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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 14. DEPARTMENT OF MENTAL HYGIENE
CHAPTER XIV. OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES
PART 633. PROTECTION OF INDIVIDUALS RECEIVING SERVICES IN FACILITIES OPERATED
AND/OR CERTIFIED BY OMRDD

Current through July 31, 2012

* Section 633.10.* Care and treatment.

(a) Principles of compliance.

(1) Section 33.03 of the Mental Hygiene Law requires that each person shall receive care and treatment that is suited to his or her needs and skillfully, safely and humanely administered with full respect to his or her dignity and personal integrity.

(2) In accordance with the regulations for the class of facility, there shall be a current record (see glossary, section 633.99 of this Part) that includes all information concerning or relating to the examination or treatment of the person for whom the record is kept, and which includes a plan of services (by whatever name known). On no less than an annual basis, the agency/facility or the sponsoring agency shall ensure the following requirements are met to ensure the protection of persons under their care and treatment:

(i) An assessment of functional capacity.

(ii) Review and evaluation of the person's written plan of services and his or her progress in relation to that plan done by at least that staff member designated as having the coordination responsibility for the person's plan of services, or by the person's program planning team (see glossary).

(iii) For persons in a residential facility, at least a medical/dental evaluation by a physician or registered physician's assistant addressing the person's need for an examination or specific medical/dental services; or by a dentist for dental services. The determination of the basis for such evaluation (e.g., appraisal of the person through records and previous contacts) shall be that of the qualified professional.

(3) Treatment or therapies which, by law or regulation, require the written order of a professional (see glossary) shall be delivered in accordance with the order of someone operating within the scope of his or her professional license. The order shall be based on an appropriate examination.

(4) Notification of health care problems.

(i) The person's parent, guardian, advocate or correspondent shall be notified if a person receiving services is suspected or diagnosed as having a health problem which results in the person being:

(a) served in an emergency room or urgent care center; or

(b) admitted to a hospital; or

(c) unable to participate in scheduled activities for seven or more days.

(ii) However, notification shall not be made if:

(a) the individual is a capable adult person (see section 633.99 of this Part) and objects to the notification; or

(b) there is a written advice from the guardian or parent that he or she does not want to be

notified.

(5) The agency/facility shall develop a plan for addressing the life threatening emergency needs of the persons served. Such a plan shall be based on the needs of the persons in the facility, and shall address the availability of first aid, cardiopulmonary resuscitation (CPR) techniques and access to emergency medical services. Where staff training is part of the plan, there shall be provision to keep such training up to date. For family care homes, the relevant sponsoring agency shall be responsible for addressing this requirement.

(6) Facilities which have emergency medical equipment on hand shall ensure that such equipment is maintained in accordance with a written agency/facility plan. Such a plan shall incorporate maintenance requirements that are in accordance with manufacturer recommendations and which includes provisions for inspection/replenishment subsequent to each use. Facilities with such equipment shall ensure that there are staff appropriately qualified to use it.

(7) Provisions relevant to implementation of the Health Care Decisions Act for Persons with Mental Retardation.

(i) Parties involved in decisions to withdraw or withhold life-sustaining treatment.

(a) Pursuant to section 1750-b of the Surrogate's Court Procedure Act (SCPA), in addition to parties specified by the statute, parties may seek the approval of the commissioner to be authorized to perform the following duties:

(1) serve as the attending physician to confirm, with a reasonable degree of medical certainty, that the person with mental retardation lacks capacity to make health care decisions (if the consultant lacks specified additional qualifications); or

(2) serve as a consulting physician or psychologist regarding confirmation, with a reasonable degree of medical certainty, that the person with mental retardation lacks capacity to make health care decisions (if the attending physician lacks specified additional qualifications); or

(3) serve as the attending physician to determine that, to a reasonable degree of medical certainty, the person with mental retardation would suffer immediate and severe injury from notification regarding implementation of a decision to withdraw or withhold life-sustaining treatment from such person (if the consultant lacks specified additional qualifications); or

(4) serve as a consulting physician or psychologist regarding a determination that, to a reasonable degree of medical certainty, the person with mental retardation would suffer immediate and severe injury from notification regarding implementation of a decision to withdraw or withhold life-sustaining treatment from such person (if the attending physician lacks specified additional qualifications).

(b) In order to obtain the approval of the commissioner, physicians and licensed psychologists shall either possess specialized training in the provision of services to persons with mental retardation or have at least three years experience in the provision of such services. The commissioner may disapprove physicians or psychologists whose qualifications do not include sufficient training or experience in the determination of capacity or incapacity of persons with mental retardation. The commissioner may also disapprove physicians who have been found guilty of medical misconduct by the Board for Professional Medical Conduct, and psychologists who have been subject to a disciplinary action by the Board of Regents for professional misconduct. The commissioner may suspend the approval process during the pendency of an investigation and proceedings related to alleged medical misconduct or professional misconduct, if he or she becomes aware of such investigation or proceedings.

(ii) Upon receipt of notification of a decision to withdraw or withhold life-sustaining treatment in accordance with section 1750-b(4)(e)(ii) of the Surrogate's Court Procedure Act (SCPA), the chief executive officer (see glossary, section 633.99 of this Part) of the agency (see glossary, section 633.99 of this Part) shall confirm that the person's condition meets all of the criteria set forth in SCPA section 1750-b(4)(a) and (b). In the event that the chief executive officer is not convinced that all of the necessary criteria are met, he or she may object to the decision and/or initiate a special proceeding to resolve such dispute in accordance with SCPA section 1750-b(5) and (6).

(iii) For purposes of communicating the notification required by section 1750-b(4)(e)(iii) of the Surrogate's Court Procedure Act (SCPA), the commissioner (see glossary, section 633.99 of this Part) designates the directors of each of the DDSOs (see glossary, section 633.99 of this Part) to receive such notification from an attending physician. In any such case, the DDSO director shall confirm that the person's condition meets all of the criteria set forth in SCPA section 1750-b(4)(a) and (b). In the event that the director is not convinced that all of the necessary criteria are met, he or she may object to the decision and/or initiate a special proceeding to resolve such dispute in accordance with SCPA section 1750-b(5) and (6).

(iv) Qualified family member.

(a) This subparagraph implements the provisions of subdivision (1) of SCPA section 1750-b, only for the purposes of a qualified family member making a decision to withhold or withdraw life-

sustaining treatment pursuant to such section.

(b) In the case of a person for whom no guardian has been appointed pursuant to SCPA sections 1750 or 1750-a, a guardian as used in SCPA section 1750-b shall also mean a qualified family member.

(c) A decision to withhold or withdraw life-sustaining treatment may be made in accordance with SCPA section 1750-b by the following qualified family members in the order stated:

- (1) an actively involved (see section 633.99 of this Part) spouse;
- (2) an actively involved parent;
- (3) an actively involved adult child;
- (4) an actively involved adult sibling; and
- (5) an actively involved adult family member (see section 633.99 of this Part).

(d) If the first qualified family member on the list in clause (c) of this subparagraph is not reasonably available and willing, and is not expected to become responsibly available and willing to make a timely decision given the person's medical circumstances, a decision may be made by the next qualified family member on the list, in the order of priority stated.

(e) If more than one qualified family member exists within a category on the list in clause (c) of this subparagraph, the qualified family member with the higher level of active involvement shall have the opportunity to make the decision first. If the qualified family members within a category are equally actively involved, any of such qualified family members shall have equal opportunity to make a decision.

(f) If the first reasonably available and willing qualified family member makes a decision not to withhold or withdraw life-sustaining treatment, other qualified family members would not be authorized to overturn such decision. However, nothing in this subparagraph limits the right of any such qualified family member to object to such decision pursuant to SCPA section 1750- b(5) (ii).

(b) Standards of certification.

(1) If a person was suspected or diagnosed as having a health problem which required emergency room services or admission to a hospital or infirmary, or was unable to participate in scheduled activities for seven or more days, there is documentation that his or her parent(s), guardian(s) or correspondent was notified, unless the person is a capable adult and objected to such notification to a parent or correspondent being made.

(2) There is a written plan specifying how the agency/facility will deal with life threatening emergencies. Such a plan shall address:

- (i) First aid.
- (ii) CPR.
- (iii) Access to emergency medical services.

(3) OMRDD shall verify that staff have been made aware of their responsibilities in accordance with the agency/facility plan.

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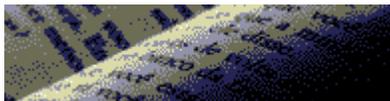
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