Timothy Montoya Task Force

Relevant Colorado Statute and Regulations

Overview

The Timothy Montoya Task Force to Prevent Children from Running Away from Out-of-Home Placement has expressed an interest in reviewing and clarifying Colorado's statutes and regulations regarding children who run away from care, legal concerns around locking out-of-home care facilities, and prohibitions on restraint and seclusion. This resource compiles relevant statutes and regulations into one document for common referral among Task Force members. Inclusion does not indicate they are directly relevant to environments being considered by the Task Force. For instance, §27-65 pertains to people with mental health disorders, which is not always the case for youth in out-of-home placement. However, the language used in these sections may be of interest to Task Force members.

When viewing this document on Microsoft Word, it is recommended to enable the Navigation Pane under the View toolbar to navigate this document more easily. Keywords of interest such as "runaway", "restraint", and "residential" are formatted with bold to aid visual scanning. The regulations section has been truncated for space considerations rather than displaying the entirety of relevant regulations. Citations are given throughout and full texts may be accessed online for statutes and regulations.

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- **Relevant Colorado Statute**
  - Colo. Rev. Stat. Ann. §§19-2.5-1507 to 1508 (page 3)
    - This section contains statutes relevant to facilities within the juvenile justice system, their requirement to create policies and procedures around the restraint and control of adjudicated juveniles, and notification responsibilities when a juvenile has run away from out-of-home placement.
  - §19-3-403 (pages 3-10)
    - This section describes restrictions and rules around taking children into temporary custody and shelter.
  - §§26-20-101 to 110 (pages 10-21)
    - This section describes the rights of individuals regarding restraint and seclusion. This includes defining relevant terms, detailing permitted and prohibited uses, staff training requirements, documentation needs, and other related details.
  - §§26-65-101 to 131 (pages 21-60)
    - These sections outline requirements regarding the care and treatment of people with mental health disorders. This includes voluntary and involuntary care, emergency mental health holds, hospitalizations, and the rights of individuals in such circumstances.
- **Relevant Colorado Regulations**
  - 12 Colo. Code Regs. §§2509-8:7.714 (pages 61-76)
    - These rules and regulations describe quality standards for 24-hour child care including relevant definitions; requirements to create procedures regarding restraint and seclusion; the rights of children; limitations on the use of discipline, seclusion and restraint; and related staff training, documentation and reporting requirements.
  - §§2505-10.8.765 (pages 76-79)
    - These regulations regard services for clients in residential child care facilities. This includes relevant definitions, and regulations regarding the use of seclusion and restraint.
  - §§2505-10.8.508 (page 79)
    - These regulations describe the use of restraints in children's habilitation residential programs, particularly recording and reviewing instances of restraint.
  - §§2509-8:7.708.3 (page 80)
    - These sections describe requirements for the ongoing operation of foster care homes, including restrictions on the use of seclusion and restraint.

Relevant Colorado Statute

19-2.5 Part 15 - Facilities

19-2.5-1507. Facilities - control and **restraint** - liability - duty to pursue **runaways**.

(1) Any facility that houses or provides nonresidential services to adjudicated juveniles pursuant to this article 2.5, whether publicly or privately operated, for short-term or long-term commitment or **detention** is authorized to respond in a reasonable manner to issues of control and **restraint** of adjudicated juveniles when necessary. Each facility or program shall establish clearly defined policies and procedures for the short-term **restraint** and control of adjudicated juveniles housed within the facility or receiving services in the nonresidential program.

(2) Any facility that houses or provides nonresidential services to adjudicated juveniles pursuant to this article 2.5 and any person employed by the facility or program is not liable for damages arising from acts committed in the good-faith implementation of this section; except that the facility or program and any person employed by the facility or program may be liable for acts that are committed in a willful and wanton manner.

(3) Any facility that houses adjudicated juveniles pursuant to this article 2.5 has a duty to notify the court and the local law enforcement agency as soon as possible after discovering that an adjudicated juvenile housed at the facility has **run away.**

19-2.5-1508. Out-of-home placement - **runaways** - duty to notify.

When a juvenile who is sentenced to **detention**, committed to the department of human services, or otherwise sentenced or placed in out-of-home placement pursuant to section 19-2.5-1103 **runs away** from the facility or home in which the juvenile is placed, the person in charge of the facility or the foster parent shall notify the court and the local law enforcement agency as soon as possible after discovering that the juvenile has **run away** from the facility or home.

19-3-403. **Temporary custody and shelter**

19-3-403. Temporary custody--hearing--time limits--restriction—rules

(1) A **child** who must be taken from his or her home but who does not require physical restriction may be given temporary care with his or her grandparent, upon the grandparent's request, if in the best interests of the **child**, in a shelter facility designated by the court or with the county department of human or social services and must not be placed in **detention**. If an appropriate shelter facility does not exist, the **child** may be placed in a staff-**secure** temporary holding facility authorized by the court.

(2) When a **child** is placed in a shelter facility or a temporary holding facility not operated by the department of human services designated by the court, the law enforcement official taking the **child** into **custody** shall promptly so notify the court. He shall also notify a parent or legal guardian or, if a parent or legal guardian cannot be located within the county, the person with whom the **child** has been residing and inform him of the right to a prompt hearing to determine

whether the **child** is to be detained further. The court shall hold such hearing within forty-eight hours, excluding Saturdays, Sundays, and legal holidays. **A child requiring physical restraint may be placed in a juvenile detention facility operated by or under contract with the department of human services for a period of not more than twenty-four hours, including Saturdays, Sundays, and legal holidays.**

(3) Repealed by Laws 1990, H.B.90-1093, § 6, April 3, 1990.

(3.5) When temporary **custody** is placed with the county department of human or social services pursuant to this section or section 19-3-405 or when an emergency protection order is entered pursuant to section 19-3-405, the court shall hold a hearing within seventy-two hours after placement, excluding Saturdays, Sundays, and court holidays, to determine further **custody** of the **child** or whether the emergency protection order should continue. Such a hearing need not be held if a hearing has previously been held pursuant to subsection (2) of this section.

(3.6)(a)(I) The office of the state court administrator shall prepare a form affidavit and advisement. The form affidavit and advisement shall be available at each judicial district to each parent attending a temporary **custody** hearing. The form affidavit and advisement shall:

(A) Advise the parent that he or she is required to provide the requested information fully and completely under penalties of perjury and contempt of court;

(B) Require the parent to list the names, addresses, and telephone numbers of, and any comments concerning the appropriateness of the **child**'s potential placement with, every grandparent, aunt, uncle, brother, sister, half-sibling, and first cousin of the **child**;

(C) Provide a section in which the parent may list the names, addresses, telephone numbers of, and any comments concerning the appropriateness of the **child**'s potential placement with, other relatives and kin who have a significant relationship with the **child**;

(D) Advise the parent that failure to identify these relatives in a timely manner may result in the **child** being placed permanently outside of the home of the **child**'s relatives, if the **child** cannot be safely returned to the home of the **child**'s parents;

(E) Advise the parent that the **child** may risk life-long damage to his or her emotional well-being if the **child** becomes attached to one caregiver and is later removed from the caregiver's home;

(F) Require the parent to acknowledge that he or she understands the advisements contained in the form; and

(G) Require the parent to sign and date the form.

(II) At the hearing, information may be supplied to the court in the form of written or oral reports, affidavits, testimony, or other relevant information that the court may wish to receive.

Any information having probative value may be received by the court, regardless of its admissibility under the Colorado rules of evidence.

(III) The court shall advise the parents that the **child** or **youth** may be placed with a relative or kin. The court shall order the parents to complete the form affidavit and advisement described in subsection (3.6)(a)(I) of this section no later than seven days after the hearing date or prior to the next hearing on the matter, whichever occurs first. The original completed relative affidavit must be filed with the court and served on all parties no later than seven days after the hearing date. The court shall ask the parent if there are any changes to the information on the relative or kin affidavit at hearings held pursuant to sections 19-3-507 and 19-3-702, and if the parent has not completed the relative or kin affidavit, the court shall ask the parent, on the record, for names and contact information for relatives and kin whom the parent would like considered for engagement in the case. Each parent, the guardian ad litem or counsel for **youth**, and counsel for each parent, if any, must also receive copies of the completed form affidavit. The court may advise each parent of the penalties associated with perjury and contempt of court, if necessary. Each parent may suggest an adult relative or relatives, or kin, whom the parent believes to be the most appropriate caretaker or caretakers for the **child** or **youth**. If appropriate, the **child** or **youth** must be consulted regarding suggested relative or kin caretakers. The court shall order each parent to notify every relative or kin who may be an appropriate relative or kin caretaker for the **child** or **youth** that failure to come forward in a timely manner may result in the **child** or **youth** being placed permanently outside of the home of the relatives or kin of the **child** or **youth** if the **child** or **youth** is not able to return to the **child**'s or **youth**'s home. In addition, the court shall advise each parent that failure to identify these relatives or kin in a timely manner may result in the **child** or **youth** being placed permanently outside of the home of the relatives or kin of the **child** or **youth**.

(IV) The court shall order a county department of human or social services to exercise due diligence to contact all grandparents and other adult relatives and identified kin within thirty days after the removal of the **child** or **youth** and to inform them about placement possibilities for the **child** or **youth**, unless the court determines there is good cause not to contact or good cause to delay contacting the **child**'s or **youth**'s relatives and kin, including, but not limited to, family or domestic violence.

(A) A county department of human or social services shall provide notice to the relatives and identified kin that the **child** or **youth** has been removed from the **child**'s or **youth**'s home, an explanation of the various options to participate in the **child**'s or **youth**'s care or placement and options that may be available to support the **child**'s or **youth**'s family, and options that may be lost by failing to respond.

(B) The notice must include information about providing care for the **child** or **youth** while the family receives reunification services, with the goal of returning the **child** or **youth** to the parent or legal guardian; the relative's right to intervene in the proceedings with or without an attorney following adjudication; and additional services and supports that are available in out-

of-home placements. The notice must also include information regarding the state's entitlement plans, including but not limited to **child** care assistance, supplemental nutritional assistance programs, the relative guardianship assistance program, **child**-only eligibility for temporary assistance for needy families (TANF), and adoption assistance, as well as other options for contact. Information about family foster care certification, including how to request a variance from certification standards that do not present a safety or health risk to the **child** or **youth** in the home and supports that are available for relatives and kin and **child**ren or **youth** and what background checks are required, as well as how relatives or kin may request the court review decisions to deny placement based on background checks and why certification as a kinship foster home may be denied, must also be provided in the notice.

(C) The state department of human services, in consultation with counties, the office of the **child**'s representative, and the office of respondent parents' counsel, along with other interested stakeholders, shall develop the written notice and promulgate rules for the implementation of this section.

(D) The county department of human or social services shall request each such relative and identified kin who is interested in becoming a placement option for the **child** or **youth** to come forward at the earliest possible time to seek placement of the **child** or **youth** in the relative's or kin's home and to cooperate with the county department of human or social services to expedite procedures pertaining to the placement of the **child** or **youth** in the relative's or kin's home if the **child** or **youth** cannot be safely returned to the **child**'s or **youth**'s parents' home.

(V) The court shall give preference to giving temporary placement to a **child**'s or **youth**'s relative or kin who is capable, willing, and available for care, giving primary consideration to the **child**'s or **youth**'s mental, physical, and emotional needs, including the **child**'s or **youth**'s preference regarding placement. The court shall also find that there is no suitable birth or adoptive parent available, with due diligence having been exercised in attempting to locate any such birth or adoptive parent. A parent's objection to placement with a particular relative or kin is not alone sufficient to show that the proposed placement would hinder reunification. The court may place or continue **custody** with the county department of human or social services if the court is satisfied from the information presented at the hearing that such **custody** is appropriate and in the **child**'s or **youth**'s best interests, or the court may enter such other orders as are appropriate. The court may authorize the county department of human or social services with **custody** of a **child** or **youth** to place the **child** or **youth** with a relative or kin without the necessity for a hearing if a county department of human or social services locates a capable and willing relative or kin who is available to care for the **child** or **youth** and the guardian ad litem of the **child** or **youth** concurs that the placement is in the best interests of the **child** or **youth**. If the county department of human or social services places a **child** or **youth** with a relative or kin without a hearing pursuant to this subsection (3.6)(a)(V), the county department of human or social services shall fully inform the court of the details concerning the **child**'s or **youth**'s placement on the record at the next hearing. If the court enters an order removing a **child** or

youth from the home or continuing a **child** or **youth** in a placement out of the home, the court shall make the findings required pursuant to section 19-1-115(6), if such findings are warranted by the evidence.

(VI) The responsible county department of human or social services or other social services agency shall exercise due diligence to contact and engage relatives and kin who respond to the notice required pursuant to subsection (3.6)(a)(IV) of this section. Upon a request by a relative or kin or party to the proceedings, the court may conduct a review of the applicable agency's due diligence to contact and engage relatives and kin pursuant to subsection (3.6)(a)(IV) of this section. If the court finds that the applicable agency did not exercise due diligence to contact and engage relatives and kin who responded to the notice, the court may order the applicable agency to exercise due diligence by engaging the relatives and kin in the following activities related to the care and planning for a **child** or **youth**, determined in consultation with the other parties:

(A) Participating in case planning for the **child** or **youth** and the **child**'s or **youth**'s parent, including identifying services and resources that meet the individualized needs of the **child** or **youth** and the **child**'s or **youth**'s parent. A relative's or kin's participation in case planning may be in person, via phone, or by electronic means.

(B) Identifying the strengths and needs of the **child** or **youth** and the **child**'s or **youth**'s parent;

(C) Asking the responsible county department of human or social services, or other social services agency, to consider the relative or kin for placement with the **child** or **youth** pursuant to subsection (3.6)(a)(IV)(D) of this section;

(D) Acting as a support person for the **child** or **youth**, the **child**'s or **youth**'s parent, and the **child**'s or **youth**'s current caregiver, including collaborating with foster parents to support a healthy transition for a **child** or **youth** to family time or placement with a relative, when appropriate;

(E) Supervising family time when authorized pursuant to section 19-3-217;

(F) Providing respite care for the **child** or **youth** and having family vacation time with the **child** or **youth**;

(G) Providing transportation;

(H) Suggesting other relatives or kin who may be able to participate in the case plan or whom the county department of human or social services, or other social services agency, may consider for the placement of the **child** or **youth**. The county department of human or social services, or other social services agency, shall send a notice to each relative or kin identified by other relatives or kin, unless a relative or kin received the notice earlier in the case or was ruled out as a resource or placement by the court.

(I) Helping maintain the **child**'s or **youth**'s familiar and regular activities, as well as contact with the **child**'s or **youth**'s friends, relatives, and kin, including providing supervision of the **child** or **youth** at family gatherings and events; and

(J) Participating in the **child**'s or **youth**'s family and permanency team if the **child** or **youth** is placed in a qualified **residential** treatment program.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3.6) to the contrary, when the **child** is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the **child**ren in the sibling group, the court shall presume that placement of the entire sibling group in the joint placement is in the best interests of the **child**ren. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a **child** or of the **child**ren.

(c) A relative or kin caregiver has the right to:

(I) Be treated with dignity and respect and to be considered as a team member who is making important contributions to the objectives of the **child** welfare system, including the reunification of the **child** or **youth** with the **child**'s or **youth**'s parents whenever safely possible;

(II) Receive training and support from the state department of human services or a county department of human or social services to improve the caregiver's skills in providing daily care and meeting the special needs or disability-related needs of a **child** or **youth** in the caregiver's care;

(III) Be informed by the applicable **child** placement agency or county department of human or social services about how to reach after-hours contacts; and

(IV) Be informed about available financial assistance and the financial consequences of not pursuing certification as a foster home, including ineligibility for the state's relative guardianship assistance program.

(3.7) A **child** who is alleged to be a **runaway** from a state other than Colorado may be held in a shelter care or other appropriate facility for up to seven days, during which time arrangements shall be made for returning the **child** to the state of his residence.

<Text of (4)(a) effective until July 1, 2024>

(4)(a) If it appears that any **child** being held in a shelter facility may have an intellectual and developmental disability, as provided in article 10.5 of title 27, the court shall refer the **child** to the nearest case management agency, as defined in section 25.5-6-1702, for an eligibility determination. If it appears that any **child** being held in a shelter facility pursuant to this article 3 may have a mental health disorder, as provided in section 27-65-106, the intake personnel or other appropriate personnel shall contact a mental health professional to do a mental health disorder prescreening on the **child**. The court must be notified of the contact and may take

appropriate action. If a mental health disorder prescreening is requested, it must be conducted in an appropriate place accessible to the **child** and the mental health professional. A request for a mental health disorder prescreening must not extend the time within which a hearing is to be held pursuant to this section. If a hearing has been set but has not yet occurred, the mental health disorder prescreening must be conducted prior to the hearing; except that the prescreening must not extend the time within which a hearing is to be held pursuant to this section.

<Text of (4)(a) effective July 1, 2024>

(4)(a) If it appears that any **child** being held in a shelter facility may have an intellectual and developmental disability, as provided in article 10.5 of title 27, the court shall refer the **child** to the nearest case management agency, as defined in section 25.5-6-1702, for an eligibility determination. If it appears that any **child** being held in a shelter facility pursuant to this article 3 may have a mental health disorder, as provided in section 27-65-106, the intake personnel or other appropriate personnel shall contact a mental health professional to do a mental health disorder prescreening on the **child**. The court must be notified of the contact and may take appropriate action. If a mental health disorder prescreening is requested, it must be conducted in an appropriate place accessible to the **child** and the mental health professional. A request for a mental health disorder prescreening must not extend the time within which a hearing is to be held pursuant to this section. If a hearing has been set but has not yet occurred, the mental health disorder prescreening must be conducted prior to the hearing; except that the prescreening must not extend the time within which a hearing is to be held pursuant to this section.

(b) If a **child** has been ordered detained pending an adjudication, disposition, or other court hearing and the **child** subsequently appears to have a mental health disorder, as provided in section 27-65-106, the intake personnel or other appropriate personnel shall contact the court with a recommendation for a mental health disorder prescreening. A mental health disorder prescreening must be conducted at any appropriate place accessible to the **child** and the mental health professional within twenty-four hours after the request, excluding Saturdays, Sundays, and legal holidays.

(c) If the mental health professional finds, as a result of the prescreening, that the **child** may have a mental health disorder, the mental health professional shall recommend to the court that the **child** be evaluated pursuant to section 27-65-106, and the court shall proceed as provided in section 19-3-506.

(d) Nothing in this subsection (4) precludes the use of procedures for an **emergency mental health hold** pursuant to section 27-65-106.

(5) The court may, at any time, order the release of any **child** being held pursuant to section 19-3-401 from shelter care or a temporary holding facility not operated by the department of human services without holding a hearing, either without restriction or upon written promise of

the parent, guardian, or legal custodian to bring the **child** to the court at a time set or to be set by the court.

(6)(a) After making a reasonable effort to obtain the consent of the parent, guardian, or other legal custodian, the court may authorize or consent to medical, surgical, or dental treatment or care for a **child** placed in shelter care or a temporary holding facility not operated by the department of human services.

(b) When the court finds that emergency medical, surgical, or dental treatment is required for a **child** placed in shelter care or a temporary holding facility not operated by the department of human services, it may authorize such treatment or care if the parents, guardian, or legal custodian are not immediately available.

(7) The court may also issue temporary orders for legal **custody** as provided in section 19-1-115. The court shall enter family time orders consistent with section 19-3-217.

(8) Any law enforcement officer, employee of the division in the department of human services responsible for **youth** services, or other person acting under the direction of the court who in good faith transports any **child**, releases any **child** from **custody** pursuant to a written policy of a court, releases any **child** from **custody** pursuant to any written criteria established pursuant to this title, or detains any **child** pursuant to court order or written policy or criteria established pursuant to this title shall be immune from civil or criminal liability that might otherwise result by reason of such act. For purposes of any proceedings, civil or criminal, the good faith of any such person shall be presumed.

(9) If the sole issue preventing an emergency placement of a **child** with a relative or kin is a lack of resources, the county department shall use reasonable efforts to assist the relative or kin with obtaining the necessary items within existing available resources.

26-20- Protection of Persons from **Restraint**

26-20-101. Short title.

The short title of this article is the “Protection of Individuals from **Restraint** and **Seclusion** Act”.

26-20-102. Definitions.

As used in this article 20, unless the context otherwise requires:

(1)

(a) “Agency” means:

(I) Any one of the principal departments of state government created in article 1 of title 24, C.R.S., or any division, section, unit, office, or agency within one of such principal departments of state government, except as excluded in paragraph (b) of this subsection (1);

(II) Any county, city and county, municipality, or other political subdivision of the state or any department, division, section, unit, office, or agency of such county, city and county, municipality, or other political subdivision of the state;

(III) Any public or private entity that has entered into a contract for services with an entity described in subsection (1)(a)(I), (1)(a)(II), or (1)(a)(VI) of this section;

(IV) Any public or private entity licensed or certified by one of the entities described in subparagraph (I) or (II) of this paragraph (a);

(V) A person regulated pursuant to article 245 of title 12;

(VI) Any school district, including any school or charter school of a school district, and the state charter school institute established in section 22-30.5-503, including any institute charter school.

(b) “Agency” does not include:

(I) The department of corrections or any public or private entity that has entered into a contract for services with such department;

(II) Any law enforcement agency of the state or of a political subdivision of the state;

(III) A juvenile probation department or division authorized pursuant to section 19-2.5-1406;

(IV) Any county department of human or social services when engaged in performance of duties pursuant to part 3 of article 3 of title 19.

(2) “Chemical **restraint**” means giving an individual medication involuntarily for the purpose of **restrain**ing that individual; except that “chemical **restraint**” does not include the involuntary administration of medication pursuant to section 27-65-111 (5), C.R.S., or administration of medication for voluntary or life-saving medical procedures.

(2.5) “Division of **youth** services” means the division of **youth** services within the state department created pursuant to section 19-2.5-1501.

(3) **“Emergency” means a serious, probable, imminent threat of bodily harm to self or others where there is the present ability to effect such bodily harm.**

(3.5) “Individual” encompasses both adults and **youth**s, unless the context specifically states one or the other.

(4) “Mechanical **restraint**” means a physical device used to involuntarily restrict the movement of an individual or the movement or normal function of a portion of his or her body.

(5) “Physical **restraint**” means the use of bodily, physical force to involuntarily limit an individual’s freedom of movement for more than one minute; except that “physical **restraint**”

does not include the holding of a **child** by one adult for the purposes of calming or comforting the **child**.

(5.3) “Prone position” means a face-down position.

(5.5) “Prone **restraint**” means a **restraint** in which the individual who is being **restrain**ed is **secure**d in a prone position.

(5.7) “Qualified mental health professional” means an individual who is a licensed psychologist, a licensed psychiatrist, a licensed clinical social worker, a psychologist candidate for licensure, a licensed marriage and family therapist, or a masters-level mental health therapist who is under the supervision of a licensed mental health professional.

(6) “**Restraint**” means any method or device used to involuntarily limit freedom of movement, including bodily physical force, mechanical devices, or chemicals. **Restraint** must not be used as a form of discipline or to gain compliance from a student. If property damage might be involved, **restraint** may only be used when the destruction of property could possibly result in bodily harm to the individual or another person. “**Restraint**” includes chemical **restraint**, mechanical **restraint**, and physical **restraint**. **“Restraint” does not include:**

(a) The use of any form of **restraint** in a licensed or certified hospital when such use:

(I) Is in the context of providing medical or dental services that are provided with the consent of the individual or the individual’s guardian; and

(II) Is in compliance with industry standards adopted by a nationally recognized accrediting body or the conditions of participation adopted for federal medicare and medicaid programs;

(b) The use of protective devices or adaptive devices for providing physical support, prevention of injury, or voluntary or life-saving medical procedures;

(c) The holding of an individual for less than one minute by a staff person for protection of the individual or other persons; except that nothing in this subsection (6)(c) may be interpreted to permit the holding of a public school student in a prone position, except as described in section 26-20-111 (2), (3), or (4); or

(d) Placement of an inpatient or resident in his or her room for the night.

(e) Repealed.

(7) “**Seclusion**” means the placement of an individual alone in a room or area from which egress is involuntarily prevented, except during normal sleeping hours.

(8) “State department” means the state department of human services.

(9) “**Youth**” means an individual who is less than twenty-one years of age.

26-20-103. Basis for use of **restraint** or **seclusion**.

(1) Subject to the provisions of this article, an agency may only use **restraint** or **seclusion** on an individual:

(a) In cases of emergency, as defined in section 26-20-102 (3); and

(b)

(I**) After the failure of less restrictive alternatives; or**

(II) After a determination that such alternatives would be inappropriate or ineffective under the circumstances.

(1.5) **Restraint** and **seclusion** must never be used:

(a) As a punishment or disciplinary sanction;

(b) As part of a treatment plan or behavior modification plan;

(c) For the purpose of retaliation by staff; or

(d) For the purpose of protection, unless:

(I) The **restraint** or **seclusion** is ordered by the court; or

(II) In an emergency, as provided for in subsection (1) of this section.

(2) An agency that uses **restraint** or **seclusion** pursuant to the provisions of subsection (1) of this section shall use such **restraint** or **seclusion**:

(a) Only for the purpose of preventing the continuation or renewal of an emergency;

(b) Only for the period of time necessary to accomplish its purpose; and

(c) In the case of physical **restraint**, only if no more force than is necessary to limit the individual's freedom of movement is used.

(3) [Editor's note: This version of subsection (3) is effective until July 1, 2024.] In addition to the circumstances described in subsection (1) of this section, a facility, as defined in section 27-65-102, that is designated by the commissioner of the behavioral health administration in the state department to provide treatment pursuant to section 27-65-106, 27-65-108, 27-65-109, or 27-65-110 to an individual with a mental health disorder, as defined in section 27-65-102, may use **seclusion** to **restrain** an individual with a mental health disorder when the **seclusion** is necessary to eliminate a continuous and serious disruption of the treatment environment.

(3) [Editor's note: This version of subsection (3) is effective July 1, 2024.] In addition to the circumstances described in subsection (1) of this section, a facility, as defined in section 27-65-102, that is designated by the commissioner of the behavioral health administration in the state department to provide treatment pursuant to section 27-65-106, 27-65-108, 27-65-108.5, 27-

65-109, or 27-65-110 to an individual with a mental health disorder, as defined in section 27-65-102, may use **seclusion** to **restrain** an individual with a mental health disorder when the **seclusion** is necessary to eliminate a continuous and serious disruption of the treatment environment.

(4)

(a) The general assembly recognizes that skilled nursing and nursing care facilities that participate in federal medicaid programs are subject to federal statutes and regulations concerning the use of **restraint** in such facilities that afford protections from **restraint** in a manner consistent with the purposes and policies set forth in this article.

(b) If the use of **restraint** or **seclusion** in skilled nursing and nursing care facilities licensed under state law is in accordance with the federal statutes and regulations governing the medicare program set forth in 42 U.S.C. sec. 1395i-3(c) and 42 CFR part 483, subpart B and the medicaid program set forth in 42 U.S.C. sec. 1396r(c) and 42 CFR part 483, subpart B and with the rules of the department of public health and environment relating to the licensing of these facilities, there is a conclusive presumption that use of **restraint** or **seclusion** is in accordance with the provisions of this article.

(5)

(a) The general assembly recognizes that article 10.5 of title 27, C.R.S., and article 10 of title 25.5, C.R.S., and the rules promulgated pursuant to the authorities set forth in those articles, address the use of **restraint** on an individual with a developmental disability.

(b) If any provision of this article concerning the use of **restraint** or **seclusion** conflicts with any provision concerning the use of **restraint** or **seclusion** stated in article 10.5 of title 27, C.R.S., article 10 of title 25.5, C.R.S., or any rule adopted pursuant thereto, the provision of article 10.5 of title 27, C.R.S., article 10 of title 25.5, C.R.S., or the rule adopted pursuant thereto prevails.

(6) The provisions of this article do not apply to any agency engaged in transporting an individual from one facility or location to another facility or location when it is within the scope of that agency's powers and authority to effect such transportation.

26-20-104. General duties relating to use of **restraint** on individuals.

(1) Notwithstanding the provisions of section 26-20-103, an agency that uses **restraint** shall ensure that:

(a) At least every fifteen minutes, staff shall monitor any individual held in mechanical **restraint**s to assure that the individual is properly positioned, that the individual's blood circulation is not restricted, that the individual's airway is not obstructed, and that the individual's other physical needs are met;

(b) No physical or mechanical **restraint** of an individual shall place excess pressure on the chest or back of that individual or inhibit or impede the individual's ability to breathe;

(c) During physical **restraint** of an individual, an agent or employee of the agency shall check to ensure that the breathing of the individual in such physical **restraint** is not compromised;

(d) A chemical **restraint** shall be given only on the order of a physician or an advanced practice registered nurse with prescriptive authority who has determined, either while present during the course of the emergency justifying the use of the chemical **restraint** or after telephone consultation with a registered nurse, licensed physician assistant, or other authorized staff person who is present at the time and site of the emergency and who has participated in the evaluation of the individual, that such form of **restraint** is the least restrictive, most appropriate alternative available. Nothing in this subsection (1) shall modify the requirements of section 26-20-102 (2) or 26-20-103 (3).

(e) An order for a chemical **restraint**, along with the reasons for its issuance, shall be recorded in writing at the time of its issuance;

(f) An order for a chemical **restraint** shall be signed at the time of its issuance by such physician if present at the time of the emergency;

(g) An order for a chemical **restraint**, if authorized by telephone, shall be transcribed and signed at the time of its issuance by an individual with the authority to accept telephone medication orders who is present at the time of the emergency;

(h) Staff trained in the administration of medication shall make notations in the record of the individual as to the effect of the chemical **restraint** and the individual's response to the chemical **restraint**.

(2) For individuals in mechanical **restraint**s, agency staff shall provide relief periods, except when the individual is sleeping, of at least ten minutes as often as every two hours, so long as relief from the mechanical **restraint** is determined to be safe. During such relief periods, the staff shall ensure proper positioning of the individual and provide movement of limbs, as necessary. In addition, during such relief periods, staff shall provide assistance for use of appropriate toiletting methods, as necessary. The individual's dignity and safety shall be maintained during relief periods. Staff shall note in the record of the individual being **restrain**ed the relief periods granted.

(3) Relief periods from **seclusion** shall be provided for reasonable access to toilet facilities.

(4) An individual in physical **restraint** shall be released from such **restraint** within fifteen minutes after the initiation of physical **restraint**, except when precluded for safety reasons.

26-20-104.5. Duties relating to use of **seclusion** by division of **youth** services.

(1) Notwithstanding the provisions of section 26-20-103 to the contrary, if the division of **youth** services holds a **youth** in **seclusion** in any **secure** state-operated or state-owned facility:

(a) A staff member shall check the **youth**'s safety at varying intervals, but at least every fifteen minutes;

(b) Within one hour after the beginning of the **youth**'s **seclusion** period, and every hour thereafter, a staff member shall notify the facility director or his or her designee of the **seclusion** and receive his or her written approval of the **seclusion**; and

(c) Within twelve hours after the beginning of the **youth**'s **seclusion** period, the division of **youth** services shall notify the **youth**'s parent, guardian, or legal custodian and inform that person that the **youth** is or was in **seclusion** and the reason for his or her **seclusion**.

(2)

(a) A **youth** placed in **seclusion** because of an ongoing emergency must not be held in **seclusion** beyond four consecutive hours, unless the requirements of paragraph (b) of this subsection (2) are satisfied.

(b) If an emergency situation occurs that continues beyond four consecutive hours, the division of **youth** services may not continue the use of **seclusion** for that **youth** unless the following criteria are met and documented:

(I) A qualified mental health professional, or, if such professional is not available, the facility director or his or her designee, determines that referral of the **youth** in **seclusion** to a mental health facility is not warranted; and

(II) The director of the division of **youth** services, or his or her designee, approves at or before the conclusion of four hours, and every hour thereafter, the continued use of **seclusion**.

(c) A **youth** may not be held in **seclusion** under any circumstances for more than eight total hours in two consecutive calendar days without a written court order.

(3) Notwithstanding any other provision of this section, the division of **youth** services may place a **youth** alone in a room or area from which egress is involuntarily prevented if such confinement is part of a routine practice that is applicable to substantial portions of the population. Such confinement must be imposed only for the completion of administrative tasks and should last no longer than necessary to achieve the task safely and effectively.

26-20-105. Staff training concerning the use of **restraint** and **seclusion** - adults and **youth**.

(1) An agency that utilizes **restraint** or **seclusion** shall ensure that all staff involved in utilizing **restraint** or **seclusion** in its facilities or programs are trained in the appropriate use of **restraint** and **seclusion**.

(1.5) The division of **youth** services shall ensure that all staff involved in utilizing **restraint** and **seclusion** are trained in:

(a) The health and behavioral effects of **restraint** and **seclusion** on **youth**, including those with behavioral or mental health disorders or intellectual and developmental disabilities;

(b) Effective de-escalation techniques for **youth** in crisis, including those with behavioral or mental health disorders or intellectual and developmental disabilities;

(c) The value of positive over negative reinforcement in dealing with **youth**; and

(d) Methods for implementing positive behavior incentives.

(2) All agencies that utilize **restraint** or **seclusion** shall ensure that staff are trained to explain, where possible, the use of **restraint** or **seclusion** to the individual who is to be **restrain**ed or **secluded** and to the individual's family if appropriate.

26-20-106. Documentation requirements for **restraint** and **seclusion** - adults and **youth**.

(1) Each agency shall ensure that the use of **restraint** or **seclusion** is documented in the record of the individual who was **restrain**ed or **secluded**. Each agency that is authorized to promulgate rules or adopt ordinances shall promulgate rules or adopt ordinances applicable to the agencies within their respective jurisdictions specifying the documentation requirements for purposes of this section.

(2) The division of **youth** services shall maintain the following documentation each time a **youth** is placed in **seclusion** as a result of an emergency in any **secure** state-operated or state-owned facility:

(a) The date of the occurrence;

(b) The race, age, and gender of the individual;

(c) The reason or reasons for **seclusion**, including a description of the emergency and the specific facts that demonstrate that the **youth** posed a serious, probable, and imminent threat of bodily harm to himself, herself, or others, and that there was a present ability to effect such bodily harm;

(d) A description of de-escalation measures taken by staff and the response, if any, of the **youth** in **seclusion** to those measures;

(e) An explanation of why less restrictive alternatives were unsuccessful;

(f) The total time in **seclusion**;

(g) Any incidents of self-harm or suicide that occurred while the **youth** was in **seclusion**;

(h) With respect to the interactions required by section 26-20-104.5, documentation of the justification for keeping the **youth** in **seclusion** and specific facts to demonstrate that the emergency was ongoing;

(i) The facility director or his or her designee's approval of continued **seclusion** at intervals as required by section 26-20-104.5;

(j) Documentation of notification within twelve hours to the parent, guardian, or legal custodian of the **youth** in **seclusion** as required by section 26-20-104.5; and

(k) The written approval by the director of the division of **youth** services for any **seclusion** that results from an emergency that extends beyond four consecutive hours, as required by section 26-20-104.5. This written approval must include documentation of specific facts to demonstrate that the emergency was ongoing and specific reasons why a referral to a mental health facility was not warranted.

(3) The division of **youth** services shall maintain the following documentation each time one or more **youth**s are placed in confinement for administrative reasons pursuant to section 26-20-104.5 (3) in a **secure** state-operated or state-owned facility:

(a) The number of **youth** confined;

(b) The length of time the **youth** or **youth**s were confined; and

(c) The reason or reasons for the confinement.

(4) On or before January 1, 2017, and on or before July 1, 2017, and every January 1 and July 1 thereafter, the division of **youth** services shall report on its use of **restraint** or **seclusion** in any **secure** state-operated or state-owned facility to the **youth restraint** and **seclusion** working group established in section 26-20-110. The January report must include information from March 1 through August 31, and the July report must include information from September 1 through the last day of February. The reports must include the following:

(a) An incident report on any use of **seclusion** on a **youth** due to an emergency for more than four consecutive hours, or for more than eight total hours in two consecutive calendar days. Each incident report must include length of **seclusion**, specific facts that demonstrate that the emergency was ongoing, any incidents of self-harm while in **seclusion**, the reasons why attempts to process the **youth** out of **seclusion** were unsuccessful, and any corrective measures taken to prevent lengthy or repeat periods of **seclusion** in the future. To protect the privacy of the **youth**, the division of **youth** services shall redact all private medical or mental health information and personal identifying information, including, if necessary, the facility at which the **seclusion** occurred.

(b) A report that lists the following aggregate information, both as combined totals and totals by facility for all **secure** state-operated or state-owned facilities:

(I) The total number of **youth**s held in **seclusion** or **restraint** due to an emergency;

(II) The total number of incidents of **seclusion** or **restraint** due to an emergency;

(III) The average time in **seclusion** or **restraint** per incident;

(IV) An aggregate summary of race, age, and gender of **youth**s held in **seclusion** or **restraint**; and

(V) The type of **restraint** or **restraint**s used in each incident; and

(c) An incident report for any **youth** whom the division isolates from his or her peers for more than eight hours in two consecutive calendar days. Each incident report must include the age, race, and gender of the **youth**; the name of the facility; the length of time that the **youth** was isolated from his or her peers; and the justification for the isolation on an hour-by-hour basis. To protect the privacy of the **youth**, the division shall redact all private medical or mental health information and personal identifying information, including, if necessary, the facility at which the **seclusion** occurred. If the division has prepared an incident report of an incident involving **seclusion** pursuant to subsection (4)(a) of this section, the division is not required to include a report of the same incident pursuant to this subsection (4)(c).

(5) Reports prepared pursuant to this section must maintain the confidentiality of all **youth**. The reports made pursuant to this section are available to the public upon request.

(6) Prior to January 1, 2018, the division of **youth** services shall meet the requirements of this section to the extent that it is able using its current reporting mechanisms. The division of **youth** services shall fully comply with all requirements of this section on or before January 1, 2018.

26-20-107. Review of the use of **restraint** and **seclusion**.

An agency that utilizes **restraint** or **seclusion** shall ensure that a review process is established for the appropriate use of **restraint** or **seclusion**.

26-20-108. Rules.

An agency that is authorized to promulgate rules or adopt ordinances shall promulgate rules or adopt ordinances applicable to the agencies within their respective jurisdictions that establish procedures for the use of **restraint** and **seclusion** consistent with the provisions of this article. Any agency that has rules or ordinances in existence on April 22, 1999, is not required to promulgate additional rules or adopt additional ordinances unless that agency's existing rules or ordinances do not meet the minimum requirements of this article.

26-20-109. Limitations.

(1) Nothing in this article shall be deemed to form an independent basis of statutory authority for the use of **restraint**.

(2) Nothing in this article shall be deemed to authorize an agency to implement policies, procedures, or standards or promulgate rules or adopt ordinances that would limit, decrease, or adversely impact any policies, procedures, standards, rules, or ordinances in effect on April 22, 1999, that provided greater protection concerning the use of **restraint** than is set forth in this article.

26-20-110. **Youth restraint** and **seclusion** working group - membership - purpose - repeal.

(1) There is established within the division of **youth** services a **youth restraint** and **seclusion** working group, referred to in this section as the "working group". The working group consists of:

(a) The director of the office of **child**ren, **youth**, and families in the division of **child** welfare within the state department, or his or her designee. The director shall convene the working group and serve as chair.

(b) The director of the division of **youth** services, or his or her designee;

(c) The director of behavioral health within the division of **youth** services, or his or her designee;

(d) The commissioner of the behavioral health administration in the state department, or the commissioner's designee;

(e) An employee of the division of **youth** services who is a representative of an organization in Colorado that exists for the purpose of dealing with the state as an employer concerning issues of mutual concern between employees and the state, as appointed by the governor;

(f) Two representatives from nonprofit advocacy groups that work to restrict **restraint** or **seclusion** for **youth** or that represent **child**ren within the **custody** of the division of **youth** services, one who is appointed by the speaker of the house of representatives and one who is appointed by the president of the senate;

(g) Two experts independent from the division of **youth** services with expertise in adolescent development, adolescent brain development, trauma-responsive care of juveniles, positive behavior incentives in a juvenile correctional setting, evidence-based de-escalation techniques, or the negative effects of **seclusion** on the adolescent brain. The **minor**ity leader of the house of representatives shall appoint one expert and the **minor**ity leader of the senate shall appoint the other expert.

(h) A person who does not work for the department or for the division of **youth** services and who has worked as a staff member or as a senior executive in **youth** corrections and who has experience working to establish a rehabilitative and therapeutic culture in one or more juvenile justice facilities, to be appointed by the governor or his or her designee.

(i) The **child** protection ombudsman or his or her designee pursuant to section 19-3.3-103 (1)(g); and

(j) A parent of a person who was once committed to the **custody** of the division of **youth** services, to be appointed by the state public defender.

(2) The working group shall advise the division of **youth** services concerning policies, procedures, and best practices related to **restraint** and **seclusion** and alternatives to **restraint** and **seclusion**.

(3) The working group shall monitor the division of **youth** services' use of confinement for administrative purposes. The division of **youth** services shall share with the working group, on an ongoing basis, available data regarding time spent in confinement by **youth**s for administrative reasons, as described in section 26-20-104.5 (3), in any **secure** state-operated and state-owned facility. If necessary, the working group may make recommendations to the division of **youth** services and to the public health care and human services committee of the house of representatives and the health and human services committee of the senate, or any successor committees, about the use of confinement for administrative purposes.

(4) The working group may request, on a semiannual basis, information and data from the state department on the status of the division of **youth** services' work related to the **restraint** and **seclusion** of **youth**s in their care and **custody**.

(5) The chair of the working group shall convene the working group's first meeting no later than August 1, 2016. The working group must meet at least semi-annually thereafter. The chair shall schedule and convene subsequent meetings.

(6) The chair shall provide the working group with semiannual updates on the division of **youth** services' policies related to **restraint** and **seclusion** and alternatives to **restraint** and **seclusion**.

(7)

(a) This section is repealed, effective September 1, 2024.

(b) Prior to the repeal, the working group shall be reviewed as provided in section 2-3-1203, C.R.S.

27-65 Care and Treatment of Persons with Mental Health Disorders

§ 27-65-101. Legislative declaration

(1) The general assembly declares that the purposes of this article 65 are:
(a) To **secure** for each person with a mental health disorder such care and treatment suited to the person's needs and to ensure that
the care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;
(b) To deprive a person of the person's liberty for purposes of care or treatment only when less restrictive alternatives are
unavailable and only when the person's safety or the safety of others is endangered;
(c) To provide the fullest possible measure of privacy, dignity, and other rights to persons undergoing care and treatment for
a mental health disorder;
(d) To encourage the use of voluntary, rather than coercive, measures to provide care and treatment for mental health disorders
and to provide the care and treatment in the least restrictive setting;
(e) To provide appropriate information to family members concerning the location and fact of admission of a person with a

mental health disorder to inpatient or **residential** care and treatment;
(f) To encourage the appropriate participation of family members in the care and treatment of a person with a mental health
disorder and, when appropriate, to provide information to family members in order to facilitate that participation; and
(g) To facilitate the recovery and resiliency of each person who receives care and treatment pursuant to this article 65.
(2) To carry out these purposes, the provisions of this article 65 must be liberally construed.

§ 27-65-102. Definitions

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.
(2) "Behavioral health administration" or "BHA" means the behavioral health administration established in section 27-60-203.
(3) "Behavioral health crisis" means a significant disruption in a person's mental or emotional stability or functioning resulting in an urgent need for immediate assessment and treatment to prevent a serious deterioration in the person's mental or physical health.
(4) "Behavioral health crisis response team" means a mobile team that responds to people in the community who are in a behavioral health crisis and includes at least one licensed or bachelor-degree-level behavioral health worker. A "behavioral health crisis response team" includes, but is not limited to, a co-responder model, mobile crisis response unit, or a community response team.
(5) "Behavioral health entity" has the same meaning as set forth in section 27-50-101.
(6) "Certified peace officer" means any certified peace officer as described in section 16-2.5-102.
(7) "Commissioner" means the commissioner of the behavioral health administration established in section 27-60-203.
(8) "Court" means any district court of the state of Colorado and the probate court in the city and county of Denver.
(9) "Court-ordered evaluation" means an evaluation ordered by a court pursuant to section 27-65-106.
(10) "Danger to the person's self or others" means:
(a) A person poses a substantial risk of physical harm to the person's self as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm to the person's self; or
(b) A person poses a substantial risk of physical harm to another person or persons, as manifested by evidence of recent homicidal or other violent behavior by the person in question, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm by the person in question.

(11) "Department" means the department of human services.
(12) "Emergency medical services facility" means a general hospital with an emergency department or a freestanding emergency department, as defined in section 25-1.5-114 (5). An emergency medical services facility is not required to be, but may elect to become, a facility designated or approved by the commissioner.
(13) "Emergency medical services provider" has the same meaning as set forth in section 25-3.5-103 (8).
(14) Repealed.
(15) "Facility" means a public hospital or a licensed private hospital, behavioral health entity, institution, or **residential child** care facility that provides treatment for persons with mental health disorders.
(16) "Family member" means a spouse, partner in a civil union, as defined in section 14-15-103 (5), parent, adult **child**, or adult sibling of a person with a mental health disorder.
(17) "Gravely disabled" means a condition in which a person, as a result of a mental health disorder, is incapable of making informed decisions about or providing for the person's essential needs without significant supervision and assistance from other people. As a result of being incapable of making these informed decisions, a person who is gravely disabled is at risk of substantial bodily harm, dangerous worsening of any concomitant serious physical illness, significant psychiatric deterioration, or mismanagement of the person's essential needs that could result in substantial bodily harm. A person of any age may be "gravely disabled", but the term does not include a person whose decision-making capabilities are limited solely by the person's developmental disability.
(18) "**Hospitalization**" means twenty-four-hour out-of-home placement for treatment in a facility for a person with a mental health disorder.
(19) "Independent professional person" means a professional person 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 facility if the professional person 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 27-65-104 (2).
(20) "Intervening professional" means a person who is one of the following:
(a) A professional person;
(b) A physician assistant licensed pursuant to section 12-240-113;
(c) An advanced practice registered nurse, as defined in section 12-255-104 (1);
(d) A registered professional nurse, as defined in section 12-255-104 (11), who has specific mental health training as identified by the BHA;
(e) A clinical social worker licensed pursuant to part 4 of article 245 of title 12;
(f) A marriage and family therapist licensed pursuant to part 5 of article 245 of title 12;
(g) A professional counselor licensed pursuant to part 6 of article 245 of title 12; or
(h) An addiction counselor licensed pursuant to part 8 of article 245 of title 12.
(21) "Lay person" means a person identified by another person who is detained on an involuntary **emergency mental health hold** pursuant to section 27-65-106, certified for short-term treatment pursuant to section 27-65-109, or certified for long-term care and treatment pursuant to section 27-65-110 who is authorized to participate in activities related to the

person's involuntary **emergency mental health hold**, short-term treatment, or long-term treatment, including court appearances, discharge planning, and grievances. The person may rescind the lay person's authorization at any time.
(22) "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.
(23) "**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 the person's parent or legal guardian and is managing the person's own financial affairs, regardless of the person's source of income, or who is married and living separately and apart from the person's parent or legal guardian.
(24) "Patient representative" means a person designated by a mental health facility to process patient complaints or grievances or to represent patients who are **minor**s pursuant to section 27-65-104 (4).
(25) "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.
(26) "Physician" means a person licensed to practice medicine in this state.
(27) "Professional person" means a person licensed to practice medicine in this state, a psychologist licensed to practice in this state, or a person licensed and in good standing to practice medicine in another state or a psychologist 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.
(28) "**Residential child** care facility" has the same meaning as set forth in section 26-6-903 (29). A **residential child** care facility may be eligible for designation by the commissioner pursuant to this article 65.
(29) "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.
(30) "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, a comprehensive evaluation, treatment, referral, and other appropriate services, either on an inpatient or an outpatient basis.
(31) "**Secure** transportation provider" means a provider licensed pursuant to section 25-3.5-310 to provide public or private **secure** transportation services.

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

(1) Nothing in this article 65 in any way limits the right of any person to make a voluntary application at any time to any public or private agency or professional person for mental health services, either by direct application in person or by referral from any other public or private agency or professional person. Subject to section 15-14-316 (4), a ward, as defined in section 15-14-102 (15), may be admitted to a hospital or institutional care and treatment for a mental

health disorder with the guardian's consent for as long as the ward agrees to such care and treatment. The guardian shall immediately notify in writing the court that appointed the guardian of the admission.
(2) For the purpose of this article 65, the treatment by prayer in the practice of the religion of any church that teaches reliance on spiritual means alone for healing is considered a form of treatment.
(3) 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.
(4) Voluntary patients are afforded all the rights and privileges customarily granted by hospitals to their patients.
(5)
(a) If at any time during an **emergency mental health hold** of a person who is confined involuntarily the facility staff requests the person to sign in voluntarily and the person elects to do so, the following advisement shall be given orally and in writing and an appropriate notation shall be made in the person's medical record by the professional person or the professional person's 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.

(b) This subsection (5) does not apply to a person on an **emergency mental health hold** in an emergency medical services facility.

27-65-104. Voluntary applications for mental health services - treatment of **minor**s - definition.

(1) 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, 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 is not subject to disaffirmance because of **minor**ity. 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 **minor**'s parent or legal guardian of the services given or needed.
(2) A **minor** who is fifteen years of age or older or a **minor**'s parent or legal guardian, on the **minor**'s behalf, may make a voluntary application for **hospitalization**. An application for **hospitalization** on behalf of a **minor** who is under fifteen years of age and who is a ward of the department must 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 immediately appoint a guardian ad litem. Procedures for **hospitalization** of a **minor** may proceed pursuant to this section once a petition for appointment of a guardian ad litem has been filed, if necessary. Whenever an 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 **minor**'s parents or legal guardian, the **minor**'s school, and any other social service 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.

(3) An interview and investigation by an independent professional person is not required for a **minor** who is fifteen years of age or older and who, upon the recommendation of the **minor**'s treating professional person, seeks voluntary **hospitalization** with the consent of the **minor**'s 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 the **minor**'s right to refuse to sign the admission consent form and the **minor**'s right to revoke the **minor**'s consent at a later date. If a **minor** admitted pursuant to this subsection (3) subsequently revokes the **minor**'s consent after admission, a review of the **minor**'s need for **hospitalization** pursuant to subsection (4) of this section must be initiated immediately.

(4)

(a) The need for continuing **hospitalization** of all voluntary **minor** patients must be formally reviewed at least every two months. Review pursuant to this subsection (4) must fulfill the requirement specified in section 19-1-115 (8) when the **minor** is fifteen years of age or older and consenting to **hospitalization**.

(b) The review must be conducted by an independent professional person who is not a member of the **minor**'s treating team; or, if the **minor**, the **minor**'s physician, and the **minor**'s parent or legal guardian do not object to the need for continued **hospitalization**, the review required pursuant to this subsection (4) 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 (2) of this section and whether continued **hospitalization** is appropriate and shall, at a minimum, conduct an investigation pursuant to subsection (2) 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 the **minor**'s wishes concerning continued **hospitalization**.

(e) Nothing in this section limits a **minor**'s right to seek release from the facility pursuant to any other provision of law.

(5) Every six months the review required pursuant to subsection (4) 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 **minor** pursuant to subsection (4) of this section.

(6)

(a) When a **minor** does not consent to or objects to continued **hospitalization**, the need for such continued **hospitalization** must, within ten days, be reviewed pursuant to subsection (4) 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 **minor** pursuant to this subsection (6). The **minor** shall be informed of the results of the review within three days after the review's completion. If the conclusion reached by the professional person is that the **minor** no longer meets the standards for **hospitalization** specified in subsection (2) of this section, the **minor** must be discharged.
(b) If, twenty-four hours after being informed of the results of the review specified in subsection (6)(a) of this section, a **minor** continues to affirm the objection to **hospitalization**, the director of the facility or the director's duly appointed representative shall advise the **minor** that the **minor** has the right to retain and consult with an attorney at any time and that the director or the director's 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**; the **minor**'s attorney, if any; and the **minor**'s parent, legal guardian, or guardian ad litem, if any, shall 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 subsection (6)(d) of this section.
(c) Whenever the statement requesting an attorney is filed with the court, the court shall ascertain whether the **minor** has retained counsel, and, if the **minor** 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)
(I) The **minor** or the **minor**'s attorney or guardian ad litem may, at any time after the **minor** has continued to affirm the **minor**'s objection to **hospitalization** pursuant to subsection (6)(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 of the time and place of the hearing to the **minor**; the **minor**'s attorney, if any; the **minor**'s parents or legal guardian; the **minor**'s guardian ad litem, if any; the independent professional person; and the **minor**'s treating team. The hearing must be held in accordance with section 27-65-113; 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:
(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.
(II) 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 (6), "objects to **hospitalization**" means that a **minor**, with the necessary assistance of hospital staff, has written the **minor**'s 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 (6) until ninety days after conclusion of proceedings pursuant to this subsection (6).
(g) In addition to the rights specified in section 27-65-119 for persons receiving evaluation, care, or treatment, a written notice specifying the rights of **minor child**ren under this section must be given to each **minor** upon admission to **hospitalization**.
(7) A **minor** who no longer meets the standards for **hospitalization** specified in subsection (2) of this section must be discharged.

27-65-105. Rights of respondents.

Unless specifically stated in an order by the court, a respondent does not forfeit any legal right or suffer legal disability by reason of the provisions of this article 65.

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

(1) An **emergency mental health hold** may be invoked under one of the following conditions:
(a)
(I) When a certified peace officer has probable cause to believe a person has a mental health disorder and, as a result of the mental health disorder, is an imminent danger to the person's self or others or is gravely disabled, the certified peace officer may take the person into protective **custody** and transport the person to a facility designated by the commissioner for an **emergency mental health hold**. If such a facility is not available, the certified peace officer may transport the person to an emergency medical services facility. The certified peace officer may request assistance from a behavioral health crisis response team for assistance in detaining and transporting the person or an emergency medical services provider in transporting the person; or
(II) When an intervening professional reasonably believes that a person appears to have a mental health disorder and, as a result of the mental health disorder, appears to be an imminent danger to the person's self or others or appears to be gravely disabled, the intervening professional may cause the person to be taken into protective **custody** and transported to a facility designated by the commissioner for an **emergency mental health hold**. If such a facility is not available, the certified peace officer may transport the person to an emergency medical services facility. The intervening professional may request assistance from a certified peace officer, a **secure** transportation provider, or a behavioral health crisis response team for assistance in detaining and transporting the person, or assistance from an emergency medical services provider in transporting the person.
(b)
(I) When a person petitions the court in the county in which the respondent resides or is physically present requesting an evaluation of the respondent's condition and alleging that the respondent appears to have a mental health disorder and, as a result of the mental health disorder, appears to be a danger to the respondent's self or others or appears to be gravely disabled.
(II) Any person who files a malicious or false petition for an evaluation of a respondent pursuant to this section is subject to criminal prosecution.
(2) When a person is taken into custody pursuant to subsection (1) of this section, the person must not be detained in a jail, lockup, or other place used for the confinement of persons

charged with or convicted of penal offenses. Unless otherwise required by law, a certified peace officer may transport the person to an emergency medical services facility or facility designated by the commissioner even if a warrant has been issued for the person's arrest if the certified peace officer believes it is in the best interest of the person. The person must not be held on an **emergency mental health hold** for longer than seventy-two hours after the hold is placed or ordered. Nothing in this section prohibits an emergency medical services facility from involuntarily holding the person in order to stabilize the person as required pursuant to the federal "Emergency Medical Treatment and Labor Act", 42 U.S.C. sec. 1395dd, or if the treating professional determines that the individual's physical or mental health disorder impairs the person's ability to make an informed decision to refuse care and the provider determines that further care is indicated.
(3) When a person is placed on an **emergency mental health hold** pursuant to subsection (1) of this section and is presented to an emergency medical services facility or a facility designated by the commissioner, the facility shall require a BHA-approved application in writing, stating the circumstances under which the person's condition was called to the attention of the intervening professional or certified peace officer and further stating sufficient facts, obtained from the intervening professional's or certified peace officer's personal observations or obtained from others whom the intervening professional or certified peace officer reasonably believes to be reliable, to establish that the person has a mental health disorder and, as a result of the mental health disorder, is an imminent danger to the person's self or others or is gravely disabled. The application must indicate when the person was taken into **custody** and who brought the person's condition to the attention of the intervening professional or certified peace officer. A copy of the application must be furnished to the person being evaluated, and the application must be retained in accordance with section 27-65-123 (4).
(4)
(a) The petition for a court-ordered evaluation filed pursuant to subsection (1)(b) of this section must contain the following:
(I) The name and address of the petitioner and the petitioner's interest in the case;
(II) The name of the respondent for whom evaluation is sought, and, if known to the petitioner, the address, age, gender, marital status, occupation, and any animals or dependent **child**ren in the respondent's care;
(III) Allegations of fact indicating that the respondent may have a mental health disorder and, as a result of the mental health disorder, be a danger to the respondent's self or others or be gravely disabled and showing reasonable grounds to warrant an evaluation;
(IV) The name and address of every person known or believed by the petitioner to be legally responsible for the care, support, and maintenance of the respondent, if available; and
(V) The name, address, and telephone number of the attorney, if any, who has most recently represented the respondent.
(b) Upon receipt of a petition satisfying the requirements of subsection (4)(a) of this section, if the court is not satisfied that probable cause exists to issue an order for an evaluation, the court shall identify a facility designated by the commissioner, an intervening professional, or a certified peace officer to provide screening of the respondent to determine whether probable cause exists to believe the allegations.

(c) Following the screening described in subsection (4)(b) of this section, the facility, intervening professional, or certified peace officer designated by the court shall file a report with the court and may initiate an **emergency mental health hold** at the time of screening. The report must include a recommendation as to whether probable cause exists to believe that the respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to the respondent's self or others or is gravely disabled and whether the respondent will voluntarily receive evaluation or treatment. The screening report submitted to the court pursuant to this subsection (4)(c) is confidential in accordance with section 27-65-123 and must be furnished to the respondent or the respondent's attorney or personal representative.
(d) Whenever it appears, by petition and screening pursuant to this section, to the satisfaction of the court that probable cause exists to believe that the respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to the respondent's self or others or is gravely disabled and that efforts have been made to secure the cooperation of the respondent but the respondent has refused or failed to accept evaluation voluntarily, the court shall issue an order for evaluation authorizing a certified peace officer or secure transportation provider to take the respondent into custody and transport the respondent to a facility designated by the commissioner for an **emergency mental health hold**. At the time the respondent is taken into **custody**, a copy of the petition and the order for evaluation must be given to the respondent and promptly thereafter to the one lay person designated by the respondent and to the person in charge of the facility named in the order or the respondent's designee. If the respondent refuses to accept a copy of the petition and the order for evaluation, such refusal must be documented in the petition and the order for evaluation.
(5) When a person is transported to an emergency medical services facility or a facility designated by the commissioner, the facility may detain the person under an **emergency mental health hold** for evaluation for a period not to exceed seventy-two hours from the time the **emergency mental health hold** was placed or ordered. Nothing in this section prohibits an emergency medical services facility from involuntarily holding the person in order to stabilize the person as required pursuant to the federal "Emergency Medical Treatment and Labor Act", 42 U.S.C. sec. 1395dd, or if the treating professional determines that the individual's physical or mental health disorder impairs the person's ability to make an informed decision to refuse care and the provider determines that further care is indicated. If, in the opinion of the person in charge of the evaluation, the person can be properly cared for without being detained, the person shall be provided services on a voluntary basis. If the person in charge of the evaluation determines the person should be released, the person in charge of the evaluation may terminate the **emergency mental health hold**.
(6)
(a) Each person detained for an **emergency mental health hold** pursuant to this section shall receive an evaluation as soon as possible after the person is presented to the facility and shall receive such treatment and care as the person's condition requires for the full period that the person is held. The evaluation may include an assessment to determine if the person continues to meet the criteria for an **emergency mental health hold** and requires further mental health care in a facility designated by the commissioner. The evaluation must state whether the person should be released, referred for further care and treatment on a voluntary basis, or certified for short-term treatment pursuant to section 27-65-109.

(b) Each evaluation must be completed using a standardized form approved by the commissioner and may be completed by a professional person; a licensed advanced practice registered nurse with training in psychiatric nursing; or a licensed physician assistant, a licensed clinical social worker, a licensed professional counselor, or a licensed marriage and family therapist who has two years of experience in behavioral health safety and risk assessment working in a health-care setting.
(c) If the person conducting an evaluation pursuant to subsection (6)(a) of this section is not a professional person and the evaluating person recommends the detained person be certified for short-term treatment pursuant to section 27-65-109, the evaluating person shall notify the facility of the recommendation. A certification may only be initiated by a professional person.
(7)
(a) If a person is evaluated at an emergency medical services facility and the evaluating professional determines that the person continues to meet the criteria for an **emergency mental health hold** pursuant to subsection (1) of this section, the emergency medical services facility shall immediately notify the BHA if the facility cannot locate appropriate placement. Once notified, the BHA shall support the emergency medical services facility in locating an appropriate placement option on an inpatient or outpatient basis, whichever is clinically appropriate.
(b) If an appropriate placement option cannot be located pursuant to subsection (7)(a) of this section and the person continues to meet the criteria for an **emergency mental health hold** pursuant to subsection (1) of this section and the person has been medically stabilized, the emergency medical services facility may place the person under a subsequent **emergency mental health hold**. If the facility places the person under a subsequent **emergency mental health hold**, the facility shall immediately notify the BHA, the person's lay person, and the court, and the court shall immediately appoint an attorney to represent the person. The facility may notify the court where the person resides by mail. Once the court is notified, the emergency medical services facility is not required to take any further action to provide the person with an attorney unless specified in subsection (10) of this section. The emergency medical services facility shall notify the BHA after each **emergency mental health hold** is placed. The BHA is responsible for actively assisting the facility in locating appropriate placement for the person. If the person has been recently transferred from an emergency medical services facility to a facility designated by the commissioner and the designated facility is able to demonstrate that the facility is unable to complete the evaluation before the initial **emergency mental health hold** is set to expire, the designated facility may place the person under a subsequent **emergency mental health hold** and shall immediately notify the BHA and lay person.
(c) The BHA shall maintain data on the characteristics of each person placed on a subsequent **emergency mental health hold** pursuant to subsection (7)(b) of this section. The BHA may contract with entities coordinating care or with providers serving within the safety net system developed pursuant to section 27-63-105 to meet the requirements of this subsection (7).
(8)
(a) The facility shall provide each person detained for an **emergency mental health hold** discharge instructions. The discharge instructions must be completed for every person, regardless of the person's discharge status, before the person is released. If the detained person

refuses to accept the discharge instructions, the refusal must be documented in the person's medical record. At a minimum, the discharge instructions must include:
(I) A summary of why the person was detained or evaluated for an **emergency mental health hold**; detailed information as to why the evaluating professional determined the person no longer meets the criteria for an **emergency mental health hold** or certification pursuant to section 27-65-109; and whether the person may receive services on a voluntary basis pursuant to subsection (6) of this section;
(II) If the person's medications were changed or the person was newly prescribed medications during the **emergency mental health hold**, a clinically appropriate supply of medications, as determined by the judgment of a licensed health-care provider, for the person until the person can access another provider or follow-up appointment;
(III) A safety plan for the person and, if applicable, the person's lay person where indicated by the person's mental health disorder or mental or emotional state;
(IV) Notification to the person's primary care provider, if applicable;
(V) A referral to appropriate services, if such services exist in the community, if the person is discharged without food, housing, or economic security. Any referrals and linkages must be documented in the person's medical record.
(VI) The phone number to call or text the Colorado crisis services hotline and information on the availability of peer support services;
(VII) Information on how to establish a psychiatric advance directive if one is not presented;
(VIII) Medications that were changed during the **emergency mental health hold**, including any medications that the person was taking or that were previously prescribed upon admission, and which medications, if any, were changed or discontinued at the time of discharge;
(IX) A list of any screening or diagnostic tests conducted during the **emergency mental health hold**, if requested;
(X) A summary of therapeutic treatments provided during the **emergency mental health hold**, if requested;
(XI) Any laboratory work, including blood samples or imaging that was completed or attempted, if requested;
(XII) The person's vital signs upon discharge from the **emergency mental health hold**, if requested;
(XIII) A copy of any psychiatric advance directive presented to the facility, if applicable; and
(XIV) How to contact the discharging facility if needed.
(b) The facility shall document in the person's medical record whether the person accepted the discharge instructions. The facility shall provide the discharge instructions to the person's parent or legal guardian if the person is under eighteen years of age, and to the person's lay person, when possible.
(c) Upon discharge, the facility shall discuss with the person, the person's parent or legal guardian, or the person's lay person the statewide care coordination infrastructure established in section 27-60-204 to facilitate a follow-up appointment for the person within seven calendar days after the discharge. Facilities shall comply with this subsection (8)(c) when the statewide care coordination infrastructure created in section 27-60-204 is fully operational, as determined by the BHA. The BHA shall immediately notify facilities when the statewide care coordination infrastructure is available to assist persons with discharge.

(d)
(I) The facility shall, at a minimum, attempt to follow up with the person, the person's parent or legal guardian, or the person's lay person at least forty-eight hours after discharge. The facility is encouraged to utilize peer support professionals, as defined in section 27-60-108 (2)(b), when performing follow-up care with individuals and in developing a continuing care plan pursuant to subsection (8)(a)(I) of this section. The facility may facilitate follow-up care through contracts with community-based behavioral health providers or the Colorado behavioral health crisis hotline. If the facility facilitates follow-up care through a third-party contract, the facility shall obtain authorization from the person to provide follow-up care.
(II) If the person is enrolled in medicaid, the facility is not required to meet the requirements of this subsection (8)(d) and instead, the facility shall notify the person's relevant managed care entity, as defined in section 25.5-5-403, of the person's discharge and need for ongoing follow-up care prior to the person's discharge.
(III) If the facility contracts with a safety net provider, as defined in section 27-50-101, to provide behavioral health services to a person on or following an **emergency mental health hold**, the facility shall work with the safety net provider in order to meet the requirements of this subsection (8)(d).
(e) The facility shall encourage the person to designate a family member, friend, or other person as a lay person to participate in the person's discharge planning and shall notify the person that the person is able to rescind the authorization of a lay person at any time. If the person designates a lay person and has provided necessary authorization, the facility shall attempt to involve the lay person in the person's discharge planning. The facility shall notify the lay person that the person is being discharged or transferred.
(9)
(a) On or before July 1, 2024, and each July 1 thereafter, each emergency medical services facility that has evaluated a person pursuant to this section shall provide an annual report to the BHA that includes only disaggregated and nonidentifying information concerning persons who were treated at an emergency medical services facility pursuant to this section. The report must comply with section 24-1-136 (9) and is exempt from 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 disaggregated and provided to the BHA pursuant to this subsection (9) 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 collecting the

data pursuant to the requirements of this subsection (9), the BHA 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 (9)(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 (9)(a) of this section.
(10)
(a) A person detained for an **emergency mental health hold** pursuant to this section has the following rights:
(I) To be told the reason for the person's detainment and the limitations of the person's detainment, including a description of the person's right to refuse medication, unless the person requires emergency medications, and that the detainment does not mean all treatment during detainment is mandatory;
(II) To request a change to voluntary status;
(III) To be treated fairly, with respect and recognition of the person's dignity and individuality, by all employees of the facility with whom the person comes in contact;
(IV) To not be discriminated against on the basis of age, race, ethnicity, religion, culture, spoken language, physical or mental disability, socioeconomic status, sex, sexual orientation, gender identity, or gender expression;
(V) To retain and consult with an attorney at any time; except that, unless specified in subsection (7)(b) of this section, the facility is not required to retain an attorney on behalf of the person but must allow the person to contact an attorney;
(VI) To continue the practice of religion;
(VII) Within twenty-four hours after the person's request, to see and receive the services of a patient representative who has no direct or indirect clinical, administrative, or financial responsibility for the person;
(VIII) To have reasonable access to telephones or other communication devices and to make and to receive calls or communications in private. 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.
(IX) To wear the person's own clothes, keep and use the person's own personal possessions, and keep and be allowed to spend a reasonable sum of the person's own money. A facility may temporarily restrict a person's access to personal clothing or personal possessions, until a safety assessment is completed. If the facility restricts a person's access to personal clothing or personal possessions, the facility shall have a discussion with the person about why the person's personal clothing or personal possessions are being restricted. A licensed medical professional or a licensed behavioral health professional shall conduct a safety assessment as soon as possible. The licensed professional shall document in the person's medical record the specific reasons why it is not safe for the person to possess the person's personal clothing or personal possessions. The facility shall periodically conduct additional safety assessments to determine whether the person may possess the person's personal clothing or personal possessions, with the goal of restoring the person's rights established pursuant to this section.

(X) To keep and use the person's cell phone, unless access to the cell phone causes the person to destabilize or creates a danger to the person's self or others, as determined by a provider, facility staff member, or security personnel involved in the person's care;
(XI) To have the person's information and records disclosed to family members and a lay person pursuant to section 27-65-123;
(XII) To have the person's treatment records remain confidential, except as required by law;
(XIII) To not be fingerprinted, unless required by law;
(XIV) To not be photographed, except upon admission for identification and administrative purposes. Any photographs must be confidential and must not be released by the facility except pursuant to a court order. Nonmedical photographs must not be taken or used without appropriate consent or authorization.
(XV) To have appropriate access to adequate water, hygiene products, and food and to have the person's nutritional needs met in a manner that is consistent with recognized dietary practices;
(XVI) To have personal privacy to the extent possible during the course of treatment; and
(XVII) To have the ability to meet with visitors in accordance with the facility's current visitor guidelines.
(b) A person's rights under this subsection (10) may only be denied if access to the item, program, or service causes the person to destabilize or creates a danger to the person's self or others, as determined by a licenced provider involved in the person's care. Denial of any right must be entered into the person's treatment record and must be made available, upon request, to the person, the person's legal guardian, or the person's attorney.
(c) A facility shall not intentionally retaliate or discriminate against a detained person 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 pursuant to this section. Any facility that violates this subsection (10) commits an unclassified misdemeanor and shall be fined not more than one thousand dollars.
(d) Any person whose rights are denied or violated pursuant to this section has the right to file a complaint against the facility with the behavioral health administration and the department of public health and environment.

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

(1)
(a) When a certified peace officer or emergency medical services provider has probable cause to believe a person is experiencing a behavioral health crisis or is gravely disabled and, as a result, without professional intervention the person may be a danger to the person's self or others, then the certified peace officer or emergency medical services provider may take the person into protective **custody** and transport the person to an outpatient mental health facility or a facility designated by the commissioner or other clinically appropriate facility designated by the commissioner. If such a service is not available, the person may be taken to an emergency medical services facility.
(b) An individual may not be transported pursuant to this subsection (1) if an intervening professional has assessed the person during the same emergency event and determined the individual does not meet the criteria for an **emergency mental health hold** pursuant to section 27-65-106.

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

(2) When a person is transported against the person's will pursuant to subsection (1) of this section, the facility shall require an application, in writing, stating the circumstances under which the person's condition was called to the attention of the certified peace officer or emergency medical services provider and further stating sufficient facts, obtained from personal observations or obtained from others whom the certified peace officer or emergency medical services provider reasonably believes to be reliable, to establish that the person is experiencing a behavioral health crisis or is gravely disabled and, as a result, it is believed that without professional intervention the person may be a danger to the person's self or others. The application must indicate the name of the person and the time the person was transported. A copy of the application must be furnished to the person being transported.

(3)

(a) Once the person is presented to an outpatient mental health facility or facility designated by the commissioner, an intervening professional shall screen the person immediately. If an intervening professional is not immediately available, the person must be screened within eight hours after the person's arrival at the facility to determine if the person meets criteria for an **emergency mental health hold** pursuant to section 27-65-106. Once the screening is completed and if the person meets the criteria, the intervening professional shall first pursue voluntary treatment and evaluation. If the person refuses or the intervening professional has reasonable grounds to believe the person will not remain voluntarily, the intervening professional may place the person under an **emergency mental health hold** pursuant to section 27-65-106.

(b) If a person detained pursuant to this section is transported to an emergency medical services facility, the involuntary transportation hold expires upon the facility receiving the person for screening by an intervening professional.

(4)

(a) A person detained pursuant to this section has the following rights while being detained, which must be explained to the person before being transported to a receiving facility:

(I) To not be detained under an emergency transportation hold pursuant to this section for longer than fourteen hours, to not be transported for longer than six hours, and to receive a screening within eight hours after being presented to the receiving facility. This subsection (4)(a)(I) does not prohibit a facility from holding the person as authorized by state and federal law, including the federal "Emergency Medical Treatment and Labor Act", 42 U.S.C. sec. 1395dd, or if the treating professional determines that the individual's physical or mental health disorder impairs the person's ability to make an informed decision to refuse care and the provider determines that further care is indicated.

(II) To request a phone call to an interested party prior to being transported. If the certified peace officer or emergency medical services provider believes access to a phone poses a physical danger to the person or someone else, the receiving facility shall make the call on the person's behalf immediately upon arrival at the receiving facility.

(III) To wear the person's own clothes and keep and use personal possessions that the person had in the person's possession at the time of detainment. A facility may temporarily restrict a

person's access to personal clothing or personal possessions until a safety assessment is completed. If the facility restricts a person's access to personal clothing or personal possessions, the facility shall have a discussion with the person about why the person's personal clothing or personal possessions are being restricted. A licensed medical professional or a licensed behavioral health professional shall conduct a safety assessment as soon as possible. The licensed professional shall document in the person's medical record the specific reasons why it is not safe for the person to possess the person's personal clothing or personal possessions.
(IV) To keep and use the person's cell phone, unless access to the cell phone causes the person to destabilize or creates a danger to the person's self or others, as determined by a provider, facility staff member, or security personnel involved in the person's care;
(V) To have appropriate access to adequate water and food, and to have the person's nutritional needs met in a manner that is consistent with recognized dietary practices, to the extent reasonably possible at the receiving facility;
(VI) To be treated fairly, with respect and recognition of the person's dignity and individuality; and
(VII) To file a grievance with the BHA, the department of public health and environment, or the office of the ombudsman for behavioral health access to care established pursuant to part 3 of article 80 of this title 27.
(b) A person's rights pursuant to subsection (4)(a) of this section may only be denied if access to the item, program, or service causes the person to destabilize or creates a danger to the person's self or others, as determined by a licensed provider involved in the person's care or transportation. Denial of any right must be entered into the person's treatment record or BHA-approved form. Information pertaining to a denial of rights contained in the person's treatment record must be made available, upon request, to the person, the person's attorney, or the person's lay person.

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

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

27-65-108.5. Court-ordered certification for short-term treatment for incompetent defendants in a criminal matter - contents of petition - procedure to contest petition - commitment to behavioral health administration - definition.

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

(a) The person is a respondent in a criminal matter in which the person has been found incompetent to proceed;
(b) The court hearing the criminal matter referred the matter for filing of a petition pursuant to section 16-8.5-111 or 16-8.5-116;
(c) The person has been advised of the availability of, but has not accepted, voluntary treatment, or, if reasonable grounds exist to believe that the person will not remain in a voluntary treatment program, the person's acceptance of voluntary treatment does not preclude certification;
(d) The facility or community provider that will provide short-term treatment has been designated or approved by the commissioner to provide such treatment; and
(e) The person, the person's legal guardian, and the person's lay person, if applicable, have been advised of the person's right to an attorney and to contest the certification for short-term treatment.
(2) The petition filed pursuant to subsection (1) of this section must:
(a) State sufficient facts to establish reasonable grounds that the respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to the respondent's self or others or is gravely disabled;
(b) Be accompanied by a report of the competency evaluator or professional person who has evaluated the respondent within fifty-six days before submission of the petition, unless the respondent whose certification is sought has refused to submit to an evaluation or the respondent cannot be evaluated due to the respondent's condition;
(c) Be filed within fourteen days after the initiating party received the court order from the criminal court initiating the process;
(d) Be filed with the court in the county where the respondent resided or was physically present immediately prior to the filing of the petition; except that if the person was arrested for the prior case and held in **custody**, the petition may be filed in the county where the respondent resided or was physically present immediately prior to the respondent's arrest; and
(e) Provide recommendations if any certification should occur on an inpatient or outpatient basis.
(3) Within twenty-four hours after certification, copies of the certification must be personally delivered to the respondent, the BHA, or the office of civil and forensic mental health. The department shall retain a copy as part of the respondent's record. If the criminal case is pending, or not yet dismissed, notice of the filing of the petition should be given by the petitioning party to the criminal court, which shall provide such notice to the prosecuting and defense attorneys in the criminal case and any attorney appointed pursuant to section 27-65-113. The court shall ask the respondent to designate one other person whom the respondent wants to be informed regarding the petition. If the respondent is incapable of making such a designation at the time the petition is delivered, the court may ask the respondent to designate such person as soon as the respondent is capable.
(4) Whenever a petition is filed pursuant to this section, the court shall immediately appoint an attorney to represent the respondent. The court shall provide the respondent with a written notice that the respondent has a right to a hearing on the petition and may make a written request for a jury trial. The respondent has the right to an attorney for all proceedings conducted pursuant to this section, including any appeals. The attorney representing the

respondent must be provided with a copy of the petition and any supporting materials immediately upon the attorney's appointment. The respondent may only waive counsel when the respondent makes a knowing and voluntary waiver in front of the court.
(5) Upon the filing of the petition pursuant to this section and affording the respondent a chance to contest the petition, the court may grant or deny certification based on the facts established in the petition, subject to the court's further review or a jury trial.
(6) Within fourteen days after receipt of the petition filed pursuant to this section, the respondent, or the respondent's attorney, may request a jury trial by filing a written motion with the court.
(7) The respondent may knowingly and voluntarily consent in writing to the petition.
(8) The respondent or the respondent's attorney may, at any time, file a written request for the court to review short-term certification or request that inpatient certification be changed to outpatient treatment. If the review is requested, the court shall hear the matter within fourteen days after the request, and the court shall give notice to the respondent, the respondent's attorney, the department, and the community or facility provider who is or will provide treatment. The hearing must be held in accordance with section 27-65-113. At the conclusion of the hearing, the court may enter or confirm the certification for short-term treatment, discharge the respondent, or enter any other appropriate order.
(9) Section 27-65-109 (7) to (10) applies to proceedings held pursuant to this section.
(10) In assessing whether the respondent with a pending criminal charge is a danger to self or others or is gravely disabled, if the person is incarcerated, the professional person and court shall not rely upon the fact that the person is incarcerated to establish that the respondent is not a danger to self or others or is not gravely disabled.
(11) An **emergency mental health hold** pursuant to section 27-65-106 is not a prerequisite to a proceeding pursuant to this section.
(12) For the purposes of this section only, "respondent" means the defendant in the referring criminal matter.

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

(1) [*Editor's note: This version of subsection (1) is effective until July 1, 2024.*] If a person detained pursuant to section 27-65-106 has received an evaluation, the person may be certified for not more than three months for short-term treatment under the following conditions:
(a) The professional staff of the agency or facility providing seventy-two-hour treatment and evaluation has analyzed the person's condition and has found the person has a mental health disorder and, as a result of the mental health disorder, is a danger to others or to the person's self or is gravely disabled;
(b) The person has been advised of the availability of, but has not accepted, voluntary treatment; but, if reasonable grounds exist to believe that the person will not remain in a voluntary treatment program, the person's acceptance of voluntary treatment does not preclude certification; and
(c) The facility that will provide short-term treatment has been designated or approved by the commissioner to provide such treatment.

(1) [*Editor's note: This version of subsection (1) is effective July 1, 2024.*] A person may be certified for not more than three months for short-term treatment under the following conditions:
(a) The professional staff of the facility detaining the person on an **emergency mental health hold** has evaluated the person and has found the person has a mental health disorder and, as a result of the mental health disorder, is a danger to the person's self or others or is gravely disabled;
(b) The person has been advised of the availability of, but has not accepted, voluntary treatment; but, if reasonable grounds exist to believe that the person will not remain in a voluntary treatment program, the person's acceptance of voluntary treatment does not preclude certification;
(c) The facility or community provider that will provide short-term treatment has been designated by the commissioner to provide such treatment; and
(d) The person, the person's legal guardian, and the person's lay person, if applicable, have been advised of the person's right to an attorney and to contest the certification for short-term treatment.
(2) [*Editor's note: This version of subsection (2) is effective until July 1, 2024.*] The notice of certification must be signed by a professional person on the staff of the evaluation facility who participated in the evaluation and must:
(a) 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 the person's self or is gravely disabled;
(b) Be filed with the court within forty-eight hours, excluding Saturdays, Sundays, and court holidays, of the date of certification; and
(c) Be filed with the court in the county in which the respondent resided or was physically present immediately prior to being taken into **custody**.
(2) [*Editor's note: This version of subsection (2) is effective July 1, 2024.*] The notice of certification must be signed by a professional person who participated in the evaluation. The notice of certification must:
(a) State facts sufficient to establish reasonable grounds to believe that the respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to the respondent's self or others or is gravely disabled;
(b) Be filed with the court within forty-eight hours, excluding Saturdays, Sundays, and court holidays, after the date of certification;
(c) Be filed with the court in the county in which the respondent resided or was physically present immediately prior to being taken into **custody**; and
(d) Provide recommendations if the certification should take place on an inpatient or outpatient basis.
(3) [*Editor's note: This version of subsection (3) is effective until July 1, 2024.*] Within twenty-four hours after certification, copies of the certification must be personally delivered to the respondent, and a copy must be kept by the evaluation facility as part of the respondent's record. The respondent must also be asked to designate one other person whom the respondent wishes informed regarding certification. If the respondent is incapable of making such a designation at the time the certification is delivered, the respondent must be asked to

designate such person as soon as the respondent is capable. In addition to the copy of the certification, the respondent must be given a written notice that a hearing upon the respondent's 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.

(3) [*Editor's note: This version of subsection (3) is effective July 1, 2024.*] Within twenty-four hours after certification, copies of the certification must be personally delivered to the respondent, the BHA, and a copy must be kept by the evaluating facility as part of the respondent's record, if applicable. The facility or court shall ask the respondent to designate a lay person whom the respondent wishes to be informed regarding certification. If the respondent is incapable of making such a designation at the time the certification is delivered, the respondent must be asked to designate a lay person as soon as the respondent is capable. In addition to the copy of the certification, the respondent must be given a written notice that a hearing upon the respondent's 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 has **custody** of the respondent.

(5) Whenever a certification is filed with the court by a professional person, the court shall immediately appoint an attorney to represent the respondent. The respondent has the right to an attorney for all proceedings conducted pursuant to this section, including any appeals. The attorney representing the respondent must be provided with a copy of the certification immediately upon the attorney's appointment. The respondent may only waive counsel when the respondent makes a knowing and intelligent waiver in front of the court.

(6) [*Editor's note: This version of subsection (6) is effective until July 1, 2024.*] The respondent for short-term treatment or the respondent's 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 the respondent's attorney and the certifying and treating professional person of the time and place thereof. The hearing must be held in accordance with section 27-65-113. At the conclusion of the hearing, the court may enter or confirm the certification for short-term treatment, discharge the respondent, or enter any other appropriate order, subject to available appropriations.

(6) [*Editor's note: This version of subsection (6) is effective July 1, 2024.*] The respondent or the respondent's 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 the respondent's attorney and the certifying and treating professional person of the time and place of the hearing. The hearing must be held in accordance with section 27-65-113. At the conclusion of the hearing, the court may enter or confirm the certification for short-term treatment, discharge the respondent, or enter any other appropriate order.

(7) [*Editor's note: This version of subsection (7) is effective until July 1, 2024.*] Records and papers in proceedings under this section must be maintained separately by the clerks of the

several courts. Upon the release of any respondent in accordance with section 27-65-112, the facility shall notify the clerk of the court within five days after 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 the court until and unless the respondent becomes subject to an order of long-term care and treatment pursuant to section 27-65-110 or until and unless the court orders them opened for good cause shown. In the event a petition is filed pursuant to section 27-65-110, the 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.
(7) [*Editor's note: This version of subsection (7) is effective July 1, 2024.*] Records and papers in proceedings pursuant to this section must be maintained separately by the clerks of the several courts. Upon the release of any respondent in accordance with section 27-65-112, the facility shall notify the clerk of the court within five days after the release, and the clerk shall immediately seal the record in the case and omit the name of the respondent from the index of cases in the court until and unless the respondent becomes subject to an order of certification for long-term care and treatment pursuant to section 27-65-110 or until and unless the court orders the records opened for good cause shown. In the event a petition is filed pursuant to section 27-65-110, the 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) [*Editor's note: This version of subsection (8) is effective until July 1, 2024.*] 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 **secure** transportation provider, or a law enforcement agency, the court may issue an order directing the law enforcement agency where the respondent resides to deliver the respondent to the designated facility.
(8) [*Editor's note: This version of subsection (8) is effective July 1, 2024.*] Whenever it appears to the court, by reason of a report by the treating professional person or the BHA or any other report satisfactory to the court, that a respondent detained for evaluation and treatment or certified for short-term 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 **secure** transportation provider or a law enforcement agency, the court may issue an order directing the law enforcement agency where the respondent resides or **secure** transportation provider to deliver the respondent to the designated facility.
(9) A respondent certified for short-term treatment may be discharged upon the signature of the treating medical professional and the medical director of the facility. A respondent certified for short-term treatment on an outpatient basis may be discharged upon the signature of the approved professional person overseeing the respondent's treatment, and the professional person shall notify the BHA prior to the discharge. A facility or program shall make the respondent's discharge instructions available to the respondent, the respondent's attorney, and the respondent's legal guardian, if applicable, within seven days after discharge, if requested. A facility or program that is transferring a respondent to a different treatment facility or to an outpatient provider shall provide all treatment records to the facility or provider accepting the respondent at least twenty-four hours prior to the transfer.

(10) [*Editor's note: This version of subsection (10) is effective until July 1, 2024.*] 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, the professional person shall file with the court an extended certification. Extended certification for treatment is not for a period of more than three months. The respondent is entitled to a hearing on the extended certification under the same conditions as an original certification. The attorney initially representing the respondent shall continue to represent the respondent, unless the court appoints another attorney.
(10) [*Editor's note: This version of subsection (10) is effective July 1, 2024.*] If the professional person in charge of the evaluation and treatment believes that a period longer than three months is necessary to treat the respondent, the professional person shall file with the court an extended certification at least thirty days prior to the expiration date of the original certification. An extended certification for treatment must not be for a period of more than three months. The respondent is entitled to a hearing on the extended certification under the same conditions as an original certification. The attorney initially representing the respondent shall continue to represent the respondent, unless the court appoints another attorney.

27-65-110. Long-term care and treatment of persons with mental health disorders - procedure.

(1) Whenever a respondent has received an extended certification for treatment pursuant section 27-65-109 (10), the professional person in charge of the certification for short-term treatment or the BHA may file a petition with the court at least thirty days prior to the expiration date of the extended certification 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 the respondent's self or others 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, the respondent's acceptance of voluntary treatment does not preclude an order pursuant to this section; and
(c) The facility that will provide long-term care and treatment has been designated by the commissioner to provide the care and treatment.
(2) Every petition for long-term care and treatment must include a request for a hearing before the court prior to the expiration of six months after the date of original certification and provide a recommendation as to whether the certification for long-term care and treatment should take place on an inpatient or outpatient basis. A copy of the petition must be delivered personally to the respondent for whom long-term care and treatment is sought and electronically delivered to the respondent's attorney of record simultaneously with the filing.
(3) Within ten days after receipt of the petition, the respondent or the respondent's attorney may request a hearing before the court or a jury trial by filing a written request 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 the respondent's self or others or is gravely disabled. The court shall issue an order of long-term care and treatment for a term not to exceed six months, discharge the respondent for whom long-term care and treatment was sought, or enter any other appropriate order. An order for long-term care and treatment must grant **custody** of the respondent to the BHA for placement with an agency or facility designated by the commissioner to provide long-term care and treatment. The BHA may delegate the physical **custody** of the respondent to a facility designated by the commissioner and the requirement for the provision of services and care coordination. 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, as a result, the respondent is unable to competently exercise the specific legal right or perform the function for 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.
(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 simultaneously delivered to the respondent and electronically delivered to the respondent's attorney of record. At least twenty days before the expiration of the order, the court shall give written notice to the respondent and the respondent's 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, the hearing 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 the respondent's self 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.
(6) A respondent certified for long-term care and treatment may be discharged from the facility upon the signature of the treating professional person and medical director of the facility, and the facility shall notify the BHA prior to the respondent's discharge. The facility shall make the respondent's discharge instructions available to the respondent, the respondent's attorney, the respondent's lay person, and the respondent's legal guardian, if applicable, within one week after discharge, if requested. A facility that is transferring a respondent to a different facility or to an outpatient program shall provide all treatment records to the facility or provider accepting the respondent at least twenty-four hours prior to the transfer.

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

(1) [*Editor's note: This section is effective July 1, 2024.*] Any respondent certified pursuant to section 27-65-108.5, 27-65-109, or 27-65-110 may be provided treatment on an outpatient

basis. The outpatient treatment provider shall develop a treatment plan for the respondent receiving treatment on an outpatient basis with the goal of the respondent finding and sustaining recovery. The treatment plan must include measures to keep the respondent or others safe, as informed by the respondent's need for certification. The treatment plan may include, but is not limited to:
(a) Intensive case management;
(b) Assertive community treatment;
(c) Peer recovery services;
(d) Individual or group therapy;
(e) Day or partial-day programming activities;
(f) Intensive outpatient programs;
(g) Educational and vocational training or activities; and
(h) Housing and transportation assistance.
(2) The respondent, the respondent's legal guardian, the respondent's patient representative or the respondent's lay person, or any party at any court hearing may contest a respondent's treatment regimen, including court-ordered medications, at any court hearing related to the respondent's certification for treatment.
(3) The facility responsible for providing services to a respondent on a certification on an outpatient basis shall proactively reach out to the respondent to engage the respondent in treatment. If the respondent refuses treatment or court-ordered medication and is decompensating psychiatrically, the court may order a certified peace officer or **secure** transportation provider to transport the respondent to an appropriate, least restrictive designated facility in collaboration with the BHA and the provider holding the certification. The respondent does not need to be imminently dangerous to the respondent's self or others for the provider to request, and the court to order, transportation to a facility for the respondent to receive treatment and court-ordered medications. The facility responsible for providing services to a respondent on a certification on an outpatient basis shall provide the court information on the facility's proactive outreach to the respondent and the professional person's and psychiatric advanced practice registered nurse's basis for medical opinion.
(4) If a respondent is placed in a more restrictive setting, the respondent has the right to judicial review within ten days after filing a written request.
(5)
(a) In addition to any other limitation on liability, a person providing care to a respondent placed on short-term or long-term certification on an outpatient basis is only liable for harm subsequently caused by or to a respondent who:
(I) Has been terminated from certification despite meeting statutory criteria for certification pursuant to section 27-65-108.5, 27-65-109, or 27-65-110; or
(II) Provided services to the respondent not within the scope of the person's professional license, or was reckless or grossly negligent in providing services.
(b) A provider is not liable if a respondent's certification is terminated, despite meeting criteria for certification, if the provider is unable to locate the respondent despite proactive and reasonable outreach.
(6) A respondent subject to a short-term or long-term certification on an outpatient basis has the following rights, in addition to those enumerated in section 27-65-119:

(a) To request a change to voluntary status. A change to voluntary status may be denied by the supervising professional person or advanced practice registered nurse with training in psychiatric nursing responsible for the respondent's treatment if the professional person or advanced practice registered nurse with training in psychiatric nursing determines reasonable grounds exist to believe that the respondent will not remain in a voluntary treatment program.
(b) To be treated fairly, with respect and recognition of the respondent's dignity and individuality, by all employees of the treatment facility with whom the respondent comes in contact;
(c) To appropriate treatment, which must be administered skillfully, safely, and humanely. A respondent shall receive treatment suited to the respondent's needs that must be determined in collaboration with the respondent.
(d) To not be discriminated against on the basis of age, race, ethnicity, religion, culture, spoken language, physical or mental disability, socioeconomic status, sex, sexual orientation, gender identity, or gender expression;
(e) To retain and consult with an attorney at any time;
(f) Within forty-eight hours after the respondent's request, to see and receive the services of a patient representative, including a peer specialist, who has no direct or indirect clinical, administrative, or financial responsibility for the respondent;
(g) To have the respondent's behavioral health orders for scope of treatment or psychiatric advance directive reviewed and considered by the court as the preferred treatment option for involuntary administration of medications unless, by clear and convincing evidence, the respondent's directive does not qualify as effective participation in behavioral health decision-making;
(h) To have the respondent's information and records disclosed to adult family members and a lay person pursuant to section 27-65-123;
(i) To have access to a representative within the facility who provides assistance to file a grievance; and
(j) To have the right to file a motion with the court at any time to contest the certification.

27-65-112. Termination of short-term and long-term treatment - escape.

(1) [*Editor's note: This version of this section is effective until July 1, 2024.*] An original or extended certification for short-term treatment or an order for long-term care and treatment or any extension thereof terminates as soon as, in the opinion of the professional person in charge of treatment of the respondent, the respondent has received sufficient benefit from such treatment for the respondent to leave. Whenever a certification or extended certification is terminated pursuant to this section, the professional person in charge of providing treatment shall notify the court in writing within five days after such termination. The professional person may also prescribe day care, night care, or any other similar mode of treatment prior to termination.
(2) Before termination, an escaped respondent may be returned to the facility by order of the court without a hearing or by the superintendent or director of the facility without order of court. After termination, a respondent may be returned to the facility only in accordance with this article 65.

27-65-112. Termination of certification for short-term and long-term treatment.

(1) [*Editor's note: This version of this section is effective July 1, 2024.*] An original or extended certification for short-term treatment issued pursuant to section 27-65-108.5 or 27-65-109, or an order or extension for certification for long-term care and treatment pursuant to section 27-65-110, terminates as soon as the professional person in charge of treatment of the respondent and the BHA determine the respondent has received sufficient benefit from the treatment for the respondent to end involuntary treatment. Whenever a certification or extended certification is terminated pursuant to this section, the professional person in charge of providing treatment shall notify the court in writing within five days after the termination.

(2) Before termination, a respondent who leaves a facility may be returned to the facility by order of the court without a hearing or by the superintendent or director of the facility without a court order. After termination, a respondent may be returned to the facility only in accordance with this article 65.

27-65-113. Hearing procedures - jurisdiction.

(1) [*Editor's note: This version of subsection (1) is effective until July 1, 2024.*] Hearings before the court pursuant to section 27-65-109 or 27-65-110 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 respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to the respondent's self or others or is gravely disabled.

(1) [*Editor's note: This version of subsection (1) is effective July 1, 2024.*] Hearings before the court pursuant to section 27-65-108.5, 27-65-109, or 27-65-110 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 respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to the respondent's self or others or is gravely disabled.

(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 the professional person's examination. The court-appointed professional person shall act solely in an advisory capacity, and no presumption is attached to the professional person's findings.

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

(4) The court in which the petition is filed under section 27-65-106 or the certification is filed pursuant to section 27-65-109 is the court of original jurisdiction and of continuing jurisdiction for any further proceedings pursuant to this article 65. 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 is 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), or by reason of insanity pursuant to section 16-8-105 (4) or 16-8-105.5, 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; or the court of the jurisdiction in which the designated facility treating the respondent or person is located has 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 the respondent or person. 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. 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 pursuant to subsection (5)(a) of this section 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 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 and who refuses to accept medication, the jurisdiction for the petition for involuntary treatment procedures is as set forth in section 16-8.5-112.

(6) All adversarial proceedings pursuant to this article 65, including proceedings to impose a legal disability pursuant to section 27-65-127, must 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 must 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.

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

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

27-65-114. Appeals.

Appellate review of any order of short-term treatment or long-term care and treatment may be had as provided in the Colorado appellate rules. An appeal must be advanced upon the calendar of the appellate court and must be decided at the earliest practicable time. Pending disposition by the appellate court, the court may make such order as the court may consider proper in the premises relating to the care and **custody** of the respondent.

27-65-115. Habeas corpus.

Any person detained pursuant to this article 65 is entitled to an order in the nature of habeas corpus upon proper petition to any court generally empowered to issue orders in the nature of habeas corpus.

27-65-116. Restoration of rights.

Any person who, by reason of a judicial decree entered by a court of this state prior to July 1, 1975, is adjudicated as a person with a mental illness is deemed to have been restored to legal capacity and competency.

27-65-117. Discrimination - definition.

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

27-65-118. Right to treatment - rules.

(1)

(a) Any person receiving an evaluation or treatment pursuant to this article 65 is entitled to medical and psychiatric care and treatment, with regard to services listed in section 27-66-101 and services listed in rules authorized by section 27-66-102, suited to meet the person's individual needs, delivered in such a way as to keep the person in the least restrictive environment, and delivered in such a way as to include the opportunity for participation of family members in the person's program of care and treatment, when appropriate. Nothing in this subsection (1)(a) creates any right with respect to any person other than the person receiving an evaluation, care, or treatment. The professional person and the agency or facility providing an evaluation, care, or treatment shall keep records detailing all care and treatment received by the person, and the records must be made available, upon the person's written

authorization, to the person's attorney or the person's personal physician. The records are permanent records and must be retained in accordance with section 27-65-123 (4).
(b) Any person receiving an evaluation or treatment pursuant to this article 65 may petition the court pursuant to section 13-45-102, for release to a less restrictive setting within or without a treating facility or release from a treating facility when adequate medical and psychiatric care and treatment are not administered.
(2) The BHA shall promulgate rules to assure that each agency or facility providing an evaluation, care, or treatment requires the following:
(a) Consent for specific therapies and major medical treatment in the nature of surgery. The nature of the consent, by whom it is given, and under what conditions, is determined by rules of the BHA.
(b) The order of a physician for any treatment or specific therapy based on appropriate medical examinations;
(c) Notation in the patient's treatment record of periodic examinations, evaluations, orders for treatment, and specific therapies, signed by personnel involved;
(d) Conduct according to the guidelines contained in the regulations of the federal government and the rules of the BHA with regard to clinical investigations, research, experimentation, and testing of any kind; and
(e) Documentation of the findings, conclusions, and decisions in any administrative review of a decision to release or withhold the information requested by a family member or lay person pursuant to section 27-65-123 (1)(g) or (1)(h) and documentation of any information given to a family member or lay person.

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

(1) [*Editor's note: This version of the introductory portion to subsection (1) is effective until July 1, 2024.*] Each respondent certified for short-term treatment or long-term care and treatment on an inpatient basis pursuant to sections 27-65-109 and 27-65-110 has the following rights and shall be advised of such rights by the facility:
(1) [*Editor's note: This version of the introductory portion to subsection (1) is effective July 1, 2024.*] Each respondent certified for short-term treatment or long-term care and treatment on an inpatient basis pursuant to sections 27-65-108.5, 27-65-109, and 27-65-110 has the following rights and shall be advised of such rights by the facility:
(a) To be treated fairly, with respect and recognition of the respondent's dignity and individuality, by all employees of the facility with whom the respondent comes in contact;
(b) To not be discriminated against on the basis of age, race, ethnicity, religion, culture, spoken language, physical or mental disability, socioeconomic status, sex, sexual orientation, gender identity, or gender expression;
(c) To retain and consult with an attorney at any time;
(d) To meet with or call a personal clinician, spiritual advisor, counselor, crisis hotline, family member, workplace, **child** care provider, or school at all reasonable times;
(e) To continue the practice of religion;

(f) Within twenty-four hours after the respondent's request, to see and receive the services of a patient representative who has no direct or indirect clinical, administrative, or financial responsibility for the person;
(g) To receive and send sealed correspondence, as well as to be given the assistance of facility staff if the respondent is unable to write, prepare, or mail correspondence. Facility staff shall not open, delay, intercept, read, or censor mail or other communications or use mail or other communications as a method to enforce compliance with facility staff.
(h) To have the respondent's behavioral health orders for scope of treatment or psychiatric advance directive reviewed and considered by the court as the preferred treatment option for involuntary administration of medications unless, by clear and convincing evidence, the respondent's directive does not qualify as effective participation in behavioral health decision-making;
(i) To have reasonable access to telephones or other communication devices and to make and receive calls or communications in private;
(j) To have frequent and convenient opportunities to meet with visitors;
(k) To see the respondent's attorney, clergyperson, or physician at any time;
(l) To wear the respondent's own clothes, keep and use the respondent's own personal possessions, including the person's cell phone, and keep and be allowed to spend a reasonable sum of the respondent's own money;
(m) To have the respondent's information and records disclosed to family members and a lay person pursuant to section 27-65-123;
(n) To have the respondent's treatment records remain confidential, except as required by law;
(o) To have appropriate access to adequate water, hygiene products, and food and to have the respondent's nutritional needs met in a manner that is consistent with recognized dietary practices;
(p) To have personal privacy to the extent possible during the course of treatment; and
(q) To have access to a representative within the facility who provides assistance to file a grievance.
(2) A respondent's rights under subsection (1) of this section may be denied if access to the item, program, or service would endanger the safety of the respondent or another person in close proximity and may only be denied by a person involved in the respondent's care. Denial of any right must be entered into the respondent's treatment record. Information pertaining to a denial of rights contained in the respondent's treatment record must be made available, upon request, to the respondent, the respondent's legal guardian, or the respondent's attorney.
(3) A respondent admitted to or in a facility must not be fingerprinted unless required by other provisions of law.
(4) A respondent may be photographed upon admission for identification and the administrative purposes of the facility. The photographs are confidential and must not be released by the facility except pursuant to court order. Nonmedical photographs shall not be taken or used without appropriate consent or authorization.
(5) Any respondent receiving evaluation or treatment under any of the provisions of this article 65 is entitled to a written copy and verbal description in a language or modality accessible to the person of all the rights enumerated in this section, and a **minor child** must receive written notice of the **minor**'s rights as provided in section 27-65-104 (6)(g). A list of the rights must be

prominently posted in all evaluation and treatment facilities in the predominant languages of the community and explained in a language or modality accessible to the respondent. The facility shall assist the respondent in exercising the rights enumerated in this section.
(6) A facility shall not intentionally retaliate or discriminate against a person 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 pursuant to this section. Any facility that violates this subsection (6) commits an unclassified misdemeanor and shall be fined not more than one thousand dollars.
(7) Any respondent whose rights are denied or violated pursuant to this section has the right to file a compliant against the facility with the behavioral health administration and the department of public health and environment.

27-65-120. Administration or monitoring of medications to persons receiving treatment.

The commissioner has the power to direct the administration or monitoring of medications in conformity with part 3 of article 1.5 of title 25 to persons receiving treatment in facilities designated pursuant to this article 65.

27-65-121. Employment of persons in a facility - rules.

The BHA shall adopt rules governing the employment and compensation for the administration of care or treatment to persons receiving care or treatment pursuant to this article 65. The BHA shall establish standards for reasonable compensation for such employment.

27-65-122. Voting in public elections.

Any person receiving evaluation, care, or treatment pursuant to this article 65 must be given the opportunity to exercise the person's right to register and to vote in primary and general elections. The agency or facility providing evaluation, care, or treatment shall assist the person, upon the person's request, to obtain voter registration forms and mail ballots and to comply with any other prerequisite for voting.

27-65-123. Records.

(1) Except as provided in subsection (2) of this section, all information obtained and records prepared in the course of providing any services to any person pursuant to any provision of this article 65 are confidential and privileged matter. The information and records may be disclosed only:
(a) In communications between qualified professionals, facility personnel, or state agencies in the provision of services or appropriate referrals;
(b) When the recipient of services designates persons to whom information or records may be released; but, if a recipient of services is a ward or conservatee and the ward's or conservatee's guardian or conservator designates, in writing, persons to whom records or information may be disclosed, the designation is valid in lieu of the designation by the recipient; except that nothing in this section compels a physician, psychologist, social worker, nurse, attorney, or other professional personnel to reveal information that has been given to the person in confidence by members of a patient's family or other informants;

(c) To the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which the recipient may be entitled;
(d) If the BHA has promulgated rules for the conduct of research. Such rules must include, but are not 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, must not be disclosed for research purposes.
(e) To the courts, as necessary for the administration of this article 65;
(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 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 27-65-124 and is subject to review pursuant to section 27-65-124.
(h) To family members or a lay person 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 27-65-124 (2) and is subject to review pursuant to section 27-65-124.
(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 subsection (1)(g) or (1)(h) of this section precludes the release of information to a parent concerning the parent's **minor child**.
(3)
(a) Nothing in this article 65 renders privileged or confidential any information, except written medical records and information that is privileged pursuant to section 13-90-107, concerning observed behavior that constitutes a criminal offense committed upon the premises of any facility providing services pursuant to this article 65 or any criminal offense committed against any person while performing or receiving services pursuant to this article 65.
(b) Subsection (1) of this section does not apply to physicians or psychologists eligible to testify concerning a criminal defendant's mental condition pursuant to section 16-8-103.6.
(4)
(a) All facilities shall maintain and retain permanent records, including all applications as required pursuant to section 27-65-106 (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 prohibits or limits the sharing of information by a state institution of higher education police department to authorized university administrators pursuant to section 23-5-141.
(6) [*Editor's note: Subsection (6) is effective July 1, 2024.*] Nothing in this section prohibits the limited disclosure of necessary information to the prosecuting attorney and criminal defense counsel if a criminal case is still pending against the person.

27-65-124. 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 27-65-123 (1)(g), the treating professional person or the professional person's 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 the professional person's 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 27-65-123 (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, lay person, 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 27-65-123 (1)(h) concerning a person with a mental health disorder, the treating professional person or the professional person's designee shall determine whether the person with a mental health disorder is capable of making a rational decision in weighing the person's confidentiality interests and the care and treatment interests implicated by the release of information. The treating professional person or the professional person's 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 the professional person's designee makes a finding that the person with a mental health disorder is capable of making a rational decision concerning the person's interests and the person with a mental health disorder consents to the release of information, the treating professional person or the professional person's designee shall order the release of the information unless the professional person or the professional person's designee 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 the professional person's designee makes a finding that the person with a mental health disorder is capable of making a rational decision concerning the

person's interests and the person with a mental health disorder objects to the release of information, the treating professional person or the professional person's designee shall not order the release of the information.
(III) If the treating professional person or the professional person's designee makes a finding that the person with a mental health disorder is not capable of making a rational decision concerning the person's interests, the treating professional person or the professional person's designee may order the release of the information if the professional person or the professional person's designee 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 the professional person's 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 the professional person's 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 27-65-123 (1)(h).
(3) When administrative review is requested pursuant to subsection (1) or (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 the director is a professional person. If the director is not available or if the director cannot provide an objective and impartial review, the review must 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 the person's 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 the person's care and treatment is released.
(5) A family member whose request for information is denied must 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 27-65-123 (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 the person's 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 the professional person's designee shall not release information requested pursuant to section 27-65-123 (1)(h) until five days after the determination upon administrative review of the director or the director's 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 the professional person's 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 the person 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 is not 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.

27-65-125. Treatment in federal facilities.

(1) If a person is certified pursuant to this article 65 and is eligible for hospital care or treatment by an agency of the United States, and if a certificate of notification from the agency showing that facilities are available and that the person is eligible for care or treatment is received, the court may order the person to be placed in the **custody** of the agency for **hospitalization**. When any person is admitted pursuant to an order of court to any hospital or institution operated by any agency of the United States within or outside this state, the person is subject to the rules and regulations of the agency. The chief officer of any hospital or institution operated by an agency in which the person is so hospitalized shall, with respect to the person, be vested with the same powers as the chief officer of the Colorado mental health institute at Pueblo with respect to **detention**, **custody**, transfer, conditional release, or discharge of patients. Jurisdiction is retained in the appropriate courts of this state to inquire into the mental condition of a person so hospitalized and to determine the necessity for continuance of the person's **hospitalization**.
(2) An order of a court of competent jurisdiction of another state, territory, or the District of Columbia authorizing **hospitalization** of a person to any agency of the United States has the same effect as to the person while in this state as in the jurisdiction in which the court entering the order is situated; the courts of the state or district issuing the order retain jurisdiction of the person so hospitalized for the purpose of inquiring into the person's mental condition and for determining the necessity for continuance of the person's **hospitalization**. Consent is given to the application of the law of the state or district in which the court issuing the order for **hospitalization** is located, with respect to the authority of the chief officer of any hospital or

institution operated in this state by any agency of the United States to retain **custody**, transfer, conditionally release, or discharge the person hospitalized.

27-65-126. Transfer of persons into and out of Colorado - reciprocal agreements.

The transfer of a person hospitalized voluntarily pursuant to this article 65 out of Colorado or under the laws of another jurisdiction into Colorado are governed by the provisions of the interstate compact on mental health.

27-65-127. Imposition of legal disability - deprivation of legal right - restoration - repeal.

(1)

(a) When an interested person wishes to obtain a determination as to the imposition of a legal disability or the deprivation of a legal right for a person who has a mental health disorder and who is a danger to the person's self or others, is gravely disabled, or is insane, as defined in section 16-8-101, and who is not then subject to proceedings pursuant to this article 65 or part 3 or part 4 of article 14 of title 15, the interested person may petition the court for a specific finding as to the legal disability or deprivation of a legal right. Actions commenced pursuant to this subsection (1) may include but are not limited to actions to determine contractual rights and rights with regard to the operation of motor vehicles.

(b) The petition must set forth the disability to be imposed or the legal right to be deprived and the reasons.

(2) The court may impose a legal disability or may deprive a respondent of a legal right only upon finding both of the following:

(a) That the respondent is a person with a mental health disorder and is a danger to the respondent's self or others, is gravely disabled, or insane, as defined in section 16-8-101; and

(b) That the requested disability or deprivation is both necessary and desirable.

(3)

(a) Beginning January 1, 2023, the BHA shall provide periodic updates to the advisory board related to the implementation of House Bill 22-1256, including updates regarding whether the BHA will have the capability and capacity to assist emergency medical services facilities that treat a person under an **emergency mental health hold** find appropriate placement, when indicated, for the person at an inpatient or outpatient mental health facility or facility designated by the commissioner.

(b) This subsection (3) is repealed, effective July 1, 2025.

(4) To have a legal disability removed or a legal right restored, any interested person may file a petition with the court that made the original finding. No legal disability may be imposed nor a legal right be deprived for a period of more than six months without a review hearing by the court at the end of six months, at which time the findings specified in subsection (2) of this section must be reaffirmed to justify continuance of the disability or deprivation. A copy of the petition must be served on the person who filed the original petition, on the person whose rights are affected if the person is not the petitioner, and upon the facility where the person whose rights are affected resides, if any.

(5) Whenever any proceedings are instituted or conducted pursuant to this section, the following procedures apply:

(a) Upon the filing of a petition, the court shall appoint an attorney to represent the respondent. The respondent may replace the attorney with an attorney of the respondent's own choosing at any time. Attorney fees for an indigent respondent are paid by the court.
(b) The court, upon request of an indigent respondent or the respondent's attorney, shall appoint, at the court's expense, one or more professional persons of the respondent's choosing to assist the respondent in the preparation of the respondent's case.
(c) Upon demand made at least five days prior to the date of hearing, the respondent has the right to a trial of all issues by a jury of six.
(d) At all times the burden is upon the person seeking imposition of a disability or deprivation of a legal right or opposing removal of a disability or deprivation to prove all essential elements by clear and convincing evidence.
(e) Pending a hearing, the court may issue an order temporarily imposing a disability or depriving the respondent of a legal right for a period of not more than ten days in conformity with the standards for issuance of ex parte temporary **restrain**ing orders in civil cases, but no individual habilitation or rehabilitation plan is required prior to the issuance of the order.
(f) Except as otherwise provided in this subsection (5), all proceedings must be held in conformance with the Colorado rules of civil procedure, but no costs may be assessed against the respondent.

27-65-128. Administration - rules.

The BHA shall promulgate any rules and develop and distribute any applications or forms necessary to consistently enforce the provisions of this article 65. The BHA shall proactively train providers, facilities, counties, judges, magistrates, intervening professionals, and certified peace officers on the procedures under this article 65, which training must include an understanding of the criteria for invoking an **emergency mental health hold** pursuant to section 27-65-106, the definition of "gravely disabled" and how a person who is gravely disabled may present physically and psychiatrically, and suggested templates and resources to be used by facilities to meet the requirements of section 27-65-106 (8)(a)(III) and (8)(a)(VII).

27-65-129. Payment for counsel.

In order to provide legal representation to persons eligible for an attorney pursuant to this article 65, the judicial department shall pay, out of money appropriated by the general assembly, sums directly to the appointed attorney on a case-by-case basis or, on behalf of the state, shall pay lump-sum grants to and contract with individual attorneys, legal partnerships, legal professional corporations, public interest law firms, or nonprofit legal services corporations

27-65-130. Advisory board - created - service standards and rules..

(1)
(a) An advisory board, referred to in this section as the "board", is established for the purpose of assisting and advising the commissioner in accordance with subsection (2) of this section in the development of service standards and rules. The board consists of no fewer than eleven but not more than fifteen members appointed by the governor, as follows:
(I) One representative from the the department of human services;

(II) One representative from the BHA;
(III) One representative from the department of public health and environment;
(IV) One representative from the university of Colorado health sciences center;
(V) One representative from a leading professional association of psychiatrists in this state;
(VI) One member representing proprietary skilled health-care facilities;
(VII) One member representing nonprofit health-care facilities;
(VIII) One member representing the Colorado bar association;
(IX) One member representing consumers of services for persons with mental health disorders;
(X) One member representing families of persons with mental health disorders;
(XI) One member representing **child**ren's health-care facilities; and
(XII) Other persons from both the private and the public sectors who are recognized or known to be interested and informed in the area of the board's purpose and function.
(b) In making appointments to the board, the governor is encouraged to include representation by at least one member who is a person with a disability, as defined in section 24-34-301, a family member of a person with a disability, or a member of an advocacy group for persons with disabilities, provided that the other requirements of this section are met.
(2) The advisory board is responsible for recommending standards and rules relevant to the provisions of this article 65 for the programs of mental health services to those patients in any health-care facility that has either separate facilities for the care, treatment, and rehabilitation of persons with mental health disorders or those health-care facilities that have as the health-care facility's only purpose the care and treatment of such persons.

27-65-131. Data report.

(1) Beginning January 1, 2025, and each January 1 thereafter, the BHA shall annually submit a report to the general assembly on the outcomes and effectiveness of the involuntary commitment system described in this article 65, disaggregated by region, including any recommendations to improve the system and outcomes for persons involuntarily committed or certified pursuant to this article 65. The report must include aggregated and disaggregated nonidentifying individual-level data. At a minimum, the report must include:
(a) The number of seventy-two-hour **emergency mental health hold**s that occurred in the state and the number of people placed on a seventy-two-hour **emergency mental health hold**, including:
(I) A summary of the reason each person was placed on an **emergency mental health hold**;
(II) Demographic information of each person placed on an **emergency mental health hold**;
(III) Disposition of each person placed on an **emergency mental health hold**;
(IV) How often a facility was required to ask for assistance from the BHA to find placement for the person pursuant to section 27-65-106 and if placement was found, the average length of time a person had to wait for the placement and the challenges encountered in finding a placement;
(V) How many subsequent **emergency mental health hold**s were placed pursuant to section 27-65-106 due to a lack of appropriate placement options; and
(VI) How each **emergency mental health hold** originated, whether by a certified peace officer; intervening professional, including specific professional type; or a court order;

(b) The number and characteristics of each certification for short-term treatment, including an extension of short-term treatment, and long-term care and treatment that occurred in the state, including:
(I) The number of inpatient versus outpatient certifications;
(II) The reason for initiating each certification;
(III) The number of certifications initiated by a court order, professional person, or certified peace officer;
(IV) The average length of each certification;
(V) The demographics of each individual on a certification for short-term treatment;
(VI) The services provided;
(VII) The services needed that were not available; and
(VIII) Any identified barriers preventing the provision of needed services;
(c) The outcome of each certification for short-term treatment and certification for long-term care and treatment;
(d) The reason each certification was discontinued, disaggregated by those successfully discharged; voluntarily discharged; transferred; not located; with treatment compliance concerns; unable to transfer to another facility or provider, for lack of payment to treatment providers; and for any other reasons;
(e) The person's housing and employment status when certification was discontinued;
(f) What services were provided versus what services were most frequently needed by people certified on an outpatient basis;
(g) Barriers and opportunities with local providers, the judicial branch, and law enforcement; and
(h) How many individuals were placed in the **custody** of the BHA on a certification for short-term treatment who were concurrently involved in the criminal justice system, including the outcomes of each person and any barriers and opportunities that may exist to better serve the population.

Relevant Colorado Regulations

2509-8:7.714 Quality standards for 24-hour child care

2509-8:7.714. Quality standards for twenty-four (24)-hour child care [Rev. eff. 6/1/12]

All rules in Section 7.714 will be known and hereinafter referred to as the Quality Standards for Twenty-Four (24)-Hour Child Care and will apply to all child care applicants and licensees subject to licensing as a specialized group facility, residential child care facility, shelter residential child care facility, or psychiatric residential treatment facility. However, Section 7.714.53, et seq., and the applicable definitions in Section 7.714.1 also apply to approved family foster care homes, see Section 7.708.36, et seq., and day treatment centers, see Section 7.706, et seq.

2509-8:7.714.1. Definitions [Rev. eff. 6/1/12]

"Client Representative" means a person designated by the facility to process grievances.
"Chemical **restraint**" means giving an individual medication involuntarily for the purpose of restraining that individual; except that chemical **restraint** does not include the involuntary administration of medication pursuant to Section 27-65-111(5), C.R.S., or administration of medication for voluntary or life-saving medical procedures. A chemical **restraint** does not include a drug or medication that is a usual and customary part of a medical diagnostic or treatment procedure to treat the individual's medical condition or symptoms or to promote the individual's independent functioning.
"De-escalation" is the use of therapeutic interventions with a child during the escalation phase of a crisis. The interventions are designed to allow children to contain their own behavior so that acute physical behavior does not develop that would lead to the need to use a physical management.
"Emergency" means a serious, probable, imminent threat of bodily harm to self or others where there is the present ability to effect such bodily harm.
"Escalation" is an increase in intensity of a child's out-of-control behavior.
The "Family Service Plan" is a case services plan completed by a county caseworker jointly with the child, parents, and providers within sixty (60) calendar days of placement for each child receiving services from a county department of social/human services.
The "Individual Child's Plan" ("the Plan") is based upon an assessment of the child immediately following placement at the facility. It is developed by the facility for each child and must be consistent with the Family Service Plan for the child.
"**Mechanical Restraint**" means a physical device used to involuntarily restrict the movement of an individual or the movement or normal function of a portion of his or her body. **Mechanical restraints** include, but are not limited to: the use of handcuffs, shackles, straight jackets, posey vests, ankle and wrist **restraints**, craig beds, vail beds, and chest **restraints**. **Mechanical restraint** does not include the use of protective devices used for the purpose of providing physical support or prevention of accidental injury.
"Nationally Recognized Criteria" means a set of standards, nationally acknowledged as acceptable and appropriate for use with at-risk populations, that are incorporated into the model of physical management utilized by the facility. The Nationally Recognized Criteria shall include, at a minimum the following:

A. Annual staff training and/or certification, to include training upon hire, and ongoing (at least every six months) refresher training or practice exercises for each staff member trained or certified in **restraint**, to review and refresh skills involved in positive behavior intervention, prevention, de-escalation, and physical management, in accordance with the model.
B. A **restraint** prevention and de-escalation component, to include identifying antecedents that may cause an individual to escalate, and/or development of behavior management plans that are in alignment with individual treatment plans if necessary.
C. A physical management process that prohibits or provides alternatives to a prone position, and includes identifying primary control techniques that emphasize utilizing only the minimum amount of force necessary to gain control and keep the individual safe.
D. A debriefing process which includes a review of physical management, to determine the appropriateness and effectiveness of preventive/de-escalation techniques used, the appropriateness of physical management, and how, or if, physical managements are preventable.
“Physical Management” means the physical action of placing one's hands on an individual. Physical management may be used to gain physical control in order to protect the individual or others from harm after all attempts to verbally direct or deescalate the individual have failed.
Physical management may be utilized when an emergency situation exists. The physical management continuum may include:
A. Utilizing transitional measures.
B. Placing one's hands on an individual to physically guide and/or physically control the individual.
C. Use of an approved **restraint** method to control or contain the individual.
D. Placing of an individual into an approved prolonged **restraint** method.
E. Physical management may be used to move or escort an individual into **seclusion**. **Seclusion**, in itself, is not a form of physical management.
“Physical **Restraint**” means the use of bodily, physical force to involuntarily limit an individual's freedom of movement.
“Prone Position” means placing an individual in a face down position.
“Prone **Restraint**” means a **restraint** in which the individual being restrained is secured for a period of time in a prone position for a period of time exceeding five (5) minutes.
“Reasonable” as used in these rules means appropriate and suitable, or not excessive or extreme.
“Religion” where used in these regulations includes traditional religious beliefs and spiritual beliefs such as those of Native Americans.
“**Restraint**” means any method or device used to involuntarily limit freedom of movement, including, but not limited to, bodily physical force, mechanical devices, or chemicals. **Restraint** includes a chemical **restraint**, a mechanical **restraint**, a physical **restraint**, and **seclusion**. **Restraint** does not include:
A. The use of any form of **restraint** in a licensed or certified hospital when such use is in the context of providing medical or dental services that are provided with the consent of the individual or the individual's guardian;
B. The use of protective devices or adaptive devices for providing physical support, prevention of injury, or voluntary or life-saving medical procedures;

C. The initial temporary holding or positioning of an individual, for less than five minutes, by a staff person appropriately trained and/or certified for protection of the individual or other persons;
D. The holding of a child by one adult for the purpose of calming or comforting the child;
E. Placement of an individual in his or her sleeping room for the night; or,
F. The use of time-out, in an unlocked setting where voluntary egress is not prevented, and as may be defined by written policies, rules, or procedures.
A "**residential** Facility" ("the facility") provides 24-hour child care and includes residential child care facilities and specialized group facilities.
A "staff member" of the facility as used in these rules includes a specialized group home parent or a specialized group center or residential child care facility.
"**Seclusion**" means the placement of an individual, six (6) years old or older, alone in a room from which egress is involuntarily prevented.
"Transitional measure" means physical guidance, prompting techniques of short duration, or an initial temporary approved physical positioning of an individual at the onset or in response to a re-escalation during a physical management, for the purpose of quickly and effectively gaining physical control of that individual in order to prevent harm to self or others. Momentary utilization of a short term (as quickly as possible, but not to exceed five (5) minutes) prone position is only permissible during a transitional measure.

2509-8:7.714.2. Admission policy and procedures [Rev. eff. 6/1/12]

…
G. The placement agreement shall be developed with the involvement of the child, the parent(s) or guardian(s) and the representative of the placing agency. Where the involvement of any of these is not feasible or desirable, the reasons for the exclusion shall be recorded by the facility. The placement agreement shall address by reference or attachment at a minimum the following:
…
2. The policy and procedure to be followed regarding the use of physical management, **restraint** and **seclusion** in an emergency situation pursuant to 7.714.53, et seq.

2509-8:7.714.3. Religion, rights, and grievance procedures

7.714.31 Children's Rights

A. The facility shall have written policies and procedures that address and ensure the availability of each of the following core rights for children in residence. These rights may not be restricted or denied by the facility.
1. Every child has the right to enjoy freedom of thought, conscience, cultural and ethnic practice, and religion.
2. Every child has the right to a reasonable degree of privacy.
3. Every child has the right to have his or her opinions heard and considered, to the greatest extent possible, when any decisions are being made affecting his/her life.

4. Every child has the right to receive appropriate and reasonable adult guidance, support and supervision.
5. Every child has the right to be free from physical abuse or neglect and inhumane treatment. Every child has the right to be protected from all forms of sexual exploitation.
6. Every child has the right to receive adequate and appropriate medical and mental health and psychiatric care in the least restrictive setting possible, suited to meet individual needs.
7. Every child has the right to receive adequate and appropriate food, clothing, and housing.
8. Every child has the right to live in clean, safe surroundings.
9. Every child has the right to participate in an educational program that will maximize his/her potential in accordance with existing law.
10. Every child has the right to communicate with "significant others" outside the facility, such as a parent or guardian, caseworker, attorney or guardian ad litem and/or counsel for youth, current therapist, physician, religious advisor, and, if appropriate, probation officer.
11. No foster child shall be fingerprinted for the purpose of a criminal background check unless required by law enforcement.
12. A child may be photographed upon admission for identification and administrative purposes of the facility pursuant to Section 19-3-306, C.R.S. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order. No other non-medical photographs or videotaping shall be taken or used without the written consent of the child's parent or legal guardian except in the case of a child abuse or police investigation.
13. Every child has the right to the same consideration for care and treatment as anyone else regardless of race, color, national origin, religion, age, sex, political affiliation, sexual orientation, financial status or disability.
14. Every child has the right to be given the names and professional status of the staff members responsible for his/her care.
15. Every child has the right to receive assistance from the resident representative in filing a grievance and to receive copies of the grievance procedure.
16. Every child fifteen (15) years of age and older has the right to request his or her own medical records, to see the records at reasonable times, and to be given written reasons if the request is denied.
17. Every child fifteen (15) years of age and older, who is not in the **custody** of human services, has the right to accept treatment of his/her own free will and may sign in as a voluntary resident. The child has the right to refuse to sign the consent for voluntary treatment at the time of admission or may take back the consent at a later date pursuant to Section 27-65-104, C.R.S.
B. The following children's rights may be limited to reasonable periods during the day or restricted according to written policies of the facility to ensure the protection of the children, staff, and program from unreasonable and unnecessary intrusions and disruptions and from health and safety hazards.
1. Every child has the right to have access to letter-writing materials, including postage, and to have staff members of the facility assist him/her if unable to write, prepare, and mail correspondence.
2. Every child has the right to have access to telephones to both make and receive calls in privacy.

3. Every child has the right to have convenient opportunities to meet with visitors.
4. Every child has the right to wear his/her own clothes, keep and use his/her own personal possessions, and keep and be allowed to spend a reasonable sum of his/her own money.
5. Every child has the right to receive and send sealed correspondence. No incoming or outgoing correspondence shall be opened, delayed, held, or censored by the personnel of the child care facility.
C. Written policies that restrict or limit a child's rights as listed at 7.714.31, B, must include at a minimum:
1. Plans for how and when telephone and written communications will take place.
2. Plans for regular visits of the child with relatives, friends, or others interested in his/her welfare, both within and outside of the facility, unless in the judgment of treatment staff and the placement agency visits would be detrimental to the child and/or his/her family.
3. Plans for extenuating circumstances and emergency situations affecting the child and his/her family.
4. The requirement that the facility notify the child, if appropriate to the age of the child, and his/her parent(s) or guardian(s) at the time of admission of any policy that would limit or restrict a child's rights. The notification must be communicated in a language or mode of communication the child can understand and, if possible, be signed by the child and his/her parent(s) or guardian(s).
D. If the facility enforces any restrictions upon the child's rights as listed at 7.714.31, B, the facility must, in compliance with the written policy and procedure of the facility:
1. Inform the child and the child's family and custodian or legal guardian, in a language or mode of communication the child can understand, of the conditions of and reasons for restriction or termination, of his/her rights.
2. Place a written report summarizing the conditions of and reasons for restriction, denial, or termination of the child's rights in that child's case record or treatment record. Information pertaining to a restriction, denial, or termination of a child's rights contained in the child's treatment or case record must be made available, upon request, to the child or the child's guardian ad litem (GAL) and/or counsel for YOUTH.
3. When a restriction of a child's rights affects another individual, the individual shall be informed, in a language or mode of communication the individual can understand, of the conditions of and reasons for the action.

7.714.32 Children's Grievance Procedure [Rev. eff. 7/2/06]

A. The facility must designate a client representative and establish a written grievance procedure that provides adequate due process safeguards, spells out the appeal process and assures that children and parent(s) or guardian(s) are entitled to report any grievance and shall not be subject to any adverse action as a result of filing the grievance.
1. The facility must follow grievance procedures without alteration or interference and must respond to any grievance filed within 72 hours.
2. This grievance procedure shall be made available to all children as provided for in the resident rights.
3. If a grievance is filed with the facility, the grievance shall be recorded in the child's record along with the investigation findings and resulting action taken by the facility. Information

regarding the grievance must be sent to the individual or agency holding legal **custody** of the child. A copy of the child's grievance may be sent to the parent with the child's permission.
4. A list of the resident rights shall be prominently posted in all facilities in areas frequented by children and legal guardians. These rights shall include the grievance procedure, the name, address, and telephone number of their resident representative, as well as a list of agencies where complaints may be filed.
B. A list of the children's rights and the grievance procedures must be provided and explained to the child and the parent or guardian in a language or manner of communication that they can understand.

7.714.33 Religion [Rev. eff. 7/2/06]

The facility shall demonstrate consideration for, and sensitivity to, the religious backgrounds of children in care. The facility shall assist a child's involvement in religious activities appropriate to the child's religious background, based upon the needs and interests of the child.
A. A child in care at the facility shall be allowed and encouraged to celebrate his/her religious holidays.
B. Opportunity and assistance shall be provided for each child to practice the chosen/preferred religious beliefs and faith of his/her family. If the family has no preference, the individual preference of the child shall be respected. This includes, but is not limited to, making necessary arrangements for attendance of children at the appropriate religious institution or at a study group for religious instruction.
C. A child may be invited to participate in the religious activities of the facility.
D. A child shall not be coerced or forced to participate in the religious activities of the facility or to attend religious services.
E. Prior to placement of the child at the facility, the parent(s), guardian(s), and/or placing agencies must be notified of the practices, philosophy, and religious affiliation of the facility.
F. Any form of religious intervention used by the facility to control or change a child's behavior, or treat or heal a medical condition, must be approved, in writing, by the legal guardian(s) of the child prior to the use of the intervention.
G. A facility cannot deny medical care to a child because of the religious beliefs of the facility.
H. The child's family and/or guardian must be consulted prior to any planned change in religious affiliation made by the child while he/she is in care at the facility.

2509-8:7.714.4. Program description and individual child's plan [Rev. eff. 6/1/12]

A. The facility shall have a written overall program description for the facility. The written description shall include the following:
1. The title of the person who has overall responsibility for the development, implementation, and coordination of the treatment program.
2. Staff responsibility for planning and implementation of the treatment procedures and techniques.
3. The range of procedures and techniques to be used and the anticipated range or types of behavior or conditions for which such procedures and techniques are to be used, including philosophy of treatment, modes of therapy, treatment modalities, positive behavior

intervention, problem management, discipline, physical management, **restraint**, and **seclusion** where allowed and approved by the department.
4. The facility's responsibility for monitoring the safety of children during treatment.
5. Review procedures for ensuring the appropriateness of the ongoing treatment and placement for each child.
6. Policies and procedures encouraging termination of the treatment procedures at the earliest opportunity in the event of achievement of goals, or when the procedures are proving to be ineffective or detrimental for a particular child.
7. Policies and procedures on how the facility involves the child and the parent(s) or guardian(s) in the plan for care and treatment of the child and obtains their consent of the plan and any subsequent revisions to the plan.
8. Policies and procedures on how the facility monitors the ongoing physical safety of a child during treatment or therapy which involves face to face interaction with the child.
9. Requirements, where appropriate, for medical examination of a child prior to implementation of a treatment strategy on a regular basis.
10. Provisions for regular and thorough review and analysis of the individualized treatment strategies and the overall treatment orientation of the facility, including provisions for making appropriate adjustments in the treatment strategies and orientation, the recording practices and procedures, and the program activities in accordance with the results of the reviews.
11. Each facility shall adopt and implement a written policy for continuity of resident care which shall include, at a minimum, the following:
a. Ease of resident movement from one element of service to another within the facility.
b. Aftercare planning, to be completed ninety (90) calendar days prior to a scheduled discharge, and included with the resident's discharge summary which describes any recommendations for the resident to follow after discharge from the facility.
c. Referrals to other agencies.
12. The placement alternative selected shall be conducive to the optimum restoration of the resident's mental and physical functioning, with due regard for the safety of the resident and those around him/her and the availability of placement alternatives.
B. A facility shall prohibit all cruel and aversive treatment or therapy including, but not limited to, the following:
…

7. Physical management, **restraint**, and **seclusion** except as described at Section 7.714.53.

2509-8:7.714.5. Safety, discipline, physical management, **restraint**, and **seclusion** [Rev. eff. 6/1/12]

…
7.714.52 Discipline
A. The facility shall have written policies and procedures regarding discipline that must be explained to all children, parent(s), guardian(s), staff, and placing agencies. These policies must include positive responses to a child's appropriate behavior.

B. Discipline shall be constructive or educational in nature and may include talking with the child about the situation, praise for appropriate behavior, diversion, separation from the problem situation, and withholding privileges.
C. Basic rights shall not be denied as a disciplinary measure.
D. Separation when used as discipline must be brief and appropriate to the child's age and circumstances. The child shall always be within hearing of an adult in a safe, clean, well-lighted, well-ventilated room in the facility that contains at least 50 square feet of floor space. No child shall be isolated in a bathroom, closet, attic, pantry, or garage.
E. Children in care at the facility shall not discipline other residents. This does not prohibit a facility from operating an organized therapeutic self-government program or positive peer culture that is conducted in accordance with the written policies of the facility and these rules, and is directly supervised by a staff member.
F. A facility shall prohibit all cruel and unusual discipline including, but not limited to, the following:
1. Any type of physical hitting or any type of physical punishment inflicted in any manner upon the body of the child such as spanking, striking, swatting, punching, shaking, biting, hair pulling, roughly handling a child, striking with an inanimate object, or any humiliating or frightening method of discipline to control the actions of any child or group of children.
2. Discipline that is designed to, or likely to, cause physical pain.
3. Physical exercises such as running or walking laps, push-ups, or carrying or stacking heavy rocks, bricks, or lumber when used solely as a means of punishment.
4. Assignment of physically strenuous or harsh work that could result in harm to the child.
5. Requiring or forcing a child to take an uncomfortable position such as squatting or bending, or requiring a child to stay in a position for an extended length of time such as standing with nose to the wall, holding hands over head, or sitting in a cross-legged position on the floor, or requiring or forcing a child to repeat physical movements when used solely as a means of punishment.
6. Group discipline except in accordance with the facility's written policy and these rules.
7. Verbal abuse or derogatory remarks about the child, his/her family, his/her race; religion, or cultural background.
8. Denial of any essential/basic program service solely for disciplinary purposes.
9. Deprivation of meals or snacks, although scheduled meals or snacks may be provided individually.
10. Denial of visiting or communication privileges with family, clergy, attorney, Guardian Ad Litem (GAL) and/or counsel for youth or caseworker solely as a means of punishment.
11. Releasing noxious, toxic, or otherwise unpleasant sprays, mists, or aerosol substances in proximity to the child's face.
12. Denial of sleep.
13. Requiring the child to remain silent for a period of time inconsistent with the child's age, developmental level, or medical condition.
14. Denial of shelter, clothing or bedding.
15. Withholding of emotional response or stimulation.
16. Discipline associated with toileting, toileting accidents or lapses in toilet training.

17. Sending a child to bed as punishment. This does not prohibit a facility from setting individual bed times for children.
18. Force feeding a child.
19. Use of physical management, **restraint** or **seclusion** as discipline for a child.

7.714.53 PHYSICAL MANAGEMENT, RESTRAINT AND SECLUSION [Rev. eff. 6/1/12]

If a facility is authorized to use physical management, **restraint** or **seclusion** at the facility, the facility shall use physical management, **restraint** or **seclusion** only in accordance with the following rules unless the specific rules prohibit, limit or modify the requirements placed upon the facility.

7.714.531 Authorization [Rev. eff. 6/1/12]

At the time of admission to the facility, the legal custodian of the individual shall be notified that physical management or **seclusion** may performed in certain circumstances. For a facility to perform physical management or **seclusion**, the legal custodian must give written consent for physical management and/or **seclusion** to be performed on the individual. No physical management or **seclusion** shall be performed on an individual without the specific written permission of the individual's legal custodian.

7.714.532 Uses Of Physical Management, Restraint and Seclusion [Rev. eff. 6/1/12]

Facility staff, including pre-approved family foster care home providers, may only use:
A. **Restraint** or **seclusion** in an emergency after the failure of less restrictive alternatives or after a determination that such alternatives would be inappropriate or ineffective under the circumstances; and,
B. **Restraint** if prior to the use of **restraint**:
1. Staff have been appropriately trained or certified in accordance with a model that includes nationally recognized criteria; and,
2. The facility tried all positive and constructive methods of dealing with the individual, including, but not limited to, implementation of a structured and consistent behavior management program, physical structuring of the environment, talking with the individual, praise for appropriate behavior, skill training and development, assisting the individual with the expression of feelings, and de-escalation of the situation.
In addition to the circumstances delineated in these rules, **Seclusion** may be used pursuant to a valid court order that the individual is kept separate from the general population.

7.714.533 Facility Policies And/Or Procedures [Rev. eff. 6/1/12]

Facility policies and/or procedures shall, at a minimum, include and comply with the following:
A. The use of prone **restraint** is prohibited. Momentary (as quickly as possible, but not to exceed five (5) minutes) utilization of a prone position is permissible only during the transitional measure portion of a physical management.
B. When using a physical or mechanical **restraint** method, in the course of a physical management, trained or certified staff shall be positioned within arm's length of the individual and continuously monitor the person to assure that the individual is properly positioned, that the individual's blood circulation is not restricted, that the individual's airway is not obstructed, and that the individual's other physical needs are met. Staff shall not place excessive pressure on the chest, abdomen or back of an individual or inhibit or impede the individual's ability to breathe. Staff shall continuously monitor to ensure that the breathing of the individual in such **restraint** is not compromised. If the individual is exceedingly agitated, staff may move further

from the individual, but must still be able to effectively assess, and respond as necessary, to the individual's physical condition. If breathing is compromised in any way, the **restraint** shall be discontinued immediately and a physical assessment shall occur to determine if medical attention is needed.

1. A transitional measure may be used during an episode of physical management to effectively gain initial physical control of an individual in order to prevent harm to self or others. A transitional measure may result in a **restraint** to maintain prolonged physical control or containment of an individual.

2. When mechanical **restraint**s are used, staff shall provide relief periods, except when the individual is sleeping, of at least ten minutes as often as every two hours, so long as relief from the mechanical **restraint** is determined to be safe. During such relief periods, the staff shall ensure proper positioning of the individual and provide movement of limbs, as necessary. In addition, during such relief periods, staff shall provide assistance with toileting, as necessary. The individual's dignity and safety shall be maintained during relief periods. Staff shall note the relief periods granted in the record of the individual being restrained.

3. An individual in physical **restraint** shall be released from such **restraint** within fifteen minutes after physical control of the individual is gained, except when precluded for safety reasons and documented accordingly.

C. Chemical **restraint** is prohibited.

D. When **seclusion** is utilized:

1. Relief periods shall be provided for reasonable access to toilet facilities. While in **seclusion**, staff shall be physically present and individuals shall be visually observed no less than every fifteen (15) minutes.

2. When a facility utilizes **seclusion**, there shall be a **seclusion** room supervisor who is a full-time facility staff member, is a Colorado Licensed Clinical Social Worker (LCSW), a Licensed Professional Counselor (LPC), a Licensed Marriage and Family Therapist (LMFT), a Colorado licensed psychologist or a board-eligible psychiatrist licensed to practice medicine in Colorado, and is designated and trained to be responsible for the use of **seclusion** and the **seclusion** room. If the **seclusion** room supervisor is not a psychiatrist or a licensed psychologist, there shall be such a person contracted to provide consultation with the **seclusion** room supervisor and staff. Staff will obtain authorization from the **seclusion** room supervisor prior to utilizing the **seclusion** room.

E. Each program choosing to use physical management, **restraint** and/or **seclusion** is to have a written policy, and practices consistent with these rules and the written policy. The program's written policy must include at a minimum the following information:

1. Documentation of the physical management model used. The physical management model shall comport with the requirements provided in section 7.714.53, et seq.

2. Documentation of the type of behavior management system utilized by the program.

3. The training, which satisfies the requirements of section 7.714.53, et seq., provided to staff members approved to use physical management and **seclusion**, and the type and number of hours of training each staff member is required to take as required by the model.

4. Which staff members will be approved by the program to use physical management and **seclusion**. Staff members authorized to perform **seclusion** shall be from one or more of the

following positions: administrator, assistant administrator, child care staff, social worker, teacher, psychologist, psychiatrist, or nurse.
5. The preventive and de-escalation techniques and positive behavioral intervention that must be attempted by staff prior to the use of physical management and **seclusion**.
6. How the facility continuously monitors physical management, how the facility will be physically present, such that the staff member is able to immediately respond to the needs of the individual in **seclusion**, and how the individual in **seclusion** shall be visually observed no less than every fifteen (15) minutes.
7. The philosophy and use of the **seclusion** room, the intake process, the evaluation of an individual while in the room, emergency procedure while an individual is in **seclusion** and method for a resident's grievance regarding the use of the room.
8. The type of written documentation the facility maintains of each physical management or **seclusion**. The record shall be prepared by each staff member involved in the physical management and/or **seclusion** and shall contain all of the following:
a. A description of the incident including the name of the individual, date and time of day, the name of any witnesses to the incident, staff members involved, their position at the facility and their involvement in the physical management, and how long the physical management or **seclusion** lasted, the person who authorized the **seclusion**, those that visited the individual during the **seclusion**, the exact time of each **seclusion** fifteen (15)-minute monitoring check and the behavior of the individual at each monitoring check, time and date of each **seclusion** counseling visit, the person who authorized the release from **seclusion**, and the time and date of the release.
b. The precipitating incident(s) and the individual's behavior before the **restraint** or **seclusion**.
c. What specific actions were attempted and/or taken to de-escalate the situation and control, calm, or contain the individual and the effect of these de-escalating actions upon the individual.
d. The staff's decision-making process to perform a physical management and/or **seclusion**, A description of the physical management and/or **seclusion** including the individual's physical, emotional and behavioral condition prior to, during and after the physical management, including, but not limited to, breathing, pulse, color, and signs of choking or respiratory distress, and in the case of **seclusion**, the time the individual was last given access to restroom facilities, the time the individual had opportunity for exercise if exercise is required under the individual child plan, when and what type of medications were given and by whom, when the individual's last staff contact occurred, and the stated reasons and/or authorization to continue any **seclusion**.
e. A description of the debriefing and evaluation with the individual and with the staff following the physical management to address other options that may have been successful in de-escalating the individual.
f. An indication of review by the neutral reviewer as to the appropriateness of the physical management or **seclusion**.
g. Verification that notification of the use of physical management or **seclusion** was made to the legal custodian.
9. Evaluation by an objective, internal professional of the documentation of each physical management to determine appropriateness and effectiveness of the preventive and de-

escalation techniques used and the physical management performed, as well as assessing carefully any injuries, bruising, or death.
10. The requirement that staff not restrain an individual in physical areas that may pose a threat to the health and safety of the individual including, but not limited to, soft, pliable surfaces, concrete, asphalt or areas including broken glass.
11. All facilities shall ensure that staff are trained to explain, at time of admission, the use of physical management, **restraint** and/or **seclusion** to the individual, legal custodian, and if appropriate, to the individual's family. The explanation provided to the legal custodian and individual will occur in a language or communication understandable to him/her and will include the purpose of physical management, the physical management model used, and the circumstances when a physical management may occur.
12. Notification to the legal custodian of each use of physical management, **restraint** and/or **seclusion**, no later than the end of the day that the physical management, **restraint** or **seclusion** occurred with a written report completed and given to the legal custodian by the next business day.
13. Emergency procedures, including First Aid, that will be used if an individual or staff member is seriously injured during a physical management.
14. The requirement of staff to report any critical incident, or child abuse or neglect pursuant to Colorado state law and Sections 7.701.52 and 7.701.53.
15. If **seclusion** is performed, the purpose of the **seclusion** room, evaluation of the individual while in the room, the emergency procedures for an individual in **seclusion**, and the method for the resident's right to grieve the use of the room.

7.714.534 SECLUSION [Rev. eff. 6/1/12]

A. **Seclusion** may only occur for the period of time necessary to accomplish its purpose. The individual shall be released from **seclusion** when state of emergency has ceased. **Seclusion** shall not exceed two (2) hours per incident unless required by the individual's treatment plan or individual child plan.
B. At the time of placement of the individual in **seclusion**, the neutral reviewer shall be notified in person or by telephone. Leaving a message is not notification, and if the neutral reviewer cannot be contacted in person or by telephone, the individual may not be placed in a **seclusion** room.
C. There must be notification of another staff member, who is currently on duty, that an individual has been placed in **seclusion**.
D. A staff member must be physically present, at all times when an individual is locked inside the room.
E. Physical Requirements for a **Seclusion** Room
1. The **seclusion** room shall be located in reasonable proximity to the living unit or other areas of activity.
2. The **seclusion** room shall be a minimum of eighty (80) square feet in size.
3. The **seclusion** room shall be kept in a clean and sanitary condition.
4. All switches for light, heat, and ventilation, as well as other electrical outlets, shall be outside the room. All switches shall be available only to the staff.
5. There shall be no features by which an individual might injure him or her self within the **seclusion** room such as utility pipes, cleaning equipment and materials, or mirrors.

6. Exterior windows are not recommended, but if there are window panes they shall be of shatter-resistant material and have psychiatric screening.
7. There shall be an observation window on the door from which all parts of the room are visible for purposes of supervision. The window shall be made of shatter-resistant materials.
8. The **seclusion** room shall have a lighted, soothing environment. The individual shall not be subjected to glaring lights. All lights shall be recessed into the ceiling and shall be covered with a shatter-resistant guard which is flush with the ceiling.
9. There shall be no more than one locked door between the individual and the staff member.
10. If the **seclusion** room is soundproof, there must be an intercom system which is activated when an individual is in the room.
F. Approvals Necessary to Operate a **Seclusion** Room
1. The written approval of the local fire department and the Colorado Department of Human Services must be received prior to the initial use of the **seclusion** room.
2. The licensee shall request such an inspection and there shall be an inspection by the fire department at least annually. The licensee shall retain a copy of the inspection report in the facility file.
3. If it is found, at the time of inspection by the State Department of Human Services, that the facility does not meet all the regulations for operation of the room, the department staff member shall give written notice of specific deficiencies which shall be corrected. The facility shall cease secluding any individual in the locked room until corrections are completed and authorization is given by the Colorado Department of Human Services.
7.714.535 STAFF TRAINING [Rev. eff. 6/1/12]
A. Staff utilizing any physical management in facilities or programs shall be trained in the appropriate use and implementation of a model that includes nationally recognized criteria prior to any staff being approved to use physical management. The model shall include, at a minimum, the following:
1. Annual staff training and/or certification, to include training upon hire, and ongoing (at least every six months) refresher training or practice exercises for each staff member trained or certified in **restraint**, to review and refresh skills involved in positive behavior intervention, prevention, de-escalation, and physical management, in accordance with the model.
a. Staff will be periodically observed when performing a physical management by a supervisor of the facility who has been training in physical management. If a supervisor of the facility determines a staff member did not correctly perform a physical management, the staff member must be immediately retrained or be restricted from performing further physical management until retraining can occur, and;
b. If available, the staff person shall complete any competency tests offered as part of the training prior to being approved to use physical management.
2. How to assess the signs of physical distress in a person in **restraint**.
3. A **restraint** prevention and de-escalation component, to include identifying antecedents that may cause an individual to escalate, and/or development of behavior management plans that are in alignment with individual treatment plans if necessary.
4. A physical management process that prohibits or provides alternatives to a prone position, and includes identifying primary control techniques that emphasize utilizing only the minimum amount of force necessary to gain control and keep the individual safe.

5. A debriefing process which includes a review of physical management, to determine the appropriateness and effectiveness of preventive/de-escalation techniques used, the appropriateness of physical management, and how, or if, physical managements are preventable.
B. Persons specified to place an individual in the **seclusion** shall have ongoing training and supervision which shall include at least the following:
1. The safety of the individual and staff and emergency procedures including First Aid and fire protection;
2. The purpose and policy, legal ramifications of placing the individual in **seclusion**;
3. The role of the neutral reviewer;
4. The dynamics of the behavior of individuals when in **seclusion**;
5. Safe methods of getting the individual to the **seclusion** room;
6. Methods of searching an individual when placing the individual in the **seclusion** room; and,
7. The protection of keys for the **seclusion** room.

7.714.536 DOCUMENTATION [Rev. eff. 6/1/12]

Each facility shall have processes in place to document the reason for the physical management and/or **seclusion**, alternative methods attempted, and the type and duration of physical management and/or **seclusion** in the record of the individual. Each physical management or **seclusion** shall be recorded as required by section 7.714.533, E, 7.

7.714.537 REVIEW [Eff. 6/1/12]

A. Each facility shall include physical management, **restraint** and/or **seclusion** in its critical incident review process and/or quality management program.
1. Review the Use of Physical Management
a. Records of each physical management shall be reviewed by a supervisor of the facility within forty-eight (48) hours of each **restraint**.
b. According to the policies and procedures of the facility, the entire individual's behavior management or treatment plan must be reviewed if it appears that the individual is being physically managed an excessive number of times, frequently in a short period of time, or frequently by the same staff member.
c. If any particular de-escalation technique appears to be causing an escalation in the behavior of an individual or a group of individuals, the use of the technique shall be evaluated for its effectiveness. De-escalation techniques that are not effective or are counter-productive must be terminated at the earliest opportunity.
d. If either the individual or a staff member was seriously injured or died during a physical management, a thorough review of the physical management and injuries must be instituted immediately. Based on the findings of the review, the staff members involved in the physical management must be retrained, be restricted from performing further physical management, and/or corrective personnel action must be taken.
e. If a staff member appears to be involved in a larger number of physical managements than other staff members and is not a part of a specially trained team, or is unsuccessful at using de-escalation effectively, the facility must conduct a thorough review of the staff member's interactions with individuals in care, prior physical management training, and need for further training or corrective personnel action as required by program's policies.
2. Review the Use of **Seclusion**

a. The record of use of the **seclusion** room shall be reviewed daily by the **seclusion** room supervisor and weekly by the facility administrator. If one individual is placed in the **seclusion** room more than three times in 72 hours or a maximum of 5 hours in 72 hours, the entire plan for the individual shall be reviewed, and a person, who meets the requirements of consultant to the **seclusion** room supervisor, and staff shall authorize any further use of the **seclusion** room or other treatment for the individual.
b. If the same staff member places an individual in the **seclusion** room repeatedly, this shall be investigated by the **seclusion** room supervisor.
c. The facility which operates a **seclusion** room shall appoint a neutral reviewer. The neutral reviewer shall not be the **seclusion** room supervisor or the person who placed the individual in the **seclusion** room. The reviewer shall determine if the situation resulting in the **seclusion** of an individual in a **seclusion** room merits such a decision. The reviewer may be a staff member of the facility or a professional contracted by the facility in one of the following positions: administrator, assistant administrator, social worker, psychologist, psychiatrist, nurse, lawyer.
B. All agencies shall have an administrative oversight component, to include, at a minimum, tracking and reviewing episodes of **seclusion**, physical management and **restraint** data such as through a quality assurance or performance improvement process.
C. Pursuant to Section 26-6-106(2)(k) of the Colorado Revised Statutes, a license can be suspended or revoked for failure to comply with the rules governing **seclusion**.

2509-8:7.714.9. Personnel/policy requirements

7.714.92 Personnel Policy, Orientation, and Training [Rev. eff. 6/1/12]

A. The facility shall have a comprehensive written plan for the recruitment, hiring or certification, orientation, ongoing training, and professional development of staff.
1. The facility shall have an introductory training and orientation program for all staff. This program shall include orientation to emergency and safety procedures and the general and specific duties and responsibilities of the job.
2. The facility shall maintain written documentation of specific in-service training held, staff participating in the training, the hours involved, and/or other on-going training activities in which staff were involved. Activities related to supervision of the staff members' routine tasks shall not be considered training activities for the purpose of this requirement.
B. The facility shall document that staff receive appropriate training in the following areas:
1. The facility's emergency and safety procedures, including but not limited to fire evacuation drills and disaster drills, on at least a semiannual basis.
2. The principles and practices of child care, including developmentally appropriate practices.
3. The facility's and, where appropriate, certifying authority's administrative procedures and overall program goals.
4. Acceptable behavior management techniques, appropriate discipline and physical management, **restraint** and **seclusion** of children in accordance with facility policies and these rules, including the ability to recognize and respond to signs of physical distress in children who are subject to a physical management.
5. Appropriate professional boundaries (both physical and emotional) between staff and children while in placement at the facility and after discharge.
6. Annual review of these regulations by all appropriate staff members of the facility.

7. All staff must have a minimum of twenty (20) clock-hours of on-going job specific training a year. Training may include areas listed above.
8. Individuals that are qualified by education, training, and experience must provide staff training.
9. Staff training must include training exercises in which staff members successfully demonstrate in practice the techniques which they have learned for managing emergency safety intervention.
10. The facility must document in the staff personnel record that the training and demonstration of competency were successfully completed. Documentation must include the date training was completed and the name of persons certifying the completion of training.

7.714.933 Required Notification [Rev. eff. 6/1/12]

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G. The facility must notify the parent(s), guardian(s), or placing authority regularly of the issues related to the care of the child including use of time out rooms, discipline, treatment, behavior management, physical management, **restraint** and **seclusion**, and restriction of rights.

2505-10:8.700. Federally Qualified Health Centers, Women's Health Services

2505-10:8.765. Services for clients in residential child care facilities as defined below

8.765.1 DEFINITIONS

…

Emergency Safety Intervention means the use of **Restraint** and **Seclusion** as an immediate response to an Emergency Safety Situation.

Emergency Safety Situation means unanticipated behavior of the client that places the client or others at serious threat of violence or injury if no intervention occurs and that calls for Emergency Safety Intervention.

Emergency Services means emergency medical and crisis management services.

…

Prone Position means a client lying in a face down or front down position.

Psychiatric residential Treatment Facility (PRTF) means a facility that is not a hospital and provides inpatient psychiatric services for individuals under age 21 under the direction of a physician, licensed pursuant to part 1 of article 36 of title 12, C.R.S.

Qualified **residential** Treatment Programs (QRTP) means a facility that provides residential trauma-informed treatment that is designed to address the needs, including clinical needs, of children with serious emotional or behavioral disorders or disturbances.

Referral Agency means the Division of Youth Corrections, County Departments of Human/Social Services who have legal **custody** of a client, Behavioral Healthcare Organization or Community

Mental Health Center that refers the client to a PRTF or RCCF for the purpose of placement through the Child Mental Health Treatment Act.

Restraint includes Drug Used as a **Restraint**, Mechanical **Restraint** and Personal **Restraint**.

Drug Used as a **Restraint** means any drug that is administered to manage a client's behavior in a way that reduces the safety risk to the client or to others; has the temporary affect of restricting the client's freedom of movement and is not a standard treatment for the client's medical or psychiatric condition.

Mechanical **Restraint** means any device attached or adjacent to the client's body that the client cannot easily remove that restricts freedom of movement or normal access to the client's body.

Personal **Restraint** means personal application of physical force without the use of any device, for the purpose of restraining the free movement of the client's body. This does not include briefly holding a client without undue force in order to calm or comfort, or holding a client's hand to safely escort the client from one area to another. This does not include the act of getting the client under control and into the required position for **Restraint**.

residential Child Care Facility (RCCF) means any facility that provides out-of-home, 24-hour care, protection and supervision for children in accordance with 12 C.C.R. 2509-8, Section 7.705.91.A.

Seclusion means the involuntary confinement of a client alone in a room or an area from which the client is physically prohibited from leaving.

…

8.765.5.K. The PRTF shall ensure all clients and/or guardians are aware of the PRTFs policies regarding **Restraint** and **Seclusion** as required in 42 C.F.R. 483.350-376, which is incorporated herein by reference.

…

1. The PRTF shall:

…

e. Provide an attestation to the Department that the PRTF is in compliance with the condition of participation for **Restraint** and **Seclusion** as described in Section 8.765.6.F and in federal law.

8.765.6.F. The PRTF shall comply with the following requirements for the use of Restraint and Seclusion:

1. Personal, Mechanical and Drugs Used as **Restraint** shall be ordered only by a physician, physician's assistant or nurse practitioner.

2. An order for **Restraint** or **Seclusion** shall not be written as a standing order or on an as-needed basis.

3. **Restraint** and **Seclusion** shall not result in harm or injury to the client and shall be used only to ensure the safety of the client or others during an Emergency Safety Situation and only until the Emergency Safety Situation has ceased.

4. **Restraint** and **Seclusion** shall not be used simultaneously.

5. A Personal **Restraint** when a client is in a Prone Position is prohibited.

6. If the order for **Restraint** or **Seclusion** is verbal, it shall be received by a registered nurse, licensed practical nurse or physician's assistant.

7. The **Restraint** or **Seclusion** shall be carried out by Clinical Staff who are trained in the use of emergency safety intervention.

8. Only a physician, registered nurse, licensed practical nurse or physician's assistant shall administer a Drug Used as a **Restraint**.

9. Clinical Staff trained in the use of emergency safety interventions that are physically present during the **Restraint** or **Seclusion** shall monitor the client during the **Restraint** or **Seclusion** period.

10. Each order for **Restraint** or **Seclusion** shall never:

a. Exceed the duration of the emergency safety situation; and

b. Exceed four hours in length for youth ages 18 to 21; two hours in length for clients ages nine to 17; or one hour in length for clients under age of nine.

11. Within one hour of the initiation of the Emergency Safety Intervention a physician, registered nurse or physician's assistant shall conduct a face-to-face assessment of the physical and psychological well being of the client. A psychologist may conduct the face-to-face assessment if done in conjunction with a physician, registered nurse or physician's assistant.

12. The PRTF shall report each serious occurrence to both the Department and the federally-designated Protection and Advocacy agency no later than close of business the next business day. Serious occurrences to be reported include a client's death, a serious injury to a client, or a client's suicide attempt.

13. The PRTF shall notify the parent(s) or legal guardian(s) of a client who has been restrained or secluded as soon as possible, but not to exceed 24 hours, after the initiation of each emergency safety intervention and shall document the date and time of this notification in the client's record.

14. Within 24 hours of the use of **Restraint** or **Seclusion**, staff involved in an Emergency Safety Intervention and the client shall have a face-to-face discussion. This discussion shall include all staff involved in the intervention except when the presence of a particular staff person may

jeopardize the well-being of the client. Other staff and the client's parent or guardian may participate in the discussion, if appropriate.

15. Within 24 hours after the use of **Restraint** or **Seclusion**, all staff involved in the Emergency Safety Intervention, and appropriate supervisory and administrative staff, shall conduct a debriefing session that includes, at a minimum, a review and discussion of:

a. The situation that required the intervention, including a discussion of the precipitating factors that led up to the intervention.

b. Alternative techniques that may have prevented the use of the **Restraint** or **Seclusion**.

c. New procedures implemented to mitigate any recurrence of the use of **Restraint** or **Seclusion**.

d. The outcome of the intervention, including any injuries that may have resulted from the use of **Restraint** or **Seclusion**.

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2505-10:8.508. Children's habilitation residential program

2505-10:8.508.101 use of **restraints**

A. The definitions contained at 12 CCR 2509-8; Section 7.714.1 (2019) are hereby incorporated by reference. The definition for "Client Representative" in 12 CCR 2509-8, Section.7.714.1 is specifically excluded. The incorporation of these regulations excludes later amendments to the regulations. Pursuant to Section 24-4-103(12.5), C.R.S. the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Copies of incorporated materials are provided at cost upon request.

B. Service Providers shall comply with the requirements for the use of Restraints in 12 CCR 2509-8, Sections 7.714.53 through 7.714.537, (2019) which are hereby incorporated by reference. The incorporation of these regulations excludes later amendments to the regulations. Pursuant to Section 24-4-103(12.5), C.R.S., the Department maintains copies of this incorporated text in its entirety, available for public inspection during regular business hours at 1570 Grant Street, Denver, CO, 80203. Copies of incorporated materials are provided at cost upon request.

C. All records of **restraints** shall be reviewed by a supervisor of the Service Provider within 24 hours of the incident. If it appears that the Client has been **restrained** excessively, frequently in a short period of time, or frequently by the same staff member, the Client's Service Plan must be reviewed.

D. Host Homes and Service Providers contracting with Host Home Providers must comply with the requirements for the use of **restraints** in Sections 8.608.2, 3, & 4 for Clients receiving Habilitation services age eighteen (18)- twenty (20).

2509-8:7.708.3. Requirement for the ongoing operation of foster care homes

7.708.34 The Prohibited Use of Cruel and Aversive Therapy [Rev. eff. 1/1/16]

The foster care home shall refrain from engaging in all cruel and aversive behavior management, treatment or therapy including, but not limited to, the following:

A. Any intervention designed to or likely to cause a foster child physical pain

B. Releasing noxious, or toxic, sprays, mists, or substances in proximity to the foster child's face.

C. Any intervention that denies a foster child sleep, food, water, shelter, access to bathroom facilities, adequate bedding, or appropriate physical comfort.

D. Any intervention or type of treatment that subjects a foster child to verbal abuse, ridicule, humiliation or that can be expected to cause excessive emotional trauma.

E. Interventions that use a device, material, or object that is designed to simultaneously immobilize all four of the foster child's extremities.

F. Any treatment intervention that deprives a foster child of the use of his/her senses, including sight, hearing, touch, taste, or smell.

G. **Physical management, restraint and seclusion except as described at Sections 7.708.36 and 7.714.53.**

H. Use of rebirthing therapy or any therapy technique that may be considered similar to rebirthing therapy as a therapeutic treatment, as defined by Section 12-43-222(1)(t)(IV), C.R.S.1

7.708.35 Discipline [Rev. eff. 1/1/16]

…

F. A foster care home shall prohibit all cruel and unusual discipline including, but not limited to, the following:

…

18. Physical management, **restraint** and **seclusion**.

7.708.36 Physical Management and Seclusion [Rev. eff. 1/1/16]

A. **Seclusion** is prohibited.

B. **Physical management** to attain and maintain control or for behavior management, treatment, or therapy is prohibited and/or **seclusion** is **prohibited, unless the foster care home is pre-approved** by the certifying authority to perform physical management and/or **seclusion** and the foster care home is in compliance with Section 7.708.61, K, 2, Section 7.714.53, et seq., and the applicable definitions found in Section 7.714.1. The foster care home must notify the placing caseworker when a child is subject to physical management and/or **seclusion**.