

Policy Title: Rights of Individuals Receiving Services

Scope: These procedures are promulgated by the Board of the Department of Mental Health under the authority of Section 41-4-1 (Declaration of Purpose) and 41-4-7 (Power and Duties of the Board), subsection (C) and (N), specifically, Mississippi Code, 1972 Annotated.

Policy: Each individual receiving services in a facility that is operated by the Department of Mental Health shall be assured that his/her legal rights will be protected and that he/she will receive care consistent with basic human dignity insofar as it is within the reasonable capabilities and limitations of the Department and is consistent with sound therapeutic treatment. It is the intended policy of this Department to assure that the rights and related procedures stated herein conform to all applicable state and federal regulations under which the Department of Mental Health facilities operate or are accredited.

These policies do not apply to nursing home residents or Forensic Services at Mississippi State Hospital as these facilities have additional or differing

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rights.

Procedures: These procedures will apply to each individual receiving services in a hospital or other facility operated by the Department of Mental Health and under the supervision, management and control of the State Board of Mental Health.

Modifications to these policies may be made pursuant to the order of a court of competent jurisdiction and shall apply to the specific facility named in the court order.

I. DEFINITIONS

A. Authorized representative refers to that person best situated by relationship to the individual receiving services by law or a person whose understanding of the condition of the individual receiving services allows him/her to make a decision on behalf of an individual receiving services who, because of mental illness or mental retardation, is unable to make an informed decision to give or withhold consent to action. The Director shall have the primary responsibility for designating an authorized representative in the following order of priority:

1. Guardian/Conservator - A legal guardian of the individual receiving services, currently authorized to give consent, or, if the individual receiving services is a minor, a parent. The Director, treating physician, or designee shall make diligent efforts to locate

the parent or legal guardian.

2. Surrogate - In designating the surrogate, the Director shall select the best qualified person according to the following priority as set forth in Section 41-41-211 of the Mississippi Code:
 - a. the spouse, unless legally separated;
 - b. an adult child;
 - c. a parent;
 - d. an adult brother or sister.
 - e. If none of the individuals eligible to act as a surrogate under state law is reasonably available an adult who had exhibited special care and concern for the individual receiving services who is familiar with the personal values of the individual receiving services, and who is reasonably available may act as surrogate.
 - f. In the absence of a qualified surrogate the director of a state operated facility may act as a surrogate.
- B. Aversive conditioning refers to any treatment procedure which involves

the administration of noxious stimuli or the creation of discomfort as a consequence of a specific behavior. Restraint, seclusion, and time-out from reinforcement shall not be considered aversive conditioning under this definition.

- C. Board refers to the Board of the Department of Mental Health as established in Section 41-4-3 (Mississippi Code, 1972 Annotated), which, as it pertains to this policy, has the responsibility to perform the function of these regulations and take action necessary to assure the rights of all individual receiving services are protected and enforced.
- D. Bodily Restraint - Any physical or mechanical device used to restrict the movement of an individual receiving services or the movement or normal function of any portion of the individual's body, excluding those devices used only to provide support for the achievement of functional body positions or balance and devices used for specific medical and surgical treatment; and chemical substances used solely to restrict the movement of an individual receiving services, including behavior management drugs.
- E. Consent/Authorization refers to the voluntary and informed agreement of a person to any action for which consent/authorization is required under this policy. The fact that a person is an individual receiving services does not alone render that person incapable of giving

consent/authorization , but it does call for added diligence by all staff in assuring that consent/authorization obtained from a individual receiving services is truly voluntary and informed. To be voluntary, the consent/authorization must be given by a person so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or any form of constraint or coercion. To be informed, consent/authorization usually must be based on disclosure and understanding of the following kinds of information:

1. A fair and reasonable explanation of the action proposed to be taken and its purpose;
2. A description of any adverse consequences and risks reasonably to be expected;
3. A description of any benefits reasonably to be expected;
4. A disclosure of any alternative procedures that might be equally advantageous for the individual receiving services or the authorized representative;
5. An offer to answer any inquiries by the individual receiving services or the authorized representative;
6. Notification that the person is free to refuse or withdraw

consent/authorization and to discontinue participation in any prospective action requiring consent/authorization at any time without fear of reprisal or prejudice; however, as the refusal of treatment can affect the prescribed treatment plan, this may be cause for discharge from the facility;

7. Consent/authorization by an individual is not necessary when a facility has received a Court Order to provide specific treatment or procedures. However, an explanation of the treatment procedure shall be provided to the individual.
8. A description of the ways in which the individual receiving services or the authorized representative can raise concerns and ask questions about the action to which consent/authorization is given;
9. Where the action involves the disclosure of records,
 - a. A description of the record/information to be used or disclosed that identifies the information in a specific and meaningful fashion.
 - b. Name of the person(s) or class of person(s) authorized to release information.

- c. An identification of the name and title of the person/entity to whom the use or disclosure is to be made;
 - d. A description of the purpose or nature of the information to be disclosed, and indication whether the consent/authorization extends to information placed on the records after the consent/authorization was given but before it expires;
 - e. A statement of when the consent/authorization will expire, specifying a date, event, or condition upon which it will expire; and
 - f. An indication of the effective date of consent/authorization.
 - g. Date and signature of person authorized to grant consent/authorization and documentation to support such authorization, if necessary.
10. The person giving the consent/authorization is of the legal age and has not been adjudicated incompetent by an appropriate court; and

11. The information may be released in a bona fide emergency as defined by the facility Director, clinical director, health records director, or their designee.
- F. Department refers to the Department of Mental Health as established in Section 41-4-5 (Mississippi Code, 1972 Annotated).
- G. Director refers to the Board appointed officer of a hospital or regional center operated by the Department.
- H. Executive Director refers to the executive officer of the Department.
- I. Facility refers to a state hospital, regional center, or other program which provides residential care or treatment for individuals with mental illness, mental retardation, alcoholism, substance abuse, or other programs operated by the Department. (Facility does not include nursing home residents or Forensic Services at Mississippi State Hospital as these facilities has additional or differing rights.)
- J. Habilitation refers to the process by which an individual is assisted to acquire and maintain those life skills which enable the person to cope more effectively with the demands of his/her person and environment and to raise the level of his/her physical, mental, and social efficiency. Habilitation includes, but is not limited to, programs of formal, structured education and

training. This term is typically used in reference to services delivered to persons with mental retardation.

- K. Human Rights/Advocacy Committee (HRAC) refers to a committee of at least five (5) members representing a broad base of consumer groups and professionals appointed by the Director with confirmation by the Executive Director. It shall be the committee's responsibility to perform the functions specified in these regulations.
- L. Investigator-Advocate refers to a person or persons who is/are appointed by the Director to represent the interest of the individual receiving services in a facility operated by the Department to assure free exercise of legal rights. This person or persons may also serve as an investigator when a rights violation is alleged. This person may simultaneously work in another classification at the facility and may have a different title. Complaints relating to violations of health information rights shall be referred to the privacy officer for investigation.
- M. Least restrictive alternative means an available program or facility which is the least confining for the condition of the individual receiving services, and service and treatment provided in the least intrusive manner reasonably and humanely appropriate to the individual's needs.

- N. Individual receiving services refers to a person residing in or served by a facility as defined in this section.
- O. Qualified Mental Health/Mental Retardation Professional (QMHP/QMRP) may carry a different title but refers to that member of the habilitation/treatment team with appropriate clinical training and experience designated as having administrative authority and clinical responsibility for assuring the implementation of the individualized written treatment/habilitation plan of the individual receiving services. The QMHP/QMRP shall, in all cases, be directly involved in the provision of treatment to the individual receiving services and personally familiar with the needs of the individual receiving services.
- P. Seclusion refers to the placement of an individual alone in a locked room or a room from which the individual is physically prevented from egress.
- Q. Time-out refers to the practice of removing a person from a source of stimulation pursuant to an approved behavior modification/treatment plan.
- R. Treatment refers to individually planned interventions intended to improve an individual's functioning in those areas which show impairment as the result of a mental disability. Treatment includes an individualized, written treatment plan.

III. DUTIES

A. Board

1. Will promulgate policies and procedures delineating the rights of individuals receiving services in facilities operated by the department.
2. Will review these policies and procedures every two years and amend as needed. These reviews will be recorded in the minutes of the Board.
3. Will review annually summaries and/or trends and actions submitted by the Human Rights and Advocacy Committees and make recommendations as appropriate.

B. Director

1. Will take necessary and appropriate steps to assure compliance with all provisions of these regulations throughout the facility including, but not limited to, ensuring adequate training of facility staff, prompt resolution of any complaint involving alleged abuse of an individual receiving services by an employee, and monitoring the adequacy of line supervision given subordinate staff.
2. Will cooperate with the Investigator-Advocate and the HRAC in investigating and remedying conditions or practices interfering with the

free exercise of rights, and shall assure that all employees of the facility cooperate with the Investigator-Advocate and the HRAC in the execution of their duties under these regulations.

3. May submit applications for changes or exceptions to the requirements of these regulations.
4. Will assure that individuals receiving services and/or their designated representatives are notified of rights protected by these regulations.
5. Shall provide the Investigator-Advocate unrestricted access to individuals receiving services and their records in accordance with policies concerning confidentiality.

C. Executive Director

Will work with the Board in investigating and remedying conditions or practices interfering with the free exercise of rights of individuals receiving services.

D. Human Rights/Advocacy Committee

1. Shall consist of no less than five (5) members, appointed by the Director and confirmed by the Executive Director. The membership should be broadly representative of professional and consumer groups. There shall be no requirement to

utilize employees of the facility as HRAC members; however, if they are utilized, they shall not comprise majority membership of the committee.

2. Appointment to the HRAC will be for a term of two (2) years.
3. Will elect from its own members a chairperson who shall coordinate the activities of the HRAC and preside at regular committee meetings and any conference. The chairperson will have direct access to the Director. The local chairperson will serve for a term of one year.
4. Will conduct regular meetings and hold at least one such meeting per quarter.
5. Will review a summary of complaints filed by or on behalf of individuals receiving services in the assigned facilities regarding alleged violations of rights and may hold fact-finding conferences concerning such complaints.
6. Will review and approve all programs utilizing aversive conditioning, all medications used for behavior management purposes, and all psychotropic medication used without a diagnosis consistent with clinical indications unless others forums or committees are utilized for this purpose.

7. Will receive, review, and make recommendations concerning existing facilities policies on their own initiative or as requested by the facility.
8. Will have written bylaws which cover matters such as parliamentary procedures, election of officers, and frequency of meetings.
9. Will have access to the records of an individual receiving services on a need-to-know basis. All specific information gained by the HRAC shall remain confidential.
10. Will submit to the Board a confidential written summary of activities and recommendations, if any, at least annually. The report shall include a summary of the following:
 - a. abuse cases by category
 - b. aversive programs
 - c. medications reviews, if reviewed by HRAC
 - d. seclusion/restraint usage
 - e. other items deemed appropriate by regulation

Format for Board Summary is attached as Exhibit A.

F. Investigator-Advocate

1. Will act as representative of individuals receiving services whose rights are alleged to have been violated.

2. May investigate and examine any and all conditions or practices which interfere with the free exercise of right of an individual receiving services.
3. Will seek to remedy such situations by informal means with the Director and, if necessary, may file a complaint with the HRAC on behalf of an individual receiving services.
4. May assist the individual receiving services during any conference, hearing or other procedure held pursuant to these procedures or consult and assist the representative of the individual receiving services.
5. May consult with the HRAC or any employee of the facility about violations and solicit recommendations for remediation.
6. Will have direct access to the Director in carrying out these duties.

IV. GENERAL AND LEGAL RIGHTS GOVERNING HABILITATION/-TREATMENT

The following standards are rights of individual receiving services for whom the Mississippi Department of Mental Health is responsible. Except as may be limited on the basis of legal competency, each person admitted to a facility operated by the Department will:

- A. Retain those legal rights which are provided by state and federal laws or court mandate. No person will be denied legal rights, privileges, or benefits solely by virtue of being voluntarily admitted or involuntarily committed to a facility operated by the Department. Legal rights include, but are not limited to, the following:
1. The right to dispose of property;
 2. The right to execute legal instruments;
 3. The right to make purchases;
 4. The right to enter into contractual relationships;
 5. The right to hold a professional occupation or vehicle operator's license;
 6. The right to make a will;
 7. The right of access to legal assistance and to the courts; and
 8. As provided by Mississippi law, no admission or commitment to a facility is a) an adjudication of legal incompetency, or b) deprives a person of the right to exercise civil rights, including, but not limited to, civil service status; the right to vote; rights relating to the granting, renewal, forfeiture, or denial of a license, permit,

privilege, or benefit pursuant to any law; or the right to enter into contractual relationships and to manage personal property. Such admission, hospitalization, finding, or authorization of continued hospitalization does not create any presumption that such person is incompetent. Section 41-21-101, Mississippi Code, 1972 Annotated.

- B. Receive prompt evaluation and habilitation/-treatment or training to the extent capable and professionally deemed appropriate regardless of age or degree of disability.

The habilitation/treatment plan will be provided and supervised by an adequate number of competent, qualified, and experienced professional clinical staff.

- 1. Respect for the personal dignity of the individual receiving services as a human being requires that each individual be assured of certain rights which may not be denied, restricted, or otherwise abridged by the facility solely because of the condition or need for treatment of the individual receiving services.
- 2. Each facility has the responsibility to:
 - a. Support and protect each individual's right to

exercise fundamental
human, civil,
constitutional, and
statutory rights including
those rights provided for
herein.

- b. Assure that no individual receiving services is denied admission to a facility or access to treatment therein on the grounds of race, religion, ethnicity, age, sex, or handicap except insofar as appropriate treatment requires restrictions of all or part of any facility.
 - c. Assure that the personal dignity of every individual receiving services is recognized and respected.
- C. Be afforded an opportunity to have access to consultation with any professional person licensed to practice in Mississippi (at personal expense) except as contraindicated as may be the case in emergency procedures required for preservation of health.
- D. Be treated under the least restrictive conditions consistent with the conditions of individuals receiving services and not be subjected to unnecessary physical restraint and isolation.

- E. Be allowed to send and receive sealed mail.
 - 1. Each individual receiving services will be allowed to receive, send, and mail sealed correspondence. Receipt of correspondence may be restricted if determined to be therapeutically indicated. Incoming or outgoing correspondence will not be opened, delayed, held, or censored by the facility unless there is a reason to believe that it contains items or substances which may be harmful to the individual receiving services or others. In such cases, the Director of the facility may direct reasonable examination of such mail and regulate the disposition of such mail and the disposition of such items or substances.
 - 2. An individual receiving services who cannot read and/or write will have access to staff assistance in communicating with persons outside the facility. Staff written letters may be reviewed to ensure that the thoughts contained in the letter are those of the individual receiving services.

- F. Have access to personal records and be assured of confidentiality except as restricted by law.
- G. Be fully informed by a physician of personal health and medical conditions unless medically contraindicated as documented by a physician in the record of the individual receiving services.
 - 1. Individuals receiving services will receive prompt and appropriate medical treatment and care for physical and mental ailments and further prevention of any illness or disability. Medical treatment will be consistent with the accepted standards of medical practice.
 - 2. Medication will be administered only as ordered by a physician. Medication will not be used as a punishment, for the convenience of staff, as a substitute for a habilitation plan, or in unnecessary or excessive quantities.
 - 3. Daily notation of medication will be kept in the record of the individual receiving services.
 - 4. Periodically, the drug regimen of each individual receiving services in a facility will be reviewed by the attending physician or other appropriate monitoring body, consistent with appropriate standards of

- medical practice.
- H. Advance Health-Care Decisions
All individuals receiving services, their legal representative, or surrogate shall have the right to make and record specific decisions about health care pursuant to pertinent regulations in state law.
 - I. Be afforded the opportunity to participate personally in the planning of total care and medical treatment.
 - J. Be allowed to communicate, associate, and meet with persons of personal choice unless such affiliations would infringe upon the rights of other individual receiving services or be therapeutically contraindicated.
 - K. Be allowed to participate in activities with social, religious, and community groups at personal discretion unless contraindicated for reasons documented by a QMHP/QMRP in the record of the individual receiving services. The right to religious preference and practices will not be unreasonably restricted.
 - L. Have the right to an impartial review of violations of rights assured herein and the right of access to legal counsel at the personal expense of the individual receiving services.
 - M. Have the right to a nutritional and adequate diet, safe and sanitary housing, participation in non-therapeutic labor, use of telephones, and suitable clothing.

1. The right to a safe, sanitary, and humane physical environment includes, but is not limited to:
 - a. Residential accommodations affording reasonable privacy;
 - b. Operating toilets, lavatories, showers, and tubs;
 - c. Direct outside air ventilation provided by an operable window or air conditioner, providing clean air, free from noxious odors;
 - d. Windows or skylights in all major areas used by individual receiving services;
 - e. The right to be called by personally preferred legal name;
 - f. The right to be protected from harm, abuse, and exploitation;
 - g. The right to comfortable, clean, and seasonably suitable clothing appropriate to the age and size of the individual receiving services for the exclusive use of that individual and in sufficient quantities to allow for a daily change

of clothing provided that the individual receiving services is unable otherwise to obtain personal clothing. In such cases, the cost of the clothing may be added to the cost of treatment subject to reimbursement; and

- h. Individuals receiving services will be allowed to conduct private telephone conversations unless clinically contraindicated. Upon request and subject to appropriate management limitations, an indigent individual receiving services is entitled to make, without charge, local telephone calls from a facility telephone provided that such calls do not result in additional cost to the facility.
- N. Be fully informed in writing of rights, responsibilities, rules, and regulations presented in a language that is understandable to the individual receiving services or the authorized representative.
- O. Be fully informed of services available and of related charges regardless of the source of payment.

- P. Be assured that participation in experimental research will only occur with his/her informed written consent/authorization.
- Q. Be informed of the right to voice a grievance and recommend changes in policies without fear of reprisal.
- R. Each person who is an individual receiving services in a facility operated or funded by the Mississippi Department of Mental Health will be assured of personal legal rights and care consistent with basic human dignity insofar as it is within the reasonable capabilities and limitations of the Department and is consistent with sound therapeutic treatment.
- S. The individual receiving services will be allowed to work for the facility only under the following conditions:
 - 1. The work is part of the individual habilitation/treatment plan;
 - 2. The work is performed voluntarily;
 - 3. Wages are received commensurate with the economic value of the work; and

4. The work project complies with federal, state, and local laws and regulations.

T. An individual receiving services may be required to perform personal housekeeping tasks without compensation.

V. RIGHTS RESTRICTIONS

A. No restriction of the physical or personal freedom may be imposed unless such restriction is the result of:

1. An evaluation of all alternatives to the proposed restriction taking into account such factors as the condition, behavior, nursing and medication needs, and level of functional dependence of the individual receiving services;

2. A determination has been made that the proposed restriction is necessary for effective treatment of the condition, behavior, nursing and medication needs, and level of functional dependence of the individual receiving services; and

3. The specific reasons for the imposition of the restriction has been documented in the record.

B. Every restriction on personal or physical freedom will be reviewed by the QMHP/QMRP every thirty (30) days

or in conjunction with the periodic review of the individualized habilitation/plan of the individual receiving services. If it is determined that such restriction is no longer necessary, such restriction will be removed.

- C. Individuals receiving services have the right to the possession and use of personal effects. The Director of the facility may take temporary custody of such effects when it is essential to do so for medical or safety reasons. Custody of such personal effects will be promptly recorded in the individual's record and a receipt for such effects will be immediately given to the individual receiving services or the authorized representative of the individual.
- D. The right to communicate or consult in private with any therapist/counselor, lawyer, legislator, clergyman, the authorized representative, or Investigator-Advocate of the individual receiving services is assured, except when a QMHP/QMRP believes that such access will create a danger to the visitor. The communication may be prohibited until the visitor has been informed of such danger involved and has agreed to hold the state harmless for any injury sustained during the visitation.
- E. Requirements for the use of time-out, seclusion or bodily restraint must adhere to all pertinent regulations.

VI. PROCEDURE FOR IMPLEMENTATION AND REMEDIES
FOR VIOLATIONS

- A. Each facility will prominently post in each living unit and throughout the facility a document setting forth the rights of individuals receiving services and the means by which they may contact a facility advocate.
- B. Each individual receiving services, or legally authorized representative, if applicable, shall be personally given notice of these rights in writing upon admission and annually thereafter. This notice may be a summary outlining their rights with directions as to how they may access this document.
- C. Receipt of this notice shall be documented in the record. If the individual receiving services refuses or is unable to acknowledge receipt of such notice, the person delivering such notice shall document that fact in the record of the individual receiving services.
- D. If an individual receiving services is unable to read the summary notice of these rights, the notice shall be read to him.
- E. Each individual receiving services is entitled to a speedy and impartial review of alleged violation of the rights assured him/her under these policies and procedures. This review will occur via the procedures outlined herein.

- F. Information gathered during such review will be strictly confidential and will not be disclosed except to the extent necessary to conduct the review.
- G. Each individual receiving services shall have the right of access to legal counsel of his/her own choice and expense. Each individual receiving services who cannot afford or is otherwise unable to retain private counsel will be informed of the existence and location of the legal aid office and shall be afforded assistance, if needed, in contacting that office.
- H. When an individual receiving services, and Investigator-Advocate, and employee, or any other interested party believes that an individual's rights have been violated, that person may present his/her complaints to the Investigator- Advocate, Director, or Executive Director. This shall be routed to the correct Investigator-Advocate who shall ensure that the complaint is filed. Complaints/violations which may be abuse, neglect, or exploitation must be reported and investigated pursuant to guidelines set out for vulnerable adults investigations. Complaints relating to violations of health information rights shall be referred to the privacy officer for investigation.
- I. The Investigator-Advocate will meet with the individual receiving services and all other persons deemed necessary not later than ten (10)

working days after the complaint is filed. It shall be the Investigator-Advocate's responsibility to remedy the problem by informal procedures if possible and allowable, depending upon the nature of the complaint.

- J. The party making the complaint in good faith and without malice will have no action taken against nor threats made toward him/her for bringing the complaint.

- K. If the complaint cannot be resolved informally or the individual receiving services or the representative is otherwise dissatisfied with its resolution, either of these persons may request a conference before the HRAC. A request for a conference will be in writing and shall contain a description of the alleged violation or any other information the HRAC considers appropriate. The individual receiving services may be assisted by the Investigator-Advocate or by person of his/her choice. If the individual chooses a person other than the Investigator-Advocate for assistance, the individual receiving services or the representative may request the Investigator-Advocate to assist in filing the request for a conference. The chairperson the HRAC shall forward a copy of the request for a conference to the Director and to the persons allegedly responsible for the alleged violations. The alleged violator shall also have the right to file a written statement with the HRAC.

- L. The HRAC shall hold a fact-finding conference within fifteen (15) working days after the receipt of a request for a conference.
- M. No later than fifteen (15) working days after the completion of the conference, the HRAC shall submit a report to the Director and to other designated parties of its findings and recommendations.
- N. The Director will utilize these findings and recommendations to support a finding that no further action is needed or that a corrective plan is appropriate. If the Director recommends a plan of corrective action, a copy of the plan shall be forwarded to the HRAC who shall implement the plan unless specific complaint is brought concerning same.
- O. There will be promulgated by the Director and reviewed by the HRAC a plan to deal with situations (i.e., violations of rights) that may, in the opinion of the Investigator-Advocate, result in serious harm to the individual receiving services if not remedied immediately.
- P. If the person bringing the complaint is not satisfied with the resolution recommended and approved, he/she may request a review by the Board. This request should come within fifteen (15) working days of the response. The person bringing the complaint may file additional information with the Board in a manner prescribed by the Board.
- Q. The director will also have appeal to

the Board upon the approval of the Executive Director.

R. The Board will conduct a review process similar to HRAC except for the difference prescribed by the Board in the time frame to hear cases.

S. No later than thirty (30) working days after the review, the Board shall submit its report to the Executive Director.

T. Within twenty (20) working days, the Executive Director will outline a response to be implemented regarding the report and recommendation made by the Board to HRAC.

U. In making its recommendation, all parties will identify any rights which were violated and identify any practices or conditions which account for any such violations, and will recommend actions for changing such practices or conditions and for preventing further violations of the rights assured under these regulations.