

**10 GCA HEALTH AND SAFETY
CH. 82 MENTALLY ILL PERSONS**

**CHAPTER 82
MENTALLY ILL PERSONS**

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**ARTICLE 1
DEFINITIONS**

- § 82101. Definitions.
- § 82102. Privacy and Dignity of a Person to Be Considered.

§ 82101. Definitions.

As used in this Chapter, unless the context requires otherwise:

(a) Department means the Guam Behavioral Health and Wellness Center and Director means the Director of the Guam Behavioral Health and Wellness Center.

(b) Facility means a public or privately operated institution operated by or contracted with a Government of Guam agency, which has been designated by the Director as being adequately equipped for the care of persons suffering from mental illness.

(c) Gravely disabled means a person who, as a result of mental disorder, is unable to use the elements of life which are essential to health or safety, including food, clothing or shelter, even though provided to the person by others.

(d) Investigator or Investigating Officer means a person or organization appointed by a Judge of the Superior Court.

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(e) Mentally ill or Mentally disordered means a person having a psychiatric or other disorder, which substantially impairs the person's mental health, but does not include a person suffering from:

- (1) epilepsy; or
- (2) mental retardation; or
- (3) brief periods of intoxication caused by substances such as alcohol and drugs.

(f) Patient means a person under evaluation, care or treatment in a facility pursuant to the provisions of this Title.

(g) Professional staff, professional person or qualified mental health professional means a licensed professional qualified by training or experience in the diagnosis of mental or related illness. The following licensed professionals shall be so designated:

- (1) a psychiatrist;
- (2) a clinical psychologist;
- (3) a certified psychiatric nurse at the Master's level; or
- (4) a physician.

(h) Restraint means the involuntary immobilization of a person through the use of chemical, mechanical or physical means.

(1) Chemical Restraint means a drug or medicine used as a restraint to control behavior or to restrict an individual's freedom of movement that is not standard treatment for an individual's medical or psychiatric condition.

(2) Mechanical restraint means the use of a mechanical device, material, or equipment attached or adjacent to the person's body that he or she cannot easily remove and that restricts normal access to the person's body.

(3) Physical restraint means the use of a physical hold to restrict freedom of movement of all or part of a person's body to restrict normal access to the person's body, which is used as a behavioral restraint.

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(i) Seclusion means a behavior technique involving locked isolation, but does not include a time out.

(j) Time out means a behavior management technique that is part of an approved treatment program and may involve the separation of the client or student from others, in a non-locked setting, for the purpose of calming. Time out is not seclusion.

(k) Treatment shall mean any therapy approved by the American Psychiatric Association or other recognized medical body, but shall not include those forms of treatment known as ElectroConvulsive Shock, Insulin Shock, Psycho-Surgery or any other measure which requires the physical invasion of the patient's body.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988). Amended by P.L. 28-173:2 (Jan. 29, 2007) effective, Oct. 1, 2007.

2013 NOTE: Pursuant to P.L. 32-024:2 (May 6, 2013) which renamed the Department of Mental Health and Substance Abuse (DMHSA) to the Guam Behavioral Health and Wellness Center, all references to DMHSA were altered to the Guam Behavioral Health and Wellness Center pursuant to P.L. 32-024:4.

§ 82102. Privacy and Dignity of a Person to Be Considered.

The provisions of this Chapter shall be carried out with the utmost consideration for the privacy and dignity of the person who undergoes involuntary evaluation or treatment. For all purposes under this Chapter, the determination of issues of fact before the court shall be as follows:

(a) In all cases the burden of proof shall be upon the agency or individual seeking commitment.

(b) The standard of proof shall be by clear and convincing evidence.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

2013 NOTE: Numbers and/or letters were altered to adhere to the Compiler's alpha-numeric scheme in accordance to 1 GCA § 1606.

**ARTICLE 2
INVOLUNTARY HOSPITALIZATION**

§ 82201. Authority to Evaluate a Person for Involuntary Hospitalization.

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- § 82202. Authority for Bringing an Individual to a Qualified Mental Health Professional for Consideration of Involuntary Hospitalization.
- § 82203. Preservation and Safeguarding of Personal Property of Person Taken into Custody.
- § 82204. Relation to Pending Criminal Actions.

§ 82201. Authority to Evaluate a Person for Involuntary Hospitalization.

(a) A qualified mental health professional shall perform an examination of any person alleged to have a mental illness and who as a result thereof is a danger to self, a danger to others or gravely disabled.

(b) A qualified mental health professional shall form an opinion as to whether the person does have a mental illness, and as a result thereof is a danger to self, a danger to others or gravely disabled. The findings of the examination shall be reduced to writing and recorded on the '72-hour hold application'. The application shall specify the circumstances under which the person's condition was brought to the attention of the qualified health professional his conclusion that there is probable cause that the person is a danger to self, a danger to others or gravely disabled as a result of a mental disorder.

(c) If a person is admitted to a treatment facility pursuant to a qualified health professional's opinion that he or she is a danger to self, a danger to others or gravely disabled as a result of a mental disorder, he or she may be detained for evaluation and treatment for a period not to exceed 72 hours, Saturdays, Sundays and holidays excluded.

(d) If in the judgment of the qualified health professional providing the evaluation or treatment, the person can be properly treated without being detained, the person shall be provided an evaluation, crisis intervention and referral for other services on a voluntary basis.

(e) Each person admitted for a 72-hour evaluation and treatment shall be released prior to the lapse of that period, if in the opinion of the qualified mental health professional that person no longer requires evaluation or treatment on a involuntary status. A person may stay longer than 72 hours for treatment on a voluntary basis if that is clinically indicated.

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(f) At the end of the 72-hour period, a person who has been detained for evaluation shall:

- (1) be referred for further care and treatment on a voluntary basis;
- or
- (2) be certified for intensive treatment on the 28-day certification as provided in this Title; or
- (3) released from inpatient care.

(g) Neither a qualified mental health professional who has ordered the detention of a person under this Chapter; nor a person on the staff at the facility shall be held liable under a criminal or civil action for the detention of the person in accordance with this Chapter for up to 72 hours, Saturdays, Sundays and holidays excepted.

(h) If, in the judgment of the qualified health professional providing the evaluation or treatment, the person can be properly treated without being detained, the person *shall* be provided an evaluation, crisis intervention, and referral for other services under an Assisted Outpatient Treatment Order when the person:

- (1) is a current or former client of GBHWC suffering from a mental illness;
- (2) as a result of mental illness, is unlikely to voluntarily participate in outpatient treatment that would enable him or her to live safely in the community;
- (3) has a history of poor treatment compliance for mental illness; and
- (4) in view of his or her treatment and current behavior, is in need of assisted outpatient treatment in order to prevent relapse or deterioration which would likely result in:
 - (A) a substantial risk of physical harm to the consumer as manifested by threats or attempts at suicide or serious bodily harm or conduct demonstrating that the consumer is dangerous to himself or herself, or
 - (B) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

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SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988). Subsection (h) added by P.L. 33-071:2 (Sept. 15, 2015).

§ 82202. Authority for Bringing an Individual to a Qualified Mental Health Professional for Consideration of Involuntary Hospitalization.

(a) Any person may bring another to the Department or an emergency room of a hospital for examination by a qualified mental health professional. The person bringing the other for examination must stay with the person until such examination is completed.

(b) If a peace officer has probable cause to believe that a person is a danger to self, a danger to others or gravely disabled because of a mental illness he may bring the person to the Department or the emergency room of a hospital for examination. Only a peace officer may use reasonable force to restrain and detain the person in need of evaluation. The peace officer's written report on the reasons for detaining a person for evaluation shall be included in the 72-hour application.

(c) If the qualified health professional conducting the examination does not find the person to be a danger to self, a danger to others or gravely disabled because of a mental illness he must notify the peace officer if he is still present, or the police department, if the peace officer has certified in writing that the person may be charged with a crime as specified in the written report of the peace officer.

(d) When a peace officer brings an individual for an examination he shall remain available until the examination is completed and it is determined that the person is accepted for involuntary hospitalization. The peace officer shall provide for the safety of others during the examination, if necessary.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82203. Preservation and Safeguarding of Personal Property of Person Taken into Custody.

(a) At the time a patient is taken into custody for evaluation, or within a reasonable time thereafter, unless a responsible relative or the guardian or conservator of the person is in possession of the patient's personal property, the person taking him into custody shall take reasonable precautions to preserve and safeguard the personal property in the immediate possession of the person. The person taking him into custody shall then furnish to the court a report generally describing the patient's personal property so preserved and

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safeguarded and its disposition, except that if a responsible relative or guardian or conservator is in possession of the patient's personal property, the report shall include only the name of the responsible relative or guardian or conservator and the location of the personal property, whereupon responsibility of the person taking him into custody for such personal property shall terminate.

(b) As used in this section responsible relative means the spouse, parent, adult child, or adult brother or sister of the person, except that it does not include the person who applied for the examination under this Chapter.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82204. Relation to Pending Criminal Actions.

Involuntary Hospitalization by the Court of an Individual Found Not Guilty by Reason of Insanity Shall be Pursuant to Titles 8 and 9 of the GCA.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

**ARTICLE 3
CERTIFICATION FOR INTENSIVE TREATMENT**

- § 82301. Authority to Detain for Additional 28-days.
- § 82302. Certification.
- § 82303. Same; Who Are to Receive Copies.
- § 82304. Maximum Period; When Termination of Certification and Release of Involuntary Patient Required.
- § 82305. Civil Liability for Knowingly and Willfully Detaining a Patient for More Than 28 Days.
- § 82306. Immunity from Liability of Qualified Mental Health Professional Staff for Action by Person Released Within the Designated Period.
- § 82307. Permitting Certified Person to Leave Facility for Short Periods.

§ 82301. Authority to Detain for Additional 28-days.

(a) If at the end of the 72-hour evaluation period, the individual is still a danger to self, a danger to others or is gravely disabled because of a mental illness, he shall remain in treatment and evaluation at the facility upon the written certification of two qualified mental health professionals that he is

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still in need of treatment. This certification shall be known as the '28-day certificate for intensive treatment'.

(b) The Court shall be notified of the certificate on the first working day following its issuance. The Court shall appoint legal counsel to represent the person being detained.

(c) A hearing shall be held within 72 hours. One of the qualified mental health professionals who performed the evaluation shall be required to be present for the hearing.

(d) Involuntary intensive treatment shall continue under the following conditions:

(1) The patient has been advised that he needs voluntary treatment, but has not accepted it, and

(2) A facility providing intensive treatment is equipped and staffed to provide appropriate [treatment] and agrees to admit the person, and

(3) An individual who is gravely disabled as a result of a mental illness may be certified for intensive treatment only after a finding by the Court that alternative, non-institutional care, capable of providing appropriate care and support, is not available on an out-patient basis and after a finding by the Court that the facility has the capability to provide intensive treatment for the individual.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

COMMENT: It appears that due to manifest error, the word "treatment" was omitted from subsection (d)(2); it has been added in brackets to clarify the Legislature's intent.

§ 82302. Certification.

Certification shall be required for any involuntary 28-day intensive treatment.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82303. Same: Who Are to Receive Copies.

(a) Copies of the certification notice, after having been filed with the Court shall be personally delivered to the patient so certified. A copy shall also be sent to the patient's attorney, to the Attorney General, and to the facility providing intensive treatment.

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(b) The patient shall be asked to designate any person whom he wishes informed regarding his certification and a copy of the certification notice shall be delivered to the person so designated. If the patient is incapable of making such a designation at the time of certification, he shall be asked to designate such a person as soon as he is capable.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82304. Maximum Period; When Termination of Certification and Release of Involuntary Patient Required.

(a) Certification shall be for no more than 28 days, and shall terminate as soon as, in the opinion of the qualified mental health professional staff of the facility providing intensive treatment, the patient has improved sufficiently for him to leave, or is prepared to accept voluntary treatment on referral or to remain in the facility providing intensive treatment on a voluntary basis.

(b) Except as otherwise provided in the provisions of Article 5 or Article 7 of this Chapter, a facility providing intensive treatment must release all involuntary patients at the end of 28 days who do not agree to receive further treatment on a voluntary basis.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82305. Civil Liability for Knowingly and Willfully Detaining a Patient for More Than 28 Days.

Any individual who is knowingly and willfully responsible for detaining a patient for more than 28 days in violation of the provisions of this Chapter shall be liable to that patient for civil damages.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

2015 NOTE: Subsection designation removed to adhere to the Compiler's general codification scheme in accordance to the authority granted by 1 GCA § 1606.

§ 82306. Immunity from Liability of Qualified Mental Health Professional Staff for Action by Person Released Within the Designated Period.

(a) Neither the qualified mental health professional staff of the facility providing intensive treatment, nor the peace officer responsible for the detainment of the person, shall be held civilly or criminally liable for any

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action by a person released at or before the end of 28 days pursuant to this Chapter.

(b) If during treatment and evaluation the patient has threatened the life or safety of any other person, it shall be the duty of the qualified mental health professional staff to make a good faith effort to communicate the substance of such threats to the person so threatened prior to the release of the patient.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82307. Permitting Certified Person to Leave Facility for Short Periods.

Nothing in this Chapter shall prohibit the qualified mental health professional staff from permitting a person certified for intensive treatment to leave the facility for home visits or for short periods for other therapeutic treatment during the person's involuntary intensive treatment. Such home visits or temporary leave shall not be deemed to be a release of the person under the provisions of §82306 of this Chapter.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

**ARTICLE 4
JUDICIAL REVIEW**

- § 82401. Right to Hearing by Habeas Corpus; Request for Release; Duties of Staff Member; Notices Required.
- § 82402. Jurisdiction; Time for Granting Writ; When Immediate Release Required.
- § 82403. Finding Under § 82402 Not Admissible as Evidence in Other Proceeding.
- § 82404. Immunity from Liability for Persons Exercising Authority in Detention and Treatment Proceedings.

§ 82401. Right to Hearing by Habeas Corpus; Request for Release; Duties of Staff Member; Notices Required.

(a) Every person detained by certification for intensive treatment or temporary conservatorship shall have a right to a hearing by writ of habeas

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corpus for his release after he or his attorney has made a request to leave to any member of the staff of a facility providing intensive treatment.

(b) Any member of the staff to whom a request for release is made shall promptly provide the patient for his signature or mark, a copy of the form set forth below. The member of the staff shall fill in his own name and the date, and, if the patient signs by mark, shall fill in the patient's name, and shall then deliver the completed copy to the qualified mental health professional person in charge, or his designee, notifying him of the request. No later than the next working day, the person notified shall inform the Superior Court and the Attorney General. The staff shall also permit the patient to telephone his attorney.

(c) The form for a request for release shall be substantially as follows:

Request for Release

(Name of the facility)

_____ day of _____, 19____.

I, _____ (member of the staff), have today received a request for release from the undersigned patient:

(Signature or mark of patient)

§ 82402. Jurisdiction; Time for Granting Writ; When Immediate Release Required.

Judicial review shall be by the Superior Court. The court shall grant a writ of habeas corpus or order an evidentiary hearing within two (2) judicial days after the petition is filed. If the court finds that the person requesting release is not, as a result of a mental illness, a danger to others, or to himself, or gravely disabled, the person shall be released immediately; provided, that the court shall not release a gravely disabled individual unless all of the conditions set forth in Section 82301(d) of this Chapter relating to non-institutional care are satisfied.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82403. Finding Under § 82402 Not Admissible as Evidence in Other Proceeding.

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A finding under Section 82402 of this Chapter shall not be admissible in evidence in any civil or criminal proceedings.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82404. Immunity from Liability for Persons Exercising Authority in Detention and Treatment Proceedings.

Individuals authorized under this Chapter to detain a person for 72-hour treatment and evaluation pursuant to Article 1 of this Chapter, to certify a person for intensive treatment pursuant to Article 2 of this Chapter, or to file a petition for post-certification treatment for a person pursuant to Article 5 of this Chapter shall not be held either criminally or civilly liable for exercising such authority in accordance with the law.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

**ARTICLE 5
POST-CERTIFICATION PROCEDURES FOR
IMMINENTLY DANGEROUS PERSONS**

- § 82501. Post-certification Procedures for Dangerous Persons; Maximum Additional Period.
- § 82502. Petition by Person in Charge of Facility.
- § 82503. Proceedings on the Petition for Post-certification Treatment.
- § 82504. Findings; Maximum Period of Additional Treatment; Filing of New Petition.
- § 82505. Release Before Expiration of Ninety (90) Days; Notice to Court.
- § 82506. Immunity of Hospital from Liability For Actions of Person Released.

§ 82501. Post-certification Procedures for Dangerous Persons; Maximum Additional Period.

At the expiration of the 28-day period of intensive treatment, a person may be confined for further treatment pursuant to the provisions of this Article for an additional period, not to exceed 90 days, if he:

- (a) Has threatened, attempted, or inflicted physical harm upon himself or the person of another after having been taken into custody

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for evaluation and treatment, and who, as a result of a mental illness, presents an imminent threat of substantial physical harm to himself or others; or

(b) Had attempted or inflicted physical harm upon the person of another, that act having resulted in his being taken into custody and who presents, as a result of a mental illness, an imminent threat of substantial harm to others. For purposes of this Chapter, 'custody' shall be construed to mean involuntary detainment under the provisions of this Chapter uninterrupted by any period of unconditioned release from a facility providing involuntary care and treatment.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82502. Petition by Person in Charge of Facility.

(a) At any time during the 28-day intensive treatment period, the qualified medical professional in charge of the facility may petition the Superior Court for an order requiring the patient to undergo an additional period of treatment on the grounds set forth in Section 82501 of this Chapter. The petition shall summarize the facts which support the contention that the person falls within the standards set forth in Section 82501 of this Chapter.

(b) Copies of the petition for post-certification treatment and the affidavits in support thereof shall be served upon the person named in the petition and his attorney on the same day as they are filed with the Clerk of the Superior Court.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82503. Proceedings on the Petition for Post-certification Treatment.

(a) The court shall conduct the proceedings on the petition for post certification treatment within four (4) judicial days of the filing of the petition and in accordance with constitutional guarantees of due process of law.

(b) If at the time of the hearing the person named in the petition requests a jury trial, such trial shall commence within ten (10) judicial days of the filing of the petition for post-certification treatment unless the person's attorney requests a continuance, which may be for a maximum of ten (10) additional judicial days. The decision of the jury must be unanimous in order to support the finding of facts required by Section 82504 of this Chapter.

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(c) Until a final decision on the merits by the court the person named in the petition shall continue to be treated in the intensive treatment facility until released by order of the Superior Court or unless the petition for post certification treatment is withdrawn. If no decision has been made within thirty (30) days after the filing of the petition, not including extensions of time requested by the person's attorney, the person shall be released.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82504. Findings; Maximum Period of Additional Treatment; Filing of New Petition.

If the court finds that the person named in the petition for post-certification treatment has:

(a) threatened, attempted or actually inflicted physical harm upon himself or the person of another after having been taken into custody for evaluation and treatment, and, as a result of a mental illness, presents an imminent threat of substantial physical harm to himself or others; or

(b) had attempted or inflicted physical harm upon the person of another, that act having resulted in his being taken into custody and who, as a result of a mental illness, presents imminent threat of substantial physical harm to others, it shall remand him to the custody of the department or other facility for a period not to exceed ninety (90) days from the date of court judgment. Said person shall be released from involuntary treatment at the expiration of ninety (90) days unless the qualified mental health professional staff of the facility in which he is confined files a new petition for post-certification treatment on the grounds that he has threatened, attempted, or inflicted physical harm on himself or on another person during his period of post-certification treatment and he is a person, who, by reason of a mental illness, presents an imminent threat of substantial harm to others. Such new petition for post-certification treatment shall be filed in the Superior Court.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82505. Release Before Expiration of Ninety (90) Days; Notice to Court.

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(a) Nothing in this Chapter shall prohibit the director or qualified mental health professional person in charge of the facility in which the person is being involuntarily treated from releasing him from treatment prior to the expiration of ninety (90) days when in his opinion the person being involuntarily treated no longer constitutes an imminent threat of substantial harm to himself or others.

(b) Whenever the director or qualified mental health professional person in charge of a facility providing post-certification treatment pursuant to this Chapter releases a person prior to the expiration of ninety (90) days, he shall so notify the court.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82506. Immunity of Hospital From Liability for Actions of Person Released.

(a) The qualified mental health professional staff providing ninety (90) days involuntary treatment shall not be held civilly or criminally liable for any action by a person released at or before the end of the ninety (90) day period.

(b) If during the ninety (90) days of involuntary treatment the patient has threatened the life or safety of any other person, it shall be the duty of the qualified mental health professional staff to make a good faith effort to communicate the substance of such threats to the person so threatened prior to the release of the patient, and no person who has made such threats may be released until after a court hearing approving such release.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

**ARTICLE 6
LEGAL AND CIVIL RIGHTS OF PERSONS**

- § 82601. Enumeration of Rights; Posting of List in English, Chamorro and Tagalog.
- § 82602. Right to Communication and Visitation; Exercise of Civil Rights.

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- § 82603. Who May Deny Rights to Person Detained; Grounds; Entry in Treatment Records; Information to Be Made Available to Person Detained.
- § 82604. Rights Not Specifically Denied to Be Retained.
- § 82605. Confidentiality of Information in Records; Persons to Whom Disclosure Authorized.
- § 82606. Compilation and Publication of Statistical Data Authorized.
- § 82607. Action for Wrongful Release of Confidential Information or Records; Penalty or Treble Damages; Injunction.
- § 82608. Presumption of Incompetency Due to Evaluation or Treatment Prohibited; Statement of Law to be Given Person Leaving Facility.
- § 82609. Mechanical Restraints.
- § 82610. Seclusion and Restraint Policy.

§ 82601. Enumeration of Rights; Posting of List in English, Chamorro and Tagalog.

Each person involuntarily detained for evaluation or treatment under the provisions of this Chapter shall have the following rights, a list of which shall be prominently posted in English, Chamorro and Tagalog in all facilities providing such services and otherwise brought to his attention by such additional means as the Attorney General may require:

(a) Every patient shall be entitled to humane care and treatment and, to the extent that facilities, equipment, and personnel are available, to medical care and treatment in accordance with the highest standards accepted in medical practice.

(b) To the fullest extent possible, all treatment proposed to be administered shall be planned in consultation with the patient and he shall be kept informed as to the nature, purpose and possible consequences of his treatment.

(c) The patient's attorney shall have the right at all times to examine all records of and plans for the treatment of the patient and, upon request and reimbursement to the treating facility for reasonable costs of copying, to a photocopy of all or any part of such records and plan.

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(d) Within twenty-four (24) hours of the signing of any order for commitment for 28-day treatment and continuously thereafter, the detained person's record at the treatment facility shall contain detailed, written information stating the mental health treatment being provided and the specific objectives of such treatment.

(e) Within five (5) days after the entry of an order committing a person to ninety (90) day treatment, the qualified mental health professional staff in charge of the patient's treatment shall prepare an individual treatment plan.

(f) Every patient, or his attorney, has the right to refuse electroconvulsive therapy, Insulin Shock, Psycho Surgery, or any other measure which requires the physical invasion of the patient's body.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82602. Right to Communication and Visitation; Exercise of Civil Rights.

(a) Except to the extent that a qualified mental health professional determines that it is necessary for the medical welfare of the patient to impose restrictions, every patient shall be entitled:

(1) To communicate by sealed mail or otherwise with persons, including official agencies, inside or outside the facility; and

(2) To receive visitors; and

(3) To exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless he has been adjudicated incompetent and has not been restored to legal capacity.

(b) Notwithstanding any limitations authorized under this Section on the right of communication, every patient shall be entitled to communicate by sealed mail with his attorney and with the Court. Any letter or written message from a patient directed to the court or the patient's attorney shall be promptly forwarded to the addressee by the facility holding the patient.

(c) Any limitations imposed by a qualified mental health professional on the exercise of these rights by the patient and the reasons for such limitation shall be made a part of the clinical record of the patient.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82603. Who May Deny Rights to Person Detained; Grounds; Entry in Treatment Records; Information to Be Made Available to Person Detained.

A person's rights under § 82601 or § 82602 of this Chapter may be denied for good cause only by the director or qualified mental health professional in charge of the facility. Denial of an involuntarily detained person's rights shall in all cases be entered into the person's treatment record. Information pertaining to the denial of rights contained in the person's treatment record shall be made available to the person, his attorney, or his conservator or guardian.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82604. Rights Not Specifically Denied to Be Retained.

Every person involuntarily detained under the provisions of this Chapter for evaluation or treatment in any facility, including a conservatee placed in any facility, shall be entitled to all rights set forth in this Chapter and shall retain all rights unless specifically denied him under this Chapter.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82605. Confidentiality of Information in Records; Persons to Whom Disclosure Authorized.

All information and records obtained in the course of providing service to either voluntary or involuntary recipients of services shall be confidential. Information and records may be disclosed only:

(a) In communications between qualified mental health professionals in the provision of services or appropriate referrals, or in the course of conservatorship proceedings;

(b) When the qualified mental health professional staff in charge of the patient, with the approval of the patient or his attorney, conservator or guardian, designates persons to whom information or records may be released, except that nothing in this Chapter shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of the patient's family. No record may be released under this subsection after ten (10) years have elapsed since the record was made;

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(c) To the extent necessary to make claims on behalf of a recipient for services for aid, insurance, or medical assistance to which he may be entitled;

(d) If the recipient of services is a ward or conservatee, and his guardian or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this Chapter shall be construed to compel a qualified mental health professional, psychologist, social worker, nurse or attorney, to reveal information which has been given him in confidence by members of a patient's family.

(e) For research, provided that the Attorney General provides by regulation, rules for the conduct of research. Such rules shall include, but need not be limited to, the requirement that all researchers must sign an oath of confidentiality as follows:

Date: _____

As a condition of doing research concerning persons who have received services from _____ (fill in the facility, agency or person) I _____ agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I realize that the unauthorized release of confidential information may make me subject to a civil action under the provisions of Title VI of the Code of Civil Procedure.

Signed: _____

(f) To the courts, as necessary to the administration of justice.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82606. Compilation and Publication of Statistical Data Authorized.

Nothing in this Chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards established by the Attorney General.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82607. Action for Wrongful Release of Confidential Information or Records; Penalty or Treble Damages; Injunction.

(a) Any person may bring an action against an individual or agency who has willfully and knowingly released confidential information or records concerning him in violation of the provisions of this Chapter, for the greater of the following amounts:

- (1) Two Thousand Five Hundred Dollars (\$2,500); or
- (2) Three times the amount of actual damages, if any, sustained by the plaintiff.

(b) It is not a prerequisite to an action under this section that the plaintiff suffer or be threatened with actual damages.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82608. Presumption of Incompetency Due to Evaluation or Treatment Prohibited; Statement of Law to Be Given Person Leaving Facility.

No person may be presumed to be incompetent because he has been evaluated or treated for mental illness, regardless of whether such evaluation or treatment was voluntarily or involuntarily received. Any person who leaves a public or private mental health facility following evaluation or treatment for mental illness, regardless of whether that evaluation or treatment was voluntarily or involuntarily received shall be given a statement of Guam law as stated in this section.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82609. Mechanical Restraints.

Mechanical restraints shall not be applied to a patient unless it is determined by the treating qualified mental health professional person to be required by the medical needs of the patient, and the use thereof is approved by the court, or, in the case of an emergency, within 72 hours after restraints are first used. Every use of mechanical restraints and the reasons therefor shall be made part of the clinical record of the patient.

§ 82610. Seclusion and Restraint Policy.

The Government of Guam's use of restraint or seclusion shall be strictly limited to emergencies when there is imminent risk of an individual physically harming himself or others and nonphysical intervention is not

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effective. This Section applies to all direct care providers within Government of Guam agencies and agents and employees of the Government of Guam who provide services to persons with mental difficulties, behavioral difficulties and developmental disabilities, but not the Department of Corrections and Guam Police Department. Direct care providers means personnel working with persons with mental difficulties, behavioral difficulties and developmental disabilities who are subject to a behavior plan, individualized educational plan or a similar plan.

(a) Training Program. An agency employing direct care providers shall provide a minimum of sixteen (16) hours to newly hired providers and annual follow-up training at a minimum of eight (8) hours. The training shall instruct providers in the following:

(1) reducing the use of seclusion and restraint through risk assessment and early intervention, which includes nonphysical intervention;

(2) needs and behaviors of the population served (e.g. age, gender, adults, or children);

(3) relationship building;

(4) proper and permissible techniques for seclusion, physical holds and chemical restraints for the population served, including risks versus benefits;

(5) preventive techniques for restraint and seclusion, including a safe and calm physical environment;

(6) positive alternatives to restraint and seclusion;

(7) de-escalation methods;

(8) avoidance of power struggles;

(9) thresholds for restraints and seclusion;

(10) the physiological and psychological impact of restraint and seclusion;

(11) monitoring physical signs of distress and obtaining medical assistance;

(12) legal issues;

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- (13) positional asphyxia;
- (14) escape and evasion techniques;
- (15) time limits;
- (16) the process for obtaining approval for continued restraints;
- (17) procedures to address problematic restraints;
- (18) documentation of restraints and seclusion;
- (19) debriefing after the use of restraints and seclusion with the client or student, the client's or student's family member, or authorized representative, as well as staff members; and
- (20) processing with clients or students, and follow-up with personnel, and investigation of injuries and complaints.

(b) Reporting Requirements. Direct care providers shall document the use of every restraint defined in §§ 82101(h) and 82101(i), Article 1, Chapter 82, Title 10 GCA on an incident report. Any injury as a result of restraint or seclusion shall be reported immediately to professional staff, Guam Behavioral Health and Wellness Center, Department of Public Health and Social Services, and the territorial protection and advocacy office or its successor.

Government of Guam agencies and agents and employees of the government of Guam who provide services to persons with mental difficulties, behavioral difficulties and developmental disabilities shall report all deaths and severe injuries to Guam Behavioral Health and Wellness Center, Department of Integrated Services for Individuals with Disabilities, and the territorial protection and advocacy office or its successor. Each agency shall maintain and update a list of all deaths, severe injuries, and the frequency of its facility's use of seclusion and restraint on an annual basis and shall post the same on its website with a proper regard for client and student confidentiality.

(c) Prohibited Acts.

- (1) seclusion is prohibited in school settings;
- (2) chemical restraint is prohibited unless prescribed by a physician who specifies the duration and circumstances under

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which the restraints are to be used, and shall be indicated in a client or student's individualized treatment plan.

(3) a physical restraint or containment technique that obstructs a person's respiratory airway or impairs the person's breathing or respiratory capacity, including techniques in which a staff member places pressure on a person's back or places his or her body weight against the person's torso or back is prohibited.

(4) a pillow, blanket, or other item covering the person's face as part of a physical or mechanical restraint or containment process is prohibited.

(5) prone restraint on a person at risk for positional asphyxiation as a result of one of the following risk factors that are known to the personnel is prohibited:

(A) obesity;

(B) pregnancy;

(C) agitated delirium or excited delirium syndromes;

(D) cocaine, methamphetamine, or alcohol intoxication;

(E) exposure to pepper spray;

(F) preexisting heart disease, including, but not limited to, an enlarged heart or other cardiovascular disorders; and/or

(G) respiratory conditions, including emphysema, bronchitis, or asthma.

SOURCE: Added by P.L. 28-173:3 (Jan. 29, 2007) effective, Oct. 1, 2007.

2013 NOTE: Pursuant to P.L. 32-024:2 (May 6, 2013) which renamed the Department of Mental Health and Substance Abuse (DMHSA) to the Guam Behavioral Health and Wellness Center, all references to DMHSA were altered to the Guam Behavioral Health and Wellness Center pursuant to P.L. 32-024:4.

Numbers and/or letters were altered in subsection (c)(5) to adhere to the Compiler's alpha-numeric scheme in accordance to 1 GCA § 1606.

ARTICLE 7
CONSERVATORSHIP FOR GRAVELY DISABLED PERSONS

- § 82701. For Whom Conservator May Be Appointed; Procedure; Exceptions.
- § 82702. Who May Recommend Conservator Ship; Petition by Investigating Officer; Pleading and Filing Requirements for Temporary Conservatorship.
- § 82703. Temporary conservatorship.
- § 82704. Duties of Investigating Officer.
- § 82705. Notice by Nominee of Willingness to Accept Conservatorship.
- § 82706. Recommendation of Person or Agency to Serve as Conservator.
- § 82707. Report by Investigating Officer.
- § 82708. Powers of Conservator.
- § 82709. Right to Place Conservatee in Medical or Other Facility, Notice to Investigating Officer.
- § 82710. Alternative Placement After Notice by Person in Charge of Facility.
- § 82711. Powers and Duties of Conservators and Legal Disabilities of Conservatees.
- § 82712. Termination of Conservatorship.
- § 82713. Same; Notice to Conservator and Conservatee.
- § 82714. Ratification of Good-Faith Acts of Conservator Beyond Maximum Period; Decree.
- § 82715. Petition by Conservatee for Rehearing.
- § 82716. Time for Hearing Petitions, Attorney for Conservatee.
- § 82717. Chapter Provisions to Supersede Commitments Under Former Provisions.
- § 82718. Former Conservatee Not to Be Presumed Incompetent.

§ 82701. For Whom Conservator May Be Appointed; Procedure; Exceptions.

A conservator of the person, or the estate, or of the person and the estate may be appointed for any person who is gravely disabled as the result of a mental disorder. The procedure for establishing conservatorship under this Chapter shall be the same as that provided in 15 GCA Division 4 except as follows:

- (a) A conservator may be appointed for a gravely disabled minor.

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(b) When a gravely disabled person already has a guardian or conservator, the Superior Court under this Chapter may retain that guardian or conservator, or remove him and appoint a new guardian or conservator under the provisions of this Chapter.

(c) The person for whom conservatorship is sought shall have the right to demand a jury trial on the issue of whether he is gravely disabled. This right shall also apply in subsequent proceedings to reestablish conservatorship.

(d) The Superior Court may grant a conservator, appointed under this Chapter, with the power to place his conservatee in a facility for psychiatric or psychological care only after finding that alternative, non- institutional care and support are not available on an out-patient basis, and after finding that the facility has the capability to provide treatment which is appropriate to the needs of the gravely disabled individual.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82702. Who May Recommend Conservatorship; Petition by Investigating Officer; Pleading and Filing Requirements for Temporary Conservatorship.

When the qualified mental health professional person in charge of a facility providing evaluation or intensive treatment determines that a person in his care is gravely disabled as a result of a mental disorder and is unwilling to accept, or incapable of accepting, treatment voluntarily, he may recommend conservatorship to the officer providing conservatorship investigation. Such recommendation shall be made in a written report supplying pertinent information to include diagnosis, symptoms, prognosis, treatment and reasons for the grave disability. If the officer providing conservatorship investigation concurs with the recommendation, he shall petition the Superior Court to establish conservatorship. Where temporary conservatorship is indicated, the fact shall be alternatively pleaded in the petition.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82703. Temporary Conservatorship.

(a) A temporary conservator under this Chapter shall determine that arrangements are necessary to provide the person with food, shelter, and care pending the determination of conservatorship. He shall give preference to

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arrangements which allow the person to return to his home, family or friends. If necessary, the temporary conservator may require the person to be detained in a facility providing intensive treatment pending the determination of the petition for conservatorship. Any person so detained shall have the same right to judicial review set forth in Article 4 of this Chapter.

(b) Temporary conservatorship shall continue pending a hearing to consider the appointment of a conservator, the trial and any appeals, but in no event longer than one (1) year. The powers of the temporary conservator shall be those granted in the decree, but in no event may they be broader than the power which may be granted a conservator.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82704. Duties of Investigating Officer.

The officer providing conservatorship investigation shall investigate all available alternatives to conservatorship and shall recommend conservatorship to the court only if no suitable alternatives are available. The report to the court shall be comprehensive and shall contain all relevant aspects of the person's medical, psychological, financial, family, vocational and social condition, and shall contain all available information concerning the person's real and personal property. The facility providing intensive treatment or evaluation shall disclose any records or information which may facilitate the investigation. If the officer providing conservatorship investigation recommends against conservatorship, he shall set forth all alternatives available. A copy of the report shall be transmitted to the individual who was originally recommended to serve as conservator, and to the person recommended for conservatorship.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82705. Notice by Nominee of Willingness to Accept Conservatorship.

The person recommended to serve as conservator shall promptly notify the officer providing conservatorship investigation whether he will accept the position if appointed. If notified that the person or agency recommended will not accept the position if appointed, the officer providing conservatorship investigation shall promptly recommend another person to serve as conservator.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82706. Recommendation of Person or Agency to Serve as Conservator.

If the conservatorship investigation results in a recommendation for conservatorship, the recommendation shall designate the most suitable person or agency to serve as a conservator. No person, or agency, shall be designated as conservator whose interest, activities, obligations or responsibilities are such as to compromise his or their ability to represent and safeguard the interests of the conservatee.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82707. Report by Investigating Officer.

The report of the officer providing conservatorship investigation shall contain his recommendations concerning the powers to be granted to, and the duties to be imposed upon the conservator, and the legal disabilities to be imposed upon the conservatee. The report of the court shall also contain an agreement signed by the person or agency recommended to serve as conservator certifying that the person or agency is able and willing to serve as conservator.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82708. Powers of Conservator.

All conservators shall have such powers as the Court may designate. The report shall also recommend for or against the imposition of each of the following disabilities on the proposed conservatee:

- (a) The right to possess and carry firearms.
- (b) The privilege of possessing a license to operate a motor vehicle. If the report recommends against this privilege and the Court adopts the recommendation, the agency providing conservatorship investigation shall, upon the appointment of the conservator, so notify the Department of Revenue and Taxation Licensing Section.
- (c) The right to enter into contracts. The investigating officer may recommend against the person having the right to enter specified types of transactions in excess of specified money amounts.
- (d) The right to use alcohol or other non-prescribed substances causing addiction.

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(e) If the person has shown to be a danger to self or to others because of a mental disorder, and if it is required by the Court, the person must take prescribed medication as part of his treatment. This shall be monitored by the conservator and may consist of oral medications or medications by injection.

(f) If the Court adopts the recommendation, the conservator shall be responsible to ensure the person's basic living requirements are paid before providing the person with funds for personal use each month.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82709. Right to Place Conservatee in Medical or Other Facility, Notice to Investigating Officer.

A conservator appointed pursuant to this Chapter shall have the right, if specified in the court order, to place his conservatee in a medical psychiatric, nursing, or other facility, or a hospital, a United States government hospital, or other non-medical facility approved by the Department. If the conservatee is not to be placed in his own home or the home of a relative, first priority shall be to placement in a suitable facility as close as possible to his home or the home of a relative. Before doing so, the conservator shall inform the officer providing conservatorship investigation and shall, if requested by the officer, submit his conservatee to an evaluation pursuant to this Title to determine whether such action is necessary.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82710. Alternative Placement After Notice by Person in Charge of Facility.

(a) A conservator appointed under this Chapter shall find alternative placement for his conservatee within seven (7) days after he is notified by the qualified mental health professional in charge of the facility serving the conservatee that the conservatee no longer needs the care or treatment offered by that facility.

(b) If the alternative placement cannot be found at the end of the 7-day period the conservator shall confer with the qualified mental health professional in charge of the facility and they shall then determine the earliest practicable date when such alternative placement may be obtained.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82711. Powers and Duties of Conservators and Legal Disabilities of Conservatees.

The Attorney General shall designate by regulation, standards to be followed by the officer providing conservatorship investigation in recommending for or against specific powers and duties of conservators and legal disabilities of conservatees under this Chapter.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82712. Termination of Conservatorship.

Conservatorship initiated pursuant to this Chapter shall automatically terminate one (1) year after the appointment of the conservator by the Superior Court. The period of service of a temporary conservator shall not be included in the one-year period. If upon the termination of an initial or a succeeding period of conservatorship the conservator determines that conservatorship is still required, he may petition the Superior Court for his reappointment as conservator for a succeeding one-year period.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82713. Same; Notice to Conservator and Conservatee.

The Clerk of the Superior Court shall notify each conservator, his conservatee and the qualified mental health professional in charge of the facility in which the person resides, and the conservatee's attorney, one (1) month before the termination of the one-year period. Notification shall be by certified mail. If the conservator does not petition to reestablish conservatorship before the termination of the one-year period, the Court shall issue a decree terminating conservatorship. The decree shall be sent to the conservator and his conservatee by certified mail.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82714. Ratification of Good-faith Acts of Conservator Beyond Maximum Period; Decree.

In the event the conservator continues in good faith to act within the powers granted him in the original decree of conservatorship beyond the one-year period, he may petition for and shall be granted a decree ratifying his acts as conservator beyond the one-year period. The decree shall provide for a retroactive appointment of the conservator to provide continuity of

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authority in those cases where the conservator did not apply in time for reappointment.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82715. Petition by Conservatee for Rehearing.

At any time, but not to exceed more than once each three (3) months, the conservatee may petition the Superior Court for a rehearing as to his status as a conservatee.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82716. Time for Hearing Petitions, Attorney for Conservatee.

All petitions under this Chapter shall be heard within thirty (30) days and an attorney shall be provided for the conservatee or proposed conservatee.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82717. Chapter Provisions to Supersede Commitments Under Former Provisions.

Conservatorship established under this Chapter shall supersede any commitment under other provisions of Guam law relating to the mentally ill.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82718. Former Conservatee Not to Be Presumed Incompetent.

A person who is no longer a conservatee shall not be presumed to be incompetent by virtue of his having been a conservatee under the provisions of this Chapter.

**ARTICLE 8
VOLUNTARY HOSPITALIZATION**

- § 82801. Authority to Receive Voluntary Patients.
- § 82802. Discharge of Voluntary Patients.
- § 82803. Right to Release on Application.

§ 82801. Authority to Receive Voluntary Patients.

Any member of the qualified mental health professional staff of a designated facility may admit for observation, diagnosis, care and treatment, any person who is mentally ill or has symptoms of a mental illness and who, being eighteen (18) years of age or over, applies therefor; or any individual under eighteen (18) years of age who is mentally ill or has symptoms of mental illness, if his parents or legal guardians apply therefor in his behalf.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82802. Discharge of Voluntary Patients.

Any qualified mental health professional member staff of a designated facility may authorize the release of a voluntarily admitted person whose hospitalization he determines to be no longer advisable.

SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).

§ 82803. Right to Release on Application.

(a) A voluntary patient who requests his release or whose release is requested, in writing by his legal guardian, parents, spouse, or adult next of kin shall be released forthwith, except that:

(1) If the patient was admitted on his own application and the request for release is made by a person other than the patient, release may be conditioned upon the agreement of the patient thereto; and

(2) If the patient, by reason of his age, was admitted on the application of another person, his release prior to becoming eighteen (18) years of age may be conditioned upon the consent of his parent or guardian; and

(3) If the qualified mental health professional of the designated facility within forty- eight (48) working hours from the receipt of the request, files with the Superior Court or a judge thereof, a 72-hour hold certificate, that in his opinion the release of the patient would be unsafe for the patient or others, release may be postponed, pursuant to this Chapter.

(b) Notwithstanding any other provision of this Chapter, judicial proceedings for hospitalization shall not be commenced with respect to a voluntary patient unless release of the patient has been requested by himself or the individual who applied for his admission.

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SOURCE: Repealed and reenacted by P.L. 19-016:1 (Apr. 11, 1988).
