PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406)
444-3036

Transition Review Committee

68th Montana Legislature

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APPENDIX: STATUTES RELATING TO EXTENSION AND DISCHARGE FROM INVOLUNTARY CIVIL COMMITMENT

This appendix also includes statutes relating to the rights of patients at the Montana State Hospital during the patient's commitment that are not discussed in the accompanying memo.

53-21-128. Petition for extension of commitment period. (1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of commitment to the state hospital, a behavioral health inpatient facility, or the Montana mental health nursing care center or the period of commitment to a community facility or program or a course of treatment provided for in 53-21-127, the professional person in charge of the patient at the place of commitment may petition the district court in the county where the patient is committed for extension of the commitment period unless otherwise ordered by the original committing court. The petition must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report must describe any tests and evaluation devices that have been employed in evaluating the patient, the course of treatment that was undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, the patient's next of kin, if reasonably available, the friend of respondent appointed by the court, and the patient's counsel. If any person notified requests a hearing prior to the termination of the previous commitment authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days, not including Saturdays, Sundays, and holidays, from the receipt of the request and notify the same people, including the professional person in charge of the patient. When a hearing is requested less than 10 days prior to the termination of the previous commitment authority, the previous commitment is considered extended until the hearing is held. The notice of hearing must include a notice of this extension. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested must be the same in all respects as the procedure on the petition for the original 3-month commitment, except that the patient is not entitled to a trial by jury. The hearing must be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by

the court. Court costs and witness fees, if any, must be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not to be suffering from a mental disorder and requiring commitment within the meaning of this part, the patient must be discharged and the petition dismissed. If the court finds that the patient continues to suffer from a mental disorder and to require commitment, the court shall order commitment as set forth in 53-21-127. However, an order extending the commitment period may not affect the patient's custody for more than 6 months and may not commit the patient to a behavioral health inpatient facility. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not found suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative must include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Prior to the end of the period of commitment to a community facility or program or course of treatment, a respondent may request that the treating provider petition the district court for an extension of the commitment order. The petition must be accompanied by a written report and evaluation of the respondent's mental and physical condition, an updated treatment plan, and a written statement by the respondent that an extension is desired. The extension procedure must follow the procedure required in subsections (1)(b) through (1)(d).

(3) Further extensions under subsection (1) or (2) may be obtained under the same procedure described in subsection (1). However, the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including a statement of the findings required by subsection (1).

History: En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1306(3), (4); amd. Secs. 10, 14, Ch. 547, L. 1979; amd. Sec. 11, Ch. 376, L. 1987; amd. Sec. 1, Ch. 434, L. 1987; amd. Sec. 24, Ch. 490, L. 1997; amd. Sec. 13, Ch. 342, L. 2001; amd. Sec. 6, Ch. 513, L. 2003; amd. Sec. 2, Ch. 554, L. 2003.

53-21-162. Establishment of patient treatment plan — patient's rights. (1) Each patient admitted as an inpatient to a mental health facility must have a comprehensive physical and mental examination and review of behavioral status within 48 hours after admission to the mental health facility, except as provided in 53-21-1206.

(2) Each patient must have an individualized treatment plan. This plan must be developed by appropriate professional persons, including a psychiatrist, and must be implemented no later than 10 days after the patient's admission, except as provided in 53-21-1206. Each individualized treatment plan must contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of hospitalization;

(c) a description of treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these goals;

(e) a specification of staff responsibility for attaining each treatment goal;

(f) criteria for release to less restrictive treatment conditions; and

(g) a notation of any therapeutic tasks and labor to be performed by the patient.

(3) Overall development, implementation, and supervision of the treatment plan must be assigned to an appropriate professional person.

(4) The inpatient mental health facility shall periodically reevaluate the patient and revise the individualized treatment plan based on changes in the patient's condition. At a minimum, the treatment plan must be reviewed:

(a) at the time of any transfer within the facility;

(b) at the time of discharge;

(c) upon any major change in the patient's condition;

(d) at the conclusion of the initial estimated length of stay and subsequent estimated lengths of stay;

(e) no less than every 90 days; and

(f) at each of the times specified in subsections (4)(a) through (4)(e), by a treatment team that includes at least one professional person who is not primarily responsible for the patient's treatment plan.

(5) A patient has the right:

(a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning of mental health services to be provided and in the revision of the plan;

(b) to a reasonable explanation of the following, in terms and language appropriate to the patient's condition and ability to understand:

(i) the patient's general mental condition and, if given a physical examination, the patient's physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, or providers of mental health services; and

(c) not to receive treatment established pursuant to the treatment plan in the absence of the patient's informed, voluntary, and written consent to the treatment, except treatment:

(i) during an emergency situation if the treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) permitted under the applicable law in the case of a person committed to a facility by a court.

(6) In the case of a patient who lacks the capacity to exercise the right to consent to treatment described in subsection (5)(c), the right must be exercised on behalf of the patient by a guardian appointed pursuant to the provisions of Title 72, chapter 5.

(7) The department shall develop procedures for initiating limited guardianship proceedings in the case of a patient who appears to lack the capacity to exercise the right to consent described in subsection (5)(c).

History: En. 38-1324 by Sec. 24, Ch. 466, L. 1975; amd. Sec. 13, Ch. 546, L. 1977; R.C.M. 1947, 38-1324; amd. Sec. 7, Ch. 579, L. 1991; amd. Sec. 1, Ch. 293, L. 1993; amd. Sec. 4, Ch. 481, L. 2009.

53-21-163. Examination following commitment. Within 30 days after a patient is committed to a mental health facility, the professional person in charge of the facility or the professional person's appointed, professionally qualified agent shall reexamine the committed patient and shall determine whether the patient continues to require commitment to the facility and whether a treatment plan complying with this part has been implemented. If the patient no longer requires commitment to the facility in accordance with the standards for commitment, the patient must be released immediately without further order of the court unless the patient agrees to continue with treatment on a voluntary basis. If for sound professional reasons a treatment plan has not been implemented, this fact must be reported immediately to the professional person in charge of the facility, the director of the department, the mental disabilities board of visitors, and the patient's counsel.

History: En. 38-1325 by Sec. 25, Ch. 466, L. 1975; amd. Sec. 14, Ch. 546, L. 1977; R.C.M. 1947, 38-1325; amd. Sec. 1922, Ch. 56, L. 2009; amd. Sec. 1, Ch. 207, L. 2017.

53-21-180. Discharge plan. Each patient admitted as an inpatient to a mental health facility must have an individualized discharge plan developed within 10 days after admission. The discharge plan must be updated as necessary. Each individualized discharge plan must contain:

(1) an anticipated discharge date;

(2) criteria for discharge;

(3) identification of the facility staff member responsible for discharge planning;

(4) identification of the community-based agency or individual who is assisting in arranging postdischarge services;

(5) referrals for financial assistance needed by the patient upon discharge; and

(6) other information necessary to ensure an appropriate discharge and adequate postdischarge services.

History: En. Sec. 3, Ch. 293, L. 1993; amd. Sec. 5, Ch. 247, L. 1999.

53-21-181. Discharge during or at end of initial commitment period — patient's right to referral. (1) (a) At any time within the period of commitment provided for in 53-21-127, the

patient may be discharged on the written order of the professional person in charge of the patient without further order of the court.

(b) If the patient is not discharged within the period of commitment and if the term is not extended as provided for in 53-21-128, a patient whose commitment was to a facility other than a category D assisted living facility must be discharged by the facility at the end of the period of commitment without further order of the court.

(c) A patient who was committed to a category D assisted living facility may be discharged from supervision by the court but may remain as a resident if the category D assisted living facility and the patient agree.

(2) Notice of the discharge must be filed with the court and the county attorney at least 5 days prior to the discharge. Failure to comply with the notice requirement may not delay the discharge of the patient.

(3) Upon being discharged, each patient has a right to be referred, as appropriate, to other providers of mental health services.

History: En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1306(2); amd. Sec. 9, Ch. 579, L. 1991; amd. Sec. 14, Ch. 342, L. 2001; amd. Sec. 2, Ch. 207, L. 2017; amd. Sec. 7, Ch. 402, L. 2017.

53-21-182. Court-ordered release to alternative placement or treatment. At any time during the patient's commitment, the court may, on its own initiative or upon application of the professional person in charge of the patient, the patient, the patient's next of kin, the patient's attorney, a third party responsible for payment for the care of the patient, or the friend of respondent appointed by the court, order the patient to be placed in the care and custody of relatives or guardians or to be provided outpatient therapy or other appropriate placement or treatment.

History: En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1306(5); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 31, Ch. 490, L. 1997.

53-21-183. Release conditioned on receipt of outpatient care. (1) When, in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of commitment, then outpatient care may be required as a condition for early release for a period that, when added to the inpatient treatment period, except as provided in 53-21-198, may not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the designated outpatient facility shall agree in writing to assume the responsibility.

(2) The mental health facility designated to provide outpatient care or the professional person in charge of the patient's case may modify the conditions for continued release when the modification is in the best interest of the patient. This includes the authorization to transfer the patient to another mental health facility designated to provide outpatient care, if the transfer is in

the best interest of the patient and the designated outpatient facility agrees in writing to assume responsibility. Notice of an intended transfer must be given to the professional person in charge of the mental health facility that provided the involuntary treatment.

(3) Notice in writing to the court that committed the patient for treatment and the county attorney who initiated the action must be provided by the professional person in charge of the patient at least 5 days prior to the patient's release from commitment or outpatient care. Failure to comply with the notice requirement may not delay the release of the patient from commitment or outpatient care.

(4) Sections 53-21-195 through 53-21-198 and this section do not apply to a temporary release, certified by the professional person in charge of the mental health facility, from the facility for the purposes of a home visit not exceeding 30 days.

History: En. 38-1308 by Sec. 8, Ch. 466, L. 1975; amd. Sec. 8, Ch. 546, L. 1977; R.C.M. 1947, 38-1308; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 1, Ch. 541, L. 1985; amd. Sec. 1925, Ch. 56, L. 2009; amd. Sec. 3, Ch. 207, L. 2017.

53-21-184. Patients for whom release and discharge provisions inapplicable. The release and discharge provisions of this part shall not apply to any patient held upon an order of court or judge in a proceeding arising out of a criminal act.

History: En. Sec. 1, Ch. 145, L. 1941; R.C.M. 1947, 38-501.

53-21-185. Care and treatment following release. The department and its agents have an affirmative duty to provide adequate transitional treatment and care for all patients released after a period of involuntary confinement. Transitional care and treatment possibilities include but are not limited to psychiatric day care, treatment in the home by a visiting therapist, nursing home or extended care, a halfway house, outpatient treatment, and treatment in the psychiatric ward of a general hospital.

History: En. 38-1326 by Sec. 26, Ch. 466, L. 1975; R.C.M. 1947, 38-1326.

53-21-186. Support of patient conditionally released. When a mental health facility conditionally releases a patient committed to its care, it is not liable for the patient's support while conditionally released. Liability transfers to the legal guardian, parent, or person under whose care the patient is placed when conditionally released or to any other person legally liable for the patient's support. The local office of public assistance in the county where the patient resides or is found is responsible for providing relief and care for a conditionally released patient who is unable to be self-supporting or who is unable to secure support from the person under whose care the patient was placed on convalescent leave, like any other person in need of relief and care, under the public assistance laws.

History: En. Sec. 6, Ch. 145, L. 1941; amd. Sec. 1, Ch. 149, L. 1953; amd. Sec. 5, Ch. 152, L. 1957; amd. Sec. 32, Ch. 120, L. 1974; amd. Sec. 34, Ch. 466, L. 1975; amd. Sec. 3, Ch. 37, L. 1977; R.C.M. 1947, 38-506; amd. Sec. 111, Ch. 114, L. 2003.

53-21-187. Clothing for patients discharged or conditionally released. A patient may not be discharged or conditionally released from a mental health facility without suitable clothing adapted to the season in which the patient is discharged.

History: En. Sec. 7, Ch. 145, L. 1941; amd. Sec. 6, Ch. 152, L. 1957; amd. Sec. 33, Ch. 120, L. 1974; amd. Sec. 35, Ch. 466, L. 1975; R.C.M. 1947, 38-507; amd. Sec. 1926, Ch. 56, L. 2009.

53-21-195. Rehospitalization of patient conditionally released from inpatient treatment facilities — petition. (1) A proceeding for the rehospitalization of a patient conditionally released from an inpatient mental health facility pursuant to 53-21-182 or 53-21-183 is commenced by the filing of a written petition in any district court by the county attorney, the professional person in charge of the patient's case, or the patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify each district court that committed the patient for the period of the patient's present hospitalization under 53-21-127 or 53-21-128 and request that the file of the earlier proceeding or proceedings be forwarded to the clerk. The file or files must be promptly forwarded.

(2) The patient has the rights set forth in 53-21-115 in a proceeding under this section.

(3) The petition must state:

(a) the patient's name and last-known address;

(b) the name and address of the patient's spouse, next of kin, attorney, or the friend of respondent appointed by the court, if any and if this information is reasonably ascertainable;

(c) that the patient has been determined by the district court to be suffering from a mental disorder and requiring commitment within the meaning of this part and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128;

(d) a simple and precise statement of the facts showing that the patient has violated a condition of the release, that the violation has caused a deterioration of the patient's mental disorder, and that as a result of this deterioration, the patient can no longer be appropriately served by outpatient care; and

(e) a statement of the rights of the respondent, including those set forth in 53-21-115, which must be in conspicuous print and identified by a suitable heading.

(4) The petition must be filed with the clerk of court, who shall immediately notify the judge.

(5) The judge shall issue notice of the time and place of the hearing on the petition. The hearing must be held no more than 5 days after the date that the petition is filed, including weekends and holidays, unless the fifth day falls upon a weekend or holiday or unless additional time is requested by the patient. Further, the judge shall ensure that the notice and copy of the petition are immediately hand-delivered to the patient, to the patient's friend of respondent, if any, and to the patient's counsel.

History: En. Sec. 2, Ch. 541, L. 1985; amd. Sec. 32, Ch. 490, L. 1997.

53-21-196. Detention of conditionally released patient pending hearing. The court may not order detention of the conditionally released patient pending the hearing, except as permitted under 53-21-124.

History: En. Sec. 3, Ch. 541, L. 1985.

53-21-197. Hearing on rehospitalization petition — revocation of conditional release. (1) The court may order that the patient's conditional release status be revoked and that the patient be returned to the mental health facility from which the patient was conditionally released or be sent to another appropriate inpatient mental health facility if, after a hearing, the court finds by clear and convincing evidence that:

(a) the conditionally released patient has been determined by the district court to be suffering from a mental disorder and requiring commitment and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128; and

(b) the conditionally released patient has violated a condition of the release, that the violation has caused a deterioration of the patient's mental condition, and that as a result of this deterioration, the patient can no longer be appropriately served by outpatient care.

(2) A revocation of the patient's conditional release status under subsection (1) must be based on the testimony of the professional person responsible for the patient's case.

(3) If the court revokes the patient's conditional release status pursuant to subsection (1), a treatment plan must be updated or a new plan prepared for the patient as required by and within the time set forth in 53-21-162.

(4) Except as provided in 53-21-198, an order revoking the patient's conditional release status may not order hospitalization or impose other conditions of release that extend beyond the expiration date of the order committing the patient under 53-21-127 or 53-21-128.

History: En. Sec. 4, Ch. 541, L. 1985; amd. Sec. 33, Ch. 490, L. 1997.

53-21-198. Extension of conditions of release — hearing. (1) (a) Subject to the provisions of subsection (1)(b), conditions of release may be extended by the district court beyond the expiration date of the order committing the patient under 53-21-127 or 53-21-128, but in no case for longer than 2 years beyond that date, upon a showing by clear and convincing evidence that:

(i) continuation of the conditions of release is necessary to prevent the deterioration of the patient's mental disorder; and

(ii) the deterioration will predictably result in the necessity of further inpatient care for the patient. Predictability may be established by the patient's medical history.

(b) The 2-year limit beyond the expiration date of a commitment order under 53-21-127 does not apply to a patient who was diverted from the Montana state hospital or the Montana mental health nursing care center to a category D assisted living facility, subject to completion of the evaluation required under subsection (2).

(2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under 53-21-127 or 53-21-128 or the period of extension ordered under subsection (5) of this section, the professional person responsible for the patient's case may petition the court for extension of the conditions of release. The petition must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report must describe any tests and evaluation devices that have been employed in evaluating the patient, the course of treatment that has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(3) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, the patient's next of kin, if reasonably available, the friend of respondent appointed by the court, if any, and the patient's counsel. If any person notified requests a hearing prior to the end of the period of detention ordered under 53-21-127 or 53-21-128, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order extending the conditions of release for a period not to exceed 6 months.

(4) Procedure on the petition for extension is the same in all respects as the procedure for hearing on a rehospitalization petition pursuant to 53-21-197. However, in an extension proceeding, the finding required is that set forth in subsection (1) of this section. The hearing must be held in the district court for the county in which the patient is residing. Court costs and witness fees, if any, must be paid by the county that paid the same costs in the initial commitment proceeding.

(5) If upon the hearing the court finds that the showing required by subsection (1) has not been made, the conditions of release may not be extended, except as provided in subsection (1)(b). If the court finds that the required showing has been made, the court may extend the conditions of release as recommended by the professional person. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not considered suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient, as required by 53-21-162. A court order for the continuation of an alternative must include a specific finding that a comprehensive, individualized plan of treatment exists.

(6) Further extensions may be obtained under the same procedure described in this section. However, the patient's custody may not be affected for more than 1 year without a renewal of the extension under the procedures set forth in this section, including a hearing and a statement of the findings required by subsection (5). Extensions under this subsection may not extend the 2-year extension limitation provided in subsection (1), subject to the exception in subsection (1)(b).

History: En. Sec. 5, Ch. 541, L. 1985; amd. Sec. 34, Ch. 490, L. 1997; amd. Sec. 8, Ch. 402, L. 2017.

STATUTES RELATING TO PATIENTS' RIGHTS DURING COMMITMENT

53-21-141. Civil and legal rights of person committed. (1) Unless specifically stated in an order by the court, a person involuntarily committed to a facility for a period of evaluation or treatment does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part except as it may be necessary to detain the person for treatment, evaluation, or care. All communication between an alleged mentally ill person and a professional person is privileged under normal privileged communication rules unless it is clearly explained to the person in advance that the purpose of an interview is for evaluation and not treatment.

(2) Whenever a person is committed to a mental health facility for a period of 3 months or longer, the court ordering the commitment may make an order stating specifically any legal rights that are denied the respondent and any legal disabilities that are imposed on the respondent. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the involuntary commitment if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally. In the case of a person admitted to a program or facility for the purpose of receiving mental health services, an individual employed by or receiving remuneration from the program or facility may not act as the person's guardian or representative unless the program or facility can demonstrate that no other person is available or willing to act as the person's guardian or representative.

(3) A person who has been committed to a mental health facility pursuant to this part is automatically restored upon the termination of the commitment to all of the person's civil and legal rights that may have been lost when the person was committed. However, this subsection does not affect a guardianship or conservatorship created independently of the commitment proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. A person who leaves a mental health facility following a period of evaluation and treatment must be given a written statement setting forth the substance of this subsection.

(4) A person committed to a mental health facility prior to July 1, 1975, enjoys all the rights and privileges of a person committed after that date.

History: En. 38-1313 by Sec. 13, Ch. 466, L. 1975; amd. Sec. 11, Ch. 546, L. 1977; R.C.M. 1947, 38-1313(1) thru (4); amd. Sec. 11, Ch. 547, L. 1979; amd. Sec. 2, Ch. 579, L. 1991; amd. Sec. 1918, Ch. 56, L. 2009.

53-21-142. Rights of persons admitted to facility. Patients admitted to a mental health facility, whether voluntarily or involuntarily, have the following rights:

(1) Patients have a right to privacy and dignity.

(2) Patients have a right to the least restrictive conditions necessary to achieve the purposes of commitment. Patients must be accorded the right to appropriate treatment and related services in a setting and under conditions that:

(a) are the most supportive of the patient's personal liberty; and

(b) restrict the patient's liberty only to the extent necessary and consistent with the patient's treatment need, applicable requirements of law, and judicial orders.

(3) Patients have rights to visitation and reasonable access to telephone communications, including the right to converse with others privately, except to the extent that the professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued. Patients have an unrestricted right to visitation with attorneys, with spiritual counselors, and with private physicians and other professional persons.

(4) Patients have an unrestricted right to send sealed mail. Patients have an unrestricted right to receive sealed mail from their attorneys, private physicians and other professional persons, the mental disabilities board of visitors, courts, and government officials. Patients have a right to receive sealed mail from others except to the extent that a professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions on receipt of sealed mail. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued.

(5) Patients have an unrestricted right to have access to letter-writing materials, including postage, and have a right to have staff members of the facility assist persons who are unable to write, prepare, and mail correspondence.

(6) Patients have a right to wear their own clothes and to keep and use their own personal possessions, including toilet articles, except to the extent that clothes or personal possessions may be determined by a professional person in charge of the patient's treatment plan to be dangerous or otherwise inappropriate to the treatment regimen. The facility has an obligation to supply an adequate allowance of clothing to any patients who do not have suitable clothing of their own. Patients must have the opportunity to select from various types of neat, clean, and seasonable clothing. The clothing must be considered the patient's throughout the patient's stay at the facility. The facility shall make provision for the laundering of patient clothing.

(7) Patients have the right to keep and be allowed to spend a reasonable sum of their own money.

(8) Patients have the right to religious worship. Provisions for worship must be made available to all patients on a nondiscriminatory basis. An individual may not be required to engage in any religious activities.

(9) Patients have a right to regular physical exercise several times a week. The facility shall provide facilities and equipment for physical exercise. Patients have a right to be outdoors at regular and frequent intervals in the absence of contrary medical considerations.

(10) Patients have the right to be provided, with adequate supervision, suitable opportunities for interaction with members of the opposite sex, as defined in 1-1-201, except to the extent that a professional person in charge of the patient's treatment plan writes an order stating that the interaction is inappropriate to the treatment regimen.

(11) Patients have a right to receive prompt and adequate medical treatment for any physical ailments. In providing medical care, the mental health facility shall take advantage of whatever community-based facilities are appropriate and available and shall coordinate the patient's treatment for mental illness with the patient's medical treatment.

(12) Patients have a right to a diet that will provide at a minimum the recommended daily dietary allowances as developed by the national academy of sciences. Provisions must be made for special therapeutic diets and for substitutes at the request of the patient or the friend of respondent in accordance with the religious requirements of any patient's faith. Denial of a nutritionally adequate diet may not be used as punishment.

(13) Patients have a right to a humane psychological and physical environment within the mental health facilities. These facilities must be designed to afford patients with comfort and safety, promote dignity, and ensure privacy. The facilities must be designed to make a positive contribution to the efficient attainment of the treatment goals set for the patient. In order to ensure the accomplishment of this goal:

(a) regular housekeeping and maintenance procedures that will ensure that the facility is maintained in a safe, clean, and attractive condition must be developed and implemented;

(b) there must be special provision made for geriatric and other nonambulatory patients to ensure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision must be made to permit nonambulatory patients to communicate their needs to the facility staff.

(c) pursuant to an established routine maintenance and repair program, the physical plant of each facility must be kept in a continuous state of good repair and operation in accordance with the needs of the health, comfort, safety, and well-being of the patients;

(d) each facility must meet all fire and safety standards established by the state and locality. In addition, any hospital must meet the provisions of the life safety code of the national fire protection association that are applicable to hospitals. A hospital must meet all standards established by the state for general hospitals to the extent that they are relevant to psychiatric facilities.

(14) A patient at a facility has the right:

(a) to be informed of the rights described in this section at the time of admission and periodically after admission in language and terms appropriate to the patient's condition and ability to understand;

(b) to assert grievances with respect to infringement of the rights described in this section, including the right to have a grievance considered in a fair and timely manner according to an impartial grievance procedure that must be provided for by the facility; and

(c) to exercise the rights described in this section without reprisal and may not be denied admission to the facility as reprisal for the exercise of the rights described in this section.

(15) In order to assist a person admitted to a program or facility in the exercise or protection of the patient's rights, the patient's attorney, advocate, or legal representatives must be given reasonable access to:

(a) the patient;

(b) the program or facility areas where the patient has received treatment or has resided or the areas to which the patient has had access; and

(c) pursuant to the written authorization of the patient, records and information pertaining to the patient's diagnosis, treatment, and related services.

(16) A person admitted to a facility must be given access to any available individual or service that provides advocacy for the protection of the person's rights and that assists the person in understanding, exercising, and protecting the person's rights as described in this section.

(17) This section may not:

(a) obligate a professional person to administer treatment contrary to the professional's clinical judgment;

(b) prevent a facility from discharging a patient for whom appropriate treatment, consistent with the clinical judgment of a professional person responsible for the patient's treatment, is or has become impossible to administer because of the patient's refusal to consent to the treatment;

(c) require a facility to admit a person who has, on prior occasions, repeatedly withheld consent to appropriate treatment; or

(d) obligate a facility to treat a person admitted to the facility solely for diagnostic evaluation.

History: En. 38-1317 by Sec. 17, Ch. 466, L. 1975; R.C.M. 1947, 38-1317; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 3, Ch. 579, L. 1991; amd. Sec. 1919, Ch. 56, L. 2009; amd. Sec. 37, Ch. 685, L. 2023.

53-21-143. Right not to be fingerprinted. No person admitted to or in a mental health facility shall be fingerprinted unless required by other provisions of law.

History: En. 38-1315 by Sec. 15, Ch. 466, L. 1975; R.C.M. 1947, 38-1315.

53-21-144. Rights concerning photographs. (1) A person admitted to a mental health facility may be photographed for the clinical or administrative purposes of the facility. The photographs are confidential. Photographs may be released to a law enforcement agency when needed to aid in the search for a person who has left a facility without authorization from the facility's medical staff and when it is determined that the person is a self-threat or self-danger or a threat or danger to others at the time that the person left the facility. A law enforcement agency may not subsequently release photographs to the public or other persons unless authorized by a court order.

(2) Other nonmedical photographs may not be taken or used without consent of the patient or, if applicable, the patient's legal guardian or without a court order.

History: En. 38-1316 by Sec. 16, Ch. 466, L. 1975; R.C.M. 1947, 38-1316; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 4, Ch. 579, L. 1991; amd. Sec. 30, Ch. 490, L. 1997.

53-21-145. Right to be free from unnecessary or excessive medication. Patients have a right to be free from unnecessary or excessive medication. A medication may not be administered unless at the written order of a physician or advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing. The attending physician or advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing is responsible for all medication given or administered to a patient. The use of medication may not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication must be kept in the individual's medical records. The department shall adopt rules governing attending physician or advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing review of the drug regimen of each patient under the physician's or the advanced practice registered nurse's care in a mental health facility, except that the drug regimen of inpatients in hospitals must be reviewed no less than weekly. Except in the case of outpatients, all prescriptions must be written with a termination date, which may not exceed 30 days. Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program.

History: En. 38-1319 by Sec. 19, Ch. 466, L. 1975; R.C.M. 1947, 38-1319; amd. Sec. 1, Ch. 429, L. 1987; amd. Sec. 166, Ch. 418, L. 1995; amd. Sec. 490, Ch. 546, L. 1995; amd. Sec. 3, Ch. 310, L. 2001.

53-21-146. Right to be free from physical restraint and isolation. Patients have a right to be free from physical restraint and isolation. Except for emergency situations in which it is likely that patients could harm themselves or others and in which less restrictive means of restraint are not feasible, patients may be physically restrained or placed in isolation only on a professional person's written order that explains the rationale for the action. The written order may be entered only after the professional person has personally seen the patient concerned and evaluated the episode or situation that is alleged to call for restraint or isolation. Emergency use of restraints or isolation may not be for more than 1 hour, by which time a professional person must have been consulted and must have entered an appropriate order in writing. The written order is effective for no more than 24 hours and must be renewed if restraint and isolation are to be continued. Whenever a patient is subject to restraint or isolation, adequate care must be taken to monitor the patient's physical and psychiatric condition and to provide for the patient's physical needs and comfort. Physical restraint may not be used as punishment, for the convenience of the staff, or as a substitute for a treatment program.

History: En. 38-1320 by Sec. 20, Ch. 466, L. 1975; R.C.M. 1947, 38-1320; amd. Sec. 5, Ch. 579, L. 1991; amd. Sec. 1920, Ch. 56, L. 2009.

53-21-147. Right not to be subjected to experimental research. (1) Patients have a right not to be subjected to experimental research without the express and informed consent of the patient, if the patient is able to give consent, and of the patient's guardian, if any, and the friend of respondent appointed by the court after opportunities for consultation with independent specialists and with legal counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility, the department, or the research project must be appointed prior to the involvement of the patient in any experimental research. At least 10 days prior to the commencement of experimental research, the facility shall send notice of intent to involve the patient in experimental research to the patient, the patient's next of kin, if known, the patient's legal guardian, if any, the attorney who most recently represented the patient, and the friend of respondent appointed by the court.

(2) The proposed research must have been reviewed and approved by the mental disabilities board of visitors before consent may be sought. Prior to approval, the board shall determine that the research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health and human services for projects supported by that agency.

(3) A patient has the right to appropriate protection before participating in an experimental treatment, including the right to a reasonable explanation of the procedure to be followed, expected benefits, relative advantages, and the potential risks and discomforts of any experimental treatment. A patient has the right to revoke at any time consent to an experimental treatment.

History: En. 38-1321 by Sec. 21, Ch. 466, L. 1975; R.C.M. 1947, 38-1321; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 6, Ch. 579, L. 1991; amd. Sec. 72, Ch. 10, L. 1993.

53-21-148. Right not to be subjected to hazardous treatment. Patients have a right not to be subjected to treatment procedures such as lobotomy, adversive reinforcement conditioning, or other unusual or hazardous treatment procedures without their express and informed consent after consultation with counsel, the legal guardian, if any, the friend of respondent appointed by the court, and any other interested party of the patient's choice. At least one of those consulted shall consent to the treatment, along with the patient's counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility or with the department must be appointed before any enumerated treatment procedure can be employed. At least 10 days prior to the commencement of the extraordinary treatment program, the facility shall send notice of intent to employ extraordinary treatment procedures to the patient, the patient's next of kin, if known,

the legal guardian, if any, the attorney who most recently represented the patient, and the friend of respondent appointed by the court.

History: En. 38-1322 by Sec. 22, Ch. 466, L. 1975; amd. Sec. 12, Ch. 546, L. 1977; R.C.M. 1947, 38-1322; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 1921, Ch. 56, L. 2009.

53-21-165. Records to be maintained. Complete patient records must be kept by the mental health facility for the length of time required by rules established by the department. All records kept by the mental health facility must be available to any person authorized by the patient in writing to receive these records and upon approval of the authorization by the board. The records must also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records must include:

(1) identification data, including the patient's legal status;

(2) a patient history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation that notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive rather than interpretative fashion;

(5) a summary of each physical examination that describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications to the plan;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan, required under 53-21-162(4), that analyzes the successes and failures of the treatment program and includes recommendations for appropriate modification of the treatment plan;

(8) a copy of the individualized discharge plan and any modifications to the plan and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status that includes the signed orders of the prescribing physician or advanced practice registered nurse. The staff person administering the medication shall indicate by signature that orders have been carried out.

(10) a summary of each significant contact by a professional person with the patient;

(11) documentation of the implementation of the treatment plan;

(12) documentation of all treatment provided to the patient;

(13) chronological documentation of the patient's clinical course;

(14) descriptions of any changes in the patient's condition;

(15) a signed order by a professional person for any restrictions on visitations and communications;

(16) a signed order by a professional person for any physical restraints and isolation;

(17) a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by a staff member noting that the staff member has personal knowledge of the incident or specifying any other source of information. The summary of the incident must be initialed within 24 hours by a professional person.

(18) a summary by the professional person in charge of the facility or by an appointed agent of the determination made after the 30-day review provided for in 53-21-163.

History: En. 38-1328 by Sec. 28, Ch. 466, L. 1975; amd. Sec. 15, Ch. 546, L. 1977; R.C.M. 1947, 38-1328; amd. Sec. 12, Ch. 547, L. 1979; amd. Sec. 1, Ch. 333, L. 1987; amd. Sec. 2, Ch. 293, L. 1993; amd. Sec. 167, Ch. 418, L. 1995; amd. Sec. 491, Ch. 546, L. 1995; amd. Sec. 4, Ch. 310, L. 2001.

53-21-166. Records to be confidential — exceptions. All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part are confidential and privileged matter and must remain confidential and privileged after the individual is discharged from the facility. Except as provided in Title 50, chapter 16, part 5, information and records may be disclosed only:

(1) in communications between qualified professionals in the provision of services or appropriate referrals;

(2) when the recipient of services designates persons to whom information or records may be released or if a recipient of services is a ward and the recipient's guardian or conservator designates in writing persons to whom records or information may be disclosed. However, this section may not be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has been given to the physician, psychologist, social worker, nurse, attorney, or other professional person in confidence by members of a patient's family.

(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which a recipient may be entitled;

(4) for research if the department has promulgated rules for the conduct of research. Rules must include but are not limited to the requirement that all researchers shall sign an oath of confidentiality.

(5) to the courts as necessary for the administration of justice;

(6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil procedure;

(7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in 53-21-104;

(8) to the state protection and advocacy program for individuals with mental illness when necessary to comply with 53-21-107(9); and

(9) to the mental health ombudsman when necessary to perform the ombudsman functions as provided in 2-15-210.

History: En. 38-1329 by Sec. 29, Ch. 466, L. 1975; R.C.M. 1947, 38-1329; amd. Sec. 28, Ch. 632, L. 1987; amd. Sec. 8, Ch. 579, L. 1991; amd. Sec. 2, Ch. 544, L. 2001; amd. Sec. 2, Ch. 776, L. 2023.

53-21-167. Patient labor. The following rules govern patient labor:

(1) A patient may not be required to perform labor that involves the operation and maintenance of a facility or for which the facility is under contract with an outside organization. Privileges or release from the facility may not be conditioned upon the performance of labor covered by this provision. Patients may voluntarily engage in the labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(2) (a) Patients may be required to perform therapeutic tasks that do not involve the operation and maintenance of the facility if the specific task or any change in assignment is:

(i) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment; and

(ii) supervised by a staff member to oversee the therapeutic aspects of the activity.

(b) Patients may voluntarily engage in therapeutic labor for which the facility would otherwise have to pay an employee if the specific labor or any change in labor assignment is:

(i) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment;

(ii) supervised by a staff member to oversee the therapeutic aspects of the activity; and

(iii) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(3) If any patient performs therapeutic labor that involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the patient may be compensated at a rate that bears the same approximate relation to the statutory minimum wage as the patient's ability to perform that particular job bears to the ability of a person not so afflicted.

(4) Patients may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(5) Deductions or payments for care and other charges may not deprive a patient of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

History: En. 38-1318 by Sec. 18, Ch. 466, L. 1975; R.C.M. 1947, 38-1318; amd. Sec. 1923, Ch. 56, L. 2009.

53-21-168. Statement of rights to be furnished and posted. Each patient shall promptly upon admission receive in language the patient understands a written statement of all of the patient's rights under this part, including the right to treatment, the right to the development of a treatment

plan, the right to and the availability of legal counsel, and the rules for patient labor. In addition, a copy of the statement of rights must be posted in each ward.

History: En. 38-1331 by Sec. 31, Ch. 466, L. 1975; amd. Sec. 17, Ch. 546, L. 1977; R.C.M. 1947, 38-1331; amd. Sec. 1924, Ch. 56, L. 2009.