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“Advocating for Better Outcomes”

## Updates to the Care and Treatment of Persons Living with Mental Health Disorders, effective 2024: Guardians’ version

The effective date for revisions to the mental health laws, enacted by HB22-1256, have been staggered since the bill passed, with the final statutory changes and updates going into effect as of July 1, 2024. Still yet some other bills were passed in 2023, including HB23-1138 as included below in subsection -108.5. The provisions selected for today are narrowed to that which I believe would be of any importance to a guardian whose ward or wards live with a severe and persistent mental health disorder.

Without revealing confidences, has anyone here worked closely with a person with SMI in a fiduciary capacity?

What about as a provider, anyone present care, treatment, or other services for persons with SMI?

Did you have a chance to assist them in admitting for mental health care? Did you know you can consent on their behalf sometimes?

What about family members – any guardians here have well-meaning family members who had a difficult time accepting medical authority?

What about those class of family and others who are not so well-meaning, but they have a relationship to the ward that the ward values? Well... let’s take a look at some of the new statutory provisions and consider such situations and others.

Jonathan Culwell

## 27-65-101. Legislative declaration.

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- (1) The general assembly declares that the purposes of this article 65 are:
- (a) To secure for each person with a mental health disorder such care and treatment suited to the person's needs and to ensure that the care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;
  - (b) To deprive a person of the person's liberty for purposes of care or treatment only when less restrictive alternatives are unavailable and only when the person's safety or the safety of others is endangered;
  - (c) To provide the fullest possible measure of privacy, dignity, and other rights to persons undergoing care and treatment for a mental health disorder;
  - (d) To encourage the use of voluntary, rather than coercive, measures to provide care and treatment for mental health disorders and to provide the care and treatment in the least restrictive setting;
  - (e) To provide appropriate information to family members concerning the location and fact of admission of a person with a mental health disorder to inpatient or residential care and treatment;
  - (f) To encourage the appropriate participation of family members in the care and treatment of a person with a mental health disorder and, when appropriate, to provide information to family members in order to facilitate that participation; and
  - (g) To facilitate the recovery and resiliency of each person who receives care and treatment pursuant to this article 65.
- (2) To carry out these purposes, the provisions of this article 65 must be liberally construed.

## 27-65-102. Definitions.

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- (2) "Behavioral health administration" or "BHA" means the behavioral health administration established in section 27-60-203.
- (5) "Behavioral health entity" has the same meaning as set forth in section 27-50-101.
- (10) "Danger to the person's self or others" means:
- (a) A person poses a **substantial risk of physical harm** to the person's self as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm to the person's self; or
  - (b) A person poses a **substantial risk of physical harm** to another person or persons, as manifested by evidence of recent homicidal or other violent behavior by the person in question, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm by the person in question.
- (16) "Family member" means a spouse, partner in a civil union, as defined in section 14-15-103 (5), parent, adult child, or adult sibling of a person with a mental health disorder.
- (17) "Gravely disabled" means a condition in which a person, as a result of a mental health disorder, is incapable of making informed decisions about or providing for the person's essential needs without significant supervision and assistance from other people. *As a result of being incapable of making these informed decisions*, a person who is gravely disabled **is at risk of** substantial bodily harm, dangerous worsening of any concomitant serious physical illness, significant psychiatric deterioration, or mismanagement of the person's essential needs that could result in substantial bodily harm. A person of any age may be "gravely disabled", but the term does not include a person whose decision-making capabilities are limited solely by the person's developmental disability.
- (21) "Lay person" means a person identified by another person who is detained on an involuntary emergency mental health hold pursuant to section 27-65-106, certified for short-term treatment pursuant to section 27-65-109, or certified for long-term care and treatment pursuant to section 27-65-110 who is authorized to participate in activities related to the person's involuntary emergency mental health hold, short-term treatment, or long-term treatment, including court appearances, discharge planning, and grievances. The person may rescind the lay person's authorization at any time.

(31) “Secure transportation provider” means a provider licensed pursuant to section 25-3.5-310 to provide public or private secure transportation services.

## 27-65-103. Voluntary applications for mental health services.

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(1) Nothing in this article 65 in any way limits the right of any person to make a voluntary application at any time to any public or private agency or professional person for mental health services, either by direct application in person or by referral from any other public or private agency or professional person. Subject to section 15-14-316 (4), a ward, as defined in section 15-14-102 (15), may be admitted to a hospital or institutional care and treatment for a mental health disorder with the guardian’s consent for as long as the ward agrees to such care and treatment. The guardian shall immediately notify in writing the court that appointed the guardian of the admission.

## 27-65-106. Emergency mental health hold - screening - court-ordered evaluation - discharge instructions - respondent’s rights.

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(1) An emergency mental health hold may be invoked under one of the following conditions:

(a)... **[same, for all intents and purposes, as an M-1 Hold]**

(I) When a certified peace officer *has probable cause* to believe a person has a mental health disorder and, as a result of the mental health disorder, **is an imminent** danger to the person’s self or others or is gravely disabled, the certified peace officer may take the person into protective custody and transport the person to a facility designated by the commissioner for an emergency mental health hold...

(II) When an *intervening professional reasonably believes* that a person appears to have a mental health disorder and, as a result of the mental health disorder, **appears to be an imminent** danger to the person’s self or others or appears to be gravely disabled, the intervening professional may cause the person to be taken into protective custody and transported to a facility designated by the commissioner for an emergency mental health hold...

(b) **[This is the old M-3 Hold, now in the same subsection as the M-1]**

(I) When a person petitions the court in the county in which the respondent resides or is physically present requesting an evaluation of the respondent’s condition and alleging that the respondent appears to have a mental health disorder and, as a result of the mental health disorder, appears to be a danger to the respondent’s self or others or appears to be gravely disabled.

(II) Any person who files a malicious or false petition for an evaluation of a respondent pursuant to this section is subject to criminal prosecution.

(2) When a person is taken into custody pursuant to subsection (1) of this section, the person must not be detained in a jail, lockup, or other place used for the confinement of persons charged with or convicted of penal offenses. Unless otherwise required by law, a certified peace officer may transport the person to an emergency medical services facility or facility designated by the commissioner even if a warrant has been issued for the person’s arrest if the certified peace officer believes it is in the best interest of the person...

(3) When a person is placed on an emergency mental health hold pursuant to subsection (1) of this section and is presented to an emergency medical services facility or a facility designated by the commissioner, the facility shall require a BHA-approved application in writing, stating the circumstances under which the person’s condition was called to the attention of the intervening professional or certified peace officer and further stating sufficient facts, obtained from the intervening professional’s or certified peace officer’s personal observations or obtained from others whom the intervening professional or certified peace officer reasonably believes to be reliable, to establish that the person has a mental health disorder and, as a result of the mental health disorder, is an imminent danger to the person’s self or others or is gravely disabled. The application must indicate when the person was taken into custody and who brought the person’s condition to the attention of the intervening professional or certified peace officer. A copy of the application must be furnished to the person being evaluated, and the application must be retained in accordance with section 27-65-123 (4).

(4)

(a) The petition for a court-ordered evaluation filed pursuant to subsection (1)(b) of this section must contain the following:

(I) The name and address of the petitioner and the petitioner's interest in the case;

(II) The name of the respondent for whom evaluation is sought, and, if known to the petitioner, the address, age, gender, marital status, occupation, and any animals or dependent children in the respondent's care;

(III) Allegations of fact indicating that the respondent may have a mental health disorder and, as a result of the mental health disorder, be a danger to the respondent's self or others or be gravely disabled and showing reasonable grounds to warrant an evaluation;

(IV) The name and address of every person known or believed by the petitioner to be legally responsible for the care, support, and maintenance of the respondent, if available; and

(V) The name, address, and telephone number of the attorney, if any, who has most recently represented the respondent.

(b) Upon receipt of a petition satisfying the requirements of subsection (4)(a) of this section, **if the court is not satisfied that probable cause exists to issue an order for an evaluation, the court shall** identify a facility designated by the commissioner, an intervening professional, or a certified peace officer to provide *screening* of the respondent to determine whether probable cause exists to believe the allegations. (See section -102 Definitions for Screening)

...

(d) Whenever it appears, by petition and screening pursuant to this section, to the satisfaction of the court that probable cause exists to believe that the respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to the respondent's self or others or is gravely disabled and that efforts have been made to secure the cooperation of the respondent but the respondent has refused or failed to accept evaluation voluntarily, **the court shall issue an order for evaluation authorizing a certified peace officer or secure transportation provider** to take the respondent into custody and transport the respondent to a facility designated by the commissioner for an emergency mental health hold. At the time the respondent is taken into custody, a copy of the petition and the order for evaluation must be given to the *respondent* and promptly thereafter to the one *lay person* designated by the respondent and to the *person in charge of the facility* named in the order or the respondent's designee. If the respondent refuses to accept a copy of the petition and the order for evaluation, such refusal must be documented in the petition and the order for evaluation.

...

(8)

(a) The facility shall provide each person detained for an emergency mental health hold discharge instructions. The discharge instructions must be completed for every person, regardless of the person's discharge status, before the person is released. If the detained person refuses to accept the discharge instructions, the refusal must be documented in the person's medical record. At a minimum, the discharge instructions must include:

(I) A summary of why the person was detained or evaluated for an emergency mental health hold; detailed information as to why the evaluating professional determined the person no longer meets the criteria for an emergency mental health hold or certification pursuant to section 27-65-109; and whether the person may receive services on a voluntary basis pursuant to subsection (6) of this section;

(II) If the person's medications were changed or the person was newly prescribed medications during the emergency mental health hold, a clinically appropriate supply of medications, as determined by the judgment of a licensed health-care provider, for the person until the person can access another provider or follow-up appointment;

(III) A safety plan for the person and, if applicable, the person's lay person where indicated by the person's mental health disorder or mental or emotional state;

(IV) Notification to the person's primary care provider, if applicable;

(V) A referral to appropriate services, if such services exist in the community, if the person is discharged without food, housing, or economic security. Any referrals and linkages must be documented in the person's medical record.

(VI) The phone number to call or text the Colorado crisis services hotline and information on the availability of peer support services;

(VII) Information on how to establish a psychiatric advance directive if one is not presented;

- (VIII) Medications that were changed during the emergency mental health hold, including any medications that the person was taking or that were previously prescribed upon admission, and which medications, if any, were changed or discontinued at the time of discharge;
- (IX) A list of any screening or diagnostic tests conducted during the emergency mental health hold, if requested;
- (X) A summary of therapeutic treatments provided during the emergency mental health hold, if requested;
- (XI) Any laboratory work, including blood samples or imaging that was completed or attempted, if requested;
- (XII) The person's vital signs upon discharge from the emergency mental health hold, if requested;
- (XIII) A copy of any psychiatric advance directive presented to the facility, if applicable; and
- (XIV) How to contact the discharging facility if needed.

(b) The facility shall document in the person's medical record whether the person accepted the discharge instructions. The facility shall provide the discharge instructions to the person's parent or legal guardian if the person is under eighteen years of age, and to the person's lay person, when possible.

(c) Upon discharge, the facility shall discuss with the person, the person's parent or legal guardian, or the person's lay person the statewide care coordination infrastructure established in section 27-60-204 to facilitate a follow-up appointment for the person within seven calendar days after the discharge. Facilities shall comply with this subsection (8)(c) when the statewide care coordination infrastructure created in section 27-60-204 is fully operational, as determined by the BHA. The BHA shall immediately notify facilities when the statewide care coordination infrastructure is available to assist persons with discharge. (No later than July 1, 2024, per SB22-177)

(d)

- (I) The facility shall, at a minimum, attempt to follow up with the person, the person's parent or legal guardian, or the person's lay person at least forty-eight hours after discharge. The facility is encouraged to utilize peer support professionals, as defined in section 27-60-108 (2)(b), when performing follow-up care with individuals and in developing a continuing care plan pursuant to subsection (8)(a)(I) of this section. The facility may facilitate follow-up care through contracts with community-based behavioral health providers or the Colorado behavioral health crisis hotline. If the facility facilitates follow-up care through a third-party contract, the facility shall obtain authorization from the person to provide follow-up care.
- (II) If the person is enrolled in medicaid, the facility is not required to meet the requirements of this subsection (8)(d) and instead, the facility shall notify the person's relevant managed care entity, as defined in section 25.5-5-403, of the person's discharge and need for ongoing follow-up care prior to the person's discharge.
- (III) If the facility contracts with a safety net provider, as defined in section 27-50-101, to provide behavioral health services to a person on or following an emergency mental health hold, the facility shall work with the safety net provider in order to meet the requirements of this subsection (8)(d).

(e) The facility shall encourage the person to designate a family member, friend, or other person as a lay person to participate in the person's discharge planning and shall notify the person that the person is able to rescind the authorization of a lay person at any time. If the person designates a lay person and has provided necessary authorization, the facility shall attempt to involve the lay person in the person's discharge planning. The facility shall notify the lay person that the person is being discharged or transferred.

## 27-65-107. Emergency transportation - application - screening - respondent's rights.

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(1)

(a) When a certified peace officer or emergency medical services provider has probable cause to believe a person is experiencing a behavioral health crisis or is gravely disabled and, as a result, without professional intervention the person may be a danger to the person's self or others, then the certified peace officer or emergency medical services provider may take the person into protective custody and transport the person to an outpatient mental health facility or a facility designated by the commissioner or other clinically appropriate facility designated by the commissioner. If such a service is not available, the person may be taken to an emergency medical services facility.

**(b)** An individual may not be transported pursuant to this subsection (1) if an intervening professional has assessed the person during the same emergency event and determined the individual does not meet the criteria for an emergency mental health hold pursuant to section 27-65-106.

**(c)** If a behavioral health crisis response team is known to be available in a timely manner, the certified peace officer or emergency medical services provider shall access the behavioral health crisis response team prior to transporting an individual involuntarily pursuant to this subsection (1)

...

## **27-65-108. Care coordination for persons certified or in need of ongoing treatment.**

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**(1)** [*Note: This section is effective July 1, 2024.*] A facility designated by the commissioner shall notify and engage the BHA prior to terminating or transferring a person certified pursuant to section 27-65-108.5, 27-65-109, 27-65-110, or 27-65-111. The BHA may provide care coordination services to support a person whose certification is terminated but who is in need of ongoing treatment and services.

**(2)** The BHA shall, directly or through a contract, provide care coordination services to a person certified pursuant to section 27-65-108.5, 27-65-109, 27-65-110, or 27-65-111 and determined by the designated facility and the BHA to need care coordination services.

## **27-65-108.5. Court-ordered certification for short-term treatment for incompetent defendants in a criminal matter ...**

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**(1)** [*Note: This section is effective July 1, 2024.*] Upon petition of the district attorney, a professional person, a representative of the BHA, or a representative of the office of civil and forensic mental health, a court may certify a person for short-term treatment for not more than three months under the following conditions:

**(a)** The person is a respondent in a criminal matter in which the person has been found incompetent to proceed;

**(b)** The court hearing the criminal matter referred the matter for filing of a petition pursuant to section 16-8.5-111 or 16-8.5-116;

**(c)** The person has been advised of the availability of, but has not accepted, voluntary treatment, or, if reasonable grounds exist to believe that the person will not remain in a voluntary treatment program, the person's acceptance of voluntary treatment does not preclude certification;

**(d)** The facility or community provider that will provide short-term treatment has been designated or approved by the commissioner to provide such treatment; and

**(e)** The person, the person's legal guardian, and the person's lay person, if applicable, have been advised of the person's right to an attorney and to contest the certification for short-term treatment.

**(2)** The petition filed pursuant to subsection (1) of this section must:

**(a)** State sufficient facts to establish reasonable grounds that the respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to the respondent's self or others or is gravely disabled;

**(b)** Be accompanied by a report of the competency evaluator or professional person who has evaluated the respondent within fifty-six days before submission of the petition, unless the respondent whose certification is sought has refused to submit to an evaluation or the respondent cannot be evaluated due to the respondent's condition;

**(c)** Be filed within fourteen days after the initiating party received the court order from the criminal court initiating the process;

**(d)** Be filed with the court in the county where the respondent resided or was physically present immediately prior to the filing of the petition; except that if the person was arrested for the prior case and

held in custody, the petition may be filed in the county where the respondent resided or was physically present immediately prior to the respondent's arrest; and

(e) Provide recommendations if any certification should occur on an inpatient or outpatient basis.

(3) Within twenty-four hours after certification, copies of the certification must be personally delivered to the respondent, the BHA, or the office of civil and forensic mental health. The department shall retain a copy as part of the respondent's record. If the criminal case is pending, or not yet dismissed, notice of the filing of the petition should be given by the petitioning party to the criminal court, which shall provide such notice to the prosecuting and defense attorneys in the criminal case and any attorney appointed pursuant to section 27-65-113. The court shall ask the respondent to designate one other person whom the respondent wants to be informed regarding the petition. If the respondent is incapable of making such a designation at the time the petition is delivered, the court may ask the respondent to designate such person as soon as the respondent is capable.

(4) Whenever a petition is filed pursuant to this section, the court shall immediately appoint an attorney to represent the respondent. The court shall provide the respondent with a written notice that the respondent has a right to a hearing on the petition and may make a written request for a jury trial. The respondent has the right to an attorney for all proceedings conducted pursuant to this section, including any appeals. The attorney representing the respondent must be provided with a copy of the petition and any supporting materials immediately upon the attorney's appointment. The respondent may only waive counsel when the respondent makes a knowing and voluntary waiver in front of the court.

(5) Upon the filing of the petition pursuant to this section and affording the respondent a chance to contest the petition, the court may grant or deny certification based on the facts established in the petition, subject to the court's further review or a jury trial.

(6) Within fourteen days after receipt of the petition filed pursuant to this section, the respondent, or the respondent's attorney, may request a jury trial by filing a written motion with the court.

(7) The respondent may knowingly and voluntarily consent in writing to the petition.

(8) The respondent or the respondent's attorney may, at any time, file a written request for the court to review short-term certification or request that inpatient certification be changed to outpatient treatment. If the review is requested, the court shall hear the matter within fourteen days after the request, and the court shall give notice to the respondent, the respondent's attorney, the department, and the community or facility provider who is or will provide treatment. The hearing must be held in accordance with section 27-65-113. At the conclusion of the hearing, the court may enter or confirm the certification for short-term treatment, discharge the respondent, or enter any other appropriate order.

(9) Section 27-65-109 (7) to (10) applies to proceedings held pursuant to this section.

(10) In assessing whether the respondent with a pending criminal charge is a danger to self or others or is gravely disabled, if the person is incarcerated, the professional person and court shall not rely upon the fact that the person is incarcerated to establish that the respondent is not a danger to self or others or is not gravely disabled.

(11) An emergency mental health hold pursuant to section 27-65-106 is not a prerequisite to a proceeding pursuant to this section.

(12) For the purposes of this section only, "respondent" means the defendant in the referring criminal matter.

## 27-65-109. Certification for short-term treatment - procedure.

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*Note: Bolded language in this section 27-65-109 becomes effective July 1, 2024.*

(1) If a person detained pursuant to section 27-65-106 has received an evaluation, the person may be certified for not more than three months for short-term treatment under the following conditions:

- (a) The professional staff of the agency or facility providing seventy-two-hour treatment and evaluation has analyzed the person's condition and has found the person has a mental health disorder and, as a result of the mental health disorder, is a danger to others or to the person's self or is gravely disabled;
- (b) The person has been advised of the availability of, but has not accepted, voluntary treatment; but, if reasonable grounds exist to believe that the person will not remain in a voluntary treatment program, the person's acceptance of voluntary treatment does not preclude certification;
- (c) The facility or community provider that will provide short-term treatment has been designated by the commissioner to provide such treatment; and
- (d) The person, the person's legal guardian, and the person's lay person, if applicable, have been advised of the person's right to an attorney and to contest the certification for short-term treatment.**

(2) [The notice of certification must be signed by a professional person who participated in the evaluation. The notice of certification must:

- (a) State facts sufficient to establish reasonable grounds to believe that the respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to the respondent's self or others or is gravely disabled;
- (b) Be filed with the court within forty-eight hours, excluding Saturdays, Sundays, and court holidays, after the date of certification;
- (c) Be filed with the court in the county in which the respondent resided or was physically present immediately prior to being taken into custody; and
- (d) Provide recommendations if the certification should take place on an inpatient or outpatient basis.**

...

(10) If the professional person in charge of the evaluation and treatment believes that a period longer than three months is necessary to treat the respondent, the professional person shall file with the court an extended certification **at least thirty days prior to the expiration date of the original certification.** An extended certification for treatment must not be for a period of more than three months. The respondent is entitled to a hearing on the extended certification under the same conditions as an original certification. The attorney initially representing the respondent shall continue to represent the respondent, unless the court appoints another attorney.

## 27-65-111. Certification on an outpatient basis - short-term and long-term care.

(1) [*Note: This section is effective July 1, 2024.*] Any respondent certified pursuant to section 27-65-108.5, 27-65-109, or 27-65-110 may be provided treatment on an outpatient basis. The outpatient treatment provider shall develop a treatment plan for the respondent receiving treatment on an outpatient basis with the goal of the respondent finding and sustaining recovery. The treatment plan must include measures to keep the respondent or others safe, as informed by the respondent's need for certification. The treatment plan may include, but is not limited to:

- (a) Intensive case management;
- (b) Assertive community treatment;
- (c) Peer recovery services;
- (d) Individual or group therapy;
- (e) Day or partial-day programming activities;
- (f) Intensive outpatient programs;
- (g) Educational and vocational training or activities; and
- (h) Housing and transportation assistance.

(2) The respondent, the respondent's legal guardian, the respondent's patient representative or the respondent's lay person, or any party at any court hearing may contest a respondent's treatment regimen, including court-ordered medications, at any court hearing related to the respondent's certification for treatment.

(3) The facility responsible for providing services to a respondent on a certification on an outpatient basis shall proactively reach out to the respondent to engage the respondent in treatment. If the respondent refuses treatment or court-ordered medication and is decompensating psychiatrically, the court may order a certified peace officer or secure transportation provider to transport the respondent to an appropriate, least restrictive designated facility in collaboration with the BHA and the provider holding the certification. The respondent does not need to be imminently dangerous to the respondent's self or others for the provider to request, and the court to order, transportation to a facility for the respondent to receive treatment and court-ordered medications. The facility



responsible for providing services to a respondent on a certification on an outpatient basis shall provide the court information on the facility's proactive outreach to the respondent and the professional person's and psychiatric advanced practice registered nurse's basis for medical opinion.

(4) If a respondent is placed in a more restrictive setting, the respondent has the right to judicial review within ten days after filing a written request.

(5)

(a) In addition to any other limitation on liability, a person providing care to a respondent placed on short-term or long-term certification on an outpatient basis is only liable for harm subsequently caused by or to a respondent who:

(I) Has been terminated from certification despite meeting statutory criteria for certification pursuant to section 27-65-108.5, 27-65-109, or 27-65-110; or

(II) Provided services to the respondent not within the scope of the person's professional license, or was reckless or grossly negligent in providing services.

(b) A provider is not liable if a respondent's certification is terminated, despite meeting criteria for certification, if the provider is unable to locate the respondent despite proactive and reasonable outreach.

(6) A respondent subject to a short-term or long-term certification on an outpatient basis has the following rights, in addition to those enumerated in section 27-65-119:

(a) To request a change to voluntary status. A change to voluntary status may be denied by the supervising professional person or advanced practice registered nurse with training in psychiatric nursing responsible for the respondent's treatment if the professional person or advanced practice registered nurse with training in psychiatric nursing determines reasonable grounds exist to believe that the respondent will not remain in a voluntary treatment program.

(b) To be treated fairly, with respect and recognition of the respondent's dignity and individuality, by all employees of the treatment facility with whom the respondent comes in contact;

(c) To appropriate treatment, which must be administered skillfully, safely, and humanely. A respondent shall receive treatment suited to the respondent's needs that must be determined in collaboration with the respondent.

(d) To not be discriminated against on the basis of age, race, ethnicity, religion, culture, spoken language, physical or mental disability, socioeconomic status, sex, sexual orientation, gender identity, or gender expression;

(e) To retain and consult with an attorney at any time;

(f) Within forty-eight hours after the respondent's request, to see and receive the services of a patient representative, including a peer specialist, who has no direct or indirect clinical, administrative, or financial responsibility for the respondent;

(g) To have the respondent's behavioral health orders for scope of treatment or psychiatric advance directive reviewed and considered by the court as the preferred treatment option for involuntary administration of medications unless, by clear and convincing evidence, the respondent's directive does not qualify as effective participation in behavioral health decision-making;

(h) To have the respondent's information and records disclosed to adult family members and a lay person pursuant to section 27-65-123;

(i) To have access to a representative within the facility who provides assistance to file a grievance; and

(j) To have the right to file a motion with the court at any time to contest the certification.

## 27-65-113. Hearing procedures - jurisdiction.

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**(Effective prior to 2022 revisions)**

(7) Upon request of a legal guardian appointed pursuant to article 14 of title 15, the legal guardian may intervene in any proceeding brought pursuant to this article 65 concerning the legal guardian's ward and, through counsel, may present evidence and represent to the court the views of the legal guardian concerning the appropriate disposition of the case.

**(Enacted 2022, effective prior to 2024)**

**(8)** A lay person may submit an affidavit to the court concerning the lay person's relationship to the respondent, how long the lay person has known the respondent, the lay person's physical address, and the lay person's views concerning the appropriate disposition of the respondent's case.

## 27-65-117. Discrimination - definition.

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**(Enacted 2022, effective prior to 2024)**

No person who has received an evaluation or treatment pursuant to this article 65 may be discriminated against for receiving an evaluation or treatment. For purposes of this section, "discrimination" means giving any undue weight to the fact of hospitalization or outpatient care and treatment unrelated to a person's present capacity to meet standards applicable to all persons. Any person who suffers injury by reason of a violation of this section has a civil cause of action.

## 27-65-119. Rights of respondents certified for short-term treatment or long-term care and treatment.

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**(1)** [*Note: This version of the introductory portion to subsection (1) is effective July 1, 2024.*] Each respondent certified for short-term treatment or long-term care and treatment on an inpatient basis pursuant to sections 27-65-108.5, 27-65-109, and 27-65-110 has the following rights and shall be advised of such rights by the facility:

- (a)** To be treated fairly, with respect and recognition of the respondent's dignity and individuality, by all employees of the facility with whom the respondent comes in contact;
- (b)** To not be discriminated against on the basis of age, race, ethnicity, religion, culture, spoken language, physical or mental disability, socioeconomic status, sex, sexual orientation, gender identity, or gender expression;
- (c)** To retain and consult with an attorney at any time;
- (d)** To meet with or call a personal clinician, spiritual advisor, counselor, crisis hotline, family member, workplace, child care provider, or school at all reasonable times;
- (e)** To continue the practice of religion;
- (f)** Within twenty-four hours after the respondent's request, to see and receive the services of a patient representative who has no direct or indirect clinical, administrative, or financial responsibility for the person;
- (g)** To receive and send sealed correspondence, as well as to be given the assistance of facility staff if the respondent is unable to write, prepare, or mail correspondence. Facility staff shall not open, delay, intercept, read, or censor mail or other communications or use mail or other communications as a method to enforce compliance with facility staff.
- (h)** To have the respondent's behavioral health orders for scope of treatment or psychiatric advance directive reviewed and considered by the court as the preferred treatment option for involuntary administration of medications unless, by clear and convincing evidence, the respondent's directive does not qualify as effective participation in behavioral health decision-making;
- (i)** To have reasonable access to telephones or other communication devices and to make and receive calls or communications in private;
- (j)** To have frequent and convenient opportunities to meet with visitors;
- (k)** To see the respondent's attorney, clergyperson, or physician at any time;
- (l)** To wear the respondent's own clothes, keep and use the respondent's own personal possessions, including the person's cell phone, and keep and be allowed to spend a reasonable sum of the respondent's own money;
- (m)** To have the respondent's information and records disclosed to family members and a lay person pursuant to section 27-65-123;
- (n)** To have the respondent's treatment records remain confidential, except as required by law;
- (o)** To have appropriate access to adequate water, hygiene products, and food and to have the respondent's nutritional needs met in a manner that is consistent with recognized dietary practices;
- (p)** To have personal privacy to the extent possible during the course of treatment; and

- (q) To have access to a representative within the facility who provides assistance to file a grievance.

## 27-65-123. Records.

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(1) Except as provided in subsection (2) of this section, all information obtained and records prepared in the course of providing any services to any person pursuant to any provision of this article 65 are confidential and privileged matter. The information and records may be disclosed only:

(a) In communications between qualified professionals, facility personnel, or state agencies in the provision of services or appropriate referrals;

(b) When the recipient of services designates persons to whom information or records may be released; but, if a recipient of services is a ward or conservatee and the ward's or conservatee's guardian or conservator designates, in writing, persons to whom records or information may be disclosed, the designation is valid in lieu of the designation by the recipient; except that nothing in this section compels a physician, psychologist, social worker, nurse, attorney, or other professional personnel to reveal information that has been given to the person in confidence by members of a patient's family or other informants;

(6) [*Note: Subsection (6) is effective July 1, 2024.*] Nothing in this section prohibits the limited disclosure of necessary information to the prosecuting attorney and criminal defense counsel if a criminal case is still pending against the person.

## 27-65-131. Data report.

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(1) Beginning January 1, 2025, and each January 1 thereafter, the BHA shall annually submit a report to the general assembly on the outcomes and effectiveness of the involuntary commitment system described in this article 65...