

Draft 27-65 Rewrite

Draft_001

September 10, 2021

Note: Draft does not include conforming amendments

27-65-102. Definitions

As used in this article 65, unless the context otherwise requires:

(1) “Acute treatment unit” means a facility or a distinct part of a facility for short-term psychiatric care, which may include treatment for substance use disorders, that provides a total, twenty-four-hour, therapeutically planned and professionally staffed environment for persons who do not require inpatient hospitalization but need more intense and individual services than are available on an outpatient basis, such as crisis management and stabilization services.

(1.5) [Editor’s note: Subsection (1.5) is effective July 1, 2022.] “Behavioral health entity” means a facility or provider organization engaged in providing community-based health services, which may include behavioral health disorder services, alcohol use disorder services, or substance use disorder services, including crisis stabilization, acute or ongoing treatment, or community mental health center services as described in section 27-66-101 (2) and (3), but does not include:

(a) Residential child care facilities as defined in section 26-6-102 (33); or

(b) Services provided by a licensed or certified mental health care provider under the provider’s individual professional practice act on the provider’s own premises.

(2) “Certified peace officer” means any certified peace officer as described in section 16-2.5-102, C.R.S.

(3) “Court” means any district court of the state of Colorado and the probate court in the city and county of Denver.

(4) “Court-ordered evaluation” means an evaluation ordered by a court pursuant to section 27-65-106.

(4.5) “Danger to self or others” means:

(a) With respect to an individual, that the individual poses a substantial risk of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm to himself or herself; or

(b) With respect to other persons, that the individual 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.

(5) ~~“Department” means the department of human services.~~ **BEHAVIORAL HEALTH ADMINISTRATION" OR "BHA" MEANS THE BEHAVIORAL HEALTH ADMINISTRATION ESTABLISHED IN SECTION 27-60-203.**

(5.5) “Emergency medical services facility” means a facility licensed pursuant to part 1 of article 3 of title 25 or certified pursuant to section 25-1.5-103, or any other licensed and certified facility that provides emergency medical services. An emergency medical services facility is ~~not~~ required to be, but may elect to become, a facility **MAINTAIN A BASE DESIGNATION designated or approved by the executive director COMMISSIONER** for a seventy-two-hour treatment and evaluation pursuant to section 27-65-105.

(6) ~~“Executive director COMMISSIONER” means the~~ **COMMISSIONER OF THE BEHAVIORAL HEALTH ADMINISTRATION ESTABLISHED IN SECTION 27-60-203** ~~executive director of the department of human services.~~

(7) [Editor’s note: This version of subsection (7) is effective until July 1, 2022.] “Facility” means a public hospital or a licensed private hospital, clinic, community mental health center or clinic, acute treatment unit, institution, or residential child care facility that provides treatment for persons with mental health disorders.

(8) “Family member” means a spouse, parent, adult child, or adult sibling of a person with a mental health disorder.

(9) “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 his or her 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 his or her essential needs that could result in substantial bodily harm. A person of any age may be “gravely disabled”, but such term does not include a person whose decision-making capabilities are limited solely by his or her developmental disability.

(10) “Hospitalization” means twenty-four-hour out-of-home placement for treatment in a facility for a person with a mental health disorder.

(11) “Independent professional person” means a professional person, as defined in subsection (17) of this section, who evaluates a minor’s condition as an independent decision-maker and whose recommendations are based on the standard of what is in the best interest of the minor. The professional person may be associated with the admitting mental health facility if he or she is free to independently evaluate the minor’s condition and need for treatment and has the authority to refuse admission to any minor who does not satisfy the statutory standards specified in section 27-65-103 (3).

~~(11.3) “Intervening professional” means a person described in section 27-65-105 (1)(a)(II) who may effect a seventy-two-hour hold under the provisions outlined in section 27-65-105.~~

WHO HAS SUCCESSFULLY COMPLETED A BHA ISSUED TRAINING AND MEETS ONE OF THE BELOW CRITERIA: The following persons may act as intervening professionals to effect a seventy-two-hour hold, as provided in subsections (1)(a)(I) and (1)(a)(I.5) of this section:

(A) A certified peace officer;

(B) A professional person;

(C) A PHYSICIAN ASSISTANT LICENSED UNDER THE PROVISIONS OF 12-240-113;

(D) AN ADVANCED PRACTICE REGISTERED NURSE AS DEFINED IN SECTION 12-255-104(1);

~~(E)~~ **(E)** A registered professional nurse as defined in section 12-255-104 (11) ~~who by reason of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing;~~

~~(D)~~ A licensed marriage and family therapist, licensed professional counselor, or addiction counselor licensed under part 5, 6, or 8 of article 245 of title 12 who, by reason of postgraduate education and additional preparation, has gained knowledge, judgment, and skill in psychiatric or clinical mental health therapy, forensic psychotherapy, or the evaluation of mental health disorders; or

(F) A licensed marriage and family therapist licensed under the provisions of part 5 of article 245 of title 12;

(G) A licensed professional counselor licensed under the provisions of part 6 of article 245 of title 12;

(H) An addiction counselor licensed under the provisions of part 8 of article 245 of title 12; or

(I) A licensed clinical social worker licensed under the provisions of part 4 of article 245 of title 12.

(11.5) “Mental health disorder” includes one or more substantial disorders of the cognitive, volitional, or emotional processes that grossly impairs judgment or capacity to recognize reality or to control behavior. An intellectual or developmental disability is insufficient to either justify or exclude a finding of a mental health disorder pursuant to the provisions of this article 65.

(12) “Minor” means a person under eighteen years of age; except that the term does not include a person who is fifteen years of age or older who is living separately and apart from his or her parent or legal guardian and is managing his or her financial affairs, regardless of his or her source of income, or who is married and living separately and apart from his or her parent or legal guardian.

(13) “Patient representative” means a person designated by a mental health facility to process patient complaints or grievances or to represent patients who are minors pursuant to section 27-65-103 (5).

(14) Repealed.

(15) “Petitioner” means any person who files any petition in any proceeding in the interest of any person who allegedly has a mental health disorder or is allegedly gravely disabled.

(16) “Physician” means a person licensed to practice medicine in this state.

(17) “Professional person” means a person licensed to practice medicine in this state, a psychologist ~~certified~~ **LICENSED** to practice in this state, or a person licensed and in good standing to practice medicine in another state or a psychologist ~~certified~~ **LICENSED** to practice and in good standing in another state who is providing medical or clinical services at a treatment facility in this state that is operated by the armed forces of the United States, the United States public health service, or the United States department of veterans affairs.

(18) “Residential child care facility” means a facility licensed by the state department of human services pursuant to article 6 of title 26, C.R.S., to provide group care and treatment for children as such facility is defined in section 26-6-102 (33), C.R.S. A residential child care facility may be eligible for designation by the executive director of the department of human services pursuant to this article.

(19) “Respondent” means either a person alleged in a petition filed pursuant to this article 65 to have a mental health disorder or be gravely disabled or a person certified pursuant to the provisions of this article 65.

(20) “Screening” means a review of all petitions, to consist of an interview with the petitioner and, whenever possible, the respondent, an assessment of the problem, an explanation of the petition to the respondent, and a determination of whether the respondent needs and, if so, will accept, on a voluntary basis, comprehensive evaluation, treatment, referral, and other appropriate services, either on an inpatient or an outpatient basis.

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

(1) Nothing in this article 65 in any way limits the right of any person to make 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 hospital or institutional care and treatment for a mental health disorder by consent of the guardian for so long as the ward agrees to such care and treatment. Within ten days after any such admission, the guardian shall notify in writing the court that appointed the guardian of the admission.

(other sections moved to 27-65-103.5)

(9) For the purpose of this article, the treatment by prayer in the practice of the religion of any church which teaches reliance on spiritual means alone for healing shall be considered a form of treatment.

(10) The medical and legal status of all voluntary patients receiving treatment for mental health disorders in inpatient or custodial facilities must be reviewed at least once every six months.

(11) Voluntary patients shall be afforded all the rights and privileges customarily granted by hospitals to their patients.

(12) If at any time during a seventy-two-hour evaluation of a person who is confined involuntarily the facility staff requests the person to sign in voluntarily and he or she elects to do so, the following advisement shall be given orally and in writing and an appropriate notation shall be made in his or her medical record by the professional person or his or her designated agent:

NOTICE

The decision to sign in voluntarily should be made by you alone and should be free from any force or pressure implied or otherwise. If you do not feel that you are able to make a truly voluntary decision, you may continue to be held at the hospital involuntarily. As an involuntary patient, you will have the right to protest your confinement and request a hearing before a judge.

27-65-103.5 Voluntary applications for mental health services - treatment of minors

~~(2)~~ Notwithstanding any other provision of law, a minor who is fifteen years of age or older, whether with or without the consent of a parent or legal guardian, may consent to receive mental health services to be rendered by a facility or by a professional person or mental health professional licensed pursuant to part 3, 4, 5, 6, or 8 of article 245 of title 12 in any practice setting. Such consent shall not be subject to disaffirmance because of minority. The professional person or licensed mental health professional rendering mental health services to a minor may, with or without the consent of the minor, advise the parent or legal guardian of the minor of the services given or needed.

~~(3)~~ A minor who is fifteen years of age or older or a parent or legal guardian of a minor on the minor's behalf may make voluntary application for hospitalization. Application for hospitalization on behalf of a minor who is under fifteen years of age and who is a ward of the department of human services shall not be made unless a guardian ad litem has been appointed for the minor or a petition for the same has been filed with the court by the agency having custody of the minor; except that such an application for hospitalization may be made under emergency circumstances requiring immediate hospitalization, in which case the agency shall file a petition for appointment of a guardian ad litem within seventy-two hours after application for admission is made, and the court shall appoint a guardian ad litem forthwith. Procedures for hospitalization of such minor may proceed pursuant to this section once a petition for appointment of a guardian ad litem has been filed, if necessary. Whenever such application for hospitalization is made, an independent professional person shall interview the minor and conduct a careful investigation into the minor's background, using all available sources, including, but not limited to, the parents or legal guardian and the school and any other social agencies. Prior to admitting a minor for hospitalization, the independent professional person shall make the following findings:

- (a) That the minor has a mental health disorder and is in need of hospitalization;
- (b) That a less restrictive treatment alternative is inappropriate or unavailable; and
- (c) That hospitalization is likely to be beneficial.

(4) An interview and investigation by an independent professional person shall not be required for a minor who is fifteen years of age or older and who, upon the recommendation of his or her treating professional person, seeks voluntary hospitalization with the consent of his or her parent or legal guardian. In order to assure that the minor's consent to such hospitalization is voluntary, the minor shall be advised, at or before the time of admission, of his or her right to refuse to sign the admission consent form and his or her right to revoke his or her consent at a later date. If a minor admitted pursuant to this subsection (4) subsequently revokes his or her consent after admission, a review of his or her need for hospitalization pursuant to subsection (5) of this section shall be initiated immediately.

(5) (a) The need for continuing hospitalization of all voluntary patients who are minors shall be formally reviewed at least every two months. Review pursuant to this subsection (5) shall fulfill the requirement specified in section 19-1-115 (8), C.R.S., when the minor is fifteen years of age or older and consenting to hospitalization.

(b) The review shall be conducted by an independent professional person who is not a member of the minor's treating team; or, if the minor, his or her physician, and the minor's parent or guardian do not object to the need for continued hospitalization, the review required pursuant to this subsection (5) may be conducted internally by the hospital staff.

(c) The independent professional person shall determine whether the minor continues to meet the criteria specified in subsection (3) of this section and whether continued hospitalization is appropriate and shall at least conduct an investigation pursuant to subsection (3) of this section.

(d) Ten days prior to the review, the patient representative at the mental health facility shall notify the minor of the date of the review and shall assist the minor in articulating to the independent professional person his or her wishes concerning continued hospitalization.

(e) Nothing in this section shall be construed to limit a minor's right to seek release from the facility pursuant to any other provisions under the law.

(6) Every six months the review required pursuant to subsection (5) of this section shall be conducted by an independent professional person who is not a member of the minor's treating team and who has not previously reviewed the child pursuant to subsection (5) of this section.

(7)

(a) When a minor does not consent to or objects to continued hospitalization, the need for such continued hospitalization shall, within ten days, be reviewed pursuant to subsection (5) of this section by an independent professional person who is not a member of the minor's treating team and who has not previously reviewed the child pursuant to this subsection (7). The minor shall be informed of the results of such review within three days of completion of such review. If the conclusion reached by such professional person is that the minor no longer meets the standards for hospitalization specified in subsection (3) of this section, the minor shall be discharged.

(b) If, twenty-four hours after being informed of the results of the review specified in paragraph (a) of this subsection (7), a minor continues to affirm the objection to hospitalization, the minor shall be advised by the director of the facility or his or her duly appointed representative that the minor has the right to retain and consult with an attorney at any time and that the director or his or her duly appointed representative shall file, within three days after the request of the minor, a statement requesting an attorney for the minor or, if the minor is under fifteen years of age, a guardian ad litem. The minor, his or her attorney, if any, and his or her parent, legal guardian, or guardian ad litem, if any, shall also be given written notice that a hearing upon the recommendation for continued hospitalization may be had before the court or a jury upon written request directed to the court pursuant to paragraph (d) of this subsection (7).

(c) Whenever the statement requesting an attorney is filed with the court, the court shall ascertain whether the minor has retained counsel, and, if he or she has not, the court shall, within three days, appoint an attorney to represent the minor, or if the minor is under fifteen years of age, a guardian ad litem. Upon receipt of a petition filed by the guardian ad litem, the court shall appoint an attorney to represent the minor under fifteen years of age.

(d) The minor or his or her attorney or guardian ad litem may, at any time after the minor has continued to affirm his or her objection to hospitalization pursuant to subsection (7)(b) of this section, file a written request that the recommendation for continued hospitalization be reviewed by the court or that the treatment be on an outpatient basis. If review is requested, the court shall hear the matter within ten days after the request, and the court shall give notice to the minor; his or her attorney, if any; his or her parents or legal guardian; his or her guardian ad litem, if any; the independent professional person; and the minor's treating team of the time and place of the hearing. The hearing must be held in accordance with section 27-65-111; except that the court or jury shall determine that the minor is in need of care and treatment if the court or jury makes the

following findings: That the minor has a mental health disorder and is in need of hospitalization, that a less restrictive treatment alternative is inappropriate or unavailable, and that hospitalization is likely to be beneficial. At the conclusion of the hearing, the court may enter an order confirming the recommendation for continued hospitalization, discharge the minor, or enter any other appropriate order.

(e) For purposes of this subsection (7), “objects to hospitalization” means that a minor, with the necessary assistance of hospital staff, has written his or her objections to continued hospitalization and has been given an opportunity to affirm or disaffirm such objections forty-eight hours after the objections are first written.

(f) A minor may not again object to hospitalization pursuant to this subsection (7) until ninety days after conclusion of proceedings pursuant to this subsection (7).

(g) In addition to the rights specified under section 27-65-117 for persons receiving evaluation, care, or treatment, a written notice specifying the rights of minor children under this section shall be given to each minor upon admission to hospitalization.

(8) A minor who no longer meets the standards for hospitalization specified in subsection (3) of this section shall be discharged.

27-65-104. Rights of respondents

Unless specifically stated in an order by the court, a respondent shall not forfeit any legal right or suffer legal disability by reason of the provisions of this article.

27-65-105. Emergency procedure

(1) Emergency procedure may be invoked under one of the following conditions:

(a) (I) When any person appears to have a mental health disorder and, as a result of such mental health disorder, appears to be an imminent danger to others or to himself or herself or appears to be gravely disabled, then an intervening professional, ~~as specified in subsection (1)(a)(II) of this section,~~ upon probable cause and with such assistance as may be required, may take the person into custody, or cause the person to be taken into custody, and placed in a facility designated ~~or approved by the executive director~~ **COMMISSIONER** for a seventy-two-hour treatment and evaluation. **ALL EMERGENCY MEDICAL SERVICES FACILITIES SHALL BE REQUIRED TO MAINTAIN A 72-HOUR TREATMENT AND EVALUATION BASE DESIGNATION BY THE COMMISSIONER.** ~~If such a facility is not available, the person may be taken to an emergency medical services facility.~~

~~(1.5) When any person appears to have a mental health disorder and, as a result of such mental health disorder, is in need of immediate evaluation for treatment in order to prevent physical or psychiatric harm to others or to himself or herself, then an intervening professional, as specified in subsection (1)(a)(II) of this section, upon probable cause and with such assistance as may be required, may immediately transport the person to an outpatient mental health facility or other~~

~~clinically appropriate facility designated or approved by the executive director. If such a facility is not available, the person may be taken to an emergency medical services facility.~~

~~(H) The following persons may act as intervening professionals to effect a seventy-two-hour hold, as provided in subsections (1)(a)(I) and (1)(a)(I.5) of this section:~~

~~(A) A certified peace officer;~~

~~(B) A professional person;~~

~~(C) A registered professional nurse as defined in section 12-255-104 (11) who by reason of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing;~~

~~(D) A licensed marriage and family therapist, licensed professional counselor, or addiction counselor licensed under part 5, 6, or 8 of article 245 of title 12 who, by reason of postgraduate education and additional preparation, has gained knowledge, judgment, and skill in psychiatric or clinical mental health therapy, forensic psychotherapy, or the evaluation of mental health disorders; or~~

~~(b) Upon an **ANY PERSON'S** affidavit sworn to or affirmed before a judge **OR MAGISTRATE** that relates sufficient facts to establish 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 others or to himself or herself or appears to be gravely disabled, the court may order the person described in the affidavit to be taken into custody and placed in a facility designated or approved by the executive director **COMMISSIONER** for a seventy-two-hour treatment and evaluation. Whenever in this article 65 a facility is to be designated or approved by the executive director, hospitals, if available, must be approved or designated in each county before other facilities are approved or designated. Whenever in this article 65 a facility is to be designated or approved by the executive director as a facility for a stated purpose and the facility to be designated or approved is a private facility, the consent of the private facility to the enforcement of standards set by the executive director is a prerequisite to the designation or approval.~~

~~(c) Upon an affidavit sworn to or affirmed before a judge that relates sufficient facts to establish that a person appears to have a mental health disorder and, as a result of the mental health disorder, is in need of immediate evaluation for treatment to prevent physical or psychiatric harm to others or to himself or herself, the court may order the person described in the affidavit to be transported to an outpatient mental health facility or other clinically appropriate facility designated or approved by the executive director.~~

~~(2) When a person is taken into custody pursuant to subsection (1) of this section, he or she must not be detained in a jail, lockup, or other place used for the confinement of persons charged with or convicted of penal offenses **REGARDLESS OF WHETHER A WARRANT HAS ISSUED FOR THE PERSON'S ARREST.**~~

~~(3) When a person is taken into emergency custody by an intervening professional pursuant to subsection (1) of this section and is presented to an emergency medical services facility or a~~

facility that is designated ~~or approved~~ by the **COMMISSIONER** ~~executive director~~, the facility shall require an application in writing, stating the circumstances under which the person's condition was called to the attention of the intervening professional and further stating sufficient facts, obtained from the intervening professional's personal observations or obtained from others whom he or she 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 others or to himself or herself, **OR** is gravely disabled, ~~or is in need of immediate evaluation for treatment~~. 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. A copy of the application must be furnished to the person being evaluated, and the application must be retained in accordance with the provisions of section 27-65-121 (4).

~~(4) If the seventy-two-hour treatment and evaluation facility admits~~ **ACCEPTS** the person, it may detain him or her for evaluation and treatment for a period not to exceed seventy-two hours, ~~excluding Saturdays, Sundays, and holidays if evaluation and treatment services are not available on those days. For the purposes of this subsection (4), evaluation and treatment services are not deemed to be available merely because a professional person is on call during weekends or holidays.~~ If, in the opinion of the ~~professional~~ person in charge of the evaluation, the person can be properly cared for without being detained, he or she shall be provided services on a voluntary basis.

~~(5) Each person admitted to~~ **DETAINED FOR** a seventy-two-hour treatment and evaluation facility under the provisions of this article shall receive an evaluation as soon as possible after he or she is ~~admitted~~ **ACCEPTED BY THE FACILITY** and shall receive such treatment and care as his or her condition requires for the full period that he or she is held. **THE EVALUATION SHALL DETERMINE IF A PERSON MAY BE RELEASED, REFERRED FOR FURTHER CARE, OR CERTIFIED PURSUANT TO 27-65-107.**

A. EVERY EVALUATION MUST BE COMPLETED USING A STANDARDIZED FORM APPROVED BY THE COMMISSIONER OF THE BEHAVIORAL HEALTH ADMINISTRATION.

B. AN EVALUATION MAY BE COMPLETED BY:

a. A PROFESSIONAL PERSON

b. A PROFESSIONAL WHO HAS COMPLETED TRAINING REQUIREMENTS AS DETERMINED BY THE BHA AND IS A LICENSED ADVANCED PRACTICE NURSE, A LICENSED PHYSICIANS ASSISTANT, A LICENSED CLINICAL SOCIAL WORKER, OR A LICENSED PROFESSIONAL COUNSELOR.

~~The person shall be released before seventy-two hours have elapsed if in the opinion of the professional person, the person no longer requires evaluation or treatment. Persons who have been detained for seventy-two-hour evaluation and treatment shall be released, referred for~~

~~further care and treatment on a voluntary basis, or certified for treatment pursuant to section 27-65-107.~~

- C. IF AFTER AN EVALUATION, THE EVALUATING PERSON DETERMINES THE INDIVIDUAL MEETS CRITERIA TO BE CERTIFIED FOR TREATMENT PURSUANT TO 27-65-107 AND THE FACILITY CANNOT LOCATE AN AVAILABLE PLACEMENT FOR THE INDIVIDUAL, IF THE FACILITY IS APPROPRIATELY DESIGNATED BY THE COMMISSIONER, THE FACILITY MAY INITIATE A SHORT-TERM CERTIFICATION AND DETAIN THE INDIVIDUAL FOR AN ADDITIONAL 5 DAYS WHILE PLACEMENT IS LOCATED.
- a. ANY FACILITY THAT IS APPROPRIATELY DESIGNATED BY THE COMMISSIONER FOR 72-HOUR TREATMENT AND EVALUATION THAT INITIATES A SHORT-TERM CERTIFICATION SHALL IMMEDIATELY NOTIFY THE BEHAVIORAL HEALTH ADMINISTRATION. THE BHA SHALL ASSIST THE FACILITY IN LOCATING AN APPROPRIATE PLACEMENT OPTION.
 - b. IF A FACILITY, WITH ASSISTANCE FROM THE BHA, IS UNABLE TO LOCATE AN APPROPRIATE PLACEMENT OPTION WITHIN 5 DAYS, THE SHORT-TERM CERTIFICATION SHALL BE TERMINATED.

~~(6) At any time during emergency custody of an individual pursuant to this section in either an emergency medical services facility or a designated facility, if, in the opinion of a professional person, or an advanced practice nurse licensed pursuant to part 1 of article 255 of title 12 and included in the advanced practice registry pursuant to section 12-255-111 with a population focus in psychiatry or mental health, acting within his or her scope of practice, the person no longer meets the standards for emergency custody or detention and his or her care can be provided in another setting, The person must be appropriately discharged or referred for further care and treatment on a voluntary basis, or certified for treatment pursuant to section 27-65-107.~~

(7) ALL INDIVIDUALS WHO HAVE BEEN DETAINED FOR SEVENTY-TWO-HOUR EVALUATION AND TREATMENT SHALL RECEIVE A DISCHARGE SUMMARY AND COPY OF A COMPLETED EVALUATION FORM.

- A. Discharge summaries shall be completed for all clients regardless of discharge status before the individual is released.
- B. The discharge summary shall be signed by the client or the client's parent or guardian when possible, the evaluating professional, when possible and the clinical supervisor or program director.
- C. Medication changes made due to differences in formulary shall be noted on the discharge summary.

- D. The facility shall document in the client's medical record whether or not the discharge summary was provided to the client. If it was not provided to the client, documentation shall include the reason it was not provided. If the individual is under 18 years old, the discharge summary shall be provided to the individual's parent or guardian. If the individual has identified and authorized an individual to act as a lay caregiver, a copy of the discharge summary shall be provided to the lay caregiver, when possible.
- E. Discharge summaries shall include the following:
- a. Continuing care plan
 - b. Any medications that were changed during the emergency mental health procedure including any medications the patient was taking/previously prescribed upon admission, and which (if any) were changed or stopped at the time of discharge.
 - c. Any screening/diagnostic tests during the emergency mental health procedure.
 - d. Any therapeutic treatments during the emergency mental health procedure
 - e. Any labs (blood tests) or imaging (such as c-t, mri, etc.) that were completed or attempted.
 - f. Vital signs, if applicable.
 - g. A copy of any Psychiatric Advance Directive that was presented to the facility
 - h. How to contact the treating facility if needed.
- F. Continuing Care. Each discharge summary shall include a continuing care plan. The plan shall include:
- a. Any prescriptions for the individual and a 7-day supply of medication
 - b. An appointment for ongoing outpatient behavioral health care with the individual's care provider. If he or she does not have a care provider, the facility shall notify the statewide care coordination infrastructure as established in 27-60-204.
 - c. Develop a safety plan with the patient and, if applicable, the designated lay caregiver or guardian.
 - d. Notification of the patient's primary care provider, if applicable.
 - e. The facility shall ensure any individual who is discharged without food, housing, or economic security is referred to appropriate services in the community and these referrals and linkages shall be documented in the client's medical record.
 - f. If the facility has provided care and treatment to the individual more than once in a twelve-month period under an emergency mental health procedure or emergency substance use commitment, the facility shall refer the individual to the transition specialist program created pursuant to 27-66.5-103.
 - i. With the patient's consent, the facility shall also document information regarding the patient's pre-intake living situation for the purposes of data collection. Such information would include patient statistics about stable

- housing, community services efficiency, substance use, social support networks, resource accessibility, and employment.
- g. The phone number and text line to the Colorado Crisis Services hotline and information on the availability of peer support services.
 - h. Information on how to establish a psychiatric advance directive if one was not presented.
- G. The facility shall, at a minimum, attempt to follow-up with the individual, his or her family or guardian, or identified lay caregiver at least 48 hours after discharge. The facility is encouraged to utilize peer support professionals, as defined in 27-60-108 (2)(b) when performing follow-up care with individuals and in developing a continuing care plan.
- a. A facility may facilitate follow-up care through contracts with a community-based behavioral health provider or Colorado behavioral health crisis hotline.
 - b. Follow-up care may be conducted in person, via telehealth or by phone;
- H. The facility shall encourage the client to identify a family, friend, or other individual to act as a lay caregiver to participate in discharge planning and shall notify the client that he or she is able to rescind the authorization at any time. If the individual identifies a person to act as a lay caregiver and has provided necessary authorization, the facility shall attempt to involve that individual in discharge planning. The facility shall notify the lay caregiver that the client is being discharged or transferred.
- a. A copy of the continuing care plan shall be filed in the client's case record.
- I. Referral Policies/Community Linkage. The entity shall develop, maintain and document compliance with written policies and procedures for referring clients and receiving client referrals from other service providers.

(8) RIGHTS OF INDIVIDUALS DETAINED FOR SEVENTY-TWO-HOUR TREATMENT AND EVALUATION

(1) Each person detained for 72-hour treatment and evaluation has the following rights, regardless of receiving facility, a list of which shall be prominently posted in the predominant languages of the community and explained in a language or modality accessible to the patient. The facility shall assist the patient in exercising the rights granted in this subdivision.

- Immediately upon placement in the facility, to receive a written copy and verbal description in a language or modality accessible to the patient of all his or her enumerated rights outlined in this section and any accompanying rules, and a minor child and his or her guardian shall receive written notice of his or her rights as provided in section 27-65-103(7)(g).
- To be told verbally and in writing:
 - The reason for his or her detainment

- The limitations of their detainment, including a description of their right to refuse medication, and that the detainment does not mean that all treatment during confinement is mandatory
 - If not certified pursuant to 27-65-107, the patient has the right to leave after 72 hours
- To request a change to voluntary status.
- To be treated fairly, with respect and recognition of the patient's dignity and individuality by all employees of the treatment facility with whom the patient comes in contact.
- To receive the same consideration and access to appropriate services as others, regardless of race, color, national origin, age, gender identity, sexual orientation, political affiliation, religious beliefs, financial status, or disability;
- To retain and consult with an attorney at any time.
- A patient has the right to meet with or call a personal clinician, spiritual advisor, counsel, crisis hotline, family, workplace, childcare provider, or school at all reasonable times. The patient has the right to continue the practice of religion.
- The legal guardian of the patient shall be given the opportunity to authorize disclosure of the patient's presence in the facility to callers and visitors who may seek to communicate with the patient.
- To see and receive the services of a patient advocate who has no direct or indirect clinical, administrative, or financial responsibility for the person. The person must have access to such services within 2 hours of their request.
- To have reasonable access to telephones or other communication devices, and to make and to receive calls or communications in privacy. 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.
- To wear his or her own clothes, keep and use personal possessions, and keep and be allowed to spend a reasonable sum of the person's own money;
- To have access to medical records pursuant to 27-65-121;
- To have treatment records remain confidential, except as required by law;
- To not be fingerprinted, unless required by law;
- A person may be photographed upon admission for identification and the administrative purpose of the facility. The photographs shall be confidential and shall not be released by the facility except pursuant to court order. No other nonmedical photographs shall be taken or used without appropriate consent or authorization.
- To have appropriate access to adequate food in accordance with dietary preferences and practices, water, and hygiene products;
- To have physical privacy in showering, changing, and using the restroom; and
- To have frequent and convenient opportunities to meet with visitors.

A person's right under subsection (1) of this section may be denied only if access to the item, program, or service would endanger the safety of the individual or another person in close proximity and may only be denied by the evaluating person providing treatment. Denial of any right shall in all cases be entered into the person's treatment record. Information pertaining to a denial of rights contained in the person's treatment record shall be made available, upon request, to the person or his or her attorney.

No person may intentionally retaliate or discriminate against any patient or employee for contacting or providing information to any official or to an employee of any state protection and advocacy agency, or for initiating, participating in, or testifying in a grievance procedure or in an action for any remedy authorized under this section. Whoever violates this paragraph may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

Any patient whose rights are protected under this section who suffers damage as the result of the unlawful denial or violation of any of these rights may bring an action against the person or facility, including the state or any political subdivision thereof, which unlawfully denies or violates the right in question. The individual may recover any damages as may be proved, together with exemplary damages of not less than \$1000 for each violation and such costs and reasonable actual attorney fees as may be incurred.

(79)

(a) On or before July 1, 2019, and each July 1 thereafter, each emergency medical services facility that has treated a person pursuant to this section shall provide an annual report to the department that includes only aggregate and nonidentifying information concerning persons who were treated at an emergency medical services facility pursuant to this section. The report must comply with the provisions of section 24-1-136 (9) and is exempt from the provisions of section 24-1-136 (11)(a)(I). The report must contain the following:

(I) The names and counties of the facilities;

(II) The total number of persons treated pursuant to this section, including a summary of demographic information;

(III) A summary regarding the different reasons for which persons were treated pursuant to this section; and

(IV) A summary of the disposition of persons transferred to a designated facility.

(b)

(I) Any information aggregated and provided to the department pursuant to this subsection (7) is privileged and confidential. Such information must not be made available to the public except in an aggregate format that cannot be used to identify an individual facility. The information is not subject to civil subpoena and is not discoverable or admissible in any civil, criminal, or administrative proceeding against an emergency medical services facility or health care professional. The information must be used only to assess statewide behavioral health services

needs and to plan for sufficient levels of statewide behavioral health services. In the collection of data to accomplish the requirements of this subsection (7), the department shall protect the confidentiality of patient records, in accordance with state and federal laws, and shall not disclose any public identifying or proprietary information of any hospital, hospital administrator, health care professional, or employee of a health care facility.

(II) Subsection (7)(b)(I) of this section does not apply to information that is otherwise available from a source outside of the data collection activities required pursuant to subsection (7)(a) of this section.

Create new 27-65-105.5 Emergency Transportation Procedure

Repeal 27-65-105(1)(a)(I.5), C.R.S.

Repeal 27-65-105(1)(c), C.R.S.

(1) Any person who appears or is alleged to have a mental health disorder and, as a result of the mental health disorder, it is believed that without professional intervention this individual could become a danger to others or themselves or be gravely disabled and community-based services are unavailable or have been unsuccessful then a certified peace officer as defined in 27-65-102(2) or an emergency medical services provider as defined in 25-3.5-103(8) upon probable cause and with such assistance as it may be required, may immediately transport the person to an outpatient mental health facility 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.

(2) Upon ANY PERSON'S affidavit sworn to or affirmed before a judge OR MAGISTRATE that relates sufficient facts to establish that a person appears or is alleged to have a mental health disorder and, as a result of the mental health disorder, it is believed that without professional intervention this individual could become a danger to others or themselves or be gravely disabled and community-based services are unavailable or have been unsuccessful then the court may order the person described in the affidavit to be transported to an outpatient mental health facility or other clinically appropriate facility designated ~~or approved~~ by the ~~executive director~~ COMMISSIONER. If such a service is not available, the person may be taken to an emergency medical services facility.

(3) When a person is transported against their will pursuant to subsection (1) or (2) of this section and is presented to an emergency medical services facility or a facility that is designated ~~or approved~~ by the COMMISSIONER ~~executive director~~, the facility shall require an application in writing, stating the circumstances under which the person's condition was called to the attention of the peace officer or emergency medical service provider and further stating sufficient

facts, obtained from personal observations or obtained from others whom he or she reasonably believes to be reliable, to establish that the person appears to have a mental health disorder and, as a result of the mental health disorder, it is believed that without professional intervention this individual could become a danger to others or themselves or be gravely disabled, ~~or is in need of immediate evaluation for treatment.~~ The application must indicate the name of the individual, when the person was taken into custody and what community-based services were provided prior to taking the person into custody. A copy of the application must be furnished to the person being transported.

(3) Once the person is accepted by the facility, an intervening professional must screen the individual within two hours to establish if the person meets criteria for an emergency procedure pursuant to 27-65-105. Once the screening has been completed, the intervening professional must first pursue voluntary treatment and evaluation. If the person refuses or the intervening professional has ~~reason~~ REASONABLE GROUNDS to believe the person will not remain voluntary, he or she may enact an emergency procedure pursuant to 27-65-105.

(4) Each person detained pursuant to 27-65-105.5 has the following rights, which must be explained to the individual, before being transported to a receiving facility.

- (a) The person has the right not to be detained for longer than 8 hours total. He or she may not be transported for longer than 6 hours and has the right to an evaluation within 2 hours once accepted by the receiving facility.
- (b) The person has the right to make a phone call to an interested party prior to being transported. If the person does not have access to a phone, the peace officer or emergency medical services provider shall make immediate accommodations to ensure the person may contact an interested party if they so choose.
- (c) The person has the right to continue to wear his or her own clothes and keep and use non-dangerous personal possessions that the person had in their possession at the time of the detainment, including a cell phone.
- (d) The person has the right to have appropriate access to adequate food and water.
- (e) To be treated fairly, with respect and recognition of the patient's dignity and individuality.
- (f) To file a grievance with the Behavioral Health Administration or the Office of the Behavioral Health Ombudsman

27-65-106. Court-ordered evaluation for persons with mental health disorders

(1) Any person alleged to have a mental health disorder and, as a result of the mental health disorder, to be a danger to others or to himself or herself or to be gravely disabled may be given an evaluation of his or her condition under a court order pursuant to this section.

(2) Any individual may petition the court in the county in which the respondent resides or is physically present alleging that there is a person who appears to have a mental health disorder

and, as a result of the mental health disorder, appears to be a danger to others or to himself or herself or appears to be gravely disabled and requesting an evaluation of the person's condition.

(3) The petition for a court-ordered evaluation must contain the following:

(a) The name and address of the petitioner and his or her interest in the case;

(b) The name of the person for whom evaluation is sought, who shall be designated as the respondent, and, if known to the petitioner, the address, age, sex, marital status, and occupation of the respondent;

(c) 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 others or to himself or herself or be gravely disabled and showing reasonable grounds to warrant an evaluation;

(d) 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;

(e) The name, address, and telephone number of the attorney, if any, who has most recently represented the respondent. If there is no attorney, there shall be a statement as to whether, to the best knowledge of the petitioner, the respondent meets the criteria established by the legal aid agency operating in the county or city and county for it to represent a client.

(4) Upon receipt of a petition satisfying the requirements of subsection (3) of this section, **IF THE COURT IS NOT SATISFIED THAT IT HAS PROBABLE CAUSE TO ISSUE AN ORDER PURSUANT TO SUBSECTION (6) OF THIS SECTION**, the court shall designate a facility, approved by the executive director, or ~~a professional person~~ **AN INTERVENING PROFESSIONAL** to provide screening of the respondent to determine whether there is probable cause to believe the allegations.

(5) Following screening, the facility or professional person designated by the court shall file his or her report with the court. The report must include a recommendation as to whether there is probable cause to believe that the respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to others or to himself or herself or is gravely disabled and whether the respondent will voluntarily receive evaluation or treatment. The screening report submitted to the court is confidential in accordance with section 27-65-121 and must be furnished to the respondent or his or her attorney or personal representative.

(6) Whenever it appears, by petition ~~and~~ **OR** screening **OR BOTH**, 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 others or to himself or herself or is gravely disabled and that efforts have been made to secure the cooperation of the respondent, who has refused or failed to accept evaluation voluntarily, the court shall issue an order for evaluation authorizing a certified peace officer to take the respondent into custody and place him or her in a facility designated by the ~~executive director~~ **COMMISSIONER** for seventy-two-hour treatment and evaluation. At the time of taking the respondent into custody, a copy of the petition and the order for evaluation must be given to the respondent, and promptly thereafter to any one person designated by the respondent and to the person in charge of the seventy-two-hour treatment and evaluation facility named in the order or his or her designee.

(7) The respondent shall be evaluated as promptly as possible and shall in no event be detained longer than seventy-two hours under the court order, ~~excluding Saturdays, Sundays, and holidays if treatment and evaluation services are not available on those days.~~ Within that time, the respondent shall be released **UNDER THE PROVISIONS OF SECTION 27-65-105(5)**, referred for further care and treatment on a voluntary basis, or certified for short-term treatment.

(8) At the time the respondent is taken into custody for evaluation or within a reasonable time thereafter, unless a responsible relative is in possession of the respondent's personal property, the certified peace officer taking him or her into custody shall take reasonable precautions to preserve and safeguard the personal property in the possession of or on the premises occupied by the respondent.

(9) When a person is involuntarily admitted to a seventy-two-hour treatment and evaluation facility under the provisions of this section or section 27-65-105, the person shall be advised by the facility director or his or her duly appointed representative that the person is going to be examined with regard to his or her mental condition.

(10) Whenever a person is involuntarily admitted to a seventy-two-hour treatment and evaluation facility, he or she shall be advised by the facility director or his or her duly appointed representative of his or her right to retain and consult with any attorney at any time and that, if he or she cannot afford to pay an attorney, upon proof of indigency, one will be appointed by the court without cost.

27-65-107. Certification for short-term treatment - procedure

(1) If a person detained for seventy-two hours pursuant to the provisions of section 27-65-105, ~~or~~ a respondent under court order for evaluation pursuant to section 27-65-106, has received an evaluation, he or she may be certified for not more than three months of 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 himself or herself 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, his or her acceptance of voluntary treatment shall not preclude certification.

(c) The facility which will provide short-term treatment has been designated or approved by the ~~executive director~~ **COMMISSIONER** to provide such treatment.

(2) The notice of certification must be signed by a professional person **OR OTHER PROFESSIONAL AS DESCRIBED IN 27-65-105 (5) (B)** on the staff of the evaluation **OR SHORT-TERM TREATMENT** facility who participated in the evaluation and must state facts sufficient to establish reasonable grounds to believe that the person has a mental health disorder and, as a result of the mental health disorder, is a danger to others or to himself or herself or is

gravely disabled. The certification must be filed with the court within forty-eight hours, excluding Saturdays, Sundays, and court holidays, of the date of certification. The certification must be filed with the court in the county in which the respondent ~~resided~~ **RESIDES** or was physically present immediately prior to being taken into custody.

(3) Within twenty-four hours of certification, copies of the certification shall be personally delivered to the respondent, and a copy shall be kept by the evaluation facility as part of the person's record. The ~~respondent~~ **FACILITY** shall ~~also be asked~~ **ASK RESPONDENT** to designate one other person whom ~~he or she~~ **RESPONDENT** wishes **TO BE** informed regarding certification. If ~~he or she~~ **RESPONDENT** is incapable of making such a designation at the time the certification is delivered, ~~he or she~~ **RESPONDENT** shall be asked to designate such person as soon as he or she is capable. In addition to the copy of the certification, the respondent shall be given a written notice that a hearing upon his or her certification for short-term treatment may be had before the court or a jury upon written request directed to the court pursuant to subsection (6) of this section.

(4) Upon certification of the respondent, the facility designated for short-term treatment shall have custody of the respondent.

(5) Whenever a certification is filed with the court, the court, if it has not already done so under section 27-65-106 (10), shall forthwith appoint an attorney to represent the respondent. The court shall determine whether the respondent is able to afford an attorney. If the respondent cannot afford counsel, the court shall appoint either counsel from the legal services program operating in that jurisdiction or private counsel to represent the respondent. The attorney representing the respondent shall be provided with a copy of the certification immediately upon his or her appointment. Waiver of counsel must be knowingly and intelligently made in writing and filed with the court by the respondent. In the event that a respondent who is able to afford an attorney fails to pay the appointed counsel, such counsel, upon application to the court and after appropriate notice and hearing, may obtain a judgment for reasonable attorney fees against the respondent or person making request for such counsel or both the respondent and such person.

(6) The respondent for short-term treatment or his or her attorney may at any time file a written request that the certification for short-term treatment or the treatment be reviewed by the court or that the treatment be on an outpatient basis. If review is requested, the court shall hear the matter within ten days after the request, and the court shall give notice to the respondent and his or her attorney and the certifying and treating professional person of the time and place thereof. The hearing shall be held in accordance with section 27-65-111. 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, subject to available appropriations.

(7) Records and papers in proceedings under this section and section 27-65-108 shall be maintained separately by the clerks of the several courts. Upon the release of any respondent in accordance with the provisions of section 27-65-110, the facility shall notify the clerk of the court within five days of the release, and the clerk shall forthwith seal the record in the case and omit the name of the respondent from the index of cases in such court until and unless the

respondent becomes subject to an order of long-term care and treatment pursuant to section 27-65-109 or until and unless the court orders them opened for good cause shown. In the event a petition is filed pursuant to section 27-65-109, such certification record may be opened and become a part of the record in the long-term care and treatment case and the name of the respondent indexed.

(8) Whenever it appears to the court, by reason of a report by the treating professional person or any other report satisfactory to the court, that a respondent detained for evaluation and treatment or certified for treatment should be transferred to another facility for treatment and the safety of the respondent or the public requires that the respondent be transported by a sheriff, the court may issue an order directing the sheriff or his or her designee to deliver the respondent to the designated facility.

(9) (insert language from 108 re: short-term certification extension) (Need to make conforming amendments)

If the professional person in charge of the evaluation and treatment believes that a period longer than three months is necessary for treatment of the respondent, he or she shall file with the court an extended certification. No extended certification for treatment shall be for a period of more than three months. The respondent shall be entitled to a hearing on the extended certification under the same conditions as in an original certification. The attorney initially representing the respondent shall continue to represent that person, unless the court appoints another attorney.

~~27-65-108. Extension of short-term treatment~~

~~If the professional person in charge of the evaluation and treatment believes that a period longer than three months is necessary for treatment of the respondent, he or she shall file with the court an extended certification. No extended certification for treatment shall be for a period of more than three months. The respondent shall be entitled to a hearing on the extended certification under the same conditions as in an original certification. The attorney initially representing the respondent shall continue to represent that person, unless the court appoints another attorney.~~

NEW 27-65-108 Certification on an outpatient basis - Short and long-term

- If an individual is certified for treatment on an outpatient basis, the Court must also approve an initial individualized service plan by the accepting certification provider. The Behavioral Health Administration shall ensure there is an adequate number of providers willing to accept outpatient certifications. The Administration shall provide needed wrap-around services outlined in his or her individualized service plan to be successful in the least restrictive setting.
- If the organization holding the certification demonstrates intentional negligence in providing appropriate and timely services outlined in the treatment plan as approved by the Court, the individual may file a motion with the court to change provider or request

the court to modify the outpatient certification. If such a motion is filed due to negligence, the Court shall immediately notify the Behavioral Health Administration upon receipt of the motion.

- Providers that hold an outpatient certification are free from civil liability if an individual under their care commits a crime (ensure on correct language here)
- Each person certified on an outpatient basis has the following rights. The organization holding the certification shall assist the patient in exercising these rights:
 - To request a change to voluntary status.
 - That a change to voluntary status can be denied by the provider if the provider determines there is a reasonable probability that the respondent will not remain in voluntary treatment
 - To be treated fairly, with respect and recognition of the patient's dignity and individuality by all employees of the treatment facility with whom the patient comes in contact.
 - To receive the same consideration and access to appropriate services as others, regardless of race, color, national origin, age, gender identity, sexual orientation, political affiliation, religious beliefs, financial status, or disability;
 - To retain and consult with an attorney at any time. (attorney is free for individuals who are indigent)
 - To see and receive the services of a patient advocate, including a peer specialist, who has no direct or indirect clinical, administrative, or financial responsibility for the person. The person must have access to such services within 24 hours of their request.
 - To have their psychiatric advance directive reviewed and utilized by the Court prior to certification determinations being made on an outpatient basis, including when an individualized service plan is being drafted or updated.
 - To have access to medical record pursuant to 27-65-121;
 - To have treatment records remain confidential, except as required by law;
 - To not be fingerprinted, unless required by law;
 - A person may be photographed upon admission for identification and the administrative purpose of the facility. The photographs shall be confidential and shall not be released by the facility except pursuant to court order. No other nonmedical photographs shall be taken or used without appropriate consent or authorization.
 - To have immediate access to a representative within the organization who provides assistance to file an administrative grievance.
 - To have the right to file a motion with the court at any time to contest the outpatient certification.

- To have the right to an individualized service plan as approved by the court, a full explanation of the services provided, and the right to participate in the development of your individualized service plan.

27-65-109. Long-term care and treatment of persons with mental health disorders - procedure

(1) Whenever a respondent has received short-term treatment for five consecutive months pursuant to the provisions of sections 27-65-107 and 27-65-108, the professional person in charge of the evaluation and treatment may file a petition with the court for long-term care and treatment of the respondent under the following conditions:

(a) The professional staff of the agency or facility providing short-term treatment has analyzed the respondent's condition and has found that the respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to others or to himself or herself or is gravely disabled.

(b) The respondent has been advised of the availability of, but has not accepted, voluntary treatment; but, if reasonable grounds exist to believe that the respondent will not remain in a voluntary treatment program, his or her acceptance of voluntary treatment shall not preclude an order pursuant to this section.

(c) The facility that will provide long-term care and treatment has been designated ~~or approved by the executive director~~ **COMMISSIONER** to provide the care and treatment.

(2) Every petition for long-term care and treatment shall include a request for a hearing before the court prior to the expiration of six months from the date of original certification. A copy of the petition shall be delivered personally to the respondent for whom long-term care and treatment is sought and mailed to his or her attorney of record simultaneously with the filing thereof.

(3) Within ten days after receipt of the petition, the respondent or his or her attorney may request a jury trial by filing a written request therefor with the court.

(4) The court or jury shall determine whether the conditions of subsection (1) of this section are met and whether the respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to others or to himself or herself or is gravely disabled. The court shall thereupon issue an order of long-term care and treatment for a term not to exceed six months, or it shall discharge the respondent for whom long-term care and treatment was sought, or it shall enter any other appropriate order, subject to available appropriations. An order for long-term care and treatment must grant custody of the respondent to the ~~department~~ **BHA** for placement with an agency or facility designated by the ~~executive director~~ **COMMISSIONER** to provide long-term care and treatment. ~~When a petition contains a request that a specific legal disability be imposed or that a specific legal right be deprived, the court may order the disability imposed or the right deprived if the court or a jury has determined that the respondent has a mental health disorder or is gravely disabled and that, by reason thereof, the person is unable to competently exercise said right or perform the function as to which the disability is sought to be imposed.~~ Any interested person may ask leave of the court to intervene as a copetitioner for the purpose of

~~seeking the imposition of a legal disability or the deprivation of a legal right. (moved to 27-65-109.5)~~

(5) An original order of long-term care and treatment or any extension of such order expires on the date specified, unless further extended as provided in this subsection (5). If an extension is being sought, the professional person in charge of the evaluation and treatment shall certify to the court at least thirty days prior to the expiration date of the order in force that an extension of the order is necessary for the care and treatment of the respondent subject to the order in force, and a copy of the certification must be delivered to the respondent and simultaneously mailed to his or her attorney of record. At least twenty days before the expiration of the order, the court shall give written notice to the respondent and his or her attorney of record that a hearing upon the extension may be had before the court or a jury upon written request to the court within ten days after receipt of the notice. If a hearing is not requested by the respondent within such time, the court may proceed ex parte. If a hearing is timely requested, it must be held before the expiration date of the order in force. If the court or jury finds that the conditions of subsection (1) of this section continue to be met and that the respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to others or to himself or herself or is gravely disabled, the court shall issue an extension of the order. Any extension must not exceed six months, but there may be as many extensions as the court orders pursuant to this section.

New 27-65-109.5

(1) When a petition contains a request that a specific legal disability be imposed or that a specific legal right be deprived, the court may order the disability imposed or the right deprived if the court or a jury has determined that the respondent has a mental health disorder or is gravely disabled and that, by reason thereof, the person is unable to competently exercise said right or perform the function as to which the disability is sought to be imposed. Any interested person may ask leave of the court to intervene as a copetitioner for the purpose of seeking the imposition of a legal disability or the deprivation of a legal right.

27-65-111. Hearing procedures - jurisdiction

(1) Hearings before the court pursuant to section 27-65-107, 27-65-108, or 27-65-109 are conducted in the same manner as other civil proceedings before the court. The burden of proof is on the person or facility seeking to detain the respondent. The court or jury shall determine that the respondent is in need of care and treatment only if the court or jury finds by clear and convincing evidence that the person has a mental health disorder and, as a result of the mental health disorder, is a danger to others or to himself or herself or is gravely disabled.

(2) The court, after consultation with respondent's counsel to obtain counsel's recommendations, may appoint a professional person to examine the respondent for whom short-term treatment or long-term care and treatment is sought and to testify at the hearing before the court as to the

results of his or her examination. The court-appointed professional person shall act solely in an advisory capacity, and no presumption shall attach to his or her findings.

(3) Every respondent subject to an order for short-term treatment or long-term care and treatment shall be advised of his or her right to appeal the order by the court at the conclusion of any hearing as a result of which such an order may be entered.

(4) The court in which the petition is filed under section 27-65-106 or the certification is filed under section 27-65-107 shall be the court of original jurisdiction and of continuing jurisdiction for any further proceedings under this article. When the convenience of the parties and the ends of justice would be promoted by a change in the court having jurisdiction, the court may order a transfer of the proceeding to another county. Until further order of the transferee court, if any, it shall be the court of continuing jurisdiction.

(5)

(a) In the event that a respondent or a person found not guilty by reason of impaired mental condition pursuant to section 16-8-103.5 (5), C.R.S., or by reason of insanity pursuant to section 16-8-105 (4) or 16-8-105.5, C.R.S., refuses to accept medication, the court having jurisdiction of the action pursuant to subsection (4) of this section, the court committing the person or defendant to the custody of the department pursuant to section 16-8-103.5 (5), 16-8-105 (4), or 16-8-105.5, C.R.S., or the court of the jurisdiction in which the designated facility treating the respondent or person is located shall have jurisdiction and venue to accept a petition by a treating physician and to enter an order requiring that the respondent or person accept such treatment or, in the alternative, that the medication be forcibly administered to him or her. The court of the jurisdiction in which the designated facility is located shall not exercise its jurisdiction without the permission of the court that committed the person to the custody of the ~~department~~ **Behavioral Health Administration**. Upon the filing of such a petition, the court shall appoint an attorney, if one has not been appointed, to represent the respondent or person and hear the matter within ten days.

(b) In any case brought under paragraph (a) of this subsection (5) in a court for the county in which the treating facility is located, the county where the proceeding was initiated pursuant to subsection (4) of this section or the court committing the person to the custody of the department pursuant to section 16-8-103.5 (5), 16-8-105 (4), or 16-8-105.5, C.R.S., shall either reimburse the county in which the proceeding pursuant to this subsection (5) was filed and in which the proceeding was held for the reasonable costs incurred in conducting the proceeding or conduct the proceeding itself using its own personnel and resources, including its own district or county attorney, as the case may be.

(c) In the case of a defendant who is found incompetent to proceed pursuant to section 16-8.5-103, C.R.S., and who refuses to accept medication, the jurisdiction for the petition for involuntary treatment procedures shall be as set forth in section 16-8.5-112, C.R.S.

(6) All **ADVERSARIAL** proceedings under this article, including proceedings to impose a legal disability pursuant to sections **27-65-109.5 AND 27-65-127**, shall be conducted by the district attorney of the county where the proceeding is held or by a qualified attorney acting for the

district attorney appointed by the district court for that purpose; except that, in any county or in any city and county having a population exceeding fifty thousand persons, the proceedings shall be conducted by the county attorney or by a qualified attorney acting for the county attorney appointed by the district court. In any case in which there has been a change of venue to a county other than the county of residence of the respondent or the county in which the certification proceeding was commenced, the county from which the proceeding was transferred shall either reimburse the county to which the proceeding was transferred and in which the proceeding was held for the reasonable costs incurred in conducting the proceeding or conduct the proceeding itself using its own personnel and resources, including its own district or county attorney, as the case may be. ~~Upon request of a guardian appointed pursuant to article 14 of title 15, C.R.S., the guardian may intervene in any proceeding under this article concerning his or her ward and, through counsel, may present evidence and represent to the court the views of the guardian concerning the appropriate disposition of the case.~~

(7) Upon request of a guardian appointed pursuant to article 14 of title 15, C.R.S., the guardian may intervene in any proceeding under this article concerning his or her ward and, ~~through counsel,~~ may present evidence and represent to the court the views of the guardian concerning the appropriate disposition of the case. **Lay Caregivers and persons designated pursuant to 27-65-107(3) may submit an affidavit to the court concerning their relationship to the Respondent, how long they have known the Respondent, their physical address, and their views concerning the appropriate disposition of the case.**

(8) Any motions involving contested issues of law relating to this article 65 shall follow Colorado Rules of Civil Procedure 121 § 1-15, except that the responding party shall have seven days after the filing of a motion to file a responsive brief, and the moving party shall have three days after the filing of the responsive brief to file a reply brief, or such lesser or greater time as the Court may allow for good cause.

27-65-117. Rights of persons receiving evaluation, care, or treatment

(1) Each person receiving evaluation, care, or treatment pursuant to 27-65-107 and 27-65-109 under any provision of this article has the following rights and shall be advised of such rights by the facility:

(a) To receive and send sealed correspondence. No incoming or outgoing correspondence shall be opened, delayed, held, or censored by the personnel of the facility.

(b) To have access to letter-writing materials, including postage, and to have staff members of the facility assist him or her if unable to write, prepare, and mail correspondence;

(c) To have ready access to telephones, both to make and to receive calls in privacy;

(d) To have frequent and convenient opportunities to meet with visitors. Each person may see his or her attorney, clergyman, or physician at any time.

(e) To wear his or her own clothes, keep and use his or her own personal possessions, and keep and be allowed to spend a reasonable sum of his or her own money.

~~(2) A person's rights under subsection (1) of this section may be denied for good cause only by the professional person providing treatment. Denial of any right shall in all cases be entered into the person's treatment record. Information pertaining to a denial of rights contained in the person's treatment record shall be made available, upon request, to the person or his or her attorney.~~

~~(3) No person admitted to or in a facility shall be fingerprinted unless required by other provisions of law.~~

~~(4) A person may be photographed upon admission for identification and the administrative purposes of the facility. The photographs shall be confidential and shall not be released by the facility except pursuant to court order. No other nonmedical photographs shall be taken or used without appropriate consent or authorization.~~

~~(5) Any person receiving evaluation or treatment under any of the provisions of this article is entitled to a written copy of all his or her rights enumerated in this section, and a minor child shall receive written notice of his or her rights as provided in section 27-65-103 (7)(g). A list of such rights shall be prominently posted in all evaluation and treatment facilities. **a list of which shall be prominently posted in the predominant languages of the community and explained in a language or modality accessible to the patient. The facility shall assist the patient in exercising the rights granted in this subdivision.**~~

- **Immediately upon admission to the facility, to receive a written copy and verbal description in a language or modality accessible to the patient of all his or her enumerated rights outlined in this section and any accompanying rules, and a minor child and his or her guardian shall receive written notice of his or her rights as provided in section 27-65-103(7)(g).**
- **To be treated fairly, with respect and recognition of the patient's dignity and individuality by all employees of the treatment facility with whom the patient comes in contact.**
- **To receive the same consideration and access to appropriate services as others, regardless of race, color, national origin, age, gender identity, sexual orientation, political affiliation, religious beliefs, financial status, or disability;**
- **To retain and consult with an attorney at any time.**
- **A patient has the right to meet with or call a personal clinician, spiritual advisor, counsel, crisis hotline, family, workplace, childcare provider, or school at all reasonable times. The patient has the right to continue the practice of religion.**
- **The legal guardian of the patient shall be given the opportunity to authorize disclosure of the patient's presence in the facility to callers and visitors who may seek to communicate with the patient.**
- **To see and receive the services of a patient advocate who has no direct or indirect clinical, administrative, or financial responsibility for the person. The person must have access to such services within 2 hours of their request.**

- To receive and send sealed correspondence as well as the assistance of facility staff if the person is unable to write, prepare, or mail correspondence.
- To have reasonable access to telephones or other communication devices, and to make and to receive calls or communications in privacy. 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.
- To wear his or her own clothes, keep and use personal possessions, and keep and be allowed to spend a reasonable sum of the person's own money;
- To have access to medical records;
- To have treatment records remain confidential, except as required by law;
- To not be fingerprinted, unless required by law;
- A person may be photographed upon admission for identification and the administrative purpose of the facility. The photographs shall be confidential and shall not be released by the facility except pursuant to court order. No other nonmedical photographs shall be taken or used without appropriate consent or authorization.
- To have appropriate access to adequate food in accordance with dietary preferences and practices, water, and hygiene products;
- To have physical privacy in showering, changing, and using the restroom; and
- To have frequent and convenient opportunities to meet with visitors.
- Have immediate access to a representative within the facility who provides assistance to file a grievance.

A person's right under subsection (1) of this section may be denied only if access to the item, program, or service would endanger the safety of the individual or another person in close proximity and may only be denied by the professional person providing treatment. Denial of any right shall in all cases be entered into the person's treatment record. Information pertaining to a denial of rights contained in the person's treatment record shall be made available, upon request, to the person, THE PERSON'S GUARDIAN, or his or her attorney.

No person may intentionally retaliate or discriminate against any patient or employee for contacting or providing information to any official or to an employee of any state protection and advocacy agency, or for initiating, participating in, or testifying in a grievance procedure or in an action for any remedy authorized under this section. Whoever violates this paragraph may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

Any patient whose rights are protected under this section who suffers damage as the result of the unlawful denial or violation of any of these rights may bring an action against the person or facility, including the state or any political subdivision thereof, which unlawfully denies or violates the right in question. The individual may recover any damages as may be proved, together with exemplary damages of not less than \$1000 for each violation and such costs and reasonable actual attorney fees as may be incurred.

27-65-120. Voting in public elections

Any person receiving evaluation, care, or treatment under this article shall be given the opportunity to exercise his or her right to register and to vote in primary and general elections. The agency or facility providing evaluation, care, or treatment shall assist such persons, upon their request, to obtain voter registration forms and mail ballots and to comply with any other prerequisite for voting.

27-65-121. Records

(1) Except as provided in subsection (2) of this section, all information obtained and records prepared in the course of providing any services pursuant to this article 65 to individuals 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 professional personnel 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 his or her guardian or conservator designates, in writing, persons to whom records or information may be disclosed, the designation shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional personnel to reveal information that has been given to him or her in confidence by members of a patient's family or other informants;
- (c)** To the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he or she may be entitled;
- (d)** If the department has promulgated rules for the conduct of research. Such rules shall include, but not be limited to, the requirement that all researchers must sign an oath of confidentiality. All identifying information concerning individual patients, including names, addresses, telephone numbers, and social security numbers, shall not be disclosed for research purposes.
- (e)** To the courts, as necessary to the administration of the provisions of this article;
- (f)** 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 Colorado rules of civil procedure;
- (g)** To adult family members upon admission of a person with a mental health disorder for inpatient or residential care and treatment. The only information that may be released pursuant to this subsection (1)(g) is the location and fact of admission of the person with a mental health disorder who is receiving care and treatment. The disclosure of location is governed by the procedures in section 27-65-122 and is subject to review pursuant to section 27-65-122.

(h) To ~~adult family members~~ LAY CAREGIVERS AND THE PERSON WHOM THE INDIVIDUAL DESIGNATED PURSUANT TO SECTION 27-65-107(3) actively

participating in the care and treatment of a person with a mental health disorder regardless of the length of the participation. The information released pursuant to this subsection (1)(h) is limited to one or more of the following: The diagnosis, the prognosis, the need for hospitalization and anticipated length of stay, the discharge plan, the medication administered and side effects of the medication, and the short-term and long-term treatment goals. The disclosure is governed by the procedures in section 27-65-122 (2) and is subject to review pursuant to section 27-65-122.

(i) In accordance with state and federal law to the agency designated pursuant to the federal “Protection and Advocacy for Individuals with Mental Illness Act”, 42 U.S.C. sec. 10801 et seq., as the governor’s protection and advocacy system for Colorado.

(2) Nothing in paragraph (g) or (h) of subsection (1) of this section shall be deemed to preclude the release of information to a parent concerning his or her minor child.

(3)

(a) Nothing in this article shall be construed as rendering privileged or confidential any information, except written medical records and information that is privileged under section 13-90-107, C.R.S., concerning observed behavior that constitutes a criminal offense committed upon the premises of any facility providing services under this article or any criminal offense committed against any person while performing or receiving services under this article.

(b) The provisions of subsection (1) of this section shall not apply to physicians or psychologists eligible to testify concerning a criminal defendant’s mental condition pursuant to section 16-8-103.6, C.R.S.

(4)

(a) All facilities shall maintain and retain permanent records, including all applications as required pursuant to section 27-65-105 (3).

(b) Outpatient or ambulatory care facilities shall retain all records for a minimum of seven years after discharge from the facility for persons who were eighteen years of age or older when admitted to the facility, or until twenty-five years of age for persons who were under eighteen years of age when admitted to the facility.

(c) Inpatient or hospital care facilities shall retain all records for a minimum of ten years after discharge from the facility for persons who were eighteen years of age or older when admitted to the facility, or until twenty-eight years of age for persons who were under eighteen years of age when admitted to the facility.

(5) Nothing in this section shall be construed to prohibit or limit the sharing of information by a state institution of higher education police department to authorized university administrators pursuant to section 23-5-141, C.R.S.

27-65-122. Request for release of information - procedures - review of a decision concerning release of information

(1) When a family member requests the location and fact of admission of a person with a mental health disorder pursuant to section 27-65-121 (1)(g), the treating professional person or his or her designee, who must be a professional person, shall decide whether to release or withhold such information. The location must be released unless the treating professional person or his or her designee determines, after an interview with the person with a mental health disorder, that release of the information to a particular family member would not be in the best interests of the person with a mental health disorder. Any decision to withhold information requested pursuant to section 27-65-121 (1)(g) is subject to administrative review pursuant to this section upon request of a family member or the person with a mental health disorder. The treating facility shall make a record of the information given to a family member pursuant to this subsection (1). For the purposes of this subsection (1), an adult person having a similar relationship to a person with a mental health disorder as a spouse, parent, child, or sibling of a person with a mental health disorder may also request the location and fact of admission concerning a person with a mental health disorder.

(2)

(a) When a family member requests information pursuant to section 27-65-121 (1)(h) concerning a person with a mental health disorder, the treating professional person or his or her designee shall determine whether the person with a mental health disorder is capable of making a rational decision in weighing his or her confidentiality interests and the care and treatment interests implicated by the release of information. The treating professional person or his or her designee shall then determine whether the person with a mental health disorder consents or objects to the release of information. Information must be released or withheld in the following circumstances:

(I) If the treating professional person or his or her designee makes a finding that the person with a mental health disorder is capable of making a rational decision concerning his or her interests and the person with a mental health disorder consents to the release of information, the treating professional person or his or her designee shall order the release of the information unless he or she determines that the release would not be in the best interests of the person with a mental health disorder.

(II) If the treating professional person or his or her designee makes a finding that the person with a mental health disorder is capable of making a rational decision concerning his or her interests and the person with a mental health disorder objects to the release of information, the treating professional person or his or her designee shall not order the release of the information.

(III) If the treating professional person or his or her designee makes a finding that the person with a mental health disorder is not capable of making a rational decision concerning his or her interests, the treating professional person or his or her designee may

order the release of the information if he or she determines that the release would be in the best interests of the person with a mental health disorder.

(IV) Any determination as to capacity pursuant to this subsection (2)(a) must be used only for the limited purpose of this subsection (2)(a).

(b) A decision by a treating professional person or his or her designee concerning the capability of a person with a mental health disorder pursuant to subsection (2)(a)(III) of this section is subject to administrative review upon the request of the person with a mental health disorder. A decision by a treating professional person or his or her designee to order the release or withholding of information pursuant to subsection (2)(a)(III) of this section is subject to administrative review upon the request of either a family member or the person with a mental health disorder.

(c) The director of the treating facility shall make a record of any information given to a family member pursuant to subsection (2)(a) of this section and section 27-65-121 (1)(h).

(3) When administrative review is requested either pursuant to subsection (1) or subsection (2)(b) of this section, the director of the facility providing care and treatment to the person with a mental health disorder shall cause an objective and impartial review of the decision to withhold or release information. The director of the facility shall conduct the review, if he or she is a professional person. If the director is not available or if the director cannot provide an objective and impartial review, the review shall be conducted by a professional person designated by the director of the facility. The review must include, but need not be limited to, an interview with the person with a mental health disorder. The facility providing care and treatment shall document the review of the decision.

(4) If a person with a mental health disorder objects to the release or withholding of information, the person with a mental health disorder and his or her attorney, if any, must be provided with information concerning the procedures for administrative review of a decision to release or withhold information. The person with a mental health disorder must be informed of any information proposed to be withheld or released and to whom and be given a reasonable opportunity to initiate the administrative review process before information concerning his or her care and treatment is released.

(5) A family member whose request for information is denied shall be provided with information concerning the procedures for administrative review of a decision to release or withhold information.

(6) A person with a mental health disorder may file a written request for review by the court of a decision made upon administrative review to release information to a family member requested pursuant to section 27-65-121 (1)(h) and proposed to be released pursuant to subsection (2) of this section. If judicial review is requested, the court shall hear the matter within ten days after the request, and the court shall give notice to the person with a mental health disorder and his or her attorney, the treating professional person, and the person who made the decision upon

administrative review of the time and place of the hearing. The hearing must be conducted in the same manner as other civil proceedings before the court.

(7) In order to allow a person with a mental health disorder an opportunity to seek judicial review, the treating facility or the treating professional person or his or her designee shall not release information requested pursuant to section 27-65-121 (1)(h) until five days after the determination upon administrative review of the director or his or her designee is received by the person with a mental health disorder, and, once judicial review is requested, the treating facility or the treating professional person or his or her designee shall not release information except by court order. However, if the person with a mental health disorder indicates an intention not to appeal a determination upon administrative review that is adverse to him or her concerning the release of information, the information may be released less than five days after the determination upon review is received by the person with a mental health disorder.

(8) This section provides for the release of information only and shall not be deemed to authorize the release of the written medical record without authorization by the patient or as otherwise provided by law.

(9) For purposes of this section, the treating professional person's designee shall be a professional person.

27-65-129. Payment for counsel

In order to provide legal representation to persons eligible therefor as provided in this article, the judicial department is ~~authorized~~ **REQUIRED** to pay, out of appropriations made therefor by the general assembly, sums directly to appointed counsel on a case-by-case basis or, on behalf of the state, to make lump-sum grants to and contract with individual attorneys, legal partnerships, legal professional corporations, public interest law firms, or nonprofit legal services corporations.