

DEPARTMENT OF COMMUNITY HEALTH
MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

(By authority conferred on the department of mental health by sections 1 to 4 of Act No. 80 of the Public Acts of 1905, as amended, section 33 of Act No. 306 of the Public Acts of 1969, as amended, and sections 114, 130, 136, 157, 206, 244, 498n, 498r, 842, 844, 908, and 1002a of Act No. 258 of the Public Acts of 1974, as amended, being sections 19.141 to 19.144, 24.233, 330.1114, 330.1130, 330.1136, 330.1206, 330.1244, 330.1498n, 330.1498r, 330.1842, 330.1844, 330.1908, and 330.2002a of the Michigan Compiled Laws)

RIGHTS OF RECIPIENTS

SUBPART 1. GENERAL PROVISIONS

R 330.7001 Definitions.

Rule 7001. As used in this part:

(a) "Abuse class I" means a nonaccidental act or provocation of another to act by an employee, volunteer, or agent of a provider that caused or contributed to the death, or sexual abuse of, or serious physical harm to a recipient.

(b) "Abuse class II" means any of the following:

(i) A nonaccidental act or provocation of another to act by an employee, volunteer, or agent of a provider that caused or contributed to nonserious physical harm to a recipient.

(ii) The use of unreasonable force on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm.

(iii) Any action or provocation of another to act by an employee, volunteer, or agent of a provider that causes or contributes to emotional harm to a recipient.

(iv) An action taken on behalf of a recipient by a provider who assumes the recipient is incompetent, despite the fact that a guardian has not been appointed, that results in substantial economic, material, or emotional harm to the recipient.

(c) "Abuse class III" means the use of language or other means of communication by an employee, volunteer, or agent of a provider to degrade, threaten, or sexually harass a recipient.

(d) "Anatomical support" means body positioning or a physical support ordered by a physical or occupational therapist for the purpose of maintaining or improving a recipient's physical functioning. All other applications of appliances that restrict a resident's movement, regardless of their stated purpose, shall be considered physical restraint.

(e) "Bodily function" means the usual action of any region or organ of the body.

(f) "Emotional harm" means impaired psychological functioning, growth, or development of a significant nature as evidenced by observable physical symptomatology and as determined by a mental health professional.

(g) "Neglect class I" means either of the following:

(i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to serious physical harm to a recipient.

(ii) The failure to report abuse or neglect of a recipient when the abuse or neglect results in the death of, or serious physical harm, to the recipient.

(h) "Neglect class II" means either of the following:

(i) Acts of commission or omission by an employee, volunteer, or agent of a

provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to nonserious physical harm or emotional harm to a recipient.

(ii) The failure to report abuse or neglect of a recipient when the abuse or neglect results in nonserious harm to the recipient.

(i) "Neglect class III" means either of the following:

(i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service that either placed or could have placed a recipient at risk of physical harm.

(ii) The failure to report abuse or neglect of a recipient when the abuse or neglect places a recipient at risk of serious or nonserious harm.

(j) "Nonserious physical harm" means physical damage suffered by a recipient that a physician or registered nurse determines could not have caused, or contributed to, the death of a recipient, the permanent disfigurement of a recipient, or an impairment of his or her bodily functions.

(k) "Physical management" means a technique used by staff to restrict the movement of a recipient by direct physical contact in order to prevent the recipient from harming himself, herself, or others or from causing substantial property damage.

(l) "Provider" means the department, each community mental health services program, each licensed hospital, each psychiatric unit and each psychiatric partial hospitalization program licensed under section 137 of the act, their employees, volunteers, and contractual agents.

(m) "Psychotropic drug" means any medication administered for the treatment or amelioration of disorders of thought, mood, or behavior.

(n) "Serious physical harm" means physical damage suffered by a recipient that a physician or registered nurse determines caused or could have caused the death of a recipient, caused the impairment of his or her bodily functions, or caused the permanent disfigurement of a recipient.

(o) "Sexual abuse" means any sexual contact or sexual penetration, as defined in section 520a(k) and (l) of Act No. 328 of the Public Acts of 1931, as amended, being §750.520a(k) and (l) of the Michigan Compiled Laws, involving an employee, volunteer, or agent of a provider and a recipient.

(p) "Sexual harassment" means sexual advances to a recipient, requests for sexual favors from a recipient, or other conduct or communication of a sexual nature toward a recipient as defined in title VII of the civil rights act of 1991.

(q) "Time out" means a voluntary response to the therapeutic suggestion to a recipient to remove himself or herself from a stressful situation in order to prevent a potentially hazardous outcome.

(r) "Treatment by spiritual means" means a spiritual discipline or school of thought that a recipient wishes to rely on to aid physical or mental recovery.

(s) "Unreasonable force" means physical management or force that is applied by an employee, volunteer, or agent of a provider to a recipient where there is no immediate risk of physical harm to staff or other recipients and no immediate risk of significant property damage and that is any of the following:

(i) Not in compliance with approved behavior management techniques.

(ii) Not in compliance with the recipient's individual treatment plan.

(iii) Used when other less restrictive measures were not attempted immediately before the use of physical management or force.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1979 ACS 13, Eff. Feb. 1, 1983; 1998 MR 7, Eff. July 8, 1998.

R 330.7002 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 18, 1998.

R 330.7003 Informed consent.

Rule 7003. (1) All of the following are elements of informed consent:

(a) Legal competency. An individual shall be presumed to be legally competent. This presumption may be rebutted only by a court appointment of a guardian or exercise by a court of guardianship powers and only to the extent of the scope and duration of the guardianship. An individual shall be presumed legally competent regarding matters that are not within the scope and authority of the guardianship.

(b) Knowledge. To consent, a recipient or legal representative must have basic information about the procedure, risks, other related consequences, and other relevant information. The standard governing required disclosure by a doctor is what a reasonable patient needs to know in order to make an informed decision. Other relevant information includes all of the following:

- (i) The purpose of the procedures.
- (ii) A description of the attendant discomforts, risks, and benefits that can reasonably be expected.
- (iii) A disclosure of appropriate alternatives advantageous to the recipient.

(iv) An offer to answer further inquiries.

(c) Comprehension. An individual must be able to understand what the personal implications of providing consent will be based upon the information provided under subdivision (b) of this subrule.

(d) Voluntariness. There shall be free power of choice without the intervention of an element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion, including promises or assurances of privileges or freedom. There shall be an instruction that an individual is free to withdraw consent and to discontinue participation or activity at any time without prejudice to the recipient.

(2) A provider shall establish written policies that include procedures for evaluating comprehension and for assuring disclosure of relevant information and measures to ensure voluntariness before obtaining consent. The policies and procedures shall specify for specific circumstances the types of information that shall be disclosed and steps that may be taken to protect voluntariness. The procedures shall include a mechanism for determining whether guardianship proceedings should be considered.

(3) Informed consent shall be reobtained if changes in circumstances substantially change the risks, other consequences, or benefits that were previously expected.

(4) A written agreement documenting an informed consent shall not include any exculpatory language through which the recipient, or a person consenting on the recipient's behalf, waives or appears to waive, a legal right, including a release of a provider or its agents from liability for negligence. The agreement shall embody the basic elements of informed consent in the particular context. The individual, guardian, or parent consenting shall be given adequate opportunity to read the document before signing it. The requirement of a written consent shall not eliminate, where essential to the individual's understanding or otherwise deemed advisable, a reading of the document to the individual or an oral explanation in a language the individual understands. A note of the explanation and by whom made shall be placed in the record along with the written consent.

(5) A consent is executed when it is signed by the appropriate individual.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1998 MR 7, Eff. July 8, 1998.

R 330.7005 Applicant request for second opinion; response; documentation.

Rule 7005. A community mental health services program shall have written procedures to assure that an applicant's request for a second opinion regarding denial of services is responded to in a timely manner and documented in the clinical record.

History: 1998 MR 7, Eff. July 8, 1998.

SUBPART 2. RIGHTS OF RECIPIENTS OF MENTAL HEALTH SERVICES

R 330.7009 Civil rights.

Rule 7009. (1) A provider shall establish measures to prevent and correct a possible violation of civil rights related to the service provision. A violation of civil rights shall be regarded as a violation of recipient rights and shall be subject to remedies established for recipient rights violations.

(2) A recipient shall be permitted, to the maximum extent feasible and in any legal manner, to conduct personal and business affairs and otherwise exercise all rights, benefits, and privileges not divested or limited.

(3) An adult recipient, and a minor when state law allows consent by a minor, shall be presumed legally competent. The presumption may be rebutted only by court appointment of a guardian or exercise by a court of guardianship powers and only to the extent of the scope and duration of that guardianship. A provider shall do all of the following:

(a) Presume the recipient is legally competent if he or she does not have a guardian. A provider shall also presume a recipient with a limited guardian is legally competent in all areas which are not specifically identified as being under the control or scope of the guardian.

(b) Not institute guardianship proceedings, unless there is sufficient reason to doubt the recipient's comprehension, as provided under these rules and the policies and procedures of the provider.

(c) When a recipient's comprehension is in doubt, justification for petitioning the probate court for guardianship consideration shall be entered in the recipient's clinical record.

(d) Not petition for, or otherwise cause the filing of, a petition for guardianship of greater scope than is essential.

(e) Petition or cause a petition to be filed with the court to terminate a recipient's guardian or narrow the scope of the guardian's powers when the recipient demonstrates he or she is capable of providing informed consent.

(4) A provider shall not interfere with the right of a recipient to enter into a marriage contract or obtain or oppose a divorce.

(5) The right of a recipient to participate in the electoral process, including primaries and special and recall elections, shall not be abridged. An eligible recipient, including a recipient determined to be legally incompetent, shall have the right to exercise his or her franchise, except those the legislature may exclude from the electoral process by defining mental incompetence in any statute implementing article 2, section 2 of the state constitution of 1963. Facilities shall have procedures which assure all the following:

(a) All residents 18 years of age or over are canvassed to ascertain their interest in registering to vote, obtaining absentee ballots, and casting ballots. The canvass shall be conducted to allow sufficient time for voter registration and acquisition of absentee ballot, or provided residents with an opportunity to leave the premises to exercise voting privileges, or to register to vote, or a facility director may require supervisory personnel to accompany residents and may require residents to bear reasonable transportation costs.

(b) Arrangements with state and local election officials are made to provide voter registration and casting of ballots for interested residents at the facility or may elect to encourage the use of absentee ballots.

(c) Facilities shall assist election officials in determining a resident's place of residence for voting purposes.

(d) Facilities shall not prohibit a resident from receiving campaign literature, shall permit campaigning by candidates, and may reasonably regulate the time, duration, and location of these activities. A facility director shall permit a resident to place political advertisements in his or her personal quarters.

(6) A recipient shall be permitted access to religious services and worship

on a nondiscriminatory basis. A recipient shall not be coerced into engaging in religious activity.

(7) A recipient's property or living area shall not be searched by a provider unless such a search is authorized in the resident's plan of service or there is reasonable cause to believe that the resident is in possession of contraband or property that is excluded from the resident's possession by the written policies, procedures, or rules of the provider.

The following conditions apply to all searches:

(a) A search of the resident's living area or property shall occur in the presence of a witness. The resident shall also be present unless he or she declines to be present.

(b) The circumstances surrounding the search shall be entered in the resident's record, and shall include all the following:

(i) The reason for initiating the search.

(ii) The names of the individuals performing and witnessing the search.

(iii) The results of the search, including a description of the property seized.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1979 ACS 13, Eff. Feb. 1, 1983; 1984 MR 5, Eff. May 26, 1984; 1998 MR 7, Eff. July 8, 1998.

R 330.7011 Notification of rights.

Rule 7011. At the time services are first requested, a provider shall inform a recipient, his or her guardian, or other legal representative of their lawful rights in an understandable manner. If a recipient is unable to read or understand the materials provided, a provider shall make a reasonable attempt to assist the recipient in understanding the materials.

A note describing the explanation of the materials and who provided the explanation shall be entered in the recipient's record.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1998 MR 7, Eff. July 8, 1998.

R 330.7012 Provider confidentiality obligations.

Rule 7012. Observing the rights of family members specified in section 711 of the act does not relieve the provider of observing the confidentiality obligations specified in sections 748 and 750 of the act.

History: 1998 MR 7, Eff. July 8, 1998.

R 330.7014 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7017 Electroconvulsive therapy.

Rule 7017. (1) A provider shall comply with both of the following provisions when administering electroconvulsive therapy:

(a) A provider shall enter written documentation and signed consent in the clinical record.

(b) A provider shall obtain consent for a stated number of electroconvulsive treatments within a series during a stated time period. A provider shall inform a recipient or other legally empowered representative that he or she may withdraw his or her consent at any time during the stated time period.

(2) The responsible mental health agency shall notify a minor or an advocate designated by the minor of the right to object to a procedure as specified in section 717(5) of the act. A provider shall place documentation of the notification, including the date and time notified in the clinical record.

(3) The responsible mental health agency shall assist a minor or an

advocate designated by the minor who objects to an electroconvulsive procedure in properly submitting the objection to a court of competent jurisdiction.

History: 1998 MR 7, Eff. July 8, 1998.

R 330.7029 Family planning and health information.

Rule 7029. The individual in charge of the recipient's written plan of service shall provide recipients, their guardians, and parents of minor recipients with notice of the availability of family planning, and health information services and, upon request, provide referral assistance to providers of such services. The notice shall include a statement that receiving mental health services does not depend in any way on requesting or not requesting family planning or health information services.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1986 MR 12, Eff. Jan. 6, 1987; 1998 MR 7, Eff. July 8, 1998.

R 330.7032 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7035 Abuse or neglect of recipients.

Rule 7035. (1) Abuse or neglect of a recipient by an employee, volunteer, or agent of a provider shall subject the employee, volunteer, or agent of a provider, upon substantiated reports, to an appropriate penalty, including official reprimand, demotion, suspension, reassignment, or dismissal.

(2) A provider shall do both of the following:

(a) Establish written policies and procedures, which adopt and incorporate the definitions of abuse class I, abuse class II, or abuse class III and neglect as neglect class I, neglect class II, or neglect class III as described in rule 7001.

(b) Provide for a prompt and thorough review of charges of abuse that is fair to both the recipient alleged to have been abused and the charged employee, volunteer, or agent of a provider.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1998 MR 7, Eff. July 8, 1998.

R 330.7037 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7045 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7046 Summary reports of extraordinary incidents.

Rule 7046. In addition to other information required to be contained in the clinical record of the recipient by statute and rule, the record shall contain a summary of any extraordinary incidents involving the recipient. The report is to be entered into the record by a staff member who has personal knowledge of the extraordinary incident.

History: 1998 MR 7, Eff. July 8, 1998.

R 330.7051 Confidentiality and disclosure.

Rule 7051. (1) A summary of section 748 of the act shall be made a part of each recipient file.

(2) A record shall be kept of disclosures and shall include all of the following information:

(a) The information released.

(b) To whom the information is released.

(c) The purpose claimed by the person for requesting the information and a statement disclosing how the disclosed information is germane to the purpose.

(d) The subsection of section 748 of the act, or other state law, under which a disclosure was made.

(e) A statement that the receiver of disclosed information was informed that further disclosure shall be consistent with the authorized purpose for which the information was released.

(3) Unless section 748(4) of the act applies to the request for information, the director of the provider may make a determination that disclosure of information may be detrimental to the recipient or others. If the director of the provider declines to disclose information because of possible detriment to the recipient or others, then the director of the provider shall determine whether part of the information may be released without detriment. A determination of detriment shall not be made if the benefit to the recipient from the disclosure outweighs the detriment. If the record of the recipient is located at the resident's facility, then the director of the provider shall make a determination of detriment within 3 business days from the date of the request. If the record of the recipient is located at another location, then the director of the provider shall make a determination of detriment within 10 business days from the date of the request. The director of the provider shall provide written notification of the determination of detriment and justification for the determination to the person who requested the information. If a determination of detriment has been made and the person seeking the disclosure disagrees with that decision, he or she may file a recipient rights complaint with the office of recipient rights of the department, the community mental health services program, or licensed hospital, whichever was responsible for making the original determination.

(4) Information shall be provided to attorneys, other than prosecuting attorneys, as follows:

(a) An attorney who is retained or appointed by a court to represent a recipient and who presents identification and a consent or release executed by the recipient, by a legally empowered guardian, or by the parents of a minor shall be permitted to review, on the provider's premises, a record containing information concerning the recipient. An attorney who has been retained or appointed to represent a minor pursuant to an objection to hospitalization of a minor shall be allowed to review the records.

(b) Absent a valid consent or release, an attorney who does not represent a recipient shall not be allowed to review records, unless the attorney presents a certified copy of an order from a court directing disclosure of information concerning the recipient to the attorney.

(c) An attorney shall be refused written or telephoned requests for information, unless the request is accompanied or preceded by a certified copy of an order from a court ordering disclosure of information to that attorney or unless a consent or release has been appropriately executed. The attorney shall be advised of the procedures for reviewing and obtaining copies of recipient records.

(5) Information shall be provided to private physicians or psychologists appointed or retained to testify in civil, criminal, or administrative proceedings as follows:

(a) A physician or psychologist who presents identification and a certified true copy of a court order appointing the physician or psychologist to examine a recipient for the purpose of diagnosing the recipient's present condition shall be permitted to review, on the provider's premises, a record containing information concerning the recipient. Physicians or psychologists

shall be notified before the review of records when the records contain privileged communication that cannot be disclosed in court under section 750(1) of the act.

(b) The court or other entity that issues a subpoena or order and the attorney general's office, when involved, shall be informed if subpoenaed or ordered information is privileged under a provision of law. Privileged information shall not be disclosed unless disclosure is permitted because of an express waiver of privilege or because of other conditions that, by law, permit or require disclosure.

(6) A prosecutor may be given nonprivileged information or privileged information that may be disclosed pursuant to section 750(2) of the act if it contains information relating to participation in proceedings under the act, including all of the following information:

(a) Names of witnesses to acts that support the criteria for involuntary admission

(b) Information relevant to alternatives to admission to a hospital or facility.

(c) Other information designated in the policies of the provider.

(7) The holder of a record may disclose information that enables a recipient to apply for or receive benefits without the consent of the recipient or legally authorized representative only if the benefits shall accrue to the provider or shall be subject to collection for liability for mental health service.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1979 ACS 8, Eff. Dec. 11, 1981; 1986 MR 12, Eff. Jan. 6, 1987; 1990 MR 7, Eff. July 19, 1990; 1998 MR 7, Eff. July 8, 1998.

SUBPART 3. ADDITIONAL RIGHTS OF RESIDENTS OF FACILITIES

R 330.7125 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7135 Treatment by spiritual means.

Rule 7135. (1) A provider shall permit a recipient to have access to treatment by spiritual means upon the request of the recipient, a guardian, if any, or a parent of a minor recipient.

(2) A provider shall assure that the opportunity for contact with agencies providing treatment by spiritual means is provided in the same manner as recipients are permitted to see private mental health professionals.

(3) Requests for printed, recorded, or visual material essential or related to treatment by spiritual means, and to a symbolic object of similar significance shall be honored and made available at the recipient's expense.

(4) Treatment by spiritual means includes the right of recipients, guardians, or parents of a minor to refuse medication or other treatment on spiritual grounds that predate the current allegations of mental illness or disability, but does not extend to circumstances where either of the following provisions applies:

(a) A guardian or the provider has been empowered by a court to consent to or provide treatment and has done so.

(b) A recipient poses harm to himself or herself or others and treatment is essential to prevent physical injury.

(5) The right to treatment by spiritual means does not include the right to any of the following:

(a) To use mechanical devices or chemical or organic compounds that are physically harmful.

(b) To engage in activity prohibited by law.

(c) To engage in activity that physically harms the recipient or others.

(d) To engage in activity that is inconsistent with court-ordered custody

or voluntary placement by a person other than the recipient.

(6) A provider shall develop written policies and procedures concerning treatment by spiritual means that include both of the following:

(a) Recourse to court proceedings if medication or other treatment for a minor is refused.

(b) Notice to a person who requests treatment by spiritual means of a denial of the request and the reasons for denial.

(7) A provider shall provide for the administrative review or appeal of a denial of treatment by spiritual means at the option of a person requesting such treatment.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1998 MR 7, Eff. July 8, 1998.

R 330.7139 Resident's right to entertainment materials, information, and news.

Rule 7139. (1) A provider shall not prevent a resident from acquiring entertainment materials, information and news at his or her expense, or from reading written or printed material, or from viewing or listening to television, radio, recordings, or movies made available at a facility for reasons of, or similar to, censorship.

(2) A provider may limit access to entertainment materials, information, or news only if such a limitation is specifically approved in the resident's individualized plan of service.

(3) A provider shall document each instance when a limitation is imposed in the resident's record.

(4) A provider shall not limit access to entertainment materials, information or news when such limitations can no longer be clinically justified.

(5) Material not prohibited by law may be read or viewed by a minor unless there is an objection by the minor's parent or guardian who has legal custody of the minor.

(6) A provider shall establish written policies and procedures that provide for all of the following:

(a) Any general program restrictions on access to material for reading, listening, or viewing.

(b) Determining a resident's interest in, and provide for, a daily newspaper.

(c) Permit attempts by the staff person in charge of the plan of service to persuade a parent or guardian of a minor to withdraw objections to material desired by the minor.

(d) A mechanism for residents to appeal denial of their right to entertainment materials, information and news, and to remedy a wrongful denial.

(e) Any specific restrictions on a living unit or for the therapeutic benefit of the residents as a group.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1998 MR 7, Eff. July 8, 1998.

R 330.7142 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7145 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7151 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1990 MR 7, Eff. July 19, 1990; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7158 Medication.

Rule 7158. (1) A provider shall only administer medication at the order of a physician and in compliance with the provisions of section 719 of the act, if applicable.

(2) A provider shall assure that medication use conforms to federal standards and the standards of the medical community.

(3) A provider shall not use medication as punishment, for the convenience of the staff, or as a substitute for other appropriate treatment.

(4) A provider shall review the administration of a psychotropic medication periodically as set forth in the recipient's individual plan of service and based upon the recipient's clinical status.

(5) If an individual cannot administer his or her own medication, a provider shall ensure that medication is administered by or under the supervision of personnel who are qualified and trained pursuant to Act No. 368 of the Public Acts of 1978, as amended, being §333.1101 et seq. of the Michigan Compiled Laws.

(6) A provider shall record the administration of all medication in the recipient's clinical record.

(7) A provider shall ensure that medication errors and adverse drug reactions are immediately and properly reported to a physician and recorded in the recipient's clinical record.

(8) A provider shall ensure that the use of psychotropic medications is subject to the following restrictions:

(a) A provider shall not administer prescribed psychotropic medications to a recipient unless the recipient consents or unless administration of chemotherapy is necessary to prevent physical harm or injury to the recipient or others.

(b) Psychotropic medications shall not be administered to any of the following persons:

(i) A resident who has been admitted by medical certification or by petition until after a final adjudication as required under section 468(2) of the act.

(ii) A defendant undergoing examination at the center for forensic psychiatry or other certified facility to determine competency to stand trial.

(iii) A person acquitted of a criminal charge by reason of insanity while undergoing examination and evaluation at the center for forensic psychiatry.

(c) A provider may administer chemotherapy to prevent physical harm or injury after signed documentation of the physician is placed in the resident's clinical record and when the actions of a resident or other objective criteria clearly demonstrate to a physician that the resident poses a risk of harm to himself, herself or others.

(d) Initial administration of psychotropic chemotherapy may not be extended beyond 48 hours, unless there is consent. The duration of psychotropic chemotherapy shall be as short as possible and at the lowest possible dosage that is therapeutically effective. The chemotherapy shall be terminated as soon as there is little likelihood that the resident will pose a risk of harm to himself, herself, or others.

(e) Additional courses of chemotherapy may be prescribed and administered if a resident decompensates and again poses a risk to himself, herself or others.

(9) A provider shall ensure that only medication that is authorized in writing by a physician is given to residents upon his or her leave or discharge from the providers program and that enough medication is made available to ensure the recipient has an adequate supply until he or she can become established with another provider.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1979 ACS 8, Eff. Dec. 11, 1981; 1986 MR 12, Eff. Jan. 6, 1987; 1998 MR 7, Eff. July 8, 1998.

R 330.7161 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7165 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7171 Resident health, hygiene, and personal grooming.

Rule 7171. Provisions for resident health, hygiene, and personal grooming shall include assisting and training residents to exercise maximum capability in personal grooming practices, including bathing, toothbrushing, shampooing, hair grooming, shaving, and care of nails. In addition, a resident shall be provided with all of the following:

- (a) Toilet articles.
- (b) A toothbrush and dentifrice.
- (c) An opportunity for shower or tub bath at least once every 2 days, unless medically contraindicated.
- (d) The services of a barber or a beautician on a regular basis.
- (e) If a male, the opportunity to shave daily.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1979 ACS 8, Eff. Dec. 11, 1981.

R 330.7175 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7181 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1990 MR 7, Eff. July 19, 1990; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7185 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7188 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1979 ACS 13, Eff. Feb. 1, 1983; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7189 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7191 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7195 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1990 MR 7, Eff. July 19, 1990; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7199 Written plan of services.

Rule 7199. (1) The individualized written plan of services is the fundamental document in the recipient's record. A provider shall retain all periodic reviews, modifications, and revisions of the plan in the recipient's record.

(2) The plan shall identify, at a minimum, all of the following:

(a) All individuals, including family members, friends, and professionals that the individual desires or requires to be part of the planning process.

(b) The services, supports, and treatments that the recipient requested of the provider.

(c) The services, supports, and treatments committed by the responsible mental health agency to honor the recipient's request specified in subdivision (b) of this subrule.

(d) The person or persons who will assume responsibility for assuring that the committed services and supports are delivered.

(e) When the recipient can reasonably expect each of the committed services and supports to commence, and, in the case of recurring services or supports, how frequently, for what duration, and over what period of time.

(f) How the committed mental health services and supports will be coordinated with the recipient's natural support systems and the services and supports provided by other public and private organizations.

(g) Any restrictions or limitations of the recipient's rights. Documentation shall be included that describes attempts that have been made to avoid such restrictions as well as what actions will be taken as part of the plan to ameliorate or eliminate the need for the restrictions in the future.

(h) Strategies for assuring that recipients have access to needed and available supports identified through a review of their needs. Areas of possible need may include any of the following:

(i) Food.

(ii) Shelter.

(iii) Clothing.

(iv) Physical health care.

(v) Employment.

(vi) Education.

(vii) Legal services.

(viii) Transportation.

(ix) Recreation.

(i) A description of any involuntary procedures and the legal basis for performing them.

(j) A specific date or dates when the overall plan, and any of its subcomponents will be formally reviewed for possible modification or revision.

(3) The plan shall not contain privileged information or communications.

(4) Except as otherwise noted in subrule (5) of this rule, the individual plan of service shall be formally agreed to in whole or in part by the responsible mental health agency and the recipient, his or her guardian, if any, or the parent who has legal custody of a minor recipient. If the appropriate signatures are unobtainable, then the responsible mental health agency shall document witnessing verbal agreement to the plan. Copies of the plan shall be provided to the recipient, his or her guardian, if any, or the parent who has legal custody of a minor recipient.

(5) Implementation of a plan without agreement of the recipient, his or her guardian, if any, or parent who has legal custody of a minor recipient may only occur when a recipient has been adjudicated pursuant to the provisions

of section 469, 472, 473, 515, 518, or 519 of the act. However, if the proposed plan in whole or in part is implemented without the concurrence of the adjudicated recipient or his or her guardian, if any, then the stated objections of the recipient or his or her guardian shall be included in the plan.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1984 MR 5, Eff. May 26, 1984; 1986 MR 12, Eff. Jan. 6, 1987; 1990 MR 7, Eff. July 19, 1990; 1998 MR 7, Eff. July 8, 1998.

R 330.7205 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7227 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1979 ACS 8, Eff. Dec. 11, 1981; 1979 ACS 13, Eff. Feb. 1, 1983; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7229 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7231 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1986 MR 12, Eff. Jan. 6, 1987; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7235 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1979 ACS 13, Eff. Feb. 1, 1983; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7239 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7243 Restraint and seclusion.

Rule 7243. (1) A provider shall keep a separate, permanent chronological record specifically identifying all instances when physical restraint or seclusion has been used. The record shall include all of the following information:

- (a) The name of the resident.
 - (b) The type of physical restraint or conditions of seclusion.
 - (c) The name of the authorizing and ordering physician.
 - (d) The date and time placed in temporary, authorized, and ordered physical restraint or seclusion.
 - (e) The date and time the resident was removed from temporary, authorized, and ordered physical restraint or seclusion.
- (2) A resident who is in restraint or seclusion shall be inspected at least once every 15 minutes by designated personnel.
- (3) A provider shall ensure that documentation of staff monitoring and observation is entered into the medical record of the resident.

(4) A resident in physical restraint or seclusion shall be provided hourly access to a toilet.

(5) A resident in physical restraint or seclusion shall have an opportunity to bathe, or shall be bathed as often as needed, but at least once every 24 hours.

(6) If an order for restraint or seclusion is to expire and the continued use of restraint or seclusion is clinically indicated and must be extended, then a physician's reauthorization or reordering of restraint or seclusion shall be in compliance with both of the following provisions:

(a) If the physical restraint device is a cloth vest and is used to limit the resident's movement at night to prevent the resident from injuring himself or herself in bed, the physician may reauthorize or reorder the continued use of the cloth vest device pursuant to the provisions of section 740(4) and(5) of the act.

(b) Except as specified in subdivision (a) of this subrule, a physician who orders or reorders restraint or seclusion shall do so in accordance with the provisions of sections 740(5) and 742(5) of the act. The required examination by a physician shall be conducted not more than 30 minutes before the expiration of the expiring order for restraint or seclusion.

(7) If a resident is removed from restraint or seclusion for more than 30 minutes, then the order or authorization shall terminate.

(8) A provider shall ensure that a secluded or restrained resident is given an explanation of why he or she is being secluded or restrained and what he or she needs to do to have the restraint or seclusion order removed. The explanation shall be provided in clear behavioral terms and documented in the record.

(9) For restrained residents, a provider shall ensure that an assessment of the circulation status of restrained limbs is conducted and documented at 15-minute intervals or more often if medically indicated.

(10) For purposes of this rule, a time out intervention program as defined in R 330.7001 is not a form of seclusion.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1979 ACS 8, Eff. Dec. 11, 1981; 1979 ACS 13, Eff. Feb. 1, 1983; 1984 MR 5, Eff. May 26, 1984; 1998 MR 7, Eff. July 8, 1998.

R 330.7251 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7253 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; 1986 MR 12, Eff. Jan. 6, 1987; 1990 MR 7, Eff. July 19, 1990; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7254 Rescinded.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC; rescinded 1998 MR 7, Eff. July 8, 1998.

R 330.7260 Declaratory rulings.

Rule 7260. (1) A person who requests a decision concerning the applicability of a statute, rule, guideline, or order administered or issued by the department to an actual state of facts shall do so by means of a request for a declaratory ruling.

(2) The request for a declaratory ruling shall be made on the department's form 2447 which may be obtained from Office Services, Sixth Floor, Lewis Cass Building, Lansing, Michigan 48926.

(3) The completed request for a declaratory ruling shall be made to the director, Department of Mental Health, Lewis Cass Building, Lansing, Michigan 48926.

(4) The director may refer a request to the administrative tribunal of the department. An opinion on the request shall be rendered within 60 days of the receipt of that request.

History: 1979 ACS 8, Eff. Dec. 11, 1981.

DEPARTMENT OF COMMUNITY HEALTH

MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

(By authority conferred on the department of mental health by sections 1 to 4 of Act No. 80 of the Public Acts of 1905, as amended, section 33 of Act No. 306 of the Public Acts of 1969, as amended, and sections 114, 130, 136, 157, 206, 244, 498n, 498r, 842, 844, 908, and 1002a of Act No. 258 of the Public Acts of 1974, as amended, being sections 19.141 to 19.144, 24.233, 330.1114, 330.1130, 330.1136, 330.1206, 330.1244, 330.1498n, 330.1498r, 330.1842, 330.1844, 330.1908, and 330.2002a of the Michigan Compiled Laws)

PART 8. FINANCIAL LIABILITY FOR MENTAL HEALTH SERVICES

SUBPART 1. DEPARTMENT OF MENTAL HEALTH

R 330.8005 Definitions.

Rule 8005. As used in this part:

(a) "Assets" means real and personal property that is owned, in whole or in part, by the responsible party and that has cash value or equity value, but does not include any of the following:

(i) A homestead and accumulated funds separately held to pay homestead taxes, assessments, and insurance.

(ii) The cash value of life insurance for the responsible party, his or her spouse, and immediate family members as allowed for eligibility under the medical assistance program or its successor.

(iii) A prepaid funeral contract or agreement that is allowed for eligibility under the medical assistance program or its successor and that has been certified by the department or the medical assistance program or its successor as irrevocable or an out-of-state irrevocable contract that is allowed for eligibility under the medical assistance program or its successor.

(iv) Burial space, including any accumulated interest, as defined and allowed for eligibility under the medical assistance program or its successor.

(v) Burial funds, not including added interest or dividends, or both, as defined and allowed for eligibility under the medical assistance program or its successor.

(vi) Household goods customarily found in the home and intended for the maintenance, use, or occupancy of the home.

(vii) Personal goods that are incidental items for personal use.

(viii) Other personal property that is essential for health maintenance and mobility, such as a wheelchair or walker; continued enrollment in an educational or training program; employment, such as a mechanic's tools; or business, such as a business vehicle.

(ix) Pension, self-directed pension, deferred compensation, annuity, or similar funds that cannot be withdrawn or used as collateral for a loan.

(b) "Dependent" means a person who is allowed as an exemption under section 30 of Act No. 281 of the Public Acts of 1967, as amended, being §206.30 of the Michigan Compiled Laws.

(c) "Expenses" means the reasonable unreimbursed expenditures of money, actual and estimated, during a financial year to maintain a standard of living essential for one's self and his or her dependents. All of the following are considered necessities:

(i) Food, clothing, and personal necessities.

(ii) Shelter, including utilities and repairs for the upkeep of a homestead.

(iii) Employment or business expenses.

(iv) Medical services.

(v) Taxes.

(vi) Elementary, secondary, and postsecondary education.

(vii) Repayment of personal financial obligations contractually established

before an application was made for services, including such outstanding debts as lease payments, credit card obligations, and other educational or training expenses.

(viii) Payments made under a divorce decree or court order.

(ix) Transportation to maintain employment and necessary family activities.

(d) "Homestead" means a current owned or rented dwelling for which a property tax credit is allowed under section 211.7a(c) of Act No. 206 of the Public Acts of 1893, as amended, being §211.7a(c) of the Michigan Compiled Laws.

(e) "Income" means earned and unearned funds.

(f) "Protected assets" means the portion of assets, as specified in these rules, that shall not be considered when the total financial circumstance is used to determine financial liability.

(g) "Protected income" means the portion of income, as specified in these rules, that shall not be considered when the total financial circumstance is used to determine financial liability.

(h) "Spouse" means the legal marriage partner of the individual.

(i) "Undue financial burden" means a determination of ability to pay that would materially decrease the standard of living of a responsible party or his or her dependents by decreasing the responsible party's capacity to pay for expenses as defined in these rules.

History: 1979 ACS 8, Eff. Dec. 11, 1981; 1997 MR 4, Eff. Apr. 16, 1997.

R 330.8008 Application of rules and policies.

Rule 8008. Financial liability for services approved for state financial support by the department and provided by the department or community mental health services programs directly or under contract shall be determined pursuant to these rules and stated in the department's and community mental health services programs' written policies and procedures.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1997 MR 4, Eff. Apr. 16, 1997.

R 330.8012 Charges for invalid admission.

Rule 8012. The department shall charge counties and responsible parties for state services rendered to an involuntary patient or judicially admitted individual, unless it has been medically determined under the act that the individual is not a person requiring treatment or that the individual does not meet the criteria for judicial admission or unless it is determined that probable cause for involuntary admission does not exist.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1997 MR 4, Eff. Apr. 16, 1997.

R 330.8014 Review of financial liability determination.

Rule 8014. Determination of financial liability shall be reviewed not less often than annually after an initial determination. Services shall not be withheld pending review of financial liability.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC.

R 330.8016 Limitations of individual and spouse financial liability.

Rule 8016. Calculation of the total days of care as a resident in a facility for which a spouse is financially liable shall include the days of care for which the spouse alone or the spouse and individual jointly have been liable in accordance with all previous determinations of liability by the state or a county.

History: 1954 ACS 98, Eff. Jan. 9, 1979; 1979 AC.