

2018 -- H 7712

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS

Introduced By: Representatives Diaz, Slater, Blazejewski, Johnston, and Maldonado

Date Introduced: February 28, 2018

Referred To: House Health, Education & Welfare

(Dept. of BHDDH)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 40.1-22-13 of the General Laws in Chapter 40.1-22 entitled
2 "Developmental Disabilities" is hereby amended to read as follows:

3 **40.1-22-13. Visits.**

4 No public or private developmental disabilities facility shall restrict the visiting of a
5 client by anyone at any time of the day or night; however, in special circumstances when the
6 client is ill or incapacitated and a visit would not be in his or her best interest, visitation may be
7 restricted temporarily during the illness or incapacity when documented in the client's
8 individualized program plan, as defined in § 40.1-21-4.3(7).

9 SECTION 2. Section 40.1-26-3 of the General Laws in Chapter 40.1-26 entitled "Rights
10 for Persons with Developmental Disabilities" is hereby amended to read as follows:

11 **40.1-26-3. Participants' rights.**

12 In addition to any other rights provided by state or federal laws, a participant as defined
13 in this chapter shall be entitled to the following rights:

14 (1) To be treated with dignity, respect for privacy and have the right to a safe and
15 supportive environment;

16 (2) To be free from verbal and physical abuse;

17 (3) (i) To engage in any activity including employment, appropriate to his or her age, and
18 interests in the most integrated community setting;

1 (ii) No participant shall be required to perform labor, which involves the essential
2 operation and maintenance of the agency or the regular supervision or care of other participants.
3 Participants may however, be requested to perform labor involving normal housekeeping and
4 home maintenance functions if such responsibilities are documented in the participant's
5 individualized plan;

6 (4) To participate in the development of his or her individualized plan and to provide
7 informed consent to its implementation or to have an advocate provide informed consent if the
8 participant is not competent to do so;

9 (5) To have access to his or her individualized plan and other medical, social, financial,
10 vocational, psychiatric, or other information included in the file maintained by the agency;

11 (6) To give written informed consent prior to the imposition of any plan designed to
12 modify behavior, including those which utilizes aversive techniques or impairs the participant's
13 liberty or to have an advocate provide written informed consent if the participant is not competent
14 to do so. Provided, however, that if the participant is competent to provide consent but cannot
15 provide written consent, the agency shall accept an alternate form of consent and document in the
16 participant's record how such consent was obtained;

17 (7) To register a complaint regarding an alleged violation of rights through the grievance
18 procedure delineated in § 40.1-26-5;

19 (8) To be free from unnecessary restraint. Restraints shall not be employed as
20 punishment, for the convenience of the staff, or as a substitute for an individualized plan.
21 Restraints shall impose the least possible restrictions consistent with their purpose and shall be
22 removed when the emergency ends. Restraints shall not cause physical injury to the participant
23 and shall be designed to allow the greatest possible comfort. Restraints shall be subject to the
24 following conditions:

25 (i) Physical restraint shall be employed only in emergencies to protect the participant or
26 others from imminent injury or when prescribed by a physician, when necessary, during the
27 conduct of a specific medical or surgical procedure or if necessary for participant protection
28 during the time that a medical condition exists;

29 (ii) Chemical restraint shall only be used when prescribed by a physician in extreme
30 emergencies in which physical restraint is not possible and the harmful effects of the emergency
31 clearly outweigh the potential harmful effects of the chemical restraints;

32 (iii) No participant shall be placed in seclusion;

33 (iv) The agency shall have a written policy that defines the use of restraints, the staff
34 members who may authorize their use, and a mechanism for monitoring and controlling their use;

- 1 (v) All orders for restraint as well as the required frequency of staff observation of the
2 participant shall be written;
- 3 (9) To have ~~reasonable~~ access, at any time, to telephone communication;
- 4 (10) To receive visitors of a participant's choosing at any time ~~all reasonable hours~~;
- 5 (11) To keep and be allowed to spend ~~a reasonable amount of~~ one's own money;
- 6 (12) To be provided advance written notice explaining the reason(s) why the participant
7 is no longer eligible for service from the agency;
- 8 (13) To religious freedom and practice;
- 9 (14) To communicate by sealed mail or otherwise with persons of one's choosing;
- 10 (15) To select and wear one's own clothing and to keep and use one's own personal
11 possessions;
- 12 (16) To have ~~reasonable~~, prompt access to current newspapers, magazines and radio and
13 television programming;
- 14 (17) To have opportunities for physical exercise and outdoor recreation;
- 15 (18) (i) To provide informed consent prior to the imposition of any invasive medical
16 treatment including any surgical procedure or to have a legal guardian, or in the absence of a legal
17 guardian, a relative as defined in this chapter, provide informed consent if the participant is not
18 competent to do so. Information upon which a participant shall make necessary treatment and/or
19 surgery decisions shall be presented to the participant in a manner consistent with his or her
20 learning style and shall include, but not be limited to:
- 21 (A) The nature and consequences of the procedure(s);
- 22 (B) The risks, benefits and purpose of the procedure(s); and
- 23 (C) Alternate procedures available;
- 24 (ii) The informed consent of a participant or his or her legal guardian or, in the absence of
25 a legal guardian, a relative as defined in this chapter, may be withdrawn at any time, with or
26 without cause, prior to treatment. The absence of informed consent notwithstanding, a licensed
27 and qualified physician may render emergency medical care or treatment to any participant who
28 has been injured or who is suffering from an acute illness, disease, or condition if, within a
29 reasonable degree of medical certainty, delay in initiation of emergency medical care or treatment
30 would endanger the health of the participant;
- 31 (19) Each participant shall have a central record. The record shall include data pertaining
32 to admissions and such other information as may be required under regulations by the
33 department;
- 34 (20) Admissions -- As part of the procedure for the admission of a participant to an

1 agency, each participant or applicant, or advocate if the participant or applicant is not competent,
2 shall be fully informed, orally and in writing, of all rules, regulations, and policies governing
3 participant conduct and responsibilities, including grounds for dismissal, procedures for
4 discharge, and all anticipated financial charges, including all costs not covered under federal
5 and/or state programs, by other third party payors or by the agency's basic per diem rate. The
6 written notice shall include information regarding the participant's or applicant's right to appeal
7 the admission or dismissal decisions of the agency;

8 (21) Upon termination of services to or death of a participant, a final accounting shall be
9 made of all personal effects and/or money belonging to the participant held by the agency. All
10 personal effects and/or money including interest shall be promptly released to the participant or
11 his or her heirs;

12 (22) Nothing in this chapter shall preclude intervention in the form of appropriate and
13 reasonable restraint should it be necessary to protect individuals from physical injury to
14 themselves or others.

15 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS

- 1 This act would expand certain rights of persons with developmental disabilities.
- 2 This act would take effect upon passage.

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