

The existing rules in Texas Administrative Code (TAC) Title 25, [Chapter 404](#), [Subchapter E](#), relating to Rights of Persons Receiving Mental Health Services, are being repealed entirely. New rules relating to rights of individuals receiving mental health services are being proposed in 26 TAC Chapter 320, Subchapter A.

DRAFT

TITLE 26 HEALTH AND HUMAN SERVICES
PART 1 HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 320 RIGHTS OF INDIVIDUALS
SUBCHAPTER A RIGHTS OF INDIVIDUALS RECEIVING MENTAL HEALTH
 SERVICES

§320.1. Purpose.

The purpose of this subchapter is:

- (1) to provide to individuals, and their legally authorized representative if applicable, receiving mental health services a listing of the specific rights guaranteed to them and assistance in exercising their rights in a manner that does not conflict with the rights of other individuals;
- (2) to require the development of a rights handbook and its distribution to each individual receiving mental health services, and when applicable, to the LAR, and any other person designated by the individual;
- (3) to require the appointment of a rights protection officer at each applicable entity; and
- (4) to ensure that entity staff members are aware of the rights of individuals receiving mental health services.

§320.2. Application.

The provisions of this chapter apply to any of the following types of entities that provide mental health services and to any provider contracting with such an entity or HHSC:

- (1) a mental health facility operated by HHSC;
- (2) a crisis stabilization unit licensed under Texas Health and Safety Code, Chapter 577;
- (3) a hospital licensed under Texas Health and Safety Code, Chapter 241 that provides mental health services;
- (4) a local behavioral health authority designated by HHSC in accordance with Texas Health and Safety Code, §533.0356;
- (5) a local mental health authority designated by HHSC in accordance with Texas Health and Safety Code, §533.035; and
- (6) a psychiatric hospital licensed under Texas Health and Safety Code, Chapters 571-577.

§320.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse--An intentional, knowing, or reckless act or omission that causes or may cause death, physical injury, or substantial emotional harm to an individual.

(2) Aversive technique--A highly restrictive behavioral intervention designed to eliminate undesirable behavior patterns through learned associations with unpleasant stimuli or tasks.

(3) Behavioral emergency--A situation involving an individual who is behaving in a violent or self-destructive manner, in which preventive, de-escalating, or verbal techniques have been determined to be ineffective, so it is immediately necessary to restrain or seclude the individual to prevent imminent harm to self or others.

(4) Behavioral intervention--An intervention to increase socially adaptive behavior and to modify maladaptive or problem behaviors and replace them with behaviors and skills that are adaptive and socially productive. Also referred to as "behavior management," "behavior training," or "behavior therapy."

(5) Capacity--An individual's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) decide whether to undergo the proposed treatment.

(6) Competency--A legal status that is determined by the court. Adults are presumed competent unless determined otherwise by a court.

(7) Entity--Any of the following types of facilities that provide mental health services or any provider that contracts with such a facility or HHSC:

(A) a mental health facility operated by HHSC;

(B) a crisis stabilization unit licensed under Texas Health and Safety Code, Chapter 577;

(C) a hospital licensed under Texas Health and Safety Code, Chapter 241 that provides mental health services;

(D) a local behavioral health authority designated by HHSC in accordance with Texas Health and Safety Code, §533.0356;

(E) a local mental health authority designated by HHSC in accordance with

Texas Health and Safety Code, §533.035; and

(F) a psychiatric hospital licensed under Texas Health and Safety Code, Chapters 571-577.

(8) Exploitation--The illegal or improper use of an individual, or the individual's resources, for monetary or personal benefit, profit, or gain.

(9) Facility--A state hospital that provides mental health services or its respective community-based program.

(10) Habeas corpus--An order issued by a court or judge of competent jurisdiction, directed to anyone having an individual in their custody or under their restraint, commanding the person to produce the individual at a time and place named in the writ and show why the individual is held in custody or under restraint.

(11) HHSC--The Texas Health and Human Services Commission.

(12) Informed consent--The knowing written consent of an individual with capacity, or the individual's LAR, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion. The basic elements of information necessary for informed consent include all of the following, presented in language or format easily understood by the individual:

(A) a thorough explanation of the procedures to be followed and their purposes, including identification of any experimental procedures;

(B) a description of any attendant discomforts and reasonably expected risks;

(C) a description of any reasonably expected benefits;

(D) a disclosure of any appropriate alternative procedures as well as their reasonably expected risks and benefits, including those that might result if no procedure is utilized;

(E) an offer to answer any questions about the procedures; and

(F) an instruction that the individual can withdraw consent and stop participating in the program or activity at any time without prejudice to the individual. Withdrawal of consent may be in any form, including noncompliance, active resistance, or a verbal or other expression of unwillingness to continue participating in any aspect of the program.

(13) Inpatient services--Services provided to an individual by an entity that exceed 23 hours and that includes:

- (A) bed and board;
- (B) nursing and other related services;
- (C) use of hospital or other critical access facilities;
- (D) social services;
- (E) medication, biological supplies, appliances, and equipment;
- (F) other diagnostic or therapeutic services;
- (G) licensed physician services; or
- (H) transportation services, including ambulance transport.

(14) Intrusive search--The tactile examination of an individual's partially or fully unclothed body, personal belongings, or space designated for the storage of the individual's personal belongings. Intrusive searches do not include:

- (A) routine searches of belongings for contraband at the time of admission, return from pass, or transfer;
- (B) superficial external pat-downs by staff members of the same sex;
- (C) daily room checks for housekeeping and chore completion;
- (D) physical assessments by nurses and physicians, unless the assessment is resisted by the individual, in which case all procedures for intrusive searches are to be followed; and
- (E) searches of the individual's outer clothing, hair, or mouth, unless the search is resisted by the individual, in which case all procedures for intrusive searches are to be followed.

(15) LAR--Legally authorized representative. A person who is authorized by law to act on behalf of an individual, including:

- (A) a parent, legal guardian, or court-appointed managing conservator with authority to make health care decisions for the individual, if the individual is a minor;
- (B) a legal guardian if the individual has been adjudicated incapacitated to manage the individual's personal affairs; and
- (C) a personal representative or heir of the individual, as defined by Texas Estates Code, Chapter 22, if the individual is deceased.

(16) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code, §533.0356.

(17) LMHA--Local mental health authority. An entity designated as the local mental health authority by HHSC in accordance with Texas Health and Safety Code, §533.035(a).

(18) Medical staff member--As determined by the entity and may include Physicians, advanced practiced registered nurses, and physician's assistants.

(19) Mental health services--Any services concerned with the diagnosis, treatment, and care of individuals with a mental illness (known as serious emotional disturbance in reference to children and adolescents), which may be accompanied by a co-occurring diagnosis.

(20) Neglect--A negligent act or omission that causes or may cause death, physical injury, or substantial emotional harm to an individual.

(21) Ombudsman--The Ombudsman for Behavioral Health Access to Care, established by Texas Government Code, §531.02251, which receives rights-related complaints from individuals receiving services at HHSC facilities, LBHAs, LMHAs, and HHSC contractors, and serves as a neutral party to help those individuals with rights protection and to navigate and resolve issues related to access to behavioral health care, including care for mental health conditions and substance use disorders.

(22) PHI--Protected health information.

(A) Any information that identifies or could be used to identify an individual, whether oral or recorded in any form, which relates to:

(i) the past, present, or future physical or mental health or condition of the individual;

(ii) the provision of health care to the individual; or

(iii) the payment for the provision of health care to the individual.

(B) PHI does not include:

(i) health information that has been de-identified in accordance with 45 CFR §164.514(b); and

(ii) employment records held by a facility as an employer.

(23) Psychiatric emergency--A situation in which it is immediately necessary to

administer medication to a patient to prevent:

(A) imminent probable death or substantial bodily harm to the patient because the patient:

(i) is overtly or continually threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the patient overtly or continually makes or commits.

(24) Rights protection officer--A staff member appointed by the head of an entity to protect and advocate for the rights of individuals receiving mental health services.

(25) Recovery or treatment plan--A written plan:

(A) developed in collaboration with the individual, and the LAR if required, and the individual's recovery or treatment team;

(B) amended at any time based on an individual's needs or requests;

(C) guiding the recovery process and fostering resiliency;

(D) completed in conjunction with the uniform assessment;

(E) identifying the individual's changing strengths, capacities, goals, preferences, needs, and desired outcomes; and

(F) including recommended services and supports or reasons for the exclusion of services and supports.

§320.4. Rights of All Individuals Receiving Mental Health Services.

An individual receiving mental health services from an entity has the following rights, which may not be limited except in accordance with §320.6 of this subchapter (relating to Restriction of Patient Rights):

(1) A right, benefit, responsibility, or privilege guaranteed by the constitutions and laws of the United States or the State of Texas unless it has been restricted by specific provisions of law. These rights include:

(A) the right to impartial access to and provision of treatment, regardless of

race, nationality, religion, sex, gender, ethnicity, sexual orientation, age, or disability:

(B) the right to petition for habeas corpus;

(C) the right to register and vote at elections;

(D) the right to acquire, use, and dispose of property, including contractual rights;

(E) the right to sue and be sued;

(F) all rights relating to the granting, use, and revocation of licenses, permits, privileges, and benefits under law;

(G) the right to religious freedom; and

(H) rights concerning domestic relations.

(2) The right to presumption of competency in the absence of a judicial determination to the contrary.

(3) The right to a humane treatment environment that:

(A) ensures reasonable protection from harm;

(B) provides personal privacy to as great a degree as possible, with regard to personal hygiene and personal needs;

(C) provides a bed for sleeping overnight in a room that is free of known safety hazards, adequately cooled and ventilated during warm weather, adequately heated during cold weather, and appropriately lighted;

(D) provides sufficient furniture for sitting;

(E) provides for nutrition and hygiene needs;

(F) promotes respect and dignity for each individual; and

(G) is free from any cruel, unnecessary, demeaning, or humiliating treatment.

(4) The right to appropriate treatment in the least restrictive appropriate setting available, consistent with the protection of the individual and the protection of the community.

(5) The right to be informed of the entity's rules and regulations regarding the

individual's conduct.

(6) The right to communication in a language and format understandable to the individual.

(7) The right to actively participate in the development and periodic review of an individualized recovery or treatment plan, and in the development of a discharge plan addressing aftercare issues that include the individual's mental health, physical health, and social needs; the right to timely consideration of a request for any other person to participate in this process; and the right to be informed of the reasons for any denial of such a request.

(8) The right to explanations of the care, procedures, and treatment to be provided in the individual's primary language, if possible; including the risks, side effects, and benefits of all medications and treatment procedures to be used; the alternative treatment procedures that are available; and the possible consequences of refusing the treatment or procedure. This right extends to the LAR, and any other person authorized by the individual served.

(9) The right to refuse a particular treatment without prejudice to participation in other programs, or without compromising access to other treatments or services solely because of the refusal.

(10) The right to meet with the professional staff members responsible for the individual's care and to be informed of their names, professional disciplines, job titles, and responsibilities. In addition, the individual has the right to an explanation of the justification involving any proposed change in the appointment of staff members responsible for the individual's care.

(11) The right to obtain an independent psychiatric, psychosocial, psychological, or medical examination or evaluation by a psychiatrist, physician, or non-physician mental health professional of the individual's or LAR's choice at the individual's or LAR's own expense. The entity's administrator shall allow the individual or LAR to obtain the examination or evaluation at any reasonable time.

(12) The right to an in-house review, by an equally licensed practitioner, of the individual recovery or treatment plan or specific procedure upon reasonable request, as provided for in the written procedures of the entity.

(13) The right to an explanation of the reason for any transfer of the individual to any program within or outside of the entity.

(14) The right to information pertaining to the cost of services rendered (itemized when possible), the sources of the program's reimbursement, and any limitations placed upon the duration of services.

(15) At HHSC facilities, LMHAs, or LBHAs, the right to be informed that if the

individual is a beneficiary of a trust with an aggregate principal of \$250,000 or less, the corpus or income of the trust is not considered to be the property of the individual or the individual's estate and is not liable for the individual's support.

(16) The right to freedom from unnecessary or excessive medication, including the right to give or withhold informed consent to treatment with psychoactive medication, unless the right has been limited by court order or in a psychiatric emergency, in accordance with commission rules.

(17) The right to give or withhold informed consent to participate in research programs without compromising access to services to which the individual is otherwise entitled.

(18) The right to give or withhold informed consent for the use or performance of any procedure for which consent is required by law.

(19) The right to withdraw consent at any time for any matter in which the individual receiving services has previously granted consent, without limiting or compromising access to services or other treatments.

(20) The right to give or deny informed consent for the use and disposition of photographs, audio, or video recordings used in the treatment of the individual, with the exception of security video recordings.

(21) The right to confidentiality of PHI and the right to be informed of the conditions under which PHI can be disclosed without the individual's consent in accordance with federal and state statutes and regulations.

(22) The right to information contained in the individual's own record, including the right to an independent review, in accordance with federal and state law, of any denial of access to such information. This right does not extend to the PHI of another individual.

(23) The right to freedom from abuse, neglect, and exploitation.

(24) The right to reasonable protection of personal property.

(25) The right not to be secluded or have restraint applied to the individual, except as authorized by federal and state statutes and regulations.

(26) The right to fair compensation for labor performed for the entity in accordance with the Fair Labor Standards Act, and the right to retain any such compensation.

(27) The right to freedom from intrusive searches of individuals or possessions unless justified by clinical necessity, ordered by a physician, advanced practice registered nurse, or physician assistant, and witnessed by an individual of the same

sex as the individual being searched and conducted in a private area. Only physicians will perform body orifice searches.

(28) The right to be transported in a way that protects the dignity and safety of the individual. This includes:

(A) the right of a female individual to be transported or accompanied by a female attendant, unless the individual is accompanied by her father, husband, or adult brother or son;

(B) the right to not be transported in a marked law enforcement vehicle or accompanied by a uniformed law enforcement officer, unless other means are not available;

(C) the right to not be transported with state prisoners;

(D) the right to not be physically restrained, except in accordance with this subchapter; and

(E) the right to a reasonable opportunity to receive food and water and use a restroom.

(29) The right to initiate a complaint, including the right to be informed how to initiate the complaint, and to be given contact information for the ombudsman and rights protection officer.

(30) The right to freedom from interference, coercion, punishment, retaliation, or threat of punishment or retaliation regarding a complaint.

§320.5. Rights of Individuals Receiving Inpatient Services.

An individual receiving inpatient services from an entity has the following rights, which may not be limited except in accordance with §320.6 of this subchapter (relating to Restriction of Patient Rights):

(1) The right to unrestricted visits from attorneys, rights protection officers, ombudsmen, representatives of the Texas protection and advocacy agency with the consent of the individual served, private physicians, or other mental health professionals, at reasonable times and places.

(2) The right to be informed, in writing and by any other means necessary, at the time of admission to and discharge from inpatient services, and upon request, of the existence and purpose of the protection and advocacy agency in Texas under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (Public Law 99-319).

(3) The right to suitable clothing which is neat, clean, and well-fitting.

(4) The right to religious freedom and to participate or not to participate in any religious activity.

(5) The right to timely consideration of a request for transfer to another room, if another individual in the room is unreasonably disturbing the individual, and the right to be informed of any reasons for denial of such a request.

(6) The right to adequate medical and psychiatric care and treatment in accordance with the highest standards accepted in medical practice.

(7) The right of each adult individual to have the entity notify a person chosen by the individual of the individual's admission or discharge, if the individual grants permission.

(8) The right of each adult individual admitted to information about the right to make health care decisions and execute advance directives, as allowed by state law.

(9) The right to written information about any prescription medication ordered by the medical staff member, including the name, dosage, risks, side effects, benefits, administration schedule, and name of the physician who prescribed the medication.

(10) The right to periodic review of the need for continued inpatient treatment.

(11) The right to receive visitors at reasonable times and places, allowing for as much privacy as possible.

(12) The right to telephone, physical, or electronic communications, at reasonable times, allowing for as much privacy as possible, except when there is reason to suspect that the communication may present imminent risk of harm to the individual or others.

(13) The right to keep and use personal possessions, including the right to wear one's own clothing and religious or other symbolic items.

(14) The right to an opportunity for physical exercise and for going outdoors, with or without supervision, as clinically indicated, at least daily.

(15) The right to access, with or without supervision, as clinically indicated, to appropriate areas of the campus of the entity, such as recreation areas, a canteen, or chapel, away from the individual's living unit.

(16) The right to the opportunity to interact with individuals of different genders, with or without supervision, as clinically indicated for the individual.

(17) The right of an individual receiving inpatient mental health services at a

HHSC facility to be advised of the availability of trust fund accounts and other safekeeping for funds and articles of value. This right shall extend to the individual's family members, who shall be informed of the existence of a trust fund as a means of securing personal funds for the individual, and who shall be advised of the option to send monies, either checks or cash, to the cashier, and not to the individual or facility staff members.

(18) The right of an individual receiving inpatient mental health services at a HHSC facility to have the state pay the cost of transportation to the individual's home upon discharge or furlough if the individual or someone responsible for the individual is unable to do so.

(19) The right of an individual voluntarily admitted to inpatient services or the person who requested admission on the individual's behalf to request discharge in accordance with the Texas Health and Safety Code, Chapter 572. Any individual expressing a request for release shall be given an explanation of the process for requesting release and shall immediately be provided the paperwork to request release in writing.

(20) The right of an individual under the age of 18 receiving inpatient services to treatment by individuals who have specialized education and training in the emotional, mental health, and substance use disorders and treatment of minors.

(21) The right of an individual under the age of 18 receiving inpatient services to receive inpatient services in an area separated from adults receiving services.

(22) The right of an individual under the age of 18 receiving inpatient services to regular communication with the individual's family.

§320.6. Restriction of Patient Rights.

(1) An entity shall initiate, implement, and monitor any restraint or seclusion in accordance with 25 TAC Chapter 415, Subchapter F (relating to Interventions in Mental Health Services).

(2) A right under this subchapter may be limited by a medical staff member only to the extent that the restriction is necessary to maintain the individual's physical or emotional well-being or to protect another person.

(3) The medical staff member shall document in the individual's record the duration of and clinical justification for any restriction of an individual's rights under this chapter.

(4) A medical staff member or medical staff member's designee shall inform the individual, or the individual's LAR, if applicable, of the clinical reason for the restriction and its duration as soon as practicable. The treatment team shall consider strategies to help the individual regain or resume practice of the restricted

right.

(5) Unless the medical staff member reviews a restriction, renews the order for restriction in writing, and documents the renewal with clinical justification in the individual's record, the duration of a restriction may not exceed:

(A) three days for a restriction on freedom of movement, including physical exercise or going outdoors;

(B) seven days for any other restriction, except:

(i) if a restriction authorizes staff to observe the opening of packages received by an individual with a chronic limitation who is deemed not capable of protecting personal property, the duration may not exceed 30 days; and

(ii) if a restriction authorizes staff to assist in opening personal mail at the request or agreement of an individual who is unable to do so because of a chronic limitation, staff are limited to opening the mail and shall not read the mail, unless the patient requests staff to read the mail. The duration may continue until there is an improvement in the individual's condition.

(C) Ten business days or until discharge, whichever occurs first, for a restriction on accessing information contained in the individual's own record.

(6) An entity may not restrict an individual's right to communicate with legal counsel, the ombudsman, rights protection officer, courts, Legislature, Texas protection and advocacy agency, or state attorney general.

§320.7. Rights Handbooks for Individuals Receiving Mental Health Services.

(1) The ombudsman shall publish rights handbooks in English and Spanish for:

(A) adults receiving mental health services;

(B) adolescents receiving mental health services; and

(C) children receiving mental health services.

(2) Each handbook shall explain, in age-appropriate, simple, and non-technical language:

(A) the rights of an individual receiving mental health services;

(B) the circumstances under which those rights may be restricted;

(C) the process for appealing a restriction; and

(D) a list of organizations to contact in the event of a rights violation, including the ombudsman:

(3) The ombudsman may publish the handbooks in any other language the ombudsman determines is used by a significant percentage of a service area's population.

(4) The ombudsman shall revise the handbooks as necessary.

(5) An entity shall, upon admission provide each individual receiving mental health services and their LAR an age-appropriate rights handbook. The LAR of a minor shall also receive a copy of the rights handbook for adults.

(6) An entity shall have copies of age-appropriate rights handbooks available at all times, in areas frequented by individuals receiving services.

(7) The patient's rights shall be posted in plain view in common areas.

§320.8. Communication of Rights to Individuals Receiving Mental Health Services.

(1) Prior to voluntary admission, or within 24 hours after involuntary admission, upon any changes to the rule, and upon request, an entity shall, in addition to providing the appropriate rights handbook, orally inform each individual, and their LAR if applicable, of patient rights using plain and simple terms in the individual's and LAR's primary language. The notification shall include an explanation of the circumstances under which those rights may be limited, and an explanation of how a complaint may be filed.

(2) The oral communication of rights shall be documented and dated on a form signed by the individual, the LAR if applicable, and the staff member who explained the rights and shall be placed in the individual's record.

(3) If an individual receiving services is unable or unwilling to sign the oral communication of rights form, the entity shall enter a brief explanation of the reason in the form along with the signatures of the person who explained the rights and a third-party witness.

(4) If the individual does not appear to understand the rights explanation, the entity shall attempt to provide another explanation daily, or as clinically indicated, until understanding is reached or until discharge, and the entity shall document attempts as in paragraph (3) of this section.

§320.9. Rights Protection Officer.

(1) The head of each entity shall appoint a rights protection officer, who shall perform the duties of the office without any conflict of interest.

(2) The name, telephone number, email, and mailing address of the rights protection officer must be prominently posted in every area frequented by individuals receiving services, including community outreach or contract programs. Individuals desiring to contact the rights protection officer shall be allowed access to a telephone during normal business hours.

(3) Duties required of the rights protection officer are specified at the discretion of the head of the entity, and shall include:

(A) receiving allegations of rights violations, allegations of inadequate provision of services, and requests to advocate for an individual at the entity;

(B) thoroughly investigating each allegation or request received or referring it to the appropriate agency, as necessary;

(C) representing the expressed desires of the individuals served and advocating for the resolution of their grievances;

(D) reporting the results of investigations and advocacy to the individual and the complainant, consistent with the protection of the individual's right to have any identifying information remain confidential;

(E) ensuring that the rights of an individual receiving services have been thoroughly explained to entity personnel through orientation and annual training;

(F) developing policies and procedures for maintaining training records; and

(G) reviewing all policies, procedures, behavior therapy programs, and rules that affect the rights of individuals receiving services.

§320.10. Legally Authorized Representative.

An individual's LAR has the right to:

(1) information contained in the individual's own record;

(2) an explanation of the care, procedures, and treatment to be provided to the individual;

(3) an explanation of the clinical reason for any restriction of an individual's rights under this subchapter;

(4) actively participate in the development and review of the individual's recovery or treatment plan and in the development of the individual's discharge plan; and

(5) consent or refuse consent to any care or treatment, including psychiatric

medications.

DRAFT