DEPARTMENT OF HUMAN SERVICES

Division of Mental Health

CARE AND TREATMENT OF THE MENTALLY ILL

2 CCR 502-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Statement of Basis and Purpose, Fiscal Impact/Regulatory Analysis and Specific Statutory Authority

Rules regarding the Care and Treatment of the Mentally Ill were originally adopted on 3/21/1977, and subsequently amended through April 20, 1993 (effective May 30, 1993), by the Department of Institutions.

The purpose of the 1991 revision of these rules is to make the regulations easier to locate within the document, easier to read and to understand; to incorporate policy statement formerly contained in the Division of Mental Health's Procedures Manual ; and to add several changes recommended to the Department of Institutions by the Mental Health Advisory Board for Service Standards and Regulations.

These rules were proposed pursuant to Notice of Public Hearing published on November 10, 1991, and after proper notice, a public hearing was conducted on Thursday, December 5, 1991. Written and oral testimony presented to the Department of Institutions was considered in the determination to adopt these rules. The record of the rule-making proceeding demonstrates the need for these regulations; the regulations have been clearly and simply stated; and the regulations do not conflict with other provisions of law. The effective date for these rules is March 1, 1992.

Sections 103.2.A.2 and 103.2.A.3, which were adopted after January 1, 1992 and before January 1, 1993, were not extended by H.B. 93-1131 and therefore expired effective June 1, 1993.

The entire re-write of these rules were adopted following publication at the 4/2/2004 State Board of Human Services meeting, with an effective date of 6/1/2004 (Rule-making #03-5-14-1). Statement of Basis and Purpose, fiscal impact, and specific statutory authority for these revisions were incorporated by reference into the rule. These materials are available for review by the public during normal working hours at the Colorado Department of Human Services, Office of Performance Improvement, Boards and Commissions Division, State Board Administration.

19.000 Mental Health Services

19.100 General Provisions

19.110 Definitions

As used in these rules, definitions apply as follows unless the context requires otherwise:

"Assessment" means the continuous process of collecting and evaluating information about a patient for service planning, treatment and referral.

"Case Management" includes activities that are intended to ensure that patients receive the mental health and supportive services they need, that services are coordinated, and that services are appropriate to the changing needs and stated desires of the patient over time. Activities include, but are not limited to, service planning, linkage, referral, monitoring/follow-up, advocacy, and crisis management.

"Department" means the Colorado Department of Human Services (CDHS), Division of Mental Health

(DMH).

"Designated Facility" means a facility approved under these rules by the Department of Human Services as: (1) a seventy-two (72) hour treatment and evaluation facility; (2) a short-term treatment facility; (3) a long-term treatment facility; or, (4) a combination of the above designations.

"Discharge" means the termination of services by the designated facility.

"Executive Director" means the Executive Director of Colorado Department of Human Services.

"Involuntary Medication" means psychiatric medication administered without a person's consent.

"Legal Guardian" is a person appointed by the court, or by will, to make decisions concerning an incapacitated person's or minor's care, health, and welfare.

"Mechanical Restraint" means a physical device used to involuntarily restrict the movement of an individual or the movement or normal function of a portion of his or her body. Types of mechanical restraints include, but are not limited to: restraint sheets, camisoles, belts attached to cuffs, leather armlets, restraint chairs, and shackles.

"Patient" means an individual, client, consumer, or person who is receiving mental health services pursuant to Title 27, Article 10, C.R.S.

"Patient representative" means a person designated by the facility to process complaints or grievances, including assisting patients who are minors.

"Permanent record" means a written record that will be kept longer than the stay of the patient, not a temporary record.

"Physical restraint" means the use of bodily, physical force to involuntarily limit an individual's freedom of movement, except that "physical restraint" does not include the holding of a child by one adult for the purpose of calming or comforting the child.

"Placement facility" means a public or private facility that has a written agreement with a designated facility to provide care and treatment to any person undergoing mental health evaluation or treatment by a designated facility. A placement facility may be a general hospital, psychiatric hospital, community clinic and emergency clinic, convalescent center, nursing care facility, intermediate health care facility or residential facility, licensed residential child care facility or community mental health center or clinic.

"Professional person" means a person who is licensed to practice medicine or psychology in Colorado.

"Psychiatric medication" is a medication being used to treat psychiatric illness for the patient including, but not limited to, anti-psychotics, antidepressants, and other medications which may have other medical uses but are accepted within the medical profession for psychiatric use as well.

"Respondent" is a person who receives mental health services on an involuntary basis pursuant to Title 27, Article 10, C.R.S. or a person alleged in a petition filed pursuant to Title 27, Article 10, C.R.S. to be mentally ill.

"Seclusion" means the confinement of a person alone in a room from which egress is prevented. Seclusion does not include the placement of patients, who are assigned to an intake unit in a secure treatment facility in locked rooms during sleeping hours pursuant to Section 19.312 of these regulations.

"Secure Treatment Facility" means the Institute for Forensic Psychiatry at the Colorado Mental Health Institute at Pueblo.

"Special designation" means the designation of a facility that is not licensed as a hospital, residential child care facility, or community mental health center/clinic.

"Therapy or treatments" using special procedures means a therapy that requires an additional, specific consent, including electro-therapy treatment (electro-convulsive therapy), and behavior modifications using physically painful, aversive, or noxious stimuli.

19.120 Facility Designations and Use

19.121 Criteria to Become a Designated Facility

A. Facilities that may become a designated facility are: (1) a general or psychiatric hospital licensed or certified by the Colorado Department of Public Health and Environment; (2) a community mental health center or clinic; or (3) a residential child care facility licensed by the Colorado Department of Human Services. Applicant facilities shall identify any parent organization ultimately responsible for their operation.

B. Facilities that do not meet the above criteria may apply for a special designation. The Executive Director of the Department or his/her designee may approve a special designation on a case by case basis, upon a showing that the use of the specially designated facility will be particularly beneficial to individuals with mental illness. The Department may deny the application for designation, but must provide the facility the reason(s) for denial. If the Department denies the application, the facility may request a hearing as provided in Sections 24-4-104 and 24-4-105, C.R.S.

C. Designated facilities shall have a professional person, either employed or under contract, who is responsible for the evaluation and treatment of each patient. Staff privileges shall be an acceptable form of contractual arrangement. The professional person may delegate part of his/her duties, except as limited by licensing statutes or these regulations, but s/he shall remain responsible at all times for the mental health treatment administered.

D. A facility meeting the criteria above may apply to the Department of Human Services to become designated to provide any or all of the following services:

1. Seventy-two (72) hour treatment and evaluation;

2. Short-term treatment; or,

3. Long-term treatment.

19.130 Types of Designations

19.131 Seventy-two (72) Hour Treatment and Evaluation Facilities

A. Facilities that are designated by the Executive Director or designee as seventy-two (72) hour treatment and evaluation facilities may detain on an involuntary basis persons placed on a seventy-two (72) hour hold for the purpose of evaluation and treatment.

B. Exclusion of Saturdays, Sundays, and Holidays

Evaluation shall be completed as soon as possible after admission. The designated treatment and evaluation facility may detain a person for seventy-two (72) hour evaluation and treatment for a period not to exceed seventy-two (72) hours, excluding Saturdays, Sundays and holidays if evaluation and treatment services are not available on those days. For the purposes of these rules, evaluation and treatment services are not deemed to be available merely because a

professional person is on call during weekends and holidays.

19.132 Short-Term or Long-Term Treatment Facilities

Facilities that are designated by the Executive Director or designee as short-term treatment facilities may involuntarily detain persons for short-term (90 days) or extended short-term care and treatment (additional 90 days). Facilities that are designated by the Executive Director or designee as long-term treatment facilities (6 months) may involuntarily detain persons for long-term care and treatment or extended long-term treatment. Every person receiving treatment for mental illness by a designated short-term or long-term facility shall upon admission be placed under the care of a professional person employed by or under contract with the designated facility.

19.140 Application of Rules

19.141 Hospitals

Designated facilities that are licensed by the Colorado Department of Public Health and Environment as hospitals shall comply with all provisions contained in these rules.

19.142 Community Mental Health Centers/Clinics

Facilities that are designated by the Department as community mental health centers pursuant to Section 27-1-201, C.R.S., et seq., shall comply with the general and organizational provisions contained in these rules. Treatment provisions, as contained in Section 19.400, et seq., shall apply to only those persons being treated involuntarily pursuant to Title 27, Article 10, C.R.S.

19.143 Residential Treatment Facilities

Facilities that are approved by the Department as Residential Treatment Centers shall comply with all provisions contained in these rules.

19.150 Designation Procedure

19.151 Application

A. Facilities applying for designation shall make application to the Department on the form specified by the Department.

B. Except in emergency circumstances affecting the facility's ability to provide evaluation and treatment services, a facility seeking to exclude Saturdays, Sundays and holidays from the 72 hour limitation on detaining persons for evaluation and treatment must supply in its application for designation or re-designation documentation to establish that it does not have evaluation services available on these days due to the limited availability of a professional person.

C. The Executive Director or his/her designee shall acknowledge in writing receipt of the application and shall state what additional information or documents, if any, are required to be forwarded to the Department for review prior to an on-site evaluation. The dates of the on-site evaluation shall be mutually determined.

D. The Executive Director or his/her designee shall approve a facility for designation, grant provisional approval in accordance with Subparagraph G below, or deny the application. The applicant shall be advised in writing within sixty (60) calendar days of the initial on-site evaluation of the decision of the Department.

E. A facility that is found to be in compliance with these rules upon initial review will be approved by the

Department as a designated facility for the provision of seventy-two (72) hour treatment and evaluation services and/or short-term and/or long-term treatment, effective for a one (1) year period.

F. Approval, including provisional approval, shall be evidenced by placing the approved facility on a list of designated facilities and by issuing the facility a certificate of approval.

19.151 Application (continued)

G. The Department may grant provisional approval for a period not to exceed ninety (90) calendar days if, after initial inspection and review of a facility, the Department finds:

1. That the facility is in substantial compliance with these rules and regulations, and the areas of noncompliance do not adversely affect patient health, safety, or welfare.

2. That full compliance will be achieved within a reasonable period of time; and

3. That the facility has a reasonable plan or schedule in writing for achieving full compliance.

4. A second provisional approval for a period not to exceed ninety (90) calendar days may be granted under the same criteria if necessary to achieve full compliance; and,

5. If the facility is not able to come into full compliance within (180) calendar days, the Department may deny the application.

H. The Department may deny the application for designation, but must provide to the facility the reason(s) for denial.

I. If the Department denies the application, the facility may request a hearing as provided in Sections 24-4-104 and 24-4-105, C.R.S.

19.152 Re-designation

Approved facilities shall apply annually for re-designation. The Department will review all approved facilities for re-designation and will conduct an annual review. The criteria and processes for re-designation shall be the same as for initial designation.

19.153 Change in Designation

If a facility wishes to make a change in its designation status or wishes to drop designation, it shall notify the Department in writing not later than thirty (30) calendar days prior to the desired effective date. The facility shall submit a written plan for the transfer of care for the persons with mental illness if the facility will no longer treat these patients. This plan shall be submitted no later than ten (10) business days prior to the effective date.

19.154 Termination of Designation

Designations shall be automatically revoked or deemed lapsed for any facility whose license to operate as a health care or child care facility has been withdrawn, revoked or allowed to lapse.

The designation of any facility that has not provided mental health services for three (3) months shall be deemed to have been abandoned.

19.160 Placement Facilities

A. Designated facilities may provide mental health services directly or through the use of placement facility contracts. Whenever a placement facility is used there must be an agreement with the designated facility. In either case, the designated facility is responsible for assuring an appropriate treatment setting for each patient and services provided in accordance with these rules. Whenever a placement facility is used, the designated facility shall be responsible for the care provided by the placement facility.

B. All agreements between designated facilities and placement facilities and all supplemental agreements and amendments shall be reduced to writing and forwarded to the Department no later than ten (10) business days after the effective date of the agreement or amendment.

C. Whenever a designated facility uses a placement facility, the contract agreement shall include:

1. A training plan for placement facility staff that provides at a minimum training regarding mental illness, these rules, Title 27, Article 10, C.R.S., and appropriate, safe behavioral interventions. The implementation of the training plan shall be monitored by the designated facility;

2. A requirement that direct care supervision be provided by professional persons employed by or under contract with the designated facility, or designated professional person employed by the placement facility to be responsible for direct care supervision provided that the placement facility and the designated facility are operated by the same corporate entity;

3. A requirement that assures the necessary availability and supervision of placement facility staff in order to carry out the contract; and,

4. A requirement that the contract adheres to these rules.

D. Placement facilities agreements shall be re-executed annually at the least.

E. A placement facility can be used by a designated facility, at its discretion under the provisions of these regulations, in order to provide care to any person undergoing mental health evaluation or treatment. Designated facilities shall not place individuals in a placement facility unless all of the applicable provisions of these regulations are met and placement in such facility is appropriate to the clinical needs of the patient. When a placement facility is required, the least restrictive facility possible and available must be used, consistent with the clinical needs of the individual.

F. A placement facility shall not provide services beyond the scope of its license.

19.200 Enforcement and Waivers

19.201 Enforcement

The Department shall evaluate all designated facilities for compliance with these rules concerning the care and treatment of persons with mental illnesses. Evaluation of placement facilities may also be conducted at the discretion of the Department, but such evaluation will be limited to those services that are provided pursuant to a contract with a designated facility. The Department is authorized to investigate all complaints related to Title 27, Article 10, C.R.S., and these rules concerning designated facilities and placement facilities, and all complaints concerning the voluntary hospitalization of minors pursuant to Section 27-10-103, C.R.S.

19.201.1 Non-Compliance Procedure; Hearing

A. If the Department finds, after evaluation or pursuant to a complaint, that a designated facility is not in

compliance with these rules, the Department shall first, within forty-five (45) calendar days of the review, notify the designated facility in writing of the specific items found to have been out of compliance.

B. The designated facility shall have thirty (30) calendar days from the receipt of the notice of noncompliance in which to submit written data and/or a plan and schedule for achieving full compliance, with respect to the matter(s) not in compliance.

C. The Department, after reviewing the designated facility's written reply, may take action as follows:

1. Approve the proposed plan and schedule for achieving full compliance; or,

2. Approve a modified plan and schedule for achieving full compliance; or,

3. Initiate action to revoke, suspend, limit or modify the designation of the facility; and,

4. Notify any entity from which the designated facility received reimbursement for mental health services of the noncompliance.

D. In cases where the Department approves a proposed or modified plan and schedule for achieving full compliance, the designated facility shall come into full compliance within ninety (90) days. At the end of the ninety (90) day period, the Department shall take action as follows:

1. Indicate that full compliance has been achieved; or,

2. Extend the correction period for an additional ninety (90) days, if necessary to achieve full compliance; or,

3. Initiate action to revoke, limit, suspend, or modify the designation.

E. In cases where the Department grants a second period for the facility to achieve full compliance, such approval shall not exceed ninety (90) calendar days. At the end of the second provisional approval period, the Department shall take action as follows:

1. Indicate that the facility has attained full compliance, if that is the case; or

2. Initiate action to revoke, limit, suspend or modify the designation.

F. Notwithstanding any of the foregoing provisions, if the Department has reasonable grounds to believe and finds that the designated facility has been guilty of deliberate and willful violations of these rules, or that the public health, safety, and welfare imperatively requires emergency action and incorporates such findings in its report, the Department may summarily suspend designation pending proceedings for suspension or revocation.

G. When the Department seeks to revoke, suspend, limit or modify a facility designation, it shall follow the procedures set forth in the Administrative Procedures Act, Sections 24-4-104 and 24-4-105, C.R.S.

19.202 Waivers

Although it is the policy of the Department that each designated facility comply in all respects with these rules, a waiver of the specific requirements of these rules may be granted by the Department, unless the requirements are otherwise required by state or federal law. The waiver may be granted in accordance with the following:

A. Time Period

A waiver of these specific rules may be granted to designated facilities and facilities seeking initial approval for a period not to exceed one (1) year. The waiver may be renewed for additional one (1) year periods. Patient rights as provided in statute shall not be waived.

B. Grounds for a Waiver

A waiver may be granted upon a finding that:

1. The waiver would not adversely affect the health, safety and welfare of the patients, and,

2. Either it would improve patient care, or application of the particular rule would create a demonstrated financial hardship on the facility seeking the waiver.

C. Burden of Proof

The facility seeking the waiver has the burden of proof. Consideration will be given as to whether the intent of the specific rule has been met.

D. Placement Facilities

When a designated facility provides mental health services through a placement facility and a waiver is sought for such services, the designated facility and not the placement facility shall request the waiver.

E. Requests for Waivers

Requests for waivers shall be submitted to the Department, and shall be signed by the Board President and/or the Director of the designated facility. The request shall contain at a minimum the following information:

1. A detailed description of the mental health services provided by the designated facility;

2. The rule section proposed to be waived and the waivers effect on the health, safety and welfare of the patients;

3. The expected improvement in patient care; and

4. The degree of financial hardship on the designated facility.

F. Notice Requirements

1. Designated Facility Requirements

At the time of submission of each waiver request, the designated facility shall post notice of the request and a meaningful description of its substance in a conspicuous place on the designated facility's premises. The Department shall not hold hearings as described in 19.201 unless it has been preceded by such notice which shall be reasonably calculated to inform interested persons of the date, time, place and substance of the hearing.

2. Department Requirements

The Department shall give written notice of the time, date, place and a short description

of the substance of the waiver request to interested persons twenty (20) calendar days prior to the hearing. For the purpose of this process, interested persons will include the members of the Mental Health Advisory Board for Service Standards, the affected facility, persons who have requested to be notified and appropriate Department staff.

G. Hearing Procedures

The Department shall set a date to hear the waiver request in detail. The waiver hearing shall be conducted by the Executive Director or his/her designee and shall be open to public attendance and participation. The designated facility shall send representatives to present the waiver request. A record shall be made of the hearing.

H. Decision Process

Unless additional time is required to make inspections or obtain additional information from the designated facility, the Executive Director or his/her designee shall notify the designated facility in writing of the decision within thirty (30) calendar days following the date of the hearing for the waiver request. The Executive Director hereby delegates to the Director of the Division of Mental Health or his/her designee the power to make such decisions under waiver requests. That decision shall constitute "final agency action" of the Department.

19.300 Organizational Provisions

19.310 Rights and Advocacy

19.311 Advisement of Rights

A. The facility shall furnish all persons receiving evaluation, care or treatment under any provisions of Title 27, Article 10, C.R.S., with a written copy of the following rights (translated into language that the person understands) upon admission. If the person is not able to read the rights, the person shall be read the rights in a language that s/he understands. These rules shall be interpreted by the Department in accordance with a standard of reasonableness.

B. The facility shall post the following list of patient rights (in appropriate languages) in prominent places frequented by patients and their families.

1. To receive and send sealed correspondence. No incoming or outgoing correspondence shall be opened, delayed, held or censored by the personnel of the facility;

2. To have access to letter writing materials, including postage, and to have staff members of the facility assist him/her if unable to write, prepare and mail correspondence;

3. To have reasonable and frequent access to use the telephone, both to make and receive calls in privacy;

4. To have frequent and convenient opportunities to meet with visitors. The facility may not deny visits by the client's attorney, religious representative or physician, at any reasonable time; and to have privacy to maintain confidentiality of communication between a patient and spouse or significant other, family member(s), staff member(s), attorney, physician, certified public accountant and/or religious representative;

5. To wear his/her own clothing, keep and use his/her own personal possessions within reason and keep and be allowed to spend a reasonable sum of his/her own money;

6. To refuse to take psychiatric medications, unless the person is an imminent danger to self or

others or the court has ordered such medications;

7. To not be fingerprinted unless required by law;

8. To refuse to be photographed except for facility identification purposes;

9. For persons who are under certification for care and treatment, to receive twenty-four (24) hour notice before being transferred to another designated or placement facility unless an emergency exists; the right to protest any transfer to the court; and the right to have the transferring facility notify someone chosen by the client about the transfer;

10. To confidentiality of treatment records except as required by law;

11. To accept treatment voluntarily, unless reasonable grounds exist to believe the person will not remain in treatment on this basis;

12. To receive medical and psychiatric care and treatment in the least restrictive treatment setting possible, suited to meet the person's individual needs and subject to available resources;

13. To request to see their medical records, to see the records at reasonable times, and if denied access, to be given the legal reasons upon which the request was denied and have documentation of such placed in the clinical record;

14. To retain and consult with an attorney at any reasonable time;

15. Every person who is eighteen (18) years of age or older shall be given the opportunity to exercise his/her right to vote in primary and general elections. The staff of the designated or placement facility shall assist each person in obtaining voter registration forms and applications for absentee or mail ballots, and in complying with any other prerequisite for voting.

C. Patients shall be advised of any changes to their rights as a result of a change of legal status.

19.312 Rights Restrictions

As set forth in Section 27-10-117, C.R.S., a patient's statutory rights, Section 19.311, B, 1 - 5, C.R.S., may be limited or denied for good cause by the professional person providing treatment as follows:

A. A professional person, as defined in Section 27-10-102, C.R.S., providing treatment may deny only the rights enumerated in Section 19.311, B, 1 - 5, including the following:

1. Except as otherwise provided below in paragraph B, each denial of a person's right shall be made on a case by case basis and the reason for denying the right shall be documented in the clinical record and shall be made available, upon request, to the person or his/her attorney.

2. Except as otherwise provided in paragraph B, restrictions on rights in Section 19.311, B, 1 - 5 shall be evaluated for therapeutic necessity on an ongoing basis and the rationale for continuing the restriction shall be documented at least every seven (7) calendar days.

B. A professional person treating patients in a secure treatment facility, as defined in Section 19.120, may limit or deny rights for good cause based upon the safety and security needs of the staff and other patients of the facility by incorporating safety and security policies applicable to the patient's ward and unit assignment into the patient's clinical record. In a secure treatment facility, the

following procedures shall be adhered to:

1. The Executive Director or designee shall approve of safety and security policies for each ward or unit that place any limit on the rights set forth in Section 19.311; as well as the policy and criteria for placement of a person committed under Title 27, Article 10, C.R.S., in secure treatment facilities.

2. The safety and security policies for each ward and unit shall be posted in the unit. The secure facility staff shall provide a free copy of the policy for the patient's unit, upon the patient's request.

3. Any good cause restriction of rights based upon the safety and security policy of the ward or unit shall be noted in the patient's clinical record. The order for restriction shall be signed by the professional person providing care and treatment and shall be reviewed at least every 30 days.

4. No safety or security policy may limit a patient's ability to send or receive sealed correspondence. However, to prevent the introduction of contraband into the secure facility, the policy may provide that the patient open the correspondence in the presence of unit staff.

5. No safety or security policy may limit a patient's right to see his or her attorney, clergy, or physician. However, the safety and security policy may provide that advance notice be given to the secure facility for such visits so that the secure facility can adequately staff for the private visit.

6. Placement of patients in secure treatment facilities on units that are locked at night:

    a. Persons transferred to a secure treatment facility from the Department of Corrections, who are serving a sentence in the Department of Corrections, may be placed on units in which the bedroom doors are locked during sleeping hours.

    b. As to all other patients, patients who are newly admitted to a secure treatment facility may be placed on units in which the bedroom doors are locked during sleeping hours, for a time period not to exceed sixty (60) calendar days. After sixty (60) calendar days, these patients will not be placed on a unit with locked doors during sleeping hours unless an individualized assessment is made and the treatment team determines that the patient is imminently dangerous to himself or herself or to others.

    c. Sleeping hours shall begin no earlier than 9:00 p.m., and shall end no later than 8:00 a.m., and shall not exceed 8 1/2 hours.

    d. Patients shall be provided an effective means of calling for assistance when in a locked room during sleeping hours, and the secure facility shall provide staff to promptly assist a patient with his or her individual needs, including but not limited to, staff assigned to a day hall where staff will be able to hear and respond to patients who knock on their room doors. An intercom call system may also be used. Staff shall monitor each patient's well-being through visual observation checks of each patient every 15 minutes.

C. As set forth in Section 27-10-125, C.R.S., a person's rights may be limited or denied under court order by an imposition of legal disability or deprivation of a right.

D. Information pertaining to the denial of any right shall be made available, upon request, to the person

or his/her attorney.

19.313 Rights of Minors

These rights apply to children voluntarily receiving services under Section 27-10-103, C.R.S. These provisions shall not apply to any minor admitted to a twenty-four (24) hour facility for mental health purposes pursuant to the Children's Code, Title 19, C.R.S., when there have been judicial proceedings authorizing the placement of the child into a facility.

A. In addition to the rights listed herein for adults, minors who are fifteen (15) years of age or older, with or without the consent of a parent or legal guardian, have the right to:

1. Consent to receive mental health services from a facility or a professional person;

2. Consent to voluntary hospitalization;

3. Object to hospitalization and to have that objection reviewed by the court under the provisions of Section 27-10-103, C.R.S.

B. Minors who are under the age of fifteen (15) have the right to object to hospitalization and to have a guardian ad litem appointed pursuant to Section 27-10-103, C.R.S.

C. Appropriate educational programs shall be available for all school age children who are residents of the designated facility in excess of fourteen (14) calendar days. These educational programs may be provided by either the local school district or by the designated facility. If provided by the designated facility, the educational program shall be approved by the Colorado Department of Education.

19.314 Advocacy

A. The designated facility shall designate a patient representative who is available to assist patients with complaints regarding care and treatment at the designated facility.

B. All persons admitted to the facility to receive care and treatment for mental illnesses shall be advised of the assistance available through the patient representative and shall be given the name and telephone number of the patient representative. This process shall be included in written policy and procedure or documented in the clinical record.

C. A notice shall be posted within the designed facility at locations available to and frequented by clients. The notice shall include the name, location, telephone number and responsibilities of the patient representative and where a copy of the complaint procedure may be obtained.

D. The designated facility shall develop policies and procedures for handling complaints by family members, patients and others which include provisions for forwarding unresolved complaints alleging violations of Section 27-10, C.R.S. or these rules to the Director of the Division of Mental Health, Department of Human Services, for resolution.

19.315 Employment

A. All labor, employment or jobs involving facility operation and maintenance which are of an economic benefit to the facility, shall be treated as work and shall be compensated according to applicable minimum wage or certified wage rates.

B. Maintaining a minimum standard of cleanliness and personal hygiene and personal housekeeping, such as making one's bed or cleaning one's area shall not be treated as work and shall not be

compensated.

C. Patients shall not be forced in any way to perform work.

D. Privileges or release from a designated facility shall not be conditioned upon the performance of work.

E. Vocational programs and training programs must comply with all applicable federal and state laws.

F. Vocational programs are not subject to the provisions in A., above, unless the program is of economic benefit to the facility.

G. All work assignments, together with a specific consent form, and the hourly compensation received, shall be noted in the clinical record.

19.320 Environment and Safety

A. All persons being treated under these regulations shall receive such treatment in a clean and safe environment with opportunities for privacy.

B. Each facility shall adhere to local health safety codes.

C. Each facility shall maintain reasonable security capabilities to guard against the risk of unauthorized departures. The least restrictive method to prevent an unauthorized departure shall be used.

D. An unlocked facility may place a person in seclusion to prevent an unauthorized departure when such departure carries an imminent risk of danger for the person or for others. Under those circumstances, the seclusion procedures in Section 19.431 shall be followed.

E. Seclusion rooms must be a minimum of 100 square feet.

19.330 Quality Improvement

A. Every designated facility shall conduct quality improvement activities that are consistent with these standards. However, if a facility is accredited by the Joint Commission for Accreditation of HealthCare Organizations (JCAHO) through the JCAHO Behavioral Healthcare Standards of 2003 or the Standards for Hospitals, 2003, not including later amendments or editions of these standards, and is in good standing, the facility is to follow the quality improvement standards of JCAHO in lieu of the following. To get information how these materials may be obtained or examined, you may contact the Director of the Division of Mental Health at 3824 W. Princeton Circle, Denver, CO 80236. You may also contact a Customer Service Representative at JCAHO, One Renaissance Boulevard, Oakbrook Terrace, IL 60181; or examine the materials at any state publications depository library.

   In addition, if the facility is approved by the Center for Medicaid/Medicare Services (CMS) for the provision of mental health care under the Federal Regulations for Medicare and Medicaid, 2003, not including later amendments or editions, and is in good standing, the facility is to follow the quality improvement standards of CMS in lieu of the following. To get information on how these materials may be obtained or examined, you may contact the Director of the Division of Mental Health at 3824 W. Princeton Circle, Denver, CO 80236. You may also contact the Director of the Center for Medicaid/Medicare Services, Region VII, Colorado State Bank Building, 1600 Broadway, Suite 700, Denver, CO 80202; or examine the materials at any state publications depository library. If the facility is not in full compliance with JCAHO or CMS, the following standards for quality improvement shall be followed:

B. The designated facility shall adopt and implement a quality improvement program that includes, at a

minimum, the following components:

1. A clinical peer review process, that includes senior staff, to determine the appropriateness and effectiveness of treatment. The process shall include review of selected case records at least every three (3) months.

2. A physician shall review the medical status of each patient at least every six (6) months for those persons in treatment for six (6) months or longer. There shall be documented follow-up of identified medical problems.

3. Establishment of written policies and procedures for reporting and reviewing all deaths and minor and critical incidents occurring at the facility.

4. The establishment of a written process that incorporates the information gathered under quality improvement processes to identify trends and patterns. This information shall include the use and administration of involuntary medications and the use and administration of restraint and seclusion.

5. Findings of the quality improvement program shall be utilized by the administration in both clinical and organizational planning and decision making and to develop staff and patient educational program.

6. Criteria and processes for identifying and maintaining acceptable clinical competence and credentials.

7. A review of the patterns of grievances and incorporation of that information into clinical and administrative decision making.

C. If the facility is accredited by JCAHO or CMS and loses that certification for any reason, the facility must notify the Director of the Division of Mental Health, within thirty (30) days, and must comply with these rules.

19.340 Data Requirements

A. Each designated facility shall file an annual report with the Department containing information when required by the Department. The report shall be submitted to the Director of the Division of Mental Health in the format and timeframe required by the Department. This data shall include individuals being treated in placement facilities under the auspices of the designated facility.

B. The data report requirements shall include the following types of information as listed in 1 through 4:

1. Seventy-Two (72) Hour Certification (Mental Health Holds)

   The facility is required to maintain a data set including the following for each period of July 1 through June 30:

   a. Number of individuals on holds, including gender and ethnicity of the individual.

   b. Who initiated the hold, i.e., police, court, facility-based personnel and number of each type.

   c. Reason for hold, i.e., dangerous to self, dangerous to others, gravely disabled, and number of each type.

   d. Outcome of the hold, i.e., dropped, voluntary, certified, transferred and number of

each type.

e. Counties in which the holds were initiated and numbers per county.

f. Number of holds per persons eighteen (18) years of age and over.

g. Number of holds per persons seventeen (17) years of age and younger.

2. Short and Long-Term Certifications

The facility is required to maintain a data set including the following for each period of July 1 through June 30:

a. Number of individuals on certifications, including gender and ethnicity of the individual.

b. Type of certification, i.e., short-term, extended short-term, long-term, extended long-term and number of each type.

c. Reason for certification, i.e., dangerous to self, dangerous to others, gravely disabled, and number of each type.

d. Outcome of the certification, i.e., dropped, voluntary, continued, transferred, court ordered dropped and number of each type.

e. Counties in which certifications are/ were held and number of each type.

f. Number of certifications per persons eighteen (18) years of age and over.

g. Number of certifications per persons seventeen (17) years of age and younger.

3. Voluntary Patients

The facility is required to maintain a data set of the number of individuals who are receiving mental health treatment voluntarily by age groups as listed above.

4. Every designated facility shall maintain the following data sets to be available for review and/or reporting to the department. These data shall be incorporated into the quality improvement processes and systems of the facility.

a. Involuntary Medications

1) Numbers of individuals receiving involuntary (court-ordered or emergency) psychiatric medications

2) Type of order (Emergency or Court-Ordered)

b. Involuntary Treatments

1) Numbers of individuals receiving restraint and/or seclusion

2) Type of restraint

3) Length of restraint episode per person

4) Number of individuals receiving electroconvulsive therapies

c. Imposition of Legal Disability or Deprivation of a Right

Numbers of persons treated who are under a court order for imposition of legal disability or the deprivation of a right.

19.350 Staff Training Requirements

Facilities designated under these rules shall develop a training curriculum and schedule in order to meet the following requirements. Facilities may choose to use a certification of competency in lieu of training, and shall develop appropriate policies, procedures and testing to assure competency.

A. All staff participating in the provision of the care and treatment for persons with mental illnesses shall receive annual training or annual certification of competency on the provisions of these rules and the requirements of Section 27-10-101, C.R.S., et seq.

B. All staff participating in the provision of care under these rules shall receive training on the facility's policies and procedures that implement these rules.

C. All staff who administer involuntary medications shall receive annual training or annual certification of competency on Section 19.310 of these rules and the legal rationale underlying involuntary medication of clients.

D. All direct care staff shall be trained in the recognition and response to common side effects of psychiatric medications. These staff shall be trained to respond to emergency drug reactions in accordance with the facility's policies.

E. All staff in non-JCAHO or CMS approved facilities who administer restraint/seclusion techniques shall receive annual training on lower level behavioral interventions and Section 19.430 of these rules.

F. All staff shall receive training on needs identified through the quality improvement program.

G. All staff involved in the administration of the program shall receive annual training or annual certification of competency on alternative or representative medical decision making, including, but not limited to advance directives, medical durable powers of attorney, and proxy decision making, and guardianships.

H. Specific staff of placement facilities, as determined by the designated facility, shall receive annual training or annual certification of competency on the provisions of these rules and the requirements of Section 27-10-101, C.R.S., et seq.

19.360 Confidentiality

A. The designated facility has the responsibility to insure that all information obtained and records prepared in the course of treatment be maintained as confidential and privileged matter and shall not be subject to disclosure except as authorized by law, including but not limited to, Sections 27-10-120, 27-10-120.5, and 25-1-801, C.R.S., et seq., and rules enacted thereunder, and federal confidentiality laws.

B. Information and records shall be disclosed only:

1. When the patient or his/her parent(s), if the patient is a minor, designates persons to whom information or records may be released and signs a release of information form. When a person has a legal guardian or conservator and his/her legal guardian or conservator designates, in writing, persons to whom records or information may be disclosed, such designation shall be valid in lieu of the designation by the patient.

Release of information form shall at a minimum state that individual authorization for release of information shall be time limited up to one (1) year, and shall indicate who shall receive the information, for what purpose and what information shall be released.

2. In communications between qualified professional personnel in the provision of services or appropriate referrals, including, but not limited to, physicians for the purpose of seeking advice and expertise concerning a specific medical problem to assist in the ongoing treatment, or in a life threatening emergency.

3. To persons authorized by court order after there has been notice and opportunity for hearing to the person to whom the records pertain and the custodian of the records.

4. To certain family members as authorized by 27-10-120.5, C.R.S., and under the requirements of Public Law No. 104-191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

5. For claims on behalf of the patient for aid, insurance or medical assistance, such information shall be limited to information required for the payment of the claim.

6. To the courts as necessary to the administration of the Act for the Care and Treatment of the Mentally Ill, Section 27-10-101, C.R.S., et seq., as amended.

C. Records shall be released to the staff of the governor's designated Protection and Advocacy System for Persons with Mental Illness under the following guidelines for all records of:

1. Any individual who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access;

2. Expired. (Senate Bill 05-183, 28 CR 7)

3. Any individual with a mental illness, who has a legal guardian, conservator, or other legal representative, with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy, whenever:

a. such representative has been contacted by such system upon receipt of the name and address of such representative;

b. such system has offered assistance to such representative to resolve the situation; and

c. such representative has failed or refused to act on behalf of the individual.

D. Nothing in this Section shall be construed to limit the access of duly authorized representatives of the Department to confidential material for purposes of assuring compliance with these rules. Such duly authorized representatives of the Department are obligated to protect the confidentiality of any patient information reviewed.

E. Whenever a family member or other informant not including a facility requests that information revealed to treating personnel remain confidential, such information shall not be released unless otherwise provided by law or court order.

1. Whenever confidential information provided by a family member or an informant is ordered released, attempts shall be made to notify the family member or informant of the release

of information by the person who has obtained the court order.

2. The fact that confidential information is being withheld may be disclosed to persons requesting the information, but if the patient's attorney has requested the information, the fact that confidential information is being withheld shall be disclosed.

F. Any information concerning observed behavior which reasonably appears to constitute a criminal offense committed on the premises of a designated or placement facility or any criminal offense committed against any person while performing or receiving services is not considered privileged or confidential.

G. Researchers conducting clinical research must sign an oath of confidentiality. All information identifying individual patients by name, address, telephone number and/or social security number collected for research purposes, shall not be disclosed.

H. When names are deleted and other identifying information is disguised or deleted, material from case records may be used for teaching purposes, development of the governing bodies' understanding and knowledge of the facilities' services or similar educational purposes.

I. Information obtained regarding evaluation, diagnosis or treatment for alcohol or drug abuse at facilities that are subject to Federal alcohol and drug rules may be released only in compliance with Federal Regulations.

J. Information that concerns child abuse or neglect or therapist abuse shall be reported to appropriate authorities as required by law.

19.400 Treatment Provisions

19.410 Medical/Dental Care

A. Seventy-Two (72) Hour Treatment and Evaluation Facilities

The facility shall ensure the availability of emergency medical care to meet the individual needs of each client/patient. The facility shall have and adhere to a written plan for providing emergency medical care to include at least:

1. A qualified physician responsible for the completion of physical examinations within twenty-four (24) hours of admission.

2. The availability of a physician or emergency medical facility on a twenty-four (24) hour, seven (7) day week basis.

3. Emergency medical treatment, when indicated, shall be accessed immediately (within one hour) upon determination that an emergency exists.

4. Whenever indicated, a person shall be referred to an appropriate specialist for either further assessment or treatment. The facility shall be responsible for securing an appropriate assessment to determine the need for further specialty consultation. This information shall be contained in the clinical record.

B. Short-Term and Long-Term Treatment Facilities

The facility shall ensure the availability of medical care and emergency dental care to meet the individual needs of each client/patient. The facility shall have and adhere to a written plan for providing medical and emergency dental care to include at least:

1. A qualified physician responsible for the completion of physical examinations within twenty-four (24) hours of admission. Subsequent physical examinations shall be completed annually. This information shall be included in the clinical record.

2. The availability of a physician or emergency medical facility on a twenty-four (24) hour, seven (7) day week basis.

3. Emergency medical treatment, when indicated, shall be accessed immediately (within one hour) upon determination that an emergency exists.

4. Whenever indicated, a person shall be referred to an appropriate specialist for either further assessment or treatment. The facility shall be responsible for securing an appropriate assessment to determine the need for further specialty consultation. This information shall be contained in the clinical record.

5. Ongoing appraisals of the general health of each patient, including need for immunizations in accordance with applicable state and federal law and need for corrective and assistive devices such as glasses, hearing aids, prostheses, dentures, walkers, etc. This information shall be contained in the clinical record.

C. The obligation to ensure the availability of emergency medical services shall not be construed as the obligation to pay for such services; however, the facility shall secure these services regardless of source of payment.

19.420 Psychiatric Medications

A. In all instances where prescription psychiatric medications are to be ordered as a part of a mental health treatment program, the following information shall be provided to the patient and legal guardian(s). For children under the age of fifteen (15), the following information shall be provided to the child's parent(s) or legal guardian(s). When a person has designated another to act concerning medication issues pursuant to a medical durable power of attorney, advanced directive, or proxy, the information shall be provided to that individual also.

1. The name(s) of the medication being prescribed.

2. The usual uses of the medication(s).

3. The reasons for ordering the medication(s) for this patient.

4. A description of the benefits expected.

5. The common side effects and common discomforts, if any.

6. The major risks, if any.

7. The probable consequences of not taking the medication(s).

8. Any significant harmful drug or alcohol interactions, or food interactions.

9. Appropriate treatment alternatives, if any.

10. That s/he may withdraw agreement to take the medication at any time.

B. The facility shall have policies and procedures for documenting in the clinical record that the required information was given to the patient, custodian, or guardian and consent obtained before

administration of medication(s).

C. The provider with prescriptive authority or his/her designee shall offer to answer inquiries regarding the medication(s).

D. No person shall be threatened with or experience adverse consequences by facility staff solely because of a failure to accept psychiatric medication voluntarily.

E. If an individual has established an advance directive concerning psychiatric medication and the advance directive is still in effect, the professional person shall follow the directive to the extent that it is clinically appropriate to the person's clinical situation.

F. Prescribing, Handling, Administration of Psychiatric Medication(s)

All psychiatric medication(s) shall be administered on the written order of a physician or other professional authorized by statute to order such medications. Verbal medication orders may be given according to facility policies.

1. The facility shall have written policies and procedures regarding Section A, above, and the following:

   a. Documentation of the administration of medication, medication variances/errors, and adverse medication reactions related to medication administration.

   b. Notification of a physician or other professional authorized by statute to order such medications in case of medication errors and/or medication reactions/events.

   c. Discontinuance of medication.

   d. Disposal of medications

   e. Acceptance of verbal, fax, or electronically transmitted medication orders.

2. The facility shall note in the individual clinical record all prescription medications administered to patients by the facility including:

   a. The name and dosage of medication.

   b. The reason for ordering the medication.

   c. The time, date and dosage when medication(s) is administered.

   d. The name and credentials of the person who administered the medication.

   e. The name of the prescribing professional authorized by statute.

   f. If the medication is administered as an emergency medication or a court-ordered medication.

19.421 Involuntary Psychiatric Medications

These rules do not apply to refusal of non-psychiatric medications or medical emergencies. If an individual refuses medications intended to treat general medical conditions and that refusal is likely to or precipitates a medical emergency, those professionals who are authorized to order and administer medications, may take action in accordance with generally accepted medical practice in an emergency

situation.

19.421.1 Psychiatric Emergency Conditions

A. Persons who are detained pursuant to Sections 27-10-105, 106, 107, 108 or 109, C.R.S., and refuse psychiatric medication may be administered psychiatric medication(s) ordered up to 24 hours without consent under a psychiatric emergency condition.

B. An emergency condition exists if:

The person is determined to be in imminent danger of hurting herself/himself or others, as evidenced by symptoms which have in the past reliably predicted imminent dangerousness in that particular person; or,

By a recent overt act, including, but not limited to, a credible threat of bodily harm, an assault on another person, or self-destructive behavior.

C. A reasonable attempt to obtain voluntary acceptance of psychiatric medication shall be made prior to the use of involuntary medication.

19.421.2 Continuation of a Psychiatric Emergency

A. If the psychiatric emergency has abated because of the effect of psychiatric medications and the physician is of the opinion that psychiatric medication is necessary to keep the emergency in abeyance beyond seventy-two (72) hours, then within that seventy-two (72) hours the following steps shall be taken:

1. The facility shall send a written request for a court hearing for an order to administer the medication involuntarily; and

2. A documented concurring consultation with another physician shall be obtained. The consultation shall include an examination of the patient and a review of the patient's medical record including an assessment as to whether the psychiatric emergency condition continues to exist.

3. If a concurring consultation is not obtained within seventy-two (72) hours, then emergency psychiatric medication shall be discontinued until such concurring consultation is obtained and documented, except in cases where life threatening consequences could result from an abrupt medication discontinuation. Under these circumstances, the person shall be safely taken off the medication according to standards of medical practice, with corresponding clinical documentation.

4. In no case shall a person receive emergency psychiatric medication(s) involuntarily for a period exceeding ten (10) days without an order from a court of jurisdiction including continuation orders from the court.

5. The patient shall be notified of the right to contact his or her attorney and/or the court of jurisdiction at the time the written request for court-ordered medication is made. This notification shall be documented in the clinical record. If the patient chooses to exercise this right, the designated facility shall aid the patient if necessary, in accomplishing the foregoing.

B. The specific facts outlining behaviors supporting the finding of the emergency condition shall be detailed in the clinical record. Every twenty-four (24) hours thereafter until such time a final court order is issued, the emergency is resolved, or the patient accepts psychiatric medications

voluntarily, the facility shall document the behaviors that substantiated the need to continue the emergency medication, and the physician shall reorder the psychiatric medications.

C. During the course of emergency medication administration, the patient shall be offered the medication on a voluntary basis each time the medication is given. If the patient voluntarily consents to take the medication(s), and the attending physician determines that the person will likely continue to accept the medication on a voluntary basis and no longer requires involuntary medications, this shall be documented in the record and the involuntary medication procedures shall be terminated.

D. If the person again refuses to voluntarily accept medication(s) and his/her clinical condition returns to an emergency situation as cited in Section 19.421.1, the emergency psychiatric medication procedures may be re-instituted.

19.421.3 Non-Emergency Involuntary Medications

A. In non-emergency situations in which a person who is detained pursuant to Sections 27-10 106, 107, 108, or 109, C.R.S., would benefit from the administration of a psychiatric medication, but the patient does not consent, the facility shall petition the court to obtain permission to administer such medication. The following conditions must be documented in the petition:

1. The patient is incompetent to effectively participate in the treatment decision;

2. Treatment by psychiatric medication is necessary to prevent a significant and likely long-term deterioration in the patient's mental condition or to prevent the likelihood of the patient causing serious harm to him/herself or others;

3. A less intrusive appropriate treatment alternative is not available; and

4. The patient's need for treatment by psychiatric medication is sufficiently compelling to override any bona fide and legitimate interest of the person in refusing treatment.

B. The petition shall specify what psychiatric medications are being recommended as potentially beneficial to the person.

C. No psychiatric medications shall be administered without the person's consent until a court order is received authorizing involuntary use, except under emergency conditions under Section 19.421.1.

19.421.4 Involuntary Medication Data

If the facility uses a medication administration record or another mechanism which meets the criteria listed in Section B, below, can correlate this information as required in Section C, below, and places the information in the clinical record, that mechanism may be used in lieu of a separate log.

A. The designated facility must maintain a log of all cases where involuntary medications were administered.

B. The record shall contain, at a minimum, the following:

1. Patient's name and identifying number.

2. Specified use of involuntary medication.

3. Physician or other professional authorized by law ordering involuntary medication.

4. Date/time each involuntary medication was administered.

5. Date/time involuntary medication was discontinued.

6. Reason for discontinuation of involuntary medication(s).

C. The facility shall have the ability to determine, at a minimum, the aggregate number of persons receiving emergency and involuntary psychiatric medications during a specified period of time, the start and stop dates for each person's involuntary medication treatment, and shall incorporate the use of this data into the quality improvement program.

19.430 Seclusion/Restraint

The following rules covering seclusion and restraint apply to all areas of the designated facility including emergency departments and to placement facilities.

A. If a facility is accredited by JCAHO, and is in good standing, the facility shall follow those standards in lieu of Sections 19.431 through 19.434. In addition, if the facility is approved by CMHS, and is in good standing, the facility is to follow the seclusion and restraint standards of CMS in lieu of Sections 19.431 through 19.434.

B. Persons being detained under Sections 27-10-105 through 109, C.R.S., may be secluded or restrained over their objection under the conditions in Section 19.431 and Section 19.432, otherwise there must be a signed informed consent for such an intervention as outlined in Section 19.440 of these rules or a court order.

C. These rules do not supercede any requirements under Section 26-20-101, C.R.S., et seq.

D. Staff shall ensure that no person will harm or harass a person who is secluded and/or restrained.

19.431 Use of Seclusion

A. Seclusion may be used only for the purpose of preventing imminent injury to self or others, or to eliminate prolonged and serious disruption of the treatment environment. Any time a patient is placed alone in a room and not allowed to leave, it shall be construed as seclusion.

B. An unlocked designated facility may place a person in seclusion to prevent an unauthorized departure when such departure carries an imminent risk of dangerousness for the person or for others. Under those circumstances, the seclusion procedures in this section shall be followed.

C. Any decision to seclude shall be based on a current clinical assessment, and may also be based on other reliable information including information that was used to support the decision to take the person into custody for treatment and evaluation. The fact that a person is being evaluated or treated under Sections 27-10-105 through 27-10-109, C.R.S., shall not be the sole justification for the use of seclusion.

D. Seclusion shall be used only when other less restrictive methods have failed. Documentation of less restrictive methods and the outcome shall be contained in the clinical record.

E. Seclusion rooms shall be lighted, clean, safe, and have a window for staff to observe patients.

F. Seclusion shall only be ordered by a professional person.

G. Seclusion shall not be used for punishment, for the convenience of staff, or as a substitute for a program of care and treatment.

19.432 Use of Restraint

Restraint may be used in emergency circumstances, wherein the person presents a serious, probable imminent threat of bodily harm and has the ability to effect such harm.

A. The decision to restrain shall be based on a current clinical assessment, and may also be based on other reliable information including information that was used to support the decision to take the person into custody for treatment and evaluation. The fact that a person is being evaluated or treated under Sections 27-10-105 through 27-10-109, C.R.S, shall not be the sole justification for the use of restraint.

B. Mechanical restraints may be used only for the purpose of preventing such body movement that is likely to result in imminent injury to self or others. Mechanical restraint shall not be used solely to prevent unauthorized departure.

C. Restraint of a single limb is not permitted, unless court-ordered.

D. Restraint of a person by a chemical spray is not permissible.

E. The type of restraint shall be appropriate to the type of behavior to be controlled, the physical condition of the person, the age of the person and the type of effect restraint may have upon the person.

F. Restraint shall be applied only if alternative interventions have failed. Alternative interventions shall be documented in the clinical record; however, alternative techniques are not required if the alternatives would be ineffective or unsafe, when the person is physically combative or actively assaultive or self-destructive.

G. Justification for immediate use of restraint shall be documented in the clinical record.

H. Restraint shall only be ordered by a professional person.

I. Restraint shall not be used for punishment, for the convenience of staff, or as a substitute for a program of care and treatment.

J. Restraint does not include restraints used while the facility is engaged in transporting a person from one facility or location to another facility or location within a facility when it is within the scope of that facility's powers and authority to effect such transportation pursuant to Section 26-20-101, C.R.S., et seq.

19.433 Explanation to Patient

In any situation, information shall be given to the person as soon as possible after s/he has been secluded or restrained. The patient shall be given a clear explanation of the reasons for use of such intervention, the observation procedure, the desired effect, and the circumstances under which the procedure will be terminated. The fact that this explanation has been given to the person shall be documented in the clinical record.

In an emergency situation information given to the person pursuant to this rule regarding the desired effect and the circumstances under which the procedure(s) will be terminated may not be as detailed as in a non-emergency situation. However, as the person's condition progresses, staff shall promptly supplement the information given and this shall be documented in the clinical record.

19.434 Continued Use of Seclusion and/or Restraint

A. Staff shall document efforts to assure that the use of seclusion/restraint shall be a brief as possible.

B. If the seclusion/restraint episode goes beyond one (1) hour, a professional person must provide an order. A verbal order including telephone or other electronic orders may be used if followed by a written order by the professional person.

C. Seclusion and/or restraint shall not be ordered on an "as needed" basis.

D. If the patient has not been examined by a professional person within the previous twenty-four (24) hours, seclusion and/or restraint continued in excess of four (4) hours will require a face-to-face examination and a new written order by a professional person. If there has been a documented examination by a professional person within the previous twenty-four (24) hours, seclusion/restraint continued in excess of (14) fourteen hours will require a face-to-face examination and a new written order by a professional person prior to each succeeding twenty-four (24) hours of seclusion/restraint to assure that the need for these interventions is still present. The reasons for continuation shall be documented in the clinical record by the professional person.

E. An episode of seclusion/restraint is terminated when the patient has been out of seclusion/restraint for a continuous period of two (2) hours.

F. Continued seclusion/restraint in excess of twenty-four (24) hours shall require an administrative review by the medical/clinical director of the facility or his/her designee, other than the professional person in charge of treatment. The reviewer shall be a person with the authority and knowledge necessary to review clinical information and reach a determination that the extension of a seclusion and/or restraint episode beyond twenty-four (24) hours is clinically necessary.

G. If the reviewer does not concur with the order for continuation of seclusion/restraint, the order shall be discontinued and the professional person in charge of treatment shall be notified of such discontinuation.

H. An administrative review shall be initiated at the conclusion of each twenty-four (24) hour period of continuous use of seclusion/restraint, and shall be completed prior to the expiration of each twenty-four (24) hour period.

19.435 Chart Documentation for the Use of Seclusion and/or Restraint

A. A staff member shall record each use of seclusion and/or restraint and the clinical justification for the use in the patient's chart. The justification shall include:

1. The person's specific behavior(s) and the nature of the danger:

2. Describe attempts made to control the person's behavior prior to using seclusion and/or restraint;

3. Describe the circumstances under which seclusion/restraint will be terminated and evidence that these criteria were given to the patient; and,

4. Notification of a professional person within one (1) hour of the seclusion/restraint intervention.

B. Administrative review shall document the clinical justification for the continued use of seclusion/restraint in the patient's chart. The justification shall include:

1. Documentation that the professional person ordering the continuous use of seclusion/restraint in excess of twenty-four (24) hours has conducted a face-to-face evaluation of the person within the previous twenty-four (24) hours.

2. Documentation of the ongoing behaviors or findings that warrant the continued use of seclusion/restraint and other assessment information as appropriate.

3. Documentation of a plan for ongoing efforts to actively address the behaviors that resulted in the use of seclusion/restraint.

4. A determination of the clinical appropriateness of the continuation of seclusion/restraint.

5. A summary of the information considered by the reviewer and the result of the administrative review with the date, time and signature of the person completing the review.

C. Information regarding use of seclusion/restraint shall be readily accessible to authorized persons for review. Facilities shall have the ability to gather data as follows:

1. Each seclusion/restraint episode including date and time the episode started and ended, specific to each patient.

2. Aggregated data to include total numbers of persons secluded/restrained and average length of time of the episodes over the period of one year.

19.436 Observation and Care

A. A person who is in seclusion/restraint shall be observed in person by staff at least every fifteen (15) minutes, and such observation, along with the behavior of the patient, shall be recorded each time. Unless contraindicated by the patient's condition, such observation shall include efforts to interact personally with the patient.

B. Ongoing provisions shall be made for nursing care, hygiene, diet and motion of any restrained limbs. For individuals in mechanical restraints, the facility shall provide relief periods, except when the individual is sleeping, of at least ten (10) minutes as often as every two hours, so long as relief from the mechanical restraint is determined to be safe. Staff shall note in the record relief periods granted. The patient shall have access to food at least every four (4) hours and shall have access to fluids and toileting upon request or during relief periods, but at least every two (2) hours, unless sleeping.

C. Cameras and other electronic monitoring devices shall not replace the face-to-face observations.

D. An individual in physical restraint shall be released from such restraint within fifteen (15) minutes after the initiation of physical restraint, except when precluded for safety reasons pursuant to Section 26-20-101, C.R.S., et seq.

E. To the extent that the duties specified in Section 26-20-101, C.R.S., et seq . are more protective of patient rights, the provisions 26-20-101, C.R.S., et seq ., shall apply.

19.437 Facility Policies and Procedures for Seclusion/Restraint

The facility shall have and shall implement written policies and procedures that describe the situations in which the use of seclusion and/or restraint are considered appropriate within each specific program and the staff members who can order their use. The policies and procedures shall include the requirements in Sections 19.430 - 19.436 and 26-20-101, C.R.S., et seq .

In the event a facility does not authorize the use of seclusion and/or restraint of any type, the policy statement shall note the prohibition.

The polices and procedures shall include implementing administrative review including a process for

terminating the seclusion and/or restraint episode when the reviewer does not concur with the order for continuation. If the reviewer is not a professional person, the order must be discontinued by a professional person.

19.440 Informed Consent for Therapy or Treatments Using Special Procedures

Therapies using stimuli such as electroconvulsive therapy (ECT), and behavior modifications using physically painful, aversive or noxious stimuli, require special procedures for consent and shall be governed by this rule.

A. Prior to the administration of a therapy listed above, written informed consent shall be obtained and documented in the clinical record reflecting agreement by both the person being treated and his/her legal guardian, if one has been appointed or alternative decision maker if one exists. If the person undergoing treatment using special procedures is a child age sixteen (16) to eighteen (18), the clinical record shall reflect informed consent by both the child and his/her guardian(s).

B. In the case of electroconvulsive therapy, a consent form prescribed by the Department shall be used and procedures set forth in Section 13-20-401-403, C.R.S., shall be followed. An informed consent means:

1. It is freely and knowingly given and expressed in writing.

2. That the following has been explained to the patient:

    a. The reason for such treatment information;

    b. The nature of the procedures to be used in such treatment, including their probable frequency and duration;

    c. The probable degree and duration of improvement or remission expected with or without such treatment;

    d. The nature, degree, duration, and probability of the side effects and significant risks of such treatment commonly known by the medical profession, in the use of ECT, the consent shall note the possible degree and duration of memory loss, the possibility of permanent irrevocable memory loss, and the remote possibility of death;

    e. The reasonable alternative treatments, if any and why the professional person is recommending the specific treatment;

    f. That the patient has the right to refuse or accept the proposed treatment and has the right to revoke his consent for any reason at any time, either orally or in writing;

    g. That there is a difference of opinion within the medical profession on the use of some treatments;

    h. An offer to answer any inquiries concerning the recommended special procedures; and,

    i. The number of treatments expected over a specified period of time to achieve maximum benefit.

3. The consent agreement entered into by the patient or other person(s) shall not include exculpatory language through which the patient or other person(s) is made to waive, or

appear to waive, any of his/her legal rights, or to release the facility or any other party from liability for negligence.

4. Informed consent for the special procedure shall be renewed each time the maximum number of treatments is given or the specified amount of time has expired. No informed consent for special procedures shall be valid for more than thirty (30) days.

5. No one under the age of sixteen (16) shall undergo electroconvulsive treatment.

6. Electroconvulsive treatment requires a concurring consultation by a licensed psychiatrist prior to administration of the treatment. Such consultation shall be noted in the clinical record.

7. All provisions of Sections 12-20-401 through 12-20-404, C.R.S., shall be followed.

19.441 Involuntary Treatment with Therapy or Treatments Using Special Procedures

In the event the patient or the legal guardian refuses to or cannot consent, treatments referenced in Section 19.440 using special procedures shall be administered only under the following circumstances:

A. With a prior court order for the treatments using special procedure; or,

B. In an emergency in which the life of the person is in imminent danger because of the person's condition. In an emergency situation in which the patient is unable to grant informed consent and sufficient time does not exist to petition the court for an order prior to the administration of the specific therapy, the person's physician, in consultation with the director of the facility or his/her designee, may, after careful and informed deliberation and under procedures adopted by the facility, order a special procedure without consent.

19.442 Documentation

Along with the evidence of informed consent as delineated in this section, the reason for the use of any special procedure shall be fully documented in the patient's record. The administration and outcome of such special procedure shall also be documented in the clinical record.

19.443 Procedures

Each designated facility shall adopt written procedures for administration of special procedures in accordance with these rules and applicable statutes.

19.450 Continuity of Care and Transfer of Care

Each facility shall adopt and implement a written policy for continuity of patient care. The policy shall include at a minimum the following:

19.451 Continuity of Care

A. Access to all necessary care and services within the facility, and coordination with any other current mental health care providers or other systems of care or support as appropriate.

B. Coordination of care with the patient's previous mental health care providers or medical providers as appropriate, including retrieval of psychiatric and medical records.

C. Coordination of the patient's care with family members, guardians and other interested parties as appropriate and in a manner which reflects the person's culture and ethnicity.

D. The facility is not responsible for providing non-psychiatric medical care under these regulations, but shall facilitate access to proper medical care and shall be responsible for coordinating mental health treatment with medical treatment provided to the individual.

19.452 Transfer of Care

A. The patient shall only be transferred to another designated or placement facility when adequate arrangements for care by the receiving facility have been made and documented in the clinical record. Transfer coordination shall include at least one discharge planning conference, face-to-face or by telephone, with participants from both facilities and the patient and his/her guardian, whenever possible.

B. At least twenty-four (24) hours advance notice of transfer shall be given to persons under certification, unless knowingly waived in writing by the patient and guardian as appropriate, except in cases of a medical emergency. Notice of such transfer shall also be provided to the court of jurisdiction and the patient's attorney.

C. The transferring facility shall ask the patient to indicate two (2) persons to whom notification of transfer should be given and shall notify such persons within twenty-four (24) hours of notification to the patient. Such notification shall be made by the transferring facility with the appropriate written authorization. Actions taken under this section shall be documented in the clinical record.

19.460 Transportation

Whenever transportation of a person is required, the treating staff of the facility shall assess the person for dangerousness to self or others and potential for escape. Whenever clinically and safely appropriate, the person may be transported by other means such as ambulance, care van, private vehicle, and restraints shall not be used, unless authorized as necessary by the treating physician. If the treating staff assesses the person as dangerous to self or others or as an escape risk, the staff may request transportation by the local Sheriff's Department.

A. A request for transportation from the Sheriff's Department shall be filed with the court of appropriate jurisdiction and shall include:

1. Statements from the treating professional person supporting the need for transportation by the Sheriff's Department;

2. Recommendations concerning the use of mechanical restraints and the impact that handcuffs or shackles would have on the person;

3. Soft restraints not handcuffs or shackles shall be recommended if the findings of the assessment support the use of mechanical restraint;

4. Recommendations concerning the placement and management of the person during the time s/he will be absent from the designated facility due to court hearings;

5. Recommendations shall include considerations for management of the person based on the person's age, physical abilities, culture and medical status.

B. Notice of the request for transportation by the Sheriff's Department shall be given to the person and his/her attorney at least twenty-four (24) hours prior to the time it is filed with the court. This notice shall not be required during the time a seventy-two hour hold is in effect or in an emergency situation with a person under certification or when the person signs a waiver which has been clearly explained.

C. Requesting transportation by the Sheriff's Department does not require a finding of dangerousness to self or others or an escape risk if the Sheriff's Department is willing to transport the person without the use of mechanical restraints.

19.470 Certification for Treatment on an Outpatient Basis

A person who has been treated as an inpatient involuntarily under a short-term or long-term certification for mental health treatment at a designated facility may be treated on an outpatient basis if the following conditions are met:

A. A professional person who has evaluated the person and who is on the staff of the designated facility which has been treating the person, determines that while the person continues to meet the requirements for certification, professional judgment is that with appropriate treatment modalities in place the individual is unlikely to act dangerously in the community.

B. Certification on an outpatient basis is the appropriate disposition suited to the person's individual needs.

C. The designated facility that will hold the certification on an outpatient basis has documentation of the results of a recent physical examination;

D. Arrangements have been made for the person to have access to:

1. Case management;

2. Medication management;

3. Essential food, clothing, shelter; and

4. Medical care and emergency dental care.

E. The service plan shall reflect the outpatient certification status, the arrangements under D, 1 - 4, above, and meet the requirements in Section 19.482.2.

F. Content of the records shall meet the requirements in Section 19.482, et seq.

19.471 Enforcement

A. If the person on outpatient certification substantially fails to comply with the requirements specified in his/her service plan, the professional person, or staff of the designated facility that holds the certification, shall make reasonable efforts, including outreach, to obtain the person's compliance with the plan. As part of these efforts, reasonable attempts shall be made to advise the person that s/he may be picked up and taken into custody for appraisal of the person's need for continued certification and ability to receive treatment on an outpatient basis.

B. If the designated facility's medical director or the treating professional person reasonably believes that there is a significant risk of deterioration in the person's condition or that the person may pose a risk to self or the community, and reasonable efforts to obtain the person's compliance with the service plan have been unsuccessful, the medical director or the treating professional person shall make arrangements to have the person transported to a designated facility or the emergency room of a hospital. The person shall be assessed for current clinical needs and modifications made in legal status or treatment as necessary, including readmission to an inpatient facility.

C. The person shall not be physically forced to take prescribed psychiatric medication during this

appraisal process, unless the person is court-ordered to do so or an emergency situation exists as set forth in Section 19.421.

D. Following the assessment, if the patient is not detained, the facility holding the certification shall arrange transportation for the patient to return to the patient's residence or other reasonable location, if the patient so desires.

19.480 Treatment Records

19.481 Care and Retention of Records

Facilities shall maintain an organized and legible, written and/or electronic current record on each person receiving mental health treatment which can be conveniently accessed for compliance purposes. Such records shall be permanent records not temporary records and shall be retained as stated in paragraph D, below.

A. Electronic records shall be maintained in accordance with HIPAA and shall meet all the current requirements for paper charting and confidentiality set out in these rules and in law, including a method to capture patient, family, and staff signatures.

B. Treatment entries shall be signed and dated by the author, with his/her degree and title or position, at the time they are written. Telephone orders shall be written at the time they are given and authenticated at a later time.

C. Records shall be kept in a secure location at the facility and only be released in accordance with Section 19.360 of these rules and other applicable Federal and state laws.

D. Each facility shall adopt and implement policies to comply with the following schedule for retention of clinical records:

1. Outpatient/Ambulatory Care Facilities:

Adults	Seven (7) Years After Discharge
Minors [under age eighteen]	Seven (7) Years Beyond Reaching Age 18 After Discharge

2. Inpatient/Hospital Care Facilities

Adults	Ten (10) Years after Discharge
Minors [under age eighteen]	Ten (10) Years Beyond Reaching Age 18 After Discharge

19.482 Content of Records

19.482.1 Admission and Assessment Data

Records shall include written assessment information as follows:

A. Identification and demographic data.

B. Presenting problem and duration.

C. Patient strengths, abilities, skills, and interests.

D. History of mental illness and treatment with dates, location, and provider names(s), if available.

E. Physical health status including evaluation of medical conditions producing psychiatric symptoms.

F. Psychosocial history: interpersonal, family, and peer relationships, cultural and communication variables, vocational, e.g., school, work, military service; physical/sexual abuse or perpetration and current risk; legal problems, mental illness in family; violence.

G. Cultural factors relating to age, ethnicity, linguistic/communication needs, gender, sexual orientation, relational roles, and spiritual beliefs.

H. Issues specific to older adults such as hearing loss, vision loss, strength; mobility and other aging issues.

I. Issues specific to children/adolescents such as growth and development, daily activities, educational activities and legal guardians.

J. History of any use of seclusion, restraint, emergency psychiatric medications, electroconvulsive therapy and their impact upon the patient; and the patient's preference if emergency procedures must be implemented (an advance psychiatric directive).

K. Information regarding advance directives, guardianship, medical proxies, etc.

L. A mental status examination for each person who is given a diagnosis including presentation/appearance, affect and mood, cognitive functioning, thought content/process, and danger to self and others.

M. A Diagnostic and Statistical Manual of Mental Disorders (DSM) diagnosis based on psychiatric, psychological or medical condition with sufficient criteria per the current DSM to support the diagnosis and any subsequent changes in diagnosis.

N. Evidence of ongoing assessment which at a minimum shall be included in the monthly service plan review process.

O. Evidence of an assessment update for continued certification every six months for persons being treated under an outpatient certification or a long-term certification.

19.482.2 Service Planning Requirements

Records shall include:

A. An individualized, integrated, comprehensive written service plan designed to promote the patient's highest possible level of independent functioning and to reduce the likelihood of re-hospitalization or return to restrictive placement, including clinical treatment services and, as pertinent:

1. Case management services

2. Rehabilitation services

3. Medication management

4. Emergency services

5. Community support services

6. Vocational services

7. Residential services

8. Medical care and emergency dental care

9. Substance abuse services

10. Translation/Interpretation Services

B. The service plan shall contain specific goals based on the assessment and using the patient's strengths, resources, interests and to the degree possible be patient-directed. Adherence to advance directives as appropriate to the situation shall occur.

C. The service plan shall contain specific objectives that relate to the goals, are written in measurable terms, and expected dates of achievement.

D. The service plan shall contain specific criteria the patient must meet for termination of involuntary and voluntary treatment.

E. The type, frequency and duration of services shall be specified.

F. The plan shall assure the provision of or the referral for needed services.

G. For persons receiving care through outpatient certification, the plan shall assure the person has access to medical and emergency dental care, case management, medication management, food, clothing, and shelter.

H. The plan shall be developed by an interdisciplinary team as soon as is reasonable after admission, but not later than ten (10) calendar days.

I. An initial service plan shall be formulated to address the immediate needs of the patient within twenty-four (24) hours of admission to the facility.

J. The plan shall be written in a manner that is understandable to the patient.

K. If an individual is discharged during a seventy-two (72) hour hold without certification by the facility, and a service plan has not been completed, then pertinent information shall be included in the discharge summary.

L. The patient and the legal guardian and other family members, as appropriate, shall participate in the formulation, review and revision of any service planning. If the patient or legal guardian is unable to participate, or when their participation is clinically contraindicated, the reasons shall be documented on the plan. In addition, other persons selected by the patient, the guardian, or the treating professional person may also be included in the formulation, review and revision of the service plan, as appropriate. Service planning shall be conducted in a manner that is appropriate to the cultural factors of the patient.

M. The patient, the legal guardian, and others who participated in the development of the plan, shall sign the service plan and the patient shall be offered a copy of the plan. The record shall contain an explanation whenever a service plan is not signed.

N. Even when the patient is under the age of eighteen (18), s/he shall participate in, sign and be offered a copy of the plan.

O. The facility shall appoint a clinical staff person to be responsible for the formulation, implementation, review, and revision of the service plan. The name of the responsible staff person shall be specified in the plan and that person shall sign the plan. The plan shall also be signed by the treating professional person, if the treating professional person is not the responsible staff person.

P. All parties who participate in the service plan development and/or review shall be identified.

Q. A physician or other professional person authorized by law to prescribe the medications shall be responsible for the component of the plan requiring medication management services.

R. Service plans shall be readily identifiable and shall be maintained in a place readily accessible to treatment staff.

S. The service plan shall be reviewed, and revised if necessary, at least monthly or at an interval approved by the Division of Mental Health by the staff person responsible for the plan, the treating professional person, the patient and the legal guardian. This review shall include progress toward meeting the criteria for termination of treatment and the need for continued involuntary treatment if the person is certified. The review shall be documented. If the monthly review is delayed, the reason for such delay shall be noted in the record and the review shall be completed as promptly as possible.

T. Service plans are not required for persons being evaluated under Section 16-8-103.7, C.R.S.

19.482.3 Treatment Progress Documentation Requirements

Clinical Records shall contain the following written information regarding treatment services:

A. Ongoing progress on a chronological basis at least monthly for outpatient treatment and daily for inpatient and residential services.

B. The individual's response to treatment approaches and changes in the treatment plan with reasons for such changes.

C. Documentation of all treatment procedures including, but not limited to: brief physical holding, seclusion, mechanical restraint, medications voluntary and involuntary, and other therapies or interventions.

D. Service planning and monthly review.

E. Documentation of initial and ongoing assessment.

F. Information regarding the serious injury of or by the patient and the circumstances and outcome.

G. Information regarding support services provided.

H. Documentation of all transfers and reasons for transfer.

I. Legal status and all legal documents related to treatment under Section 27-10-101, C.R.S., et seq.

J. Consultations and/or case reviews.

K. Releases of information.

L. Pertinent information from outside agencies or individuals or from the patient.

M. Correspondence to and from relevant agencies and individuals.

N. Monthly documentation of the results of a professional person's review of certification, effectiveness of mental health treatment, legal status of the individual and considerations of less restrictive treatment alternatives.

O. Consent forms as appropriate for alternative treatments or voluntary treatment.

P. Use or non-use of advance directives.

19.482.4 Discharge Planning Requirements

A. Patient Instructions/Information

Records shall include documentation that written information has been given to the patient upon discharge. This information shall include:

1. Any dosages and instructions for medications the patient is receiving upon discharge or shall be taking after discharge.

2. The person's legal status if they continue to be certified and any other legal restrictions placed upon that person.

3. Recommendations for follow up care and notice of the time and place of any appointments made for the individual.

4. If the individual is being transferred to another facility, information regarding that transfer and the facility shall be included.

5. Information if the discharge is being made against advice as appropriate.

B. Discharge Summary

Records shall contain a written discharge summary to include the following information:

1. An outline of treatment received, including involuntary treatments, advance directives, progress made and case management activities.

2. Evidence of ongoing coordination of care with any other mental health treatment providers who have been or may be involved in the care of the individual.

3. Information regarding advance directives.

4. Medications, dosages and response to medications used in the course of treatment.

5. Medication and dosages being prescribed at discharge.

6. Legal status upon discharge.

7. For transfers between facilities, documentation of appropriate clinical information and coordination of services between the two facilities, including type of transportation used in the transfer.

8. Documentation of unplanned discharges and discharges against the professional person's advice.

9. Information regarding the death of the patient and the circumstances.

10. Documentation of referrals for follow up care and any appointments or arrangements that have been made.

11. Documentation of the patient's attitude toward discharge.

Editor's Notes

History

Basis & Purpose, 19.500 eff. 11/01/2007.