

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
BUREAU OF MENTAL HEALTH & SUBSTANCE ABUSE SERVICES

RIGHTS OF RECIPIENTS

(By authority conferred on the director of the department of community health by sections 1 to 4 of 1905 PA 80, section 33 of 1969 PA 306, and sections 114, 136, 157, 206, 244, 498n, 842, and 1002a of 1974 PA 258, MCL 19.141 to MCL 19.144, MCL 24.233, MCL 330.1114, MCL 330.1136, MCL 330.1206, MCL 330.1244, MCL 330.1498n, MCL 330.1842, and MCL 330.2002a)

PART 7. 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 non accidental 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.

(v) Exploitation of a recipient by an employee, volunteer, or agent of a provider.

(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) "Act" means mental health code, 1974 PA 258, MCL 330.1001 et seq.

(e) "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.

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

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

(h) "Exploitation" means an action by an employee, volunteer, or agent of a provider that involves the misappropriation or misuse of a recipient's property or funds for the benefit of an individual or individuals other than the recipient.

(i) "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 and/or rules, policies, guidelines, written directives, procedures, or individual plan of service and causes or contributes to the death, or sexual abuse of, or serious physical harm to a recipient.

(ii) The failure to report apparent or suspected abuse Class I or neglect Class I of a recipient.

(j) "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

non serious physical harm or emotional harm to a recipient.

(ii) The failure to report apparent or suspected abuse Class II or neglect Class II of a recipient.

(k) "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 and/or 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 or sexual abuse.

(ii) The failure to report apparent or suspected abuse Class III or neglect Class III of a recipient.

(l) "Nonserious physical harm" means physical damage or what could reasonably be construed as pain 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.

(m) "Physical management" means a technique used by staff as an emergency intervention to restrict the movement of a recipient by direct physical contact to prevent the recipient from harming himself, herself, or others.

(n) "Protective device" means a device or physical barrier to prevent the recipient from causing serious self-injury associated with documented and frequent incidents of the behavior. A protective device as defined in this subdivision and incorporated in the written individual plan of service shall not be considered a restraint as defined in subdivision (q) of this subrule.

(o) "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.

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

(q) "Restraint" means the use of a physical device to restrict an individual's movement. Restraint does not include the use of a device primarily intended to provide anatomical support.

(r) "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.

(s) "Sexual abuse" means any of the following:

(i) Criminal sexual conduct as defined by section 520b to 520e of 1931 PA 318, MCL 750.520b to MCL 750.520e involving an employee, volunteer, or agent of a provider and a recipient.

(ii) Any sexual contact or sexual penetration involving an employee, volunteer, or agent of a department operated hospital or center, a facility licensed by the department under section 137 of the act or an adult foster care facility and a recipient.

(iii) Any sexual contact or sexual penetration involving an employee, volunteer, or agent of a provider and a recipient for whom the employee, volunteer, or agent provides direct services.

(t) "Sexual contact" means the intentional touching of the recipient's or employee's intimate parts or the touching of the clothing covering the immediate area of the recipient's or employee's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for any of the following:

(i) Revenge.

(ii) To inflict humiliation.

(iii) Out of anger.

(u) "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.

(v) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(w) "Therapeutic de-escalation" means an intervention, the implementation of which is incorporated in the individualized written plan of service, wherein the recipient is placed in an area or room, accompanied by staff who shall therapeutically engage the recipient in behavioral de-escalation techniques and debriefing as to the cause and future prevention of the target behavior.

(x) "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.

(y) "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.

(z) "Unreasonable force" means physical management or force that is applied by an employee, volunteer, or agent of a provider to a recipient in one or more of the following circumstances:

(i) There is no imminent risk of serious or non-serious physical harm to the recipient, staff or others.

(ii) The physical management used is not in compliance with techniques approved by the provider and the responsible mental health agency.

(iii) The physical management used is not in compliance with the emergency interventions authorized in the recipient's individual plan of service.

(iv) The physical management or force is used when other less restrictive measures were possible but not attempted immediately before the use of physical management or force.

History: 1979 AC; 1983 AACS; 1998 AACS; 2007 AACS; 2009 AACS.

Editor's Note: An obvious error in R 330.7001 was corrected at the request of the promulgating agency, pursuant to Section 56 of 1969 PA 306, as amended by 2000 PA 262, MCL 24.256. The rule containing the error was published in Michigan Register, 2007 MR 23. The memorandum requesting the correction was published in Michigan Register, 2007 MR 23.

R 330.7002 Rescinded.

History: 1979 AC; 1998 AACS.

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: 1979 AC; 1998 AACS.

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 AACS.

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 recipients 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 recipients 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 recipients and may require recipients 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 recipients at the facility or may elect to encourage the use of absentee ballots.

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

(d) Facilities shall not prohibit a recipient 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 recipient 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 recipient's plan of service or there is reasonable cause to believe that the recipient is in possession of contraband or property that is excluded from the recipient's possession by the written policies, procedures, or rules of the provider. The following conditions apply to all searches:

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

(b) The circumstances surrounding the search shall be entered in the recipient'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: 1979 AC; 1983 AACS; 1984 AACS; 1998 AACS; 2007 AACS.

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 or the parent with legal custody of a minor recipient of the recipient's 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: 1979 AC; 1998 AACS; 2007 AACS.

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 AACS.

R 330.7014 Rescinded.

History: 1979 AC; 1998 AACS.

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 AACS.

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: 1979 AC; 1986 AACS; 1998 AACS.

R 330.7032 Rescinded.

History: 1979 AC; 1998 AACS.

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: 1979 AC; 1998 AACS.

R 330.7037 Rescinded.

History: 1979 AC; 1998 AACS.

R 330.7045 Rescinded.

History: 1979 AC; 1998 AACS.

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. An incident or peer review report generated pursuant to MCL 330.1143a does not constitute a summary report as intended by this section and shall not be maintained in the clinical record of a recipient.

History: 1998 AACCS; 2007 AACCS.

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: 1979 AC; 1981 AACS; 1986 AACS; 1990 AACS; 1998 AACS.

SUBPART 3. ADDITIONAL RIGHTS OF RESIDENTS OF FACILITIES

R 330.7125 Rescinded.

History: 1979 AC; 1998 AACS.

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: 1979 AC; 1998 AACs.

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: 1979 AC; 1998 AACCS.

R 330.7142 Rescinded.

History: 1979 AC; 1998 AACCS.

R 330.7145 Rescinded.

History: 1979 AC; 1998 AACCS.

R 330.7151 Rescinded.

History: 1979 AC; 1990 AACCS; 1998 AACCS.

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.

(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) Unless the individual consents or unless administration of chemotherapy is necessary to prevent physical injury to the individual or to others psychotropic medications shall not be administered to:

(i) A recipient 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.

(b) 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 recipient or other objective criteria clearly demonstrate to a physician that the recipient poses a risk of harm to himself, herself, or others.

(c) 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 recipient will pose a risk of harm to himself, herself, or others.

(d) Additional courses of chemotherapy may be prescribed and administered if a recipient 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 recipients 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: 1979 AC; 1981 AACS; 1986 AACS; 1998 AACS; 2007 AACS.

R 330.7161 Rescinded.

History: 1979 AC; 1998 AACS.

R 330.7165 Rescinded.

History: 1979 AC; 1998 AACS.

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, tooth brushing, 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: 1979 AC; 1981 AACS.

R 330.7175 Rescinded.

History: 1979 AC; 1998 AACS.

R 330.7181 Rescinded.

History: 1979 AC; 1990 AACS; 1998 AACS.

R 330.7185 Rescinded.

History: 1979 AC; 1998 AACS.

R 330.7188 Rescinded.

History: 1979 AC; 1983 AACS; 1998 AACS.

R 330.7189 Rescinded.

History: 1979 AC; 1998 AACS.

R 330.7191 Rescinded.

History: 1979 AC; 1998 AACS.

R 330.7195 Rescinded.

History: 1979 AC; 1990 AACS; 1998 AACS.

SUBPART 3. ADDITIONAL RIGHTS OF RESIDENTS OF FACILITIES

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) Limitations of the recipient's rights. Limitations of the recipient's rights, any intrusive behavior treatment techniques, or any use of psycho-active drugs for behavior control purposes shall be reviewed and approved by a specially constituted body comprised of at least 3 individuals, 1 of whom shall be a fully- or limited- licensed psychologist with the formal training or experience in applied behavior analysis, and 1 of whom shall be a licensed physician/psychiatrist. Both of the following apply:

(i) Limitations of the recipient's rights, any intrusive treatment techniques or any use of psychoactive drugs where the target behavior is due to an active substantiated Axis 1 psychiatric diagnosis listed in the Diagnostic and Statistical Manual of Mental Disorders need not be reviewed and approved by a specially constituted body described in this subdivision. DSM-IV-TR (Text Revision), 2000, published by the American Psychiatric Association, is adopted by reference and can be obtained from American Psychiatric Publishing Inc., 1000 Wilson Boulevard, Suite 1825, Arlington, VA 22209 at a cost of \$60.00. This manual is also available from the Michigan Department of Community Health, Office of Psychiatric and Medical Services, 320 South Walnut, Lansing, MI 48913 for the cost noted above plus \$20.00 shipping and handling.

(ii) Any limitation shall be justified, time-limited, and clearly documented in the plan of service. Documentation shall be included that describes attempts that have been made to avoid limitations, as well as what actions will be taken as part of the plan to ameliorate or eliminate the need for the limitations in the future.

(h) Strategies for assuring that a recipient has access to needed and available supports identified through a review of his or her 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 under section 469a, 472a, 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, or the parent who has legal custody of a minor recipient, then the stated objections of the recipient or his or her guardian or the parent who has legal custody of a minor recipient shall be included in the plan.

History: 1979 AC; 1984 AACS; 1986 AACS; 1990 AACS; 1998 AACS; 2007 AACS; 2009 AACS; 2012 AACS.

R 330.7205 Rescinded.

History: 1979 AC; 1998 AACS.

R 330.7227 Rescinded.

History: 1979 AC; 1981 AACS; 1983 AACS; 1998 AACS.

R 330.7229 Rescinded.

History: 1979 AC; 1998 AACS.

R 330.7231 Rescinded.

History: 1979 AC; 1998 AACS.

R 330.7235 Rescinded.

History: 1979 AC; 1983 AACS; 1998 AACS.

R 330.7239 Rescinded.

History: 1979 AC; 1998 AACS.

R 330.7243 Restraint seclusion, and physical management.

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

- (a) The name of the recipient.
- (b) The type of 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 restraint or seclusion.
- (e) The date and time the recipient was removed from temporary, authorized, and ordered restraint or seclusion.

(2) A recipient 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 recipient.

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

(5) A recipient in 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 comply with both of the following provisions:

(a) If the restraint device is a cloth vest and is used to limit the resident's movement at night to prevent the recipient from injuring himself or herself in bed, the physician may reauthorize or reorder the continued use of the cloth vest device pursuant to 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 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 recipient 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 recipient 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 recipients, 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 or therapeutic de-escalation program, as defined in R 330.7001, is not a form of seclusion.

(11) Physical management as defined in R 330.7001 (m) may only be used in situations when a recipient is presenting an imminent risk of serious or non-serious physical harm to himself, herself or others and lesser restrictive interventions have been unsuccessful in reducing or eliminating the imminent risk of serious or non-serious physical harm. Both of the following shall apply:

(i) Physical management shall not be included as a component in a behavior treatment plan.

(ii) Prone immobilization of a recipient for the purpose of behavior control is prohibited unless implementation of physical management techniques other than prone immobilization is medically contraindicated and documented in the recipient's record.

History: 1979 AC; 1981 AACS; 1983 AACS; 1984 AACS; 1998 AACS; 2007 AACS; 2009 AACS.

R 330.7251 Rescinded.

History: 1979 AC; 1998 AACS.

R 330.7253 Rescinded.

History: 1979 AC; 1986 AACS; 1990 AACS; 1998 AACS.

R 330.7254 Rescinded.

History: 1979 AC; 1998 AACS.

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: 1981 AACS.