in the county, of the facilities he has designated to provide involuntary emergency examination and treatment.

§ 5100.82. Jurisdiction and venue of legal proceedings.

(a) A court ordering involuntary treatment may retain jurisdiction over subsequent proceedings. If jurisdiction is initially exercised by the court of the county in which the person is, jurisdiction shall be transferred to the county of the person's most current residence except in cases committed under section 401 of the act (50 P. S. § 7401). For persons committed under section 401 of the act, jurisdiction shall be transferred to the court having jurisdiction over the person's criminal status. Security provisions for a person committed under section 401 of the act may be reduced only by the court with jurisdiction over the person's criminal status.

(b) Hearings may be held at facilities in all cases. In light of the difficulties involved in transporting patients and staff, and the impact upon patient care, every effort shall be made to hold hearings at the facility.

- (c) Records of hearings shall be confidential as part of the patient's records.

§ 5100.83. Generally.

(a) A person may be subject to an involuntary examination only at facilities approved and designated for that purpose by the administrator.

(b) No facility shall be designated unless it has an approved plan to comply with section 302(c)(2) of the act (50 P. S. § 7302(c)). The plan shall be jointly developed by the administrator and facility director, utilizing available county resources.

(c) The administrator, at least on an annual basis, shall advise the public, through notice in one newspaper of general circulation in the county, of the facilities he has designated to provide involuntary emergency examination and treatment.

§ 5100.84. Persons who may be subject to involuntary emergency examination and treatment.

(a) Persons 14 through 17 years of age may be subject to involuntary emergency examination and treatment only in an approved mental health facility capable of providing a treatment program appropriate to the person. Persons 5 through 13 years of age may be subject to involuntary emergency examination and treatment only in an approved mental health facility capable of providing a treatment program appropriate to the child. Persons from birth through 4 years of age may be subject to involuntary emergency examination and treatment only in a mental health facility capable of providing a treatment program appropriate to the child. Should no such facility exist within the county of residence, the nearest appropriate facility shall be designated by the county administrator. Longer term involuntary treatment for the age groups listed in this section, must be conducted by agencies with age appropriate programs which are approved by the Department and designated by the county administrator when public monies are utilized for treatment.

(b) Persons 18 years of age and older may be subject to involuntary emergency examination at an approved facility designated for such purpose by the administrator. Involuntary emergency treatment may be provided at the examining facility or any other designated and approved facility appropriate to the person's needs. Travel arrangements between the examining facility and the treating facility shall be arranged as needed as soon as possible to permit transportation appropriate to the person's needs.

(c) The determination of whether the standards of clear and present danger are met should always include a consideration of the person's probable behavior if adequate treatment is not provided on either an emergency or subsequent basis.

(d) The standards of clear and present danger may be met when a person has made a threat of harm to self or others; has made a threat to commit suicide; or

has made a threat to commit an act of mutilation and has committed acts in furtherance of any such threats.

(e) Examining physicians should consider the probability that the person would be unable without care, supervision, and the continued assistance of others, to satisfy his need for nourishment, personal or medical care, shelter or self-protection, and safety in accordance with section 301(b)(2)(i) of the act (50 P. S. § 7301(b)(2)(i)).

(f) When the petition for commitment filed under section 301(b)(2)(i) alleges that a person poses a clear and present danger to himself, clinical or other testimony may be considered which demonstrates that the person's judgment and insight is so severely impaired that he or she is engaging in uncontrollable behavior which is so grossly irrational or grossly inappropriate to the situation that such behavior prevents him from satisfying his need for reasonable nourishment, personal care, medical care, shelter or self-protection and safety, and that serious physical debilitation, serious bodily injury or death may occur within 30 days unless adequate treatment is provided on an involuntary basis.

(g) An attempt under sections 301(b)(2)(ii) and (iii) of the act (50 P. S. § 7301(b)(2)(ii) and (iii)), occurs:

- (1) When a person clearly articulates or demonstrates an intention to commit suicide or mutilate himself and has committed an overt action in furtherance of the intended action; or
- (2) When the person has actually performed such acts.

Notes of Decisions

Jury Instructions

Although the court did not charge the jury on these regulations which specify that a suicide attempt consists of an intent to commit suicide and an overt act in furtherance of the intended action, there was no error because 50 P. S. § 7301 fully and accurately conveyed the applicable law. *Mertz v. Temple University Hospital*, 25 Pa. D & C 4th 541 (Pa.) (1995).

Suicide

The writing of suicide notes can be considered an overt act in furtherance of a suicide. *Mertz v. Temple University Hospital*, 25 Pa. D & C 4th 541 (Pa.) (1995).

A psychiatrist who discharged a patient brought to a hospital's psychiatric emergency room for involuntary commitment under the Mental Health Procedures Act (50 P. S. §§ 7101—7503), was held liable to three minors injured when the patient blew up a row house while committing suicide. *Mertz v. Temple University Hospital*, 25 Pa. D & C 4th 541 (Pa.) (1995).

§ 5100.85. Standards.

The standards of section 301 of the act (50 P. S. § 7301), for determination of severe mental disability and present danger are to be applied so as to determine whether emergency commitment is necessary under section 302 of the act (50 P. S. § 7302), or whether a court-ordered commitment under section 304(c) of the act (50 P. S. § 7304(c)), is appropriate:

(1) The application of the standards in section 301 of the act, for emergency commitment, including the requirement of overt behavior, shall be based at least upon the following factors:

(i) There is a definite need for mental health intervention without delay to assist a person on an emergency basis;

(ii) The clear and present danger is so imminent that mental health intervention without delay is required to prevent injury or harm from occurring;

(iii) There is reasonable probability that if intervention is unduly delayed the severity of the clear and present danger will increase; or

(iv) There is reasonable probability that the person, with his presently available supports, cannot continue to adequately meet his own needs if mental health intervention is unduly delayed.

(2) The application for the standards under section 301 of the act for a court-ordered commitment, including the requirement of overt behavior under section 304(c) of the act (50 P. S. § 7304(c)), shall be based upon the following factors, among others:

(i) There is no emergency basis and mental health intervention may be delayed;

(ii) The clear and present danger is not so imminent that intervention without delay is necessary to protect life and limb;

(iii) There is reasonable probability that the severity of the clear and present danger is sufficiently low that emergency intervention without delay is unnecessary; or

(iv) There is reasonable probability that the person can continue to meet his needs; however, marginally, by utilizing his presently available supports until a hearing under section 304 of the act (50 P. S. § 7304), can be conducted.

§ 5100.86. Involuntary emergency examination and treatment not to exceed 120 hours.

(a) Written applications, warrants, and written statements made under section 302 of the act (50 P. S. § 7302), shall be made on Form MH-783 issued by the Department.

(b) A State-operated facility shall not accept an application for involuntary emergency examination and treatment unless there is a preexisting agreement of waiver approved by the Deputy Secretary of Mental Health, between the State facility and the administrator which designates the State facility as the only provider of inpatient services in the county program; or, there is a preexisting letter of agreement approved by the regional commissioner of mental health, between the State facility and the administrator which designates the State facility as:

(1) A substitute provider of inpatient services when an emergency need arises and there are no other appropriate and approved facilities available; or

(2) A provider of specialized forensic inpatient services when a need for security arises. Such letters of agreement shall define the nature of security to be available and the responsibilities of both the State facility and the Administrator for specific services including aftercare planning and referral.

(c) Any person authorized under section 302 of the act to take a person to a treatment facility for involuntary emergency examination and treatment shall explain to the person in need of such examination and treatment the nature and purpose of the action to be undertaken.

(d) The escorting individual shall make every effort to use the least force necessary and shall act to the extent possible in a courteous manner toward such individual giving attention to the dignity of the person. Transportation to and from a facility remains the ultimate responsibility of the administrator.

(e) Upon arrival at a facility previously designated as a provider of emergency examinations, Form MH-783 shall be completed and Form MH-783-B shall be given to the person subject to the examination. The person shall be informed of his right to counsel and be advised that if he cannot afford counsel, counsel can be provided.

(f) If the examining physician determines that the person is not severely mentally disabled or not in need of immediate treatment, the administrator shall be notified of the results of the examination and shall assure that the person is provided with transportation to an appropriate location within the community, as he may request.

(g) If the person is determined to be severely mentally disabled and in need of immediate treatment:

(1) The examining physician shall make certain that the person has received a copy of forms MH-782, Bill of Rights, and MH-783-A, Explanation of Rights Under Involuntary Emergency Commitment.

(2) The facility shall notify the administrator, if applicable, that:

(i) No warrant has been issued and there is reasonable probability that a previous application, based upon the same behavior, had been sought;

(ii) A bed is needed at another facility; or

(iii) Public funding will be involved.

(3) When the examining facility recommends emergency involuntary treatment and has no bed available, the administrator in designating a facility for treatment, shall also authorize transportation between facilities.

(h) The administrator shall designate an appropriate treatment facility which may be the examining facility or, if no bed is available there, the nearest appropriate facility which is capable of immediately providing such treatment. If county OMH funding is not involved, the patient's choice of facilities is to be respected whenever an appropriate bed is available.

(i) The involuntary emergency treatment of the individual, or the arrangement of such, shall be initiated immediately but shall be limited to:

(1) Conducting a physical examination.

(2) Performing diagnostic evaluations of the individual's mental health.

(3) Providing that necessary treatment required to protect the health and safety of the individual and others. As a first priority, the treating physician shall seek to respond to the emergency condition necessitating commitment unless the individual consents to additional treatment.

(j) Examination preliminaries.

(1) The facility shall deliver Forms MH-782, and MH-783-A to each person to be examined and shall inform him or her of the purpose and nature of the examination.

(2) The person shall be requested to furnish the names of up to three parties whom he may want notified and kept informed of his status. The parties

may, at the request of the patient, be informed of any major change in the person's status, including transfer, escape, major change in medical condition or discharge.

(3) The person shall be informed of his right to counsel.

(4) Reasonable use of the telephone shall mean at least three completed phone calls. If assistance is required, the facility shall assist the individual in completing phone calls. The cost of any toll calls shall be borne by the person in need of treatment, although actual payment shall not be a precondition to the person's use of the telephone.

(5) The treating facility shall immediately undertake to obtain information regarding what steps should be taken to assure that the health and safety needs of any dependents of the person are safeguarded and that his personal property and premises are secured.

(6) The facility shall immediately communicate the information obtained to the office or person designated by the administrator.

(7) Before any facility is designated as the provider of involuntary emergency examination and treatment, the administrator shall have specified in writing the procedures to be followed by his office and those facilities to be designated in carrying out of the responsibilities of section 302(c)(2) of the act (50 P. S. § 7302(c)(2)). These procedures must specify what types of reasonable actions shall be taken, how quickly they shall be taken, and who is responsible for them. Such procedures shall be based on the availability of resources within the community.

(8) The administrator's office shall coordinate and record any action taken in each case. At least annually the administrator and each approved facility shall review and consider needed amendments to the procedures.

(k) Reasonable steps to assure that the health and safety needs of a person's dependents are met and the property is secure.

(1) The actions of a facility director or county administrator taken under section 302(c)(2) of the act should be well defined, and reflective of local resources.

(2) Because of community differences, no one Statewide plan can serve all possible contingencies. The act contemplates that reasonable efforts be taken to assure protection of person's dependents and property. The efforts must, as a minimum include a documented assessment of the patient's need for protective services. This would mean that those initially working with a patient would attempt to determine what is needed by talking with the patient or his family or friends. Once the information is gathered, it should be transmitted to the person responsible for implementation of protective services or if incomplete, this fact should be transmitted to those responsible for a more thorough assessment. The act does not contemplate that mental health professionals will actually provide all needed services for all patients but relies upon professional linkage referral and follow-up to assure that the needed protections are in fact,

provided and maintained. The implementation of protective services requires community organization efforts by the county administrator's office in developing interagency liaison on continuing basis.

(3) Each mental health administrative unit should develop its own plan which addresses the most typical or usual contingencies. State in the plan that deviations will be handled on a case-by-case basis. The most essential element in meeting the requirement of this section is for the county administrator to have a well-developed local plan which shows the involvement of all possible resources, such as local health, welfare, housing agencies, and protective services determines which individuals, or agencies are responsible for particular activities and when they are to be involved. The plan should show initial procedures for involving the patient's family, legally responsible relatives, or friends designated by the patient. Agencies should be utilized only as necessary. The plan should define the communication flow and the specific duties and responsibilities for action of the mental health provider agencies, the administrator's office, and protective agencies. The plan should also indicate general provisions for the resolution of problems and how exceptional cases will be provided for.

(4) Once a referral is made and the information is conveyed to the appropriate agencies, the only remaining responsibility for the administrator is the periodic follow up necessary to demonstrate that the protection continues to be made available to the patient in need.

(5) Plans developed under this section should be reviewed at least annually by the participating agencies and will be subject to review and approval by the office of Mental Health.

Notes of Decisions

Under the terms of the Mental Health and Mental Retardation Act of 1966 and the Mental Health Procedures Act, when a court orders treatment at a designated State mental hospital, the designated facility must admit the patient for treatment; at that time, the facility is without recourse to deny admission. *In re Bishop*, 717 A.2d 1114 (Pa. Cmwlth. 1998); appeal denied 738 A.2d 458 (Pa. 1999).

§ 5100.87. Extended involuntary emergency treatment not to exceed 20 days.

(a) Within 72 hours after initiation of emergency involuntary treatment, the treating facility shall reassess the mental condition of the individual receiving treatment and shall determine whether the need for involuntary emergency treatment is likely to extend beyond the initial 120 hours.

(b) Extended involuntary emergency treatment may include inpatient, partial hospitalization, outpatient or a combination of treatment modalities. In determining whether to extend the emergency involuntary treatment, the treatment team shall consider:

- (1) The need for involuntary commitment.
- (2) The optimal modality or setting for continued treatment.

(c) If the facility determines that extended emergency involuntary treatment is necessary, the facility shall:

- (1) Immediately notify the person that an application for extended involuntary treatment will be filed and that the court will appoint an attorney to represent the person unless it appears that the person can afford and desires to have private representation.
- (2) Immediately deliver an application upon Form MH-784 to the court or Mental Health Review Officer through the administrator's office. Alternatively, any responsible person who has been involved in the emergency commitment process may act as petitioner. Applications need not be filed with or docketed by the prothonotary where the court so approves. If necessary, the court will appoint counsel for the patient.
- (3) Immediately deliver an application upon Form MH-784 to the person subject to the proceedings and notify the parties identified by the person.
- (d) Informal conference. The treatment facility shall present to the judge or mental health review officer all information it considers reliable and relevant to the determination as to whether the person is severely mentally disabled and in need of emergency treatment. The conference shall be informal, but conducted with decorum. Relevant information includes:
 - (1) Evidence of a person's conduct upon which a determination of mental disability may be based. If the alleged conduct constituting clear and present danger has occurred within 30 days relevant conduct prior to the 30 day period may be presented:
 - (2) The reasons why extended involuntary treatment is considered necessary.
 - (3) A description of the treatment to be provided.
 - (4) An explanation of the adequacy and appropriateness of such treatment for the individual, including why such treatment poses the least restrictive alternative for the individual.
 - (5) Any other relevant information even if it would be normally excluded under rules of evidence may be offered to the judge or mental health review officer who will review such information if he or she believes it is reliable. Only in rare instances need a stenographic record be taken of the proceedings required under this section.
- (e) Certification for extended emergency involuntary treatment.
 - (1) Certification for extended emergency involuntary treatment shall be made in writing on Form MH-784, issued by the Department.
 - (2) A certification filed and served shall remain in effect notwithstanding a petition for review of the certification, unless otherwise ordered by the court.
 - (3) Descriptions of proposed treatment shall be considered advisory only and shall be changed by the treatment team as the patient's condition warrants.
- (f) The opportunity for a person on involuntary inpatient status to receive treatment in an approved less restrictive program such as involuntary partial hospitalization or outpatient services may be accomplished through a transfer under section 306 of the act (50 P. S. § 7306). A commitment certification does not become void when a transfer from one program to another is executed.

(g) If the facility determines that extended emergency involuntary treatment is not necessary, it shall either accept the person for voluntary inpatient treatment or discharge the person and facilitate the person's obtaining:

- (1) Voluntary treatment at the facility best equipped to meet his needs.
- (2) Report the person's change of status and follow-up recommendations by referral for continuity of care to the county administrator, or both.

Notes of Decisions

Although the MH784 form documenting certification had been completed only in abbreviated manner, that was adequate to fulfill the intent of the statute and the demands of the pertinent regulations. *In Re: S.O.*, 492 A.2d 727 (Pa. Super. 1985).

Cross References

This section cited in 55 Pa. Code § 5100.88 (relating to court-ordered involuntary treatment not to exceed 90 days); 55 Pa. Code § 5100.89 (relating to additional periods of court-ordered involuntary treatment not to exceed 180 days).

§ 5100.88. Court-ordered involuntary treatment not to exceed 90 days.

(a) A petition for court-ordered treatment under section 304 of the act (50 P. S. § 7304), shall not be filed for a person held for involuntary emergency examination and treatment under section 302 of the act (50 P. S. § 7302), without first proceeding under section 303 of the act (50 P. S. § 7303).

(b) Initiation of court-ordered involuntary treatment for persons already subject to involuntary treatment.

(1) The director of the facility, the county administrator, or any responsible person with knowledge of the patient's mental condition may serve as petitioner.

(2) If the director of the facility determines that continuing involuntary treatment is not needed, he shall notify the county administrator or other appropriate person of this decision or a change in status 10 days before the expiration of the involuntary treatment previously authorized.

(3) If the director of the treating facility determines that continued involuntary treatment of a person already subject to involuntary treatment is necessary, he shall notify the administrator of such fact by filing Form MH-785.

(4) The petition for court-ordered involuntary treatment for persons already subject to involuntary treatment shall be filed not less than 5 days prior to the expiration of the involuntary treatment previously authorized. The petition shall be sufficient if it represents that the conduct originally established to subject the person to involuntary treatment did in fact occur and that the person's condition continues to evidence a clear and present danger to himself or others. It shall not be necessary to show the recurrence of the dangerous conduct, either harmful or debilitating, within the past 30 days.

(5) The petitioner shall immediately notify the person of the intent to file a petition for court-ordered involuntary treatment with the court of common

pleas by delivering to such person Form MH-785-A issued by the Department. The director of the facility may assist the petitioner in notifying the person in treatment of the intent to file a petition and in serving the papers. The material given to the person shall include an explanation of the nature of the proceedings and the person's right to counsel under § 5100.87(c)(1) (relating to extended involuntary emergency treatment not to exceed 20 days), and the right to the services of an expert in mental health.

(c) Initiation of court-ordered involuntary treatment for persons not presently subject to involuntary treatment.

(1) A petition for court-ordered involuntary treatment for a person not already in involuntary treatment shall be made upon Form MH-785 issued by the Department. If the petition is filed by the director of a facility or the administrator for a person already in voluntary treatment, it shall state the name of an examining physician and the substance of his opinion regarding the mental condition of the person. In all other cases, the petition shall state the name of an examining physician, if any, and the substance of his opinion regarding the mental condition of the person.

(2) If a decision to file a petition for court-ordered involuntary treatment is made by the director of a facility for a person already in voluntary treatment, the director shall immediately notify the administrator, if the decision to file is made by the administrator for a person in voluntary treatment, the administrator shall immediately notify the director of the facility. In either case, the director shall notify the person in voluntary treatment of the decision to file a petition for court-ordered involuntary treatment by delivering to such person a copy of Form MH-786-A issued by the Department.

(3) The notice given to a person not already in involuntary treatment referred to in section 304(c)(4) of the act (50 P. S. § 7304(c)(4)) advising him of the right to counsel and the assistance of an expert in the field of mental health may be provided by the use of Form MH-785-B.

(d) Duration of court-ordered involuntary treatment except for those under criminal jurisdiction:

(1) For persons committed for a period not to exceed 90 days, a person subject to court-ordered involuntary treatment shall be discharged whenever the director of the facility concludes that the person is no longer in need of continued inpatient treatment. A person may be transferred under section 306 of the act (50 P. S. § 7306) from inpatient treatment to outpatient or partial hospitalization services and remain subject to involuntary commitment.

(2) A person may be committed for treatment in an approved facility under this section as inpatient, outpatient, or combination of such treatment as the director of the facility shall determine under sections 304(f) and 306 of the act (50 P. S. §§ 7304(f) and 7306).

(3) For persons committed under section 304(g)(2) of the act (50 P. S. § 7304(g)(2)), the facility shall require the treatment team to report every 90

days whether the person is or continues to be in need of treatment. This report shall be reviewed by the director of the facility and forwarded to the committing court. If the treatment team finds that the person is no longer in need of treatment, they shall recommend to the director of the facility that the person be discharged. Whenever the director of a facility plans to discharge a patient committed under section 304(g)(2) of the act prior to the termination of a court-ordered period of involuntary treatment or whenever the director of a facility plans to release such a person at the expiration of court-ordered treatment, the director of the facility shall, at least 10 days prior to the discharge or expiration of the existing commitment, petition the court for the conditional or unconditional release of the person. The director shall give copies of the request for release to the person of residence and the district attorney. Notice of such action shall be given if appropriate to the sending jail or correctional facility.

§ 5100.89. Additional periods of court-ordered involuntary treatment not to exceed 180 days.

(a) When it is determined that additional periods of court-ordered involuntary treatment will be sought, the proceedings in § 5100.87 (relating to extended involuntary emergency treatment not to exceed 20 days), shall be followed:

(b) An application for an additional period of court-ordered involuntary treatment shall be filed not less than 10 days prior to the termination of the court-ordered involuntary treatment period. With all such filings, the director shall have notified the appropriate administrator prior to the time of filing the proposed plan.

(c) Occurrence of specific conduct constituting clear and present danger under section 301 of the act (50 P. S. § 7301), is not required to demonstrate the need for continuing involuntary treatment.

(d) Relevant factors in determining the need for continued involuntary treatment include, among others, the following:

(1) The person's willingness to participate in voluntary treatment.

(2) The continuing presence of the condition for which the individual has been receiving treatment.

(3) Any dangerous or debilitating conduct during the most recent period of treatment.

(4) The availability of outpatient placement and the likelihood that the patient will take advantage of such treatment.

(5) The availability of community resources and supports to assist the person in a less restrictive setting.

(e) When an application is made for an additional period of court-ordered involuntary treatment for persons under criminal jurisdiction, notice shall be sent to the warden or superintendent of the correctional facility to which the person otherwise would be returned.

§ 5100.90. Transfers of persons in involuntary treatment.

(a) When the treatment team or director of a facility, or both, determine that a transfer of a person in involuntary treatment is appropriate, they shall notify the county administrator of the planned transfer, setting out the reasons for the transfer which shall then be reviewed by the county administrator to determine whether the appropriate services are available and to arrange for continuity of care if the person is referred from a State mental health facility.

(b) Where a transfer of a person in involuntary treatment will involve a transfer to another county, the county administrator of the receiving county will be notified, and shall review the transfer as in subsection (a).

(c) Transfers of persons in involuntary treatment may only be made to an approved facility during the term of any given commitment unless there is a court order prohibiting such an action.

(d) A patient's transfer from inpatient to partial hospitalization or outpatient facilities or programs, or from a partial program to an outpatient program, does not affect the original involuntary commitment order. Where a patient's transfer will result in greater restraints being placed upon the patient, the transfer shall occur only after a hearing when it is determined that the transfer is necessary and supportive to the patient's treatment plan.

(e) For purposes of this section, an entire State hospital or private psychiatric hospital shall be considered to be one facility, except for those distinct parts designated as either forensic units or intermediate care units.

(f) Transfers within the mental health system of persons admitted or committed from a prison or correctional facility shall not be effected without approval of the court having criminal jurisdiction over the person.

(g) Except in an emergency, persons in treatment under section 304(g)(2) of the act (50 P. S. § 7304(g)(2)), may be transferred if prior notice has been given to and no objection has been received with 20 days from the judge and district attorney from the committing court.

(h) In an emergency and on a temporary basis, persons in treatment under section 304(g)(2) of the act, may only be transferred for acute medical treatment when life or health would be in immediate danger without such transfer. When such transfers are accomplished, the court and district attorney of the committing court must be notified. The expected duration of such transfer, security measures, and reasons for transfer should be described in the notice.

(i) Transfers of persons in treatment under section 304(g)(2) to a more secure facility in order to protect the person or others from life threatening behavior must be ordered by the court.

(j) Interstate transfers of persons on involuntary commitment status shall be coordinated by the Department's Office of Interstate Compact.

Cross References

This section cited in 55 Pa. Code § 5100.78 (relating to transfer of persons in involuntary treatment).

§ 5100.90a. State mental hospital admission of involuntarily committed individuals—statement of policy.

(a) To manage treatment resources more effectively and assure adequate Medical Assistance reimbursement to community general and private psychiatric hospitals for days of active treatment provided to Medical Assistance eligible persons with mental illness, appropriate action shall be taken by the affected parties. The following policy and procedures should be followed:

(1) Community general and private psychiatric hospital staff should notify via telephone appropriate county MH/MR staff—county administrator or designated agency—upon Medical Assistance patients admission to the community general or private psychiatric hospital. This information may be released to county administrators under § 5100.32(a)(5) (relating to nonconsensual release of information).

(2) Immediately upon determination of the need for long-term psychiatric care, a referral package should be sent to the admissions unit of the State mental hospital (SMH) so it is received at least 2 days prior to the date of the scheduled commitment hearing. The County MH/MR Administrator or their designated agency should be notified by the community general or private psychiatric hospital of the patient's need for long-term psychiatric care. The items to be included in the referral package accompanying a patient on admission to a State hospital under sections 304—306 of the Mental Health Procedures Act (50 P. S. §§ 7304—7306) include:

- (i) Signed and completed 304/305/306 commitment papers.
- (ii) Psychiatric assessment.
- (iii) Medical assessment.
- (iv) Current medications.
- (v) Laboratory and X-ray results.
- (vi) Consultant's reports.
- (vii) Social history with special emphasis on family assessment and discharge resources.
- (viii) Psychological assessments—if available.
- (ix) BSU activity.
- (x) Assessments from other clinical disciplines involved in the patient's treatment.

(3) The SMH admissions staff and the staff of the community general or private psychiatric hospital will agree upon the date that the patient will be admitted to the State hospital. The SMH admissions staff shall notify the community general or private psychiatric hospital of the agreed upon date of admission prior to the patient's scheduled hearing date.

(4) The community general or private psychiatric hospital staff shall notify the hearing officer of the date of availability of a SMH bed.

(5) The hearing officer shall conduct the hearing in a timely fashion in accordance with the timeframes required by the *Mental Health Procedures Act of 1976*. A commitment order should contain the agreed upon admission date to the SMH.

(6) The community general or private psychiatric hospital staff shall maintain appropriate documentation of the continuance of active treatment in the medical record until the patient is transferred to the SMH. Refer to § 1101.51 (d) and (e) (relating to ongoing responsibilities of providers) for the description of appropriate documentation of the continuance of active treatment.

(7) If the SMH bed is unavailable on the scheduled date of transfer, the SMH is responsible for contacting other State hospital facilities—within a 75-mile radius—to obtain a bed for the patient. If no bed is available in the surrounding SMHs, the initial SMH shall contact the next nearest SMH facility until a bed is found. SMH admissions staff may not deny access to a patient when a bed is available, except if, for clinical reasons, the clinical director deems the admission inappropriate. The area director is responsible for reviewing and monitoring denial of access to other State mental health facilities when a bed is available.

(8) The SMH will include in their Letter of Agreement with the county MH/MR program, the methodology used for referring patients to another SMH when a bed is not available. It is the intent of the Office of Mental Health to assure, whenever feasible, that the patient's treatment be in or near the patient's home community.

(b) Medical Assistance should be able to reimburse the community general or private psychiatric facility for the eligible days that the Medical Assistance eligible patient is in the facility when the policy and procedures in subsection (a) are followed to include the following:

(1) The specific date of admission to the SMH appropriately documented on the court commitment.

(2) The continuance of active treatment adequately documented in the patient's medical record.

(3) The actual transfer of the patient to the SMH occurs on the date documented on the court commitment.

Source

The provisions of this § 5100.90a adopted November 18, 1988, effective retroactively to November 9, 1988, 18 Pa.B. 5168.

PERSONS CHARGED WITH A CRIME OR UNDER SENTENCE**§ 5100.91. General.**

(a) Any person subject to examination and treatment under section 401(a) of the act (50 P. S. § 7401(a)), may be subject to involuntary treatment under Article III of the act (50 P. S. §§ 7301-7306), or may apply for voluntary treatment under § 5100.92 (relating to voluntary examination and treatment of a person charged with a crime or serving a sentence).

(b) Whenever a person subject to treatment under section 401(a) of the act is made subject to inpatient examination or treatment, he shall be transferred by the authority having jurisdiction to a designated approved facility after proceedings have been completed in accordance with the appropriate section of this chapter.

(c) Any person who is subject to inpatient examination or treatment and who remains subject to a criminal detainer or sentence, or who is under the jurisdiction of the juvenile court, shall be returned to the custody of that authority upon their discharge from treatment.

(d) Any person subject to inpatient examination and treatment shall be subject to any provisions of security imposed by the criminal juvenile court having jurisdiction, provided that the facility to which the person is being committed is capable of providing the security. If the facility is unable to provide the ordered security, the director of the facility shall immediately notify the court issuing the order.

§ 5100.92. Voluntary examination and treatment of a person charged with a crime or serving a sentence.

(a) Whenever a person in criminal detention, whether in lieu of bail or when serving a sentence, believes he is in need of treatment and substantially understands the nature of voluntary treatment, he may submit himself to examination and treatment.

(b) Prior to voluntary admission, at least one physician, preferably a psychiatrist where the person is in criminal detention, shall certify in writing the necessity for such treatment. This certification shall contain at least the following information:

(1) A statement that the person substantially understands the nature of inpatient treatment, including the nature of his mental illness or condition, and the requirement for continued security if admitted to a mental health facility.

(2) A statement that the patient is so mentally ill as to require inpatient hospitalization and an explanation why outpatient management in the penal institution population by way of psychotherapy with or without medication will not be sufficient.

(3) A description of the person's condition, symptoms, clinical history, and diagnosis.

(c) The correctional facility shall secure a written acceptance of the person for inpatient treatment from a mental health facility. This written acceptance shall contain at least the following information:

(1) A statement that the inpatient mental health facility is willing and able to accept the person for treatment.

(2) A description of the security which the inpatient mental health facility is able to provide.

(d) The superintendent or warden of the correctional facility where the person is detained shall prepare a statement concerning the reasons for seeking treatment.

(e) The person's written voluntary admission request, the physician's certification, the statement of the superintendent of the correctional facility regarding security needs, and the written acceptance from the mental health facility shall be forwarded to the president judge of the court of common pleas, in the county where the person was charged or sentenced.

(f) The documents listed in subsections (b) through (e) shall be sent by certified mail, return receipt requested to:

(1) The judge in the court which sentenced the person. If it is determined the sentencing judge is no longer on the bench, the information shall be sent to the president judge.

(2) The district attorney of the sentencing county.

(3) The county administrator of the sentencing county.

(g) The County Administrator of the county of the person's legal residence, if different from the person's county of sentence, shall receive notification by the correctional facility that the person has requested voluntary admission to a mental health facility. This notification shall include the name of the proposed mental health facility and the name of the judge of the county of sentence to whom the voluntary request has been submitted.

(h) Upon receipt of the request for voluntary admission, the district attorney of the county of sentence may, within 14 days have a physician conduct an independent examination of the applicant or file a motion contesting the need for treatment.

(i) The Department will not participate in the costs of examination, transportation, or hearings incurred at the request of the district attorney.

(j) The court of common pleas for the judicial district in which the person is charged or sentenced shall have jurisdiction for purposes related to section 407 of the act (50 P. S. § 7407). Where possible, the sentencing judge shall preside.

(k) Upon receipt of the request for voluntary examination and treatment, and upon review of the request, and its attendant reports, and following any hearing on the matter the court shall either approve or disapprove the request.

(1) In the event the court approves the request for voluntary admission to a mental health facility, the court shall also indicate whether the conditions of

security presented by the inpatient mental health facility are appropriate. If the court believes a greater or lesser degree of security is appropriate, it shall so direct.

(l) The Department has designated Farview State Hospital as the Commonwealth's maximum security psychiatric facility. The Department has also designated Warren State Hospital, Mayview State Hospital, Norristown State Hospital, and Philadelphia State Hospital as having medium security forensic units for male patients. The general wards of State hospitals and most approved community mental health facilities can only provide the same degree of security as they do for civilly committed patients. Regarding placement for women, or questions regarding the appropriate level of secure placement for males, the regional mental health for the region in which the person is located should be contacted.

(m) Whenever the court approves the request of the person charged with crime or undergoing sentence, the receiving mental health facility, when space is available, shall accept the person and immediately proceed to examine the person and develop a detailed treatment plan.

(1) In the event the receiving facility determines that the person is unwilling to agree upon or participate in a treatment plan, or is unwilling to accept the security provisions imposed by the court, the mental health facility is to make arrangements with the correctional institutes from which the person was transferred, to effect the person's immediate return to the correctional facility. The court authorizing the voluntary admission, the district attorney, and the county administrator of the county of residence, if different from the county of sentence, are to be sent notifications of this action by the mental health facility.

(2) If, at the time of the initial examination, or anytime thereafter, the mental health facility is of the opinion that the patient requires more security than the facility can offer and the patient will not consent to his transfer to a more secure facility the sending correctional authority shall be contacted immediately in order to return the patient to the sending facility. Alternatively, the mental health facility may initiate a petition for involuntary treatment to a facility with greater security. All costs involved in the transportation shall be billed to the correctional facility.

(3) In the event the receiving mental health facility is able to accept the person and a treatment plan is agreed upon with the person, treatment shall begin immediately.

(4) The receiving mental health facility shall notify the person's county of residence, if different from the county where person was charged or sentenced, of the person's voluntary admission. The county administrator is the person to whom the notification is to be sent.

(n) The treatment plan shall include a written agreement with the patient that, upon notice to withdraw from treatment, he may be held at the facility for a reasonable time until arrangements can be made for transportation by the county jail or State correctional institution.

- (1) In the event the person gives notice to withdraw and it appears that the standards for involuntary treatment can be met, proceedings may be initiated under sections 302 and 304 of the act (50 P. S. §§ 7302 or 7304).
- (i) During the pendency of any petitions filed under section 304 of the act, the mental health facility shall have the authority to detain the person regardless of the provision of section 203 of the act, provided that the hearing under section 304 of the act, is conducted within 7 days of the time the person gives notice of his intent to withdraw from treatment.
- (ii) If no hearing is held within 7 days subsequent to the filing of a petition under section 304 of the act, the person shall be returned to, and by the correctional institution where he was originally detained.
- (o) A report of the person's mental condition shall be made by the mental health facility to the court within 30 days of the person's transfer to the facility. The report shall set forth the specific grounds as to why continued treatment at a mental health facility is necessary. After the initial report the mental health facility shall thereafter report to the court every 180 days.
- (1) Copies of the report to the court shall be sent to the county administrator of the county of residence if different from the county where the person was charged or sentenced.
- (p) At any time when the mental health facility finds that continued voluntary treatment is no longer necessary the person shall be discharged and returned to the correctional facility.
- (q) Transporting the person to and from the county jail or State correctional institution for admission or discharge to or from a mental health facility shall be the responsibility of the county jail or State correctional institution where the person was originally detained.
- (r) Liability for treatment of an individual admitted to a State mental health facility shall be assessed pursuant to section 505 of the Mental Health/Mental Retardation Act of 1966 (50 P. S. § 4505), and section 408 of the act (50 P. S. § 7408).
- (s) Voluntary admission proceedings shall not be used for the purpose of conducting an inpatient evaluation or for a period of observation in connection with any proceedings with reference to a criminal act.
- (t) Voluntary admission to a facility of a person charged with crime or undergoing sentence shall be in accordance with Forms MH-781-X in Appendix A and Forms MH-781-Y and MH-781-Z.
- (u) Unauthorized absence from a mental health facility while under voluntary status.
- (1) For those patients who have escaped from a hospital who were admitted on a voluntary status under this section no discharge is to be effected without the following specific actions being taken:
- (i) As soon as it has been determined that a patient has left the hospital without authorization, at least the following are to be notified:

(A) Local and State police. The police authorities are to be advised that even though the patient was on a voluntary basis, the subject is to be apprehended and returned to the hospital since the escaped patient was admitted from a county jail or State correctional institution while awaiting trial on pending charges or while serving a sentence.

(B) Responsible person.

(C) The institution or agency having authority over the criminal status, such as, correctional institution, county jail, probation or parole departments, and the like.

(D) The court and district attorney's office of the county with criminal jurisdiction, and the like, where criminal charges are pending or where sentence was imposed.

(E) The county administrator of the county of residence, if different from the county where the person was charged or sentenced.

(F) The Office of Interstate Services and Records Unit of the Office of Mental Health.

(ii) In the event that the patient has escaped and does not return or is not returned by others after 72 hours, the penal institution or agency from which the person was admitted on a voluntary status is to be notified right away that the hospital is discharging the subject from the rolls, and the authority over the case is being officially returned to the agency or institution. In the notification of the discharge, the hospital should:

(A) Advise the receiving institution or agency that the subject's mental status has not been known during the period of escape and that following apprehension new commitment procedures would have to be initiated pursuant to the provisions of the act should the individual appear to require hospitalization.

(B) Send notices relating to the discharge and transfer of authority to those listed in subsection (u)(1)(i)(A)—(F).

(iii) All notices relating to the discharge and turning the case back to the penal authorities are to be sent by certified mail, return receipt requested.

(iv) If the patient is returned to the hospital from escape status prior to discharge:

(A) The hospital is to notify all concerned in subsection (u)(1)(i)(A)—(F).

(B) The patient is to be evaluated to determine:

(I) Whether the patient should continue on voluntary status.

(II) Whether procedures for involuntary commitment pursuant to the act would be appropriate.

(III) Whether the person should be returned to the penal institution.

(IV) Under any of these options, the mental health facility is to be certain to keep the parties listed in subsection (u)(1)(i)(A)—(F) advised.

(V) In the event the hospital elects to have the person returned to the penal institution, that institution is to be advised of the number of days the person was on unauthorized absence.

§ 5100.93. Costs of treatment.

(a) The Commonwealth will pay for costs, payments, or expenditures in excess of \$120 per day which are made on behalf of any person who is a resident of a county located within this Commonwealth and who receives treatment and for whom liability is imposed on a county pursuant to section 505(a) of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4505(a)).

(b) The county of residence shall be liable for all costs, payments, or expenditures, up to and including \$120 per day, which are made on behalf of any person who receives treatment and for whom liability is imposed under section 505(a) of the Mental Health/Mental Retardation Act of 1966.

(c) The county of sentence shall be liable for all costs, payments, or expenditures which are made on behalf of any person who receives observation or examination and for whom liability is imposed under section 505(b) of the Mental Health/Mental Retardation Act of 1966 (50 P. S. § 4505(b)).

(d) In the event a residency cannot be determined to be in a county within this Commonwealth by the court that convicted or sentenced the person, all liability for treatment shall be the responsibility of the Commonwealth.

(e) For the purposes of determining liability, the county wherein in the person had a legal residence prior to being committed or admitted for treatment will be considered the county of residence. The determination of a person's county of residence for purposes of this section shall be made by the courts that convicted or sentenced the person.

(f) All patients for whom liability can be imposed under section 505(a) of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4505(a)), and who receive treatment or examination subsequent to January 24, 1979 are subject to the provisions of subsections (a)—(d).

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